

SPECIAL ISSUE

Kenya Gazette Supplement No. 13 (Nyeri County Acts No. 6)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NYERI COUNTY ACTS, 2017

NAIROBI, 20th April, 2017

CONTENT

Act—

PAGE

The Nyeri County Water and Sewerage Services Act, 2017..... 1

**THE NYERI COUNTY WATER AND SEWERAGE SERVICES
ACT, 2016**

No. 6 of 2017

Date of Assent: 13th April, 2017

Date of Commencement: 20th April, 2017

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Section

1—Short title and commencement.

2— Interpretation.

3—Objects of the Act.

PART II—PROVISION OF WATER AND SEWERAGE SERVICES

4—Establishment of a Directorate of Water and Sewerage Services.

5—Director for Water and Sewerage Services.

6—Qualifications of a Director.

7—Functions of the Directorate.

8—Establishment of Water service Providers.

9—Board of Directors of County Water Service providers.

10—Agreement with water Services Providers.

11—Duty to provide Water Services.

12—Functions of Water Service Providers.

13—Regulations on tariffs applicable.

14—Duty to enforce Regulations for water services.

15—Supply of water in bulk.

16—Protection of Water Sources.

17—Power of Water Service Providers to prohibit or restrict use of water.

18—Execution of works for protection of water.

19—Water tariffs.

20—Clustering of areas of water service provision.

21—Acquisition of land.

22—Water service provision inspectors.

- 23— Special regulatory regime.
- 24— Transfer of functions of Water Service Provider.
- 25— Reserve Powers of the Executive Member.
- 26— Community Irrigation Projects.
- 27— Water Users Association.
- 28— Governance of Water Users Associations.
- 29— Water user Service fees.
- 30— Service provision agreement.
- 31— Equitable use of water.

PART III—WATER DEVELOPMENT CO-ORDINATION COMMITTEE

- 32— Establishment of a Water Development Co-ordination Committee.
- 33— Responsibilities of the Water Development Co-ordination Committee.
- 34— Handling of liquid effluent into sewerage system.

PART IV—SEWERAGE TARIFFS

- 35— Control of effluent.
- 36— Execution of works for protection of water.
- 37— Privately developed sewers.
- 38— Sewerage tariffs.

PART V—STORM WATER MANAGEMENT

- 39— Provision of infrastructures.
- 40— Protection of storm water system.
- 41— Participation by all actors.
- 42— Prevention of flood risk.
- 43— Studies and assessment.
- 44— Water pollution incidents.
- 45— Storm water systems on private land.
- 46— Regulations.
- 47— Penalties for default.

PART VI—WATER RESOURCES MANAGEMENT

- 48—Establishment of a Directorate for Environment and Natural Resources Management.
- 49—Other staff.
- 50—Powers and functions of Directorate.
- 51—Designation of Catchment areas.
- 52—Catchment areas water resources management strategies.
- 53—Establishment of Water Resource Users.
- 54—Sub Catchment Management plans.
- 55—Monitoring water allocation plan.
- 56—Management of wetlands.
- 57—Demarcation of riparian land.
- 58—Prohibited activities on riparian land.

PART VII—WATER SECTOR FINANCING

- 59—Financing of the implementation of the Act.
- 60—Funds collected.

PART VIII—GENERAL PROVISIONS

- 61—Permit for new works.
- 62—Penalties.
- 63—Remedy of defaults.
- 64—Power of entry.
- 65—Notice of entry.
- 66—Prohibited activities.
- 67—Regulations.
- 68—Miscellaneous offences.
- 69—Penalties.
- 70—Transfer of functions, assets, obligations, agreements and other arrangements to water service providers.
- 71—Transfer of functions, obligations, agreements and other arrangements to Water Resources Users.

**THE NYERI COUNTY WATER AND SEWERAGE SERVICES
ACT, 2017**

AN ACT of the County Assembly of Nyeri to provide for development, regulation and management of Water, Sewerage, irrigation, flood and storm water management systems, water conservation and connected purposes

ENACTED by the County Assembly of Nyeri as follows—

PART I—PRELIMINARY**Short title and Commencement**

1. This Act may be cited as the Nyeri County Water and Sewerage Services Act, 2017 and shall come into operation on the date of publication in the Gazette

Interpretation

2. In this Act. Unless the context otherwise requires—

“county” means the County Government of Nyeri;

“county government” means the government of Nyeri County;

“executive Member” means the County Executive Committee Member for the time being responsible for water and sewerage services;

“license” means a license in force under this Act:

“licensee” means any. Person who has been issued with a license under this Act;

“riparian land” means the dynamic complex of plant, animals and micro-organisms communities and their non-living environment adjacent to and associated with a watercourse;

“supply of water in bulk” means a supply of water to a licensee for distribution by or on behalf of the licensee taking the supply;

“storm water” means water that originates due to heavy rain that falls on building rooftops or collects on paved areas like driveways, roads and footpaths;

“trade effluent” means any liquid, whether with or without suspended particles, or produced as a by-product in the course of any trade or industry;

“watercourse” means any natural channel or depression in which water flows regularly or intermittently;

“water Development Co-ordination Committee” means the Water Development Co-ordination Committee established under section 33;

“water Resources Users Association” means the association of water resources users at Sub Catchment level as established in section 57; “water service” means any service of or incidental to the supply of water services or the provision of sewerage services;

“water services provider” means a company, non- governmental organization or other person or body licensed to provide water services under and in accordance with an agreement as stipulated under section 8.

Objects of the Act

3. The Object and purpose of the Act is to provide for the development, management and regulation of water and sewerage services.

PART II—PROVISION OF WATER AND SEWERAGE SERVICES

4. Establishment of a Directorate of Water and Sewerage services
(1) There is established a Directorate known as the Directorate for Water and Sewerage Services.

5. Director for Water and Sewerage Services(1) The Directorate shall be headed by the Director of Water and Sewerage Services.

(2) The Director and all staff of the Directorate shall be appointed by the County Public Service Board on such terms and conditions of service as the County Public Service may determine.

(3) The County Public Service Board may appoint such other officers and assistants as may be necessary for the effective functioning of the directorate.

Qualifications of a Director

6. A person shall not be eligible for appointment as a Director unless the person—

- (a) Holds at least a degree from a recognized University;
- (b) Meets the requirements of Chapter 6 of the Constitution;
- (c) Has at least 5 years experience in water and sewerage or a related field.

Functions of the Directorate

7. (1) the functions of the Directorate shall be—

- (a) Collaborating with national and/or other county government(s)/departments in initiating, developing, coordinating and managing policies, strategies and plans for water Supply development and storm water drains Management services;

- (b) Issue authorization and/or licenses to water service providers as defined under this Act and to monitor, regulate and enforce license conditions;
- (c) formulate, promote and monitor implementation of policies for sustainable growth of the water sector, in consultation with the private sector and in line with water institutions in the National Government;
- (d) establish a mechanism for handling complaints from consumers regarding the quality or nature of water services; and
- (e) facilitating public awareness and participation on sustainable water resources, sewerage services and storm water management;
- (f) develop and promote policies, strategies and mechanisms for climate change mitigation and adaptation in the water sector;
- (g) developing performance management system and overseeing its implementation by the agencies established under this Act and ensure compliance with the established standards related to water and sewerage services and works;
- (h) monitoring and evaluating the implementation of this Act and the water sector;
- (i) acting as the repository of information and data on water sector;
- (j) advising the Executive Member on the necessary policies to be adopted for sustainable water resources management
- (k) to receive and address complaints from water consumers and any person affected by a decision of the Water Service Providers;
- (L) to Promote and facilitate adoption and use for water conservation systems and methods, including water harvesting.

PART III—ESTABLISHMENT OF WATER SERVICE PROVIDERS

Establishment of Water Service Providers

8. (1) Water services providers shall be established under the provisions of this Act.

(2) Water Service Providers shall manage Water and Sewerage Services under delegated Authority and shall be licensed by the County Government under the provisions of this Act.

(3) The Executive Member shall by notice cause to be published in the County Gazette and/or Kenya Gazette all duly registered and licensed water service providers and the stakeholders for each of the water service providers in the County.

(4) The water service provider shall be a company established under the Companies Act or a duly registered association or trust as approved by the Executive Member.

Board of Directors of County Water Service Providers

9. (1) The Executive Member shall *Gazette* Regulations for the appointment of the board of directors for water service providers and specify the respective qualifications, professional capacity, experience, tenure and conditions on corporate governance and integrity.

(2) The members of the Board shall be nominated by the Different stakeholders within the Water Service providers subject to meeting the provisions of sub section (1) of this section.

Agreement with Water Service Providers

10. (1) Every water service provider licensed under this act shall enter into a written Service Provision Agreement (SPA) with the County Government for purposes of exercise and performance of all its powers and functions under the license.

Duty to provide Water services

11. (1) A water services provider shall, as the licensee, be responsible for the efficient and economical provision of water services so as to fulfil the rights to water and any other conditions specified in the license.

(2) For the purpose of provision of water services, a water services provider, may—

- (a) purchase, lease or otherwise acquire, premises, plant, equipment and facilities; and
- (b) Purchase, lease or otherwise acquire land, or arrange for its compulsory acquisition in accordance with the applicable laws.

Functions of Water Service Providers

12. The functions of the waters service providers shall be—

- (a) to provide water services within the specified area;
- (b) to collect and treat sewage regardless of its origins;
- (c) to maintain and manage water services and related works including county assets for water services provision;

(d) Development of county assets for water provisions as directed by the County Government

Regulations on tariffs applicable

13. (1) The Executive Member may in consultation with the Water Service Providers make regulations for or with respect to conditions for the provision of water services and the tariffs applicable.

(2) If it appears to a water service provider to be necessary for the purpose of protecting against degradation any water Source, whether on the surface or underground, which belongs to it is for the time being authorised to take, it may, with the written approval of the Executive Member make regulations—

- (a) defining the area within which he deems it necessary to exercise control;
- (b) prohibiting or regulating the doing, within that area, of any act prescribed by such regulations; and

Regulations under this clause shall be published in the Kenya Gazette and/or County Gazette and shall come into force on the date of such publication or on a later date specified in the regulations.

Duty to enforce Regulations for water services

14. (1) it shall be the duty of any Water Service Provider to monitor and enforce any regulations made under this act, and any Water Service Provider who fails to do so may be ordered by the Directorate to take such action to enforce such regulations as shall be specified in the order.

Supply of water in bulk

15. (1) Any water service provider may enter into an agreement with any other person, whether a neighbouring water service provider or groups of Consumer stakeholders within its area of jurisdiction for the supply of water in bulk on any terms and conditions as shall be agreed upon and shall be approved by the Directorate.

(2) Where it appears to the Directorate that it is expedient that a water service provider should give a supply of water in bulk to another water service provider or group of Consumers within its area of jurisdiction; and the other water service provider or consumer group should take such a supply; and the giving and taking of such a supply cannot be secured by agreement, the Directorate may, by order served on them, require the water service providers and/or Consumer group concerned to give and take such supply for such period and on such terms as it may specify.

Protection of Water Sources

16. A Water Service Provider may enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as the Water Service Provider considers necessary or as the conditions of his or her license may require for the purpose of protecting the catchment, drainage of land, carrying out soil conservation measures or the control of vegetation or more effectively collecting, conveying or preserving the purity and quality of water which the Water Service Provider is for the time being authorized to take.

Power of Water Service Provider to Prohibit or Restrict use of Water

17. (1) A Water Service Provider who is of the opinion that there is a serious deficiency or threat of a deficiency of water available for distribution may, with the approval of the Directorate, for such period as the Water Service Provider considers necessary, prohibit or restrict with respect to the whole or any part of its limits of supply, the use for any specified purpose of water supplied by the Water Service Provider.

(2) Before the prohibition or restriction in subsection (1) comes into force, notice shall be given by the Water Service Provider, in one or more newspapers of daily circulation, within the affected area or by such other means as the Directorate established under Section 4 may approve, of the proposed prohibition or restriction and of the date when it will come into force.

(3) Regulations made under this act may provide that any person, who, while such prohibition or restriction is in force, contravenes its provisions and commits an offence and on conviction shall be liable to a penalty fixed by regulation.

Execution of works for protection of water

18. (1) A Water Service Provider may, on any land belonging to it, or on land over which it has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise for preventing water belonging to the Water Service Provider, or which it is for the time being authorized to take, from being polluted.

(2) Where the proposed works will affect or are likely to affect any water resource, the Water Service Provider shall obtain the consent of the Directorate subject to any conditions as the Directorate and other agencies may impose before constructing any drain, sewer or other works.

Water tariffs

19. (1) Water service providers may levy tariffs and any appropriate user charges for the purposes of carrying out its functions after validation by the National Water Regulator.

(2) The Executive Member shall Gazette Water and Sewerage Tariffs for each Water Service Provider

(3) The Executive Member will provide guidelines on the development of tariffs by Water Service Providers.

Clustering of areas of water service provision

20. (1) The County Executive Committee Member may where it appears necessary for the purpose of securing a commercially viable water service Provider, by notice in the Gazette transfer a water service, or part thereof from one licensee to another licensee and vary the relevant licenses accordingly.

(2) An order made under this section may make such incidental, consequential and supplementary provision as the Directorate deems necessary or expedient for the purpose of carrying out the order.

Acquisition of land

21. A Water Service Provider who may require the compulsory acquisition of land for any of its purposes may apply to the Executive Committee Member, who may, in collaboration with the National Land Commission, and upon being satisfied that such compulsory acquisition is desirable, take any steps necessary to secure the land in accordance with the Land Act.

Water service provision inspectors

22. The Executive Member may at any time appoint water inspectors among others to carry out spot inspections and post inspections on the water service providers on the compliance by the water service providers on service provision conditions including water and waste water quality surveillance, Technical and Financial compliance and asset Maintenance surveillance.

Special regulatory regime

23. (1) Where the water services provider who persistently defaults in compliance with the conditions of its license or the requirements of the Act and having been notified by the Directorate to take such steps as are reasonably practicable in order to remedy any such failure has failed to do so, The County Executive Committee member may by notice in the gazette impose a special regulatory regime on a Water Service Provider

(2) Under a special regulatory regime, the Directorate may impose on the licensee requirements relating to enhanced monitoring and reporting including removal of the senior management of the licensee, dissolution of the board of directors of the licensee, and the appointment of a special manager of the water services.

Transfer of functions of Water Service Provider

24. (1) If the County Executive Committee Member is satisfied that, notwithstanding the imposition of measures under a special regulatory regime, the default has not been remedied and is not likely to be remedied by the licensee, he may by notice in the Gazette, order the transfer to another licensee of the water services in question.

(2) The order of transfer shall make such provision as appears to the County Executive Member to be desirable or necessary with respect to any property or assets being used by the defaulting licensee for the purposes of providing the water services.

Reserve Powers of the County Executive Committee Member

25. (1) The County Executive Committee Member shall retain the residual power to provide water services to consumers which shall only be exercised in cases where and for the periods during which—

- (a) the water service provider for an area has been declared to be in default under this Act and an order made transferring the functions to the County Executive Committee Member;
- (b) there is an emergency leading to serious and widespread disruption of services and a water service provider is unable to deal with the situation.

(2) The County Executive Committee Member may in consultation with the Water Development and Co-ordination Committee, to the extent necessary to enable the exercise of his powers under this clause, have power to—

- (a) Transfer the management of any water asset developed or rehabilitated by the department, donor or community to either a water service provider or to a different management committee for purposes of achieving efficient and constant delivery of water services;
- (b) purchase, lease or otherwise acquire premises, plant, equipment and facilities; and
- (c) purchase, lease or otherwise acquire land.

Revocation of Service Provision Agreement 3) Notwithstanding the provisions of Sections 10 and 31 of this Act, the Executive Member may suspend or revoke a service provision agreement on any of the following grounds.

- (a) Serious or repeated breach of the service provision agreement conditions;
- (b) Discovery of any fraud or intentional misrepresentation by a water service provider at the time of applying for the license;
- (c) Failure to meet statutory obligations.

Community Irrigation Projects

26. Residents of a catchment area who use water for irrigation purposes may form an association under the Societies Act, Cooperatives Act, or other legally recognized framework to be called Water Users Association for the better administration of the Users' interests and obligations with respect to use and conservation of water.

Water Users Associations

27. Water Users Associations (WUAs) shall be supported to develop small scale piped systems for the better administration of the Users' interests and obligations.

(2) Where a community project is funded through public funds, such project shall be subject to oversight by the Directorate as may be prescribed.

Governance of Water users Associations

28. The County Executive Committee Member shall make Rules for the establishment and governance of water users' associations including Tenure and qualification of Water Users Associations leaders/Directors.

Water User Service Fees

29. A Water Users Association may set and collect from its members water Use service fees based on the actual costs of operation and full maintenance of the same, provided that the fees referred to in this subsection shall be approved by the Executive Member in consultation with the Water Development Co-ordination Committee established under Section 32.

Service Provision Agreement

30. Every water Users Association licensed under this Act shall enter into a written Service Provision Agreement (SPA) with the County

Government for purposes of identification and development of sustainable irrigation projects.

Equitable use of water

31. Every licensed Water Users Association shall ensure equitable water use and distribution.

PART III—WATER DEVELOPMENT CO-ORDINATION COMMITTEE

Establishment of a Water Development Co-ordination Committee

32. (1) There is established a Water Development Co-ordination Committee which shall be constituted by the Department.

(2) The committee shall comprise of—

- (a) the Chief Officer responsible for matters related to water who shall be the Secretary of the Committee;
- (b) the Chief officer responsible for matters related to finance;
- (c) 9 members qualified in matters related to water and sewerage appointed by the County Executive Committee Member representing the Water Service Providers, Water Users Association and Water Resources Users Association.

(3) The Members shall in their first meeting elect the Chairperson and the Vice Chairperson from the members provided in (c) above.

(4) The County Executive Committee Member shall provide for guidelines for the appointment of the Committee and specify the respective qualifications, professional capacity, experience and necessary conditions on Corporate governance and integrity.

Responsibilities of the Water Development Co-ordination Committee

33. The Committee shall be responsible for—

- (a) reviewing development and investment plans for rural and urban areas aggregated from the county development plans and established by the county water service providers through the County Government water services institutional structure for their designated areas and recommend for implementation;
- (b) proposing policy or legislative interventions for effective implementation of this Act; and
- (c) reviewing development measures, plans and strategies for implementing this Act;

- (d) advising the County Executive Committee Member on the necessary policy measures, Regulations and rules to be adopted for better implementation of this Act.

Handling of liquid effluent into sewerage system

34. (1) It shall be the duty of a Water Service Provider receiving liquid effluent into its sewerage system to ensure that it has in place measures for the receipt and handling of the effluent without causing:

- (a) pollution of the environment;
- (b) harm to human health;
- (c) damage to the sewerage system; or
- (d) a contravention of applicable laws or contravention of standards set by the Directorate.

(2) A person shall not discharge any trade effluent from any trade premises into the sewers of a Water Service Provider without consent of the Water Service Provider.

(3) The Water Service Provider's consent may be given subject to conditions, including conditions requiring pre-treatment and payments to the Water Service Provider of charges for the discharge.

(4) Any person who is dissatisfied with the decision of the Water Service Provider on an application under this section may, within thirty days of the decision, appeal to the Directorate.

(5) A person who contravenes the provisions of this section commits an offence

PART IV—SEWERAGE SERVICES

Control of effluent

35. (1) No person shall discharge any trade or liquid effluent from any premises into the sewers of a water service provider without the consent of the water service provider.

(2) An application for consent shall be made to the water services provider and shall state—

- (a) the nature or composition of the trade effluent;
- (b) the maximum quantity of the effluent which it is proposed to discharge on any one day;
- (c) the highest rate at which it is proposed to discharge the effluent; and
- (d) any other information required by the water service provider.

(3) The water service provider's consent may be given subject to conditions, including conditions requiring the payment to the water service provider of charges for the discharge.

(4) Such consent shall be granted upon consultation with the Executive Committee Member.

Execution of works for protection of water

36. (1) A Water Service Provider may, on any land belonging to it or over or in which it has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise for preventing water belonging to the water service provider, or which he is for the time being authorised to take, from being polluted.

(2) Any water service provider proposing to construct any such drain, sewer or other works may, with the consent of the National Environment Management Authority and any other relevant authorities concerned and subject to such conditions as the authority may impose, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the limits of supply of the water service provider.

Privately developed Sewers

37. Any privately developed sewer approved and supervised by the water service Provider and connecting to public facilities will revert to public use after one year maintenance period. Any claims for the construction costs shall be lodged to the water service provider within one year after construction.

Sewerage tariffs

38. Subject to the County Governments Act, 2012 and any written law, a water Service Provider or its agent may impose tariffs or levy sewerage services on water or sewerage services for the purposes of disposal of water or sewerage.

PART V—STORM WATER MANAGEMENT

Provision of infrastructures

- 39.** (1) The County Government may—
- (i) construct, expand, alter, maintain or lay any drains, pipes or other structures related to the storm water drainage system; on or under immovable property;
 - (ii) drain storm water or discharge water from any county public works into any natural water course; and

(iii) do any other thing necessary to give effect to the provisions of this Act.

(2) Ownership of any drains, pipes or structures related to storm water shall vest in the County Government.

Protection of storm water system

40. (1) A person shall not, unless with the written consent of the County Government and subject to any conditions it may impose—

- (a) discharge, permit to enter or place anything other than storm water into the storm water system;
- (b) damage, endanger, or destroy the storm water system or its operation;
- (c) construct or erect any structure or thing or over or in such a manner to interfere with or endanger the storm water system or its operation;
- (d) discharge, permit to enter or place anything likely to cause storm water pollution;
- (e) make an opening into a storm water pipe, canal or culvert;
- (f) drain, abstract or divert any water directly from the storm water system;
- (g) fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the storm water system;
- (h) connect or direct storm water into the Public sewerage system;
- (i) connect or Direct the Sewerage system to the storm water drains.

(2) Any person who contravenes with the provisions of subsection (1) shall be liable on conviction to a fine of one hundred thousand shilling or imprisonment for term not exceeding six months or both.

Participation by all actors

41. The County Government shall promote participation of all actors through a competitive process including but not limited to individual persons, firms, corporate and Community Based Organizations in all aspects of cleaning and Maintenance of storm water drains in built up areas to the extent reasonable in pursuit of high quality and sustainable standards of environment including but not limited to provision of services and exercise of individual responsibilities

Prevention of flood risk

42. No person shall impose or undertake any activity which alone or in combination with other existing or future activities, may cause an increase in the flood levels or create a potential flood risk.

Studies and assessment

43. (1) The conditions which the County Government may impose in Section 45 may include—

- (a) the establishment of flood lines;
- (b) the undertaking of impact assessments; and
- (c) environmental impact studies or investigations which may be required by any applicable environmental laws.

(2) Any study done under subsection (1) will be at the expense of the applicant.

Water pollution incidents

44. (1) Where there is a storm water pollution incident, the owner of the property on which the incident took place or is still in the process of taking place or the person responsible for the incident shall immediately report the incident to the Executive Member.

(2) The Executive Member may in its opinion require that such persons take all reasonable measures to minimize the effects of the pollution at their own cost.

Storm water systems on private land

45. Every owner of property on which private storm water systems are located shall—

- (i) not carry out any activity which could reasonably be expected to impair the effective functioning of the storm water system, and
- (ii) at own cost, keep such storm water systems functioning effectively, including undertaking its refurbishment or reconstruction
- (iii) the provisions of subsection (ii) shall not apply where the County Government has accepted responsibility for any of the duties in a formal agreement or in terms of a condition of a servitude.

Regulations

46. The Executive Member for the time being responsible for matters related to water and Sewerage services may make regulations relating to

the manner of disposing water falling or coming to rest within private property.

Penalties for Default

47. (1) No person shall, without authority under this act or any other written law willfully obstruct, interfere with, divert or abstract a storm water Course, or negligently allow any such obstruction, interference, diversion or abstraction.

(2) A person who contravenes this shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment of a term not exceeding twelve months or to both.

PART VI—WATER RESOURCES MANAGEMENT

Establishment of a Directorate for Environment and Natural Resources Management

48. (1) There is established a Directorate known as the Directorate for Environment and Natural Resources Management.

(2) The Directorate shall be headed by the Director of Environment and Natural Resources Management who shall be appointed by the County Public Service Board.

Other staff

49. The County Public Service Board may appoint such other officers and assistants as may be necessary for the effective functioning of the directorate.

Powers and functions of Directorate

50. The functions of the directorate shall include but not limited to—

- (a) through intergovernmental relations Act, County Government Act and any other written laws, collaborate with other county governments and Basin Authority in conservation and protection of water sources and catchments of strategic importance;
- (b) formulate county standards procedures and rules for the management and use of water resources and flood mitigation;
- (c) implement National and County standards, procedures and rules for the management and use of water resources and flood mitigation;
- (d) support financing of water conservation and catchment protection areas within the County;

- (e) approval and monitoring of implementation of sub catchment management plans developed by Water Resource Users Associations;
- (f) monitor compliance by water users with the conditions of Licenses and the requirements of the Act;
- (g) collect, analyze and disseminate Data and information on water resources;
- (h) ensure access to information on water resources;
- (i) liaise with other Counties, regional, national bodies for the better regulation of the management and use of water resources;
- (k) Advise the County Executive Member in-charge of Water on development and management of water resources.

Designation of catchment areas

51. The Executive Member may in consultation with the National Land Commission, the County Land Management board, the Regional Basin Authority by notice published in the Gazette designate a defined area lying wholly or partly within an area from which rainwater flows into a watercourse to be a sub catchment area for the purposes of this act.

Catchment areas water resources management strategies

52. (1) Upon the designation of catchment area, the directorate shall formulate a County water resources management strategy which shall -

- (a) be consistent with the national water resources policy;
- (b) put in place measures to fulfil the water resource quality objectives for each class of water resource in the catchment area;
- (c) describe the measures to be put in place for the sustainable management of water resources of the catchment area;
- (d) provide a strategy for financing the management of the water resources of the catchment.

(2) The Directorate may impose through a notice in a gazette such conditions and requirements regulating or prohibiting certain activities in relation to the water conservation area.

Establishment of Water Resource Users Associations

53. (1) The Water Resource Users Association shall be established as an association of water resource users at Sub Catchment level.

(2) Water Resource Users Association shall be community based associations for catchment protection, collaborative management of water resources and conflicts resolution concerning the use of water resources.

(3) The County Government may contract Water Resource Users Associations as agents to perform some functions in catchment protection and water resource management.

Sub Catchment Management plans

54. (1) Each Sub Catchment, represented by a the Water Resources Users Associations (WRUA) shall in consultation with the Directorate formulate a Sub Catchment Management plan which shall—

- (i) provide systems, facilities and incentives to enable users of water resources within the catchment participate in managing the water resources of the catchment area.
- (ii) each sub catchment water resources management plan in force for the time being, shall be published in the Kenya Gazette.

Monitoring water Allocation plan

55. The County Government shall collaborate with the National Water Resources Management Authority, the intra-County Basin authority and the Water Resource Users Association to monitor the water allocation plan for the sub Catchment area.

Management of wetlands

56. The Directorate shall develop and gazette guidelines for sustainable management of wetlands.

Demarcation of riparian land

57. The Executive Member shall in consultation with national, intra county basin agencies and other stakeholders develop and gazette guidelines demarcating riparian lands

Prohibited activities on riparian land

58. A person shall not carry any of the following activities on riparian land—

- (a) tillage or cultivation;
- (b) clearing of indigenous trees or vegetation;
- (c) building of structures;
- (d) disposal of any form of waste within the riparian land;
- (e) excavation of soil or development of quarries;

- (f) planting of exotic tree species that may have effect to the water resource or any other activity that in the opinion of the Directorate may degrade the water resource.

User charges for WUAs and WRUAs

PART VII—WATER SECTOR FINANCING

Financing of the implementation of the Act

59. (1) Funds for financing the implementation of this Act shall consist of—

- (a) moneys allocated by the County Assembly for Water Services;
- (b) grants, donations, credits, gifts, and other endowments provided for Water Services received from any lawful source;
- (c) such other monies received from national treasury as conditional or non-conditional grants in accordance with the established system;
- (d) such monies received as user charges, agency fees payable or payments collectable under this Act;

(2) Subject to subsection (3) below, Water Service Providers, Water Users Associations or Water Resource Users Association may charge such user charges or fees for the services rendered.

(3) The Executive Member shall prescribe the user charges and fees for each Water utility as approved by the County Executive Committee and the County Assembly.

(4) The Funds under this section shall be managed in accordance with the Public Finance Management Act, 2012.

(5) The Executive Member may, subject to the approval of the County Treasury, open a bank account for the Department for the purposes of managing any monies received by the Department as grants or donations where appropriate.

- (6) Resource allocation will be equitably distributed.

Funds Collected

60. All funds collected for water services by the licensed water service providers holding county public assets on behalf of the public through water service bills and other resources shall be used entirely for the purpose of covering costs for the provision of water services and asset development.

PART VIII—GENERAL PROVISIONS

Permit for new works

61. (1) A person intending to carry out new works or maintain any water works shall apply for a permit to the Directorate.

(2) A person who prior to the commencement of this Act was carrying out water works, managing or maintaining any water works shall within ninety days apply for a permit.

Penalties

62. A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Remedy of defaults

63. (1) Without prejudice to any other remedy or course of action, if a person contravenes any provision under this Act, then, the Directorate and/or the Water Service Provider concerned may, by order served on the person concerned, order to remedy the contravention and in particular-

- (a) to clean up any pollution or make good any other harm identified in the order which was caused to any water resource by reason of the contravention; or
- (b) to remove or destroy any works, plant or machinery employed for the purposes of the contravention.

(2) Where the order in subsection (1) has not been complied with, the Water Service Provider and/or Directorate may take such steps as are necessary to remedy the contravention, and the expenses incurred in doing so shall be recoverable at the instance of the Water Service Provider concerned.

(3) A person aggrieved by an order under this section may appeal to the Water Appeals Tribunal.

Power of entry

64. An employee or agent of a water services provider authorised for the purpose may without warrant, enter to any kind or premises in the area to which any regulations of the water services provider and inspect for the purpose of—

- (a) ascertaining whether there is or has been any contravention of any such regulations;

- (b) in the case of any regulations in respect of tariffs and the payment therefore, exercising any right conferred on the licensee to cut off supplies for non-payment; or
- (c) in the case of any regulations made for preventing water degradation to;—
 - (i) ascertaining whether or not circumstances exist which would justify the water service provider's imposing a requirement to execute works or take other action to prevent degradation; or
 - (ii) exercising any right conferred on the licensee to execute and maintain works or take other action.
 - (iii) Preserving the water from pollution or protecting the bed over which it lies or flows; or
 - (iv) Removing any obstruction from, or for clearing and deepening, the bed, or
 - (v) Prevent the excessive or illegal diversion, waste or pollution of water or interference with any such bed.

Notice of entry

65. (1) An Inspector or authorized person shall not enter to the land or premises without first giving reasonable written notice, to the landholder or his employee or agent in charge of the land or premises, and such entry shall be at reasonable hours provided that an Inspector may enter without giving notice if—

- (a) he has reason to believe that a provision of this Act or of any rule or order made under this Bill has been or is about to be contravened;
- (b) he is unable to give notice within a reasonable time having regard to all the circumstances; or
- (c) he has given reasonable grounds for not giving notice;
- (d) if so requested by the owner or occupier of the land or premises, the Inspector or authorised person shall produce evidence of his right or permission, as the case may be, to enter on to the land;
- (e) it shall be the duty of any person exercising any powers under this clause to do so with reasonable care and in such a manner as to cause as little damage as possible in so doing.

Prohibited activities

66. (1) A person shall not—

- (a) interfere with any meter or equipment installed by the water service provider;
- (b) install illegal or un authorized water connections; or
- (c) install a pipe or connection which does not comply with the approved standards

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

Regulations

67. (1) The Executive Committee Member may make regulations for or with respect to any matter which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) without prejudice to the generality of the foregoing, rules may be made under this clause for—

- (a) prescribing the amount of fees payable under this Act generally or in particular cases;
- (b) the circumstances in which licences, agency fees and agreements may be applied for, granted, varied, refused or cancelled, and the manner in which a person to whom a licence is granted may exercise a right or privilege conferred upon him by the licence;
- (c) qualification for inclusion as water sector stakeholders
- (d) procedure of nominating or appointing persons to sit in the Board of a water service provider;
- (e) conduct and powers of water sector stakeholder's forum.
- (f) procedures for providing oversight over community water projects funded through government funds;
- (g) rules for conflict resolution as provided under section 50;
- (h) guidelines for the tariffs chargeable by a community water project;
- (i) guidelines for sanitation system and standards;
- (j) the registration and licensing of water service providers;
- (k) forms to be used under this act;
- (l) provision of clean and safe water.

(3) Rules made under this section may create offences in respect of any contravention of the rules and may for any such offence impose penalties not exceeding one million shillings or imprisonment not exceeding two years, or both such fine and imprisonment.

(4) Rules made under this Act shall be published in the Gazette and shall come into effect upon such publication.

Miscellaneous offences

68. (1) No person shall, without authority under this Act or other written law wilfully obstruct, interfere with, divert or abstract water from any watercourse or water resource, or negligently allow any such obstruction, interference, diversion or abstraction.

(2) No person shall, without authority under this Act or any other written law—

- (a) throw or convey, or cause or permit to be thrown or conveyed, any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause, or likely to cause, pollution of the water resource;
- (b) wilfully obstruct, molest or hinder any inspector or employee of a person authorised by the County Executive Committee Member, or a Water Service Provider in the exercise or performance of his or her powers and functions under this Act;
- (c) deface, alter or remove; or cause to be defaced, altered or removed, any documents, survey mark, water gauge, weir or measuring device or other work, structure or approval installed with the approval of the Directorate for investigation;
- (d) wilfully hinders or interrupt, or cause be hindered or interrupted, any Water Service Provider, or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act; or
- (e) wilfully reconnects water after disconnection or Connects water without approval of a water service provider or Water Users Association;
- (f) neglects or fail to comply with lawful order given under this Act.

Penalties

69. (1) No action shall lie against the Directorate or any of its officers, inspectors or authorized persons in respect of anything done or omitted to be done by them in good faith in the exercise of or performance of any power, authority or duty conferred or imposed by them under this Act.

(2) Notwithstanding sub Section (1) above, a person employed by the Directorate shall be personally liable for any act or omission done or Committed in the performance of his functions under this Act if, having regard to the circumstances of the case, such act or omission is—

- (a) done or committed wilfully or dishonestly by such person;
- (b) due to the negligence of such person; or
- (c) Committed by the person in contravention of the provisions of this Act.

(3) Any person who contravenes any of the provisions above shall be guilty of an offence and shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment of a term not exceeding twelve months or to both.

(4) A person who is guilty of an offence under section 68 above that is of a continuing nature shall be liable, in addition to the penalty stated above to a further penalty of not more than double the gazetted cost of the service for each day during which the offence continues.

Transfer of functions assets, Obligations, agreements and other arrangements to Water Service Providers

70. (1) All agreements, licenses and other arrangements for water services provision on property, assets, rights, liabilities, obligations wholly owned by the County Government shall be deemed to have been vested in or to have been acquired, incurred or entered into by or on behalf of the County Government and shall lapse upon commencement of this Act.

(2) All agreements, licenses and other arrangements for water services provision on property, assets, rights, liabilities, obligations wholly owned by the National Government and/or Water Services Boards shall continue in force until gazettment of transfer of assets plan by the National and County Government Coordinating Summit or its successor.

(3) Any other public property, liabilities and contract for water services provision shall vest in and become property, liabilities of the County Government subject to such terms for provisions as may be specified in the Regulations for the exception of public property, liabilities and contracts;

Transfer of functions, Obligations, agreements and other arrangements to Water Resource Users

71. All agreements, Catchment management plans and other arrangements on Water Resources entered with the Water Resource Users Association shall be deemed to have been entered with the County Government on commencement of this act.