

LEGAL NOTICE NO. 68

THE IRRIGATION ACT

(Cap. 347)

IN EXERCISE of the powers conferred by section 27 of the Irrigation Act, the Minister for Agriculture, after consultation with the National Irrigation Board hereby makes the following Regulations:—

THE IRRIGATION (NATIONAL IRRIGATION SCHEMES) REGULATIONS, 1977

1. These Regulations may be cited as the Irrigation (National Irrigation Schemes) Regulations, 1977, and shall apply to such areas of land as the Minister may, by notice in the Gazette, designate to be national irrigation schemes.

2. In these Regulations, unless the context otherwise requires—

“court” means the court having jurisdiction in the scheme;

“scheme” means any area designated to be a national irrigation scheme under section 14 of the Irrigation Act;

“authorized dependant” means, in relation to a licensee, his father and mother, wives and such of his children as are unmarried and under the age of eighteen years;

“committee” means an irrigation committee appointed under regulation 3 of these Regulations;

“holding” means that part of an area specified in a licence;

“licence” means a licence granted under regulation 4 of these Regulations;

“licensee” means any person to whom a licence has been granted, and includes any person who succeeds a licence under regulation 7 of these Regulations;

“manager” means such person as may from time to time be appointed by the Minister to be in charge of a national irrigation scheme.

3. (1) The Minister may appoint a committee for any scheme, such committee to be known as an irrigation committee, to be responsible for advising the manager on the general administration of the scheme in accordance with Government policy.

(2) Such committee may either be the District Agricultural Committee of the district in which the scheme is situated or may be composed of such members as the Minister may appoint.

4. Any person who resides in, carries on business in, or occupies any part of the scheme or grazes any stock thereon shall, unless he is the holder of a valid licence granted to him under these Regulations by the manager with the approval of the committee or is the authorized dependant of such licensee, be guilty of an offence.

5. (1) Every licence shall be in the form in the First Schedule to these Regulations, and shall be prepared in duplicate; the original shall be given to the licensee and the duplicate shall be retained by the manager.

(2) The manager shall maintain a register in which he shall enter the name of every licensee, the number of his holding and the names of his authorized dependants.

(3) The manager shall also maintain a separate register in which he shall enter the name of any successor nominated by the licensee under regulation 7 of these Regulations, together with the number of the holding in respect of which the successor has been nominated.

6. Before issuing a licence, the manager shall—

- (a) cause these Regulations to be read and explained to the licensee in a language which he understands;
- (b) give the licensee a copy of these Regulations; and
- (c) obtain from the licensee, in the form in the Second Schedule to these Regulations, a receipt for the Regulations, an acknowledgement that he understands them and an undertaking to observe them.

7. (1) A licensee may, at any time after the date of being granted a licence, nominate, in writing to the manager, another person to succeed him as licensee in the event of his death; and a licensee may at any time, in writing to the manager, revoke or alter any such nomination which may have been made by him:

Provided that no person nominated as successor may succeed until he has attained the apparent age of eighteen years; if he has not reached that age, his guardian under customary law may, within one month of the licensee's death, and with the approval of the manager, appoint a person to act on his behalf until the successor is of age.

(2) No person nominated as a successor may succeed without the approval of the committee.

(3) The authorized dependant of a deceased licensee may, within thirty days of his death, appeal to the court against the nomination, under paragraph (1) of this regulation, of a successor.

(4) The authorized dependant may—

- (a) where a licensee dies without having nominated a successor in accordance with paragraph (1) of this regulation; or
- (b) where, under paragraph (3) of this regulation, an appeal to the court against the nomination of a successor has been successful,

within one month of the death of the licensee or one month after the determination of the appeal, as the case may be, nominate, in writing to the manager, a successor who must be approved by the court.

(5) In the event of—

- (a) no person being appointed within the time prescribed in the proviso to paragraph (1) of this regulation; or

- (b) no person being nominated within the time prescribed in paragraph (4) of this regulation; or
- (c) any person nominated or appointed under this regulation failing to accept such nomination or appointment or failing to assume the responsibilities inherent in such nomination or appointment within a period of three months from the death of the licensee; or
- (d) no successor being acceptable to the committee,

the holding shall be deemed to have been vacated, the licence in respect of such holding shall terminate, and a fresh licence may be granted in accordance with regulations 5 and 6 of these Regulations.

(6) In the event of a holding being deemed to have been vacated in terms of paragraph (5) of this regulation—

- (a) the manager may make provision for the cultivation of any such holding and where appropriate recover the costs from the incoming licensee; and
- (b) in accordance with regulation 23 of these Regulations reasonable compensation may be paid to the authorized dependant of a licensee in respect of any improvement to the holding effected by the licensee.

8. (1) Every licence shall be granted subject to the following conditions—

- (a) a licensee shall devote his full personal time and attention to the cultivation and improvement of his holding and shall not, without the permission, in writing, of the manager, allow any other person to occupy his holding or to cultivate it on his behalf;
- (b) a licensee shall maintain the boundaries of his holding in a manner satisfactory to the manager;
- (c) a licensee shall maintain at all times his holding and all field, feeder and drainage channels to the satisfaction of the manager;
- (d) a licensee shall maintain to the satisfaction of the manager all irrigation channels and works on or serving his holding;
- (e) a licensee shall cultivate his holding to the satisfaction of, and in accordance with the crop rotation laid down by, the manager, and shall comply with all instructions given by the manager relating to the cultivation and irrigation of his holding;
- (f) a licensee shall comply with all instructions given by the manager with regard to good husbandry, the branding, dipping, inoculating, herding, grazing or watering of stock, the production and use of manure and compost, the preservation of the fertility of the soil, the prevention of soil erosion, the planting, felling, stumping and clearing of trees and vegetation and the production of silage and hay;

- (g) a licensee shall not hire, cause to be hired, or employ stock or machinery for cultural operations, other than stock and machinery owned by the manager, without prior approval, in writing, from manager;
- (h) a licensee shall not absent himself from the scheme for longer than one month without prior approval, in writing, of the manager.
- (2) Any licensee who fails to comply with the conditions specified in paragraph (1) of this regulation shall be guilty of an offence.
- (3) Any licensee who refuses, or without reasonable excuse fails, to comply with any of the conditions of this regulation shall, in addition to any penalty that may be imposed under paragraph (2) of this regulation, be liable to have his licence terminated by the Minister, on the recommendation of the manager (after confirmation by the committee) and the Minister's decision shall be final.
9. (1) A licensee shall pay to the manager, on demand, such rates in respect of water and other services in respect of his holding as shall be calculated in accordance with rates prescribed by the Minister from time to time.
- (2) The whole or part of any rates prescribed under paragraph (1) of this regulation may be varied or remitted by the Minister, either generally or in any particular case, in his absolute discretion.
10. (1) The manager may allocate to a licensee a house to be occupied by him within the scheme, or may permit a licensee to erect his own house.
- (2) In either event it shall be the duty of the licensee to maintain his house and precincts to the satisfaction of the manager, and if the manager is dissatisfied with the condition of the house or precincts he may give written notice to the licensee to the repairs which he considers necessary and specify a reasonable time within which they must be completed.
- (3) If the licensee fails to complete such repairs within the time specified and to the satisfaction of the manager, the manager may cause such repairs to be carried out and may recover the cost thereof from the licensee.
- (4) The licensee may not occupy any house other than that allocated to him without prior permission, in writing, from the manager.
- (5) A licensee shall not construct buildings or other works of any kind on his holding or elsewhere in the scheme without the prior consent, in writing, of the manager. In the event of his having erected a structure or building without such consent, the manager may direct, in writing, that the structure be removed and the land returned to its original state. If the licensee fails to comply with this direction within one month, the manager may enter the building or structure for the purpose of demolition. Any expenses incurred by the manager for the removal of the building or structure may be recovered from the licensee.
11. (1) If a licensee is sentenced to imprisonment for a term of six months or more, his licence may be terminated forthwith.

(2) If a licence is terminated under paragraph (1) of this regulation, a successor may be nominated or appointed in accordance with regulation 7 of these Regulations.

12. The manager shall have power to order the destruction of any crops planted in contravention of his instructions or of the provisions of these Regulations and to recover the expenses incurred from the licensee. No compensation shall be payable in respect of crops so destroyed.

13. If, in the opinion of the manager, it would be beneficial to a licensee's crops or to all the licensees in the scheme to cultivate by machinery, or to apply fertilizers, or manure, or to treat any crops or stocks in any way to protect them against diseases, pests, or damage of any kind, then the manager may do so and recover the costs thereof from the licensee or licensees.

14. (1) As soon as each crop other than paddy has been harvested the licensee shall deliver it, other than such portion as he may wish to retain for his own consumption and that of his authorized dependants living with him, to the manager at a collecting station to be appointed by the manager, or shall otherwise dispose of it in accordance with the instructions of the manager.

(2) The licensee shall deliver all paddy harvested to the manager at the collection station appointed by the manager, or shall otherwise dispose of it in accordance with the instructions of the manager.

(3) The licensee may purchase such quantities of milled rice from the manager for his own consumption and that of his authorized dependants living with him, as the manager may from time to time authorize.

(4) Any licensee who fails to comply with the provisions of paragraph (1) or (2) of this regulation shall be guilty of an offence.

15. (1) The manager may, when necessary, collect, process and market the crops delivered to him under regulation 14 of these Regulations and may arrange for the sale of such crops, in which event he shall give the licensees details of the sales of all such crops as soon as possible.

(2) The manager shall not be obliged to keep or sell the crops of individual licensees separately.

16. (1) A licensee shall not keep on his holding any stock other than those specified in his licence and shall declare to the manager annually the natural increase in such stock and shall comply with any instructions issued by the manager as to their disposal.

(2) A licensee who fails to comply with the provisions of paragraph (1) of this regulation, or with any instructions issued by the manager thereunder, shall be guilty of an offence and where any additional undeclared stock is found in the possession of a licensee within the scheme, the manager may order a licensee to remove such additional stock from the scheme forthwith.

(3) If a licensee fails to remove his additional stock in accordance with an order to that effect given by the manager under paragraph (2) of this regulation, the manager may confiscate and sell such additional stock, paying the proceeds thereof, less any expenses incurred by such confiscation and sale, to the licensee.

17. (1) If, in the opinion of the manager, a licensee has been negligent in the use of his land, the use of irrigation water or the cultivation of his crops, the manager may direct him to take such steps as the manager may specify to remedy the effects of such negligence, and, in the event of a licensee failing to comply with any such directions, the manager may take such measures as he considers necessary to safeguard the crop and to preserve the holding and irrigation water, and may recover the costs of any such measures from the licensee.

(2) If a licensee is absent owing to illness or any other reason, the manager may take such measures as he considers necessary to safeguard the crop and to preserve the holding and irrigation water, and may recover the costs of any such measures from the licensee.

18. A licensee shall not permit any of his stock to be upon any part of the scheme which is closed to stock or to cause damage to any crops or water installations or communications or other property, and shall be liable to pay the cost of the repair of any damage so caused.

19. (1) Any licensee who wilfully or negligently causes to be damaged any road, bridge, or culvert within the scheme shall be guilty of an offence.

(2) The manager may, where such damage has been caused by a licensee, repair any such damage and shall recover the cost of the repairs to such damage from the licensee.

20. The manager may deduct from the proceeds of the sale, under regulations 15 and 16 of these Regulations, of any crops or stock belonging to a licensee—

(a) the costs of expenses incurred by the manager—

- (i) in the making of provisions for the cultivation of any holding under regulation 7 (6) (a) of these Regulations;
- (ii) in the removal of any building or structure or repairs carried out to any house under regulation 10 of these Regulations;
- (iii) in the destruction of any crops under regulation 12 of these Regulations;
- (iv) in providing manure, fertilizers, insecticides or any agricultural operations under regulation 13 of these Regulations;
- (v) in the collecting, processing and marketing of crops under regulation 15 of these Regulations;
- (vi) in remedying the negligence or safeguarding crops or preserving the holding under regulation 17 of these Regulations;
- (vii) in repairing any damage caused by stock under regulation 18 of these Regulations;
- (viii) in repairing damage under regulation 19 (2) of these Regulations; and

- (b) any amounts due for rates payable under regulation 9 of these Regulations, any outstanding amount of any advance made to such licensee for the purpose of the cultivation, irrigation or other improvement of his holding, and such charges as may be agreed to by the Minister on the recommendation of the committee.

21. Any person who causes any motor vehicle to be driven within the scheme over any road other than a public road within the meaning of the Public Roads and Roads of Access Act unless he is in possession of a permit issued by the manager, and unless he complies with all conditions made on such permit by the manager, shall be guilty of an offence.

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22. (1) Where the manager is satisfied that a licensee has failed to comply with any of the provisions of these Regulations or with any instructions given thereunder or under any other law for the time being in force, he may serve a notice in writing on the licensee requiring him to comply with the said provisions, instructions or regulations within such time as is specified in the notice.

(2) If the licensee fails within such time to comply with the requirements of such notice, the manager may, by notice in writing, call upon the licensee to show good cause, by a date specified in the notice, why his licence should not be terminated.

(3) If the licensee fails to show good cause as aforesaid to the satisfaction of the manager, the manager may, with the approval of the committee, give notice in writing to the licensee requiring him to remove himself, his dependants and his stock from the scheme within a period specified in such notice.

(4) A licensee who is given notice under paragraph (3) of this regulation may, within twenty-eight days of such notice, appeal in writing to the Minister whose decision shall be final.

(5) If there is no appeal, the licence shall be deemed to have terminated on the date specified in the notice.

(6) If there is an unsuccessful appeal, the licence shall terminate on such date as the Minister may specify.

(7) Any person whose licence has been terminated under this regulation and who fails to comply with the terms of the notice given him shall be guilty of an offence.

23. Where any licence is terminated in accordance with any of the provisions of these Regulations, a Board consisting of the manager and one representative of both the outgoing and the incoming licensees, shall assess the amount, if any, due to the outgoing licensee or his dependants in respect of capital and labour expended by him in improving the holding, and the manager shall make arrangements for the payment of such amount by the incoming licensee within such time as the manager considers reasonable.

24. The manager shall have power, in the event of any emergency, to order all licensees to undertake emergency repair work in any part of the scheme, and any licensee who refuses to obey any such order by the manager shall be guilty of an offence.

25. Subject to the provisions of regulations 7, 8, 11 and 22 of these Regulations, every licence shall be valid for a period of one year and from year to year thereafter, but may be terminated at any time—

(a) by the licensee giving to the manager six months' notice in writing of his intention to surrender his licence;

(b) by the manager, on instruction of the Minister, giving to the licensee 12 months' notice in writing of his intention to terminate the licence.

26. Any person who—

(a) unlawfully interferes with the flow of irrigation water in canals or the opening or closing of control gates within the area;

(b) makes unlawful use of irrigation water by taking irrigation water out of turn or otherwise;

(c) refuses to permit the authorized passage of irrigation water across his holding;

(d) wilfully damages or obstructs canals or control works; or

(e) refuses to accept or drain off irrigation water when required to do so,

shall be guilty of an offence.

27. (1) Any person who is guilty of an offence under these Regulations shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months, or to both such fine and such imprisonment.

(2) Where any person is convicted of an offence under regulation 4, regulation 14 (4) or regulation 22 (7) of these Regulations, the court may, in addition to any penalty which it may impose, authorize any administrative officer or police officer to cause such person, together with his dependants and property, if any, to be removed from the scheme.

FIRST SCHEDULE

(r. 5)

LICENCE No.

..... NATIONAL IRRIGATION SCHEME:

LICENCE TO OCCUPY HOLDING

..... son
of
of the District of the Province,
is hereby authorized to occupy holding No.
of the National Irrigation Scheme for

FIRST SCHEDULE—(Contd.)

the period from the day of, 19..... to the day of 19..... and from year to year thereafter unless sooner terminated in accordance with the provisions of the above Regulations, and to keep thereon not more than the following number of stock—

- bovines,
- goats,
- sheep,
- mules,
- donkeys,
- (other stock),

subject to the conditions prescribed by the above Regulations.

Dated this day of, 19.....

.....
Manager

In accordance with regulation 6 of the above Regulations, I have caused the Regulations to be read and explained to the above-named licensee in the language, which he understands.

.....
Manager

SECOND SCHEDULE (r. 6)

I,, son of of the District of the Province, hereby acknowledge receipt of a copy of the Irrigation (National Irrigation Schemes) Regulations. I have had these Regulations explained to me and I fully understand them and I undertake to observe them and to pay all sums of money payable by me.

.....
Signature or thumb-print of Licensee

.....
Witness

.....
Date

Made this 18th day of March, 1977.

J. J. M. NYAGAH,
Minister for Agriculture.