

**THE WATER UTILIZATION (CONTROL AND REGULATION)  
ACT, 1974**

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## THE UNITED REPUBLIC OF TANZANIA



No. 42 OF 1974

I ASSENT,

*Julius K. Nyerere*  
 President

30TH OCTOBER, 1974

## An Act to repeal and replace the Water Ordinance

[\_\_\_\_\_]

ENACTED by the Parliament of the United Republic of Tanzania.

## PART I

## PRELIMINARY

1. This Act may be cited as the Water Utilization (Control and Regulation) Act, 1974 and shall come into operation on such date the Minister may, by notice in the *Gazette*, appoint.

Short title  
and  
commence-  
ment  
Interpre-  
tation

2.-(1) In this Act, unless the context otherwise requires-  
 "appointing authority" means, in the case of the Central Water Advisory Board, the Minister and in the case of a Regional Water Advisory Board, the Regional Commissioner of the region for which the Board is established;

"Central Water Advisory Board" means the Central Water Advisory Board established by section 5;

"domestic purposes" includes the watering, spraying and dipping of stock;

"easement" means a right to enter on the land of another for the purpose of constructing or maintaining works thereon or storing water thereon or carrying water under, through or over such land or for all or any of such purposes;

"existing right" in relation to the use of water means a right, registered under the provisions of the Water Ordinance hereby repealed and subsisting immediately prior to the date upon which this Act comes into operation, to divert, dam, store, abstract or use water;

Cap. 410

"Minister" means the Minister for the time being responsible for water development;

- "national water supply" means a water supply declared as such under the provisions of section 9;
- "Principal Secretary" means the Principal Secretary of the Ministry for the time being responsible for water development;
- "Principal Water Officer" means the Principal Water Officer appointed under the provisions of section 4;
- "Regional Water Advisory Board" means a Regional Water Advisory Board established by section 5;
- "Regional Water Officer" means a Regional Water Officer appointed under the provisions of section 4-
- "regional water supply" means a water supply other than a national water supply which is wholly or partly within a region;
- "underground water" means water naturally stored or flowing below the surface of the ground and not apparent on the surface of the ground;
- "water" means all water flowing over the surface of the ground or contained in or flowing in or from a spring or stream or natural lake or swamp or in or beneath a watercourse and all water made available from subterranean sources by means of works, but does not include any tidal water, nor water which is used solely for the purpose of extracting minerals therefrom;
- "Water Officer" in relation to an application for, or an objection to, or a grant of, or refusal to grant, a water right in respect of a national water supply means the Principal Water Officer, and in relation to an application for, or an objection to, or a grant of, or refusal to grant, a water right in respect of a regional water supply means the Regional Water Officer of the region in which such supply is situate;
- "works" include canals, channels, reservoirs, embankments, weirs, dams, wells, boreholes and other works constructed for or in connection with the diversion, damming, storage or abstraction of water or for drainage or for the generation of water power or the use of water for industrial or other purposes or for the conservation of rainfall.

(2) Nothing in this Act shall be construed as conferring upon an appointing authority the right to exercise his functions under this Act in relation to any Water Advisory Board other than the Water Advisory Board in respect of which he is the appointing authority.

Application  
of Act to  
Govern-  
ment, the  
Community,  
etc  
Cap. 281

3. Without prejudice to the generality of the application of this Act, it is hereby declared that the provisions of this Act shall apply to and be carried into effect by departments of the Government, public and local authorities, the East African Community and all Corporations within the Community and all Water Authorities appointed under the Water Works Ordinance.

## PART II

### APPOINTMENT OF OFFICERS AND ESTABLISHMENT OF WATER ADVISORY BOARD

4.-(1) There shall be a Principal Water Officer and also, for every region in Tanganyika, a Regional Water Officer who shall be appointed by the Minister from among persons in the public service.

Appoint-  
ment of  
officers

(2) The Minister may appoint such other officers as, in his opinion, may be necessary for the purpose Of the administration of this Act and the subsidiary legislation made hereunder.

(3) Officers appointed under this section shall have such functions as are conferred upon them by or under this Act.

5. (1) There shall be established a Central Water Advisory Board and also, for every region in Tanganyika, a Regional Water Advisory Board.

Establish-  
ment  
of Water  
Advisory  
Boards

(2) Every Water Advisory Board shall consist of not less than five and not more than twenty members one of whom shall act as the Secretary.

(3) The members of the Central Water Advisory Board shall be appointed by the Minister. The members of a Regional Water Advisory Board shall be appointed by the Regional Commissioner of the region for which the Board is established.

(4) Each member of a Water Advisory Board shall hold office for such term as the appointing authority may determine at the time of his appointment and shall be eligible for re-appointment from time to time on the expiration of his term of office.

(5) Where a member of a Water Advisory Board is absent from Tanganyika or is unable to perform his functions for any reason, the appointing authority may appoint another person to be a temporary member of the Water Advisory Board to perform and discharge the functions of such person for the period during which such person is so absent or disabled from acting.

(6) Every Water Advisory Board shall sit on such occasions and at such places as it may in its discretion determine.

(7) The business of a Water Advisory Board shall be conducted in such manner as may be prescribed:

Provided that until such procedure has been prescribed a Water Advisory Board shall conduct its business in such manner as it shall determine.

6.-(1) The Central Water Advisory Board shall advise the Principal Water Officer on all matters concerning the apportionment of national water supplies, the determination, diminution or modification of water rights, the measures to be taken in case of drought and the priorities to be given from time to time, and in accordance with prevailing circumstances for the different purposes for which water is required in any area of Tanganyika.

Functions  
of Central  
Water  
Advisory  
Board

(2) The Principal Water Officer shall consider the advice of the Central Water Advisory Board before granting or refusing any application for a water right, before determining, revising, diminishing or modifying any water right or existing right and before specifying a quantity of water under section 21, but shall not be bound to follow such advice:

Provided that nothing in this subsection shall require the Principal Water Officer to make any reference to, or to consider the advice of the Central Water Advisory Board in respect of any suspension or variation of a right under the provisions of section 20 or in respect of any modification, variation, determination or diminution of a right with the consent of the holder thereof.

Functions  
of Regional  
Water  
Advisory  
Boards

7.-(1) The provisions of section 6 shall apply *mutatis mutandis* in relation to a regional water supply as if references therein to the Central Water Advisory Board and the Principal Water Officer were references respectively to a Regional Water Advisory Board and a Regional Water Officer:

Provided that all such functions as are provided for or referred to in section 6 shall, in the application of that section to a Regional Water Advisory Board and a Regional Water Officer be restricted to regional water supplies within such region.

### PART III

#### OWNERSHIP OF AND INHERENT RIGHTS TO THE USE OF WATER

All water  
vested in  
the United  
Republic

8. All water in Tanganyika is vested In the United Republic.

Declaration  
of national  
water  
supplies

9. Where the Minister is of the opinion that it is in the public interest to regulate the use of water from any source in any area of Tanganyika on a national basis, he may by notice in the *Gazette*, declare such source to be a national water supply for the purpose of this Act.

Right to  
water for  
domestic  
purposes

10. Any person having lawful access to any water may abstract and use the same for domestic purposes:

Provided that nothing in this section shall be construed as authorizing the construction of any works.

Right to  
limited  
quantities  
of under-  
ground  
water and  
to casual  
water

11. (1) The owner or occupier of any land may —

(a) sink or enlarge any well or borehole thereon and abstract water therefrom, not exceeding 22,700 litres in any one day:

Provided that this section shall not authorize the sinking of any well or borehole within 230 metres of any other well or borehole or within 90 metres of any body of surface water or enlargement of any well or borehole which is within those distances from any other well or borehole or body of surface water, as the case may be;

(b) construct any works thereon for the conservation of rainfall, otherwise than in a river or stream and abstract and use the water so conserved.

(2) A Water Officer may determine for the purposes of paragraph (b) of subsection (1) whether any watercourse is a river or stream, and the determination of the Water Officer thereon shall be final and conclusive for the purposes of this Act.

12.(1) The holder of a mining lease granted under the Mining Ordinance or of a lease granted under the Mining (Mineral Oil) Ordinance shall have in respect of the land comprised in his lease the same rights as are conferred on by section 11 on the owner or occupier of any land and may also abstract and use any underground water encountered in any workings and construct any works required for or in connection With the use of such water.

Right to  
water for  
mining  
purpose  
Cap. 123  
Cap. 399

(2) The holder of a claim registered under the Mining Ordinance or of a disc claim under the Mining (Controlled Areas) Ordinance shall have in respect of the land comprised in such claim the same rights as are conferred on the holder of a lease by subsection (1) and may in addition, in respect of water to which he has lawful access, abstract and use the same for prospecting and mining purposes, returning the same to the stream or body of water from which it was taken, substantially undiminished in quantity.

Cap. 123  
Cap. 124

(3) The holder of a prospecting right or of an exclusive prospecting licence granted under the Mining Ordinance or of a prospecting or exploration licence granted under Mining (Mineral Oil) Ordinance may, within the area specified in such licence, subject to all other rights to the use of water-

Cap. 399

- (a) abstract and use for prospecting purposes any water to which he has lawful access, returning the same to the stream or body of water from which it was taken;
- (b) sink or enlarge any well or borehole in any land on which he has the right to explore or prospect, and abstract water therefrom, not exceeding 22,700 litres in any one day; and
- (c) abstract and use any underground water encountered in any workings and construct any works required for or in connection with the use of such water.

(4) Any person abstracting underground water from any workings under the powers conferred by this section shall comply with any directions of the Water Officer regarding the disposal of such water as is not used.

(5) Every person exercising the powers in this section contained shall, as regards the owners of any surface rights, exercise such powers and pay compensation in the same manner and to the same extent as if the powers exercised under this Act were exercisable under the Mining Ordinance.

Right to water for forestry purposes  
Cap. 389

**13.** The holder of an exclusive licence to take trees and timber granted under the Forests Ordinance may, within the area specified in such licence, subject to all other rights to the use of water-

- (a) abstract and use any water to which he has lawful access-
  - (i) for logging or sawmilling operations of a temporary nature:

Provided that no such operation shall be deemed to be of a temporary nature unless no substantial plant is maintained in any one place for more than one year nor is intended to be so maintained; or

- (ii) for fighting forest fires; or
- (b) sink or enlarge any well or borehole and abstract water therefrom not exceeding 22,700 litres in any one day.

Prohibition of use of water except with lawful authority

**14.** Subject to the provisions of this Part and to the provisions of section 53 of the Mining Ordinance, no person shall divert, dam, store, abstract or use water or for any such purpose, construct or maintain any works, except in accordance with an existing right or with a water right granted under this Act.

#### PART IV

##### GRANT OF WATER RIGHTS

Grant of water rights

**15.** (1) A Water Officer may grant to any person the right to divert, dam, store, abstract and use water from such source, in such quantity for such period, whether definite or indefinite, and for such purpose as may be specified in the water right, subject, to such terms and conditions as he may deem fit.

(2) Upon receipt of an application for the grant of a water right, the Water Officer shall give notice of the same in the prescribed manner. Any interested person may notify the Water Officer that he objects to the grant of a water right and may specify the grounds for such objection, and shall, if he so requires, have a right to be heard thereon by the Water Advisory Board.

(3) The Water Officer-

- (a) shall consider every application and any objections made to him in respect thereof, and shall refer the same to the Water Advisory Board; and
- (b) may, after considering the advice of the Water Advisory Board, grant such right as he may consider appropriate or may dismiss the application.

(4) Nothing in any such water right shall be deemed to imply any guarantee that the quantity of water thereon referred to is or will be available.

Right may be made appurtenant to land

**16.**-(1) A Water Officer may, either at the time of the grant or at any time after the grant of any water right, declare that such right shall be appurtenant to land described in the water right and may at any time declare an existing right to be appurtenant to land affected thereby.



(2) Where a water right or existing right has been declared to be appurtenant to any land, the benefit of the right shall be enjoyed and the right, may be enforced by the person who is for the time being entitled to the possession of the land.

(3) Where in consequence of any transfer, lease or partition, any person becomes entitled to the possession of part of the land to which a water right or existing right has been declared appurtenant, he may abstract and use such proportion of the water the abstraction and use of which is permitted by the water right or existing right as may have been assigned to him in the transfer, lease or partition or as may be agreed between him and the persons entitled to the possession of the remainder of the land, or, in the absence of any such assignment or agreement, as may be determined by the Water Officer.

(4) Where any apportionment of water has been made under the provisions of this subsection in respect of any partition of land, the several amounts of water so apportioned shall be deemed to be appurtenant to the several parcels of such land and the benefit thereof shall be enjoyed and all rights thereof may be enforced, in accordance with such apportionment by the persons who are for the time being entitled to the possession of such parcels, and such rights shall prevail until the parcels shall again become merged with each other.

(5) Any person acquiring a right to abstract and use water by agreement in accordance with the provisions of subsection (3) of this section shall within thirty days give notice thereof in the prescribed form to the Water Officer.

17. The following conditions shall be implied in every water right granted for mining, forestry or industrial purposes or for the generation of power-

Conditions implied in certain rights

- (a) that the water used thereunder-
  - (i) shall be returned to the stream or body of water from which it was taken or to such other stream or body of water as may be authorized by the Water Officer;
  - (ii) shall be substantially undiminished in quantity;
  - (iii) shall not be polluted with any matter derived from such use to such extent as to be likely to cause injury either directly or indirectly to public health, to livestock or fish, to crops, orchards or gardens which are irrigated by such water or to any product in the processing of which such water is used; and
- (b) that precautions shall be taken to the satisfaction of the Water Officer to prevent accumulations in any river, stream or water-course of silt, sand, gravel, stones, sawdust refuse, sewerage, sisal waste or any other substance likely to affect injuriously the use of such water.

Rights conditional construction of works

18.-(1) Where a Water Officer has granted a water right subject to the construction of works within a specified period, he may, from time to time at any time notwithstanding that the period previously allowed may have expired, extend the period for the construction of such works.

(2) At the expiration of the period allowed for the construction of the works, the Water Officer shall cause the works to be inspected by such officer as the Principal Secretary may approve who, if they have been constructed to his satisfaction, shall so certify in writing to the Water Officer.

(3) No certificate issued under this section shall be deemed to imply any guarantee by the Government that the works are properly designed or constructed nor shall support or justify any claim whatsoever against the Government or any Government officer in connection with such works.

## PART V

### REVISION, VARIATION, DETERMINATION AND DIMINUTION OF WATER RIGHTS

Position when volume inadequate to satisfy all rights granted in respect thereof

19. If, at any time, in the opinion of the Minister, in any specified area, the volume of water to which rights of use exist is insufficient to satisfy all such rights, he may direct the appropriate Water Officer to review the use, diversion, control and appropriation of water in that area and in so doing the Water Officer may revise the quantity allowed by any right and the terms and conditions of any right to the use of water in that area:

Provided that the Water Officer shall have regard to the principle that where beneficial use of the whole right has been maintained, no right shall be canceled or reduced except in proportion with all other rights in the same area.

Suspension or variation of rights on account of drought

20. Where in the opinion of the Water Officer on account of drought the supply of water from any source is insufficient or likely to become insufficient for the needs of the persons using it, the Water Officer may at any time and from time to time, by notice in writing addressed to the holders of water rights suspend or vary all or any rights to abstract or use water from that source, for such period as he may deem necessary, and thereupon such rights shall cease for the period of the suspension or shall be exercisable only as so varied, as the case may be.

Where quantity unspecified Water Officer may specify quantity

21. In respect of any existing right to the use of an unspecified quantity of water, the Water Officer may at any time specify the quantity of water for which that shall be valid, and record the same in the register of water rights and so to inform the holder of that existing right.

Variation of water rights with consent

22. A Water Officer may at any time on the application or with the consent of the holder of a water right, determine or diminish the right or vary any of the conditions thereof.

23. Where the holder of a water right has failed to comply with any condition, express or implied, subject to which the right was granted, or has abstracted or used water in excess of that authorized or has used water for a purpose not authorized by the grant, the Water Officer may by notice in writing addressed to the holder declare the right to be determined:

Determina-  
tion for  
breach of  
condition

Provided that where the default is one capable of being remedied, the Water Officer shall first serve on the holder notice in writing specifying the default and requiring the holder to remedy the same within such time as may be specified in the notice.

24.-(1) If at any time a Water Officer has reason to believe that the holder of a water right has not, during the preceding three years, made full beneficial use of that right, the Water Officer may by notice in writing addressed to such holder call upon him to show cause why such right should not be determined or diminished or modified in such respects as may be specified in the notice.

Determina-  
tion or  
diminution  
for non use

(2) If within three months of the service of such notice no reply has been received by the Water Officer, he may declare the right determined or diminished or modified, as the case may be.

(3) The holder of a water right upon whom a notice has been served under subsection (1) may, within three months of such service, submit to the Water Officer a statement in writing of reasons why the right should not be determined or diminished or modified, as the case may be, or may require to be heard in the matter.

(4) The Water Officer shall consider any statement submitted to him under subsection (3) and shall, if so required give the holder an opportunity of being heard in person or by an advocate and may thereafter by notice in writing addressed to the holder-

- (a) declare the right determined; or
- (b) declare the right diminished or modified in such respects as may be specified in the declaration; or
- (c) declare the right to be subsisting unchanged.

25.-(1) Where a Water Officer is satisfied that water is required for a public purpose he may, by notice in writing addressed to the holder of any water right, determine or diminish that right to the extent that such water is required for the aforesaid public purpose, and thereupon the right shall cease or shall be exercisable only as so diminished, as the case may be.

(2) The holder of any right determined or diminished under the provisions of this section shall be entitled to receive compensation from the Government for all loss resulting from the determination or diminution of the right. The amount of compensation payable shall in the absence of agreement be determined by the High Court upon the application of the holder or the Minister.

Determina-  
tion or  
diminution  
for public  
purposes

(3) The Minister may by notice in the *Gazette* declare any purpose to be a public purpose within the meaning of this section.

Application  
of Part V  
to existing  
rights

26. The provisions of this Part shall apply to all existing rights in the same manner as they apply to water rights granted under this Act.

## PART VI

### MISCELLANEOUS POWERS

Power to  
create  
easements

27.-(1) Where any person who is the holder of a water right or who has applied for the grant of water right is unable fully to enjoy the benefit of that right without an easement, and has failed to secure an easement by agreement with the owner or occupier of the land over which the easement is required he may apply to the appropriate Water Officer for the creation of such easement.

(2) Upon receipt of any such application, the Water Officer shall serve notice of the application on the owner or occupier of the land over which an easement is sought and on any other persons known to be interested in that land.

(3) Any interested person may notify the Water Officer that he objects to the creation of an easement under this section or that he desires to be heard on the subject of compensation.

(4) The Water Officer shall consider any objections made to him and shall give an opportunity of being heard to all persons who so require, and may thereafter by a certificate in the prescribed form create such easement as he may consider appropriate or refuse to create an easement.

(5) Where the water right in respect of which an easement is created has been made appurtenant to the land of the holder of the water right, then an easement created by the Water Officer may also be made appurtenant to such land, but not otherwise.

(6) Every easement created under this section shall be subject to the payment of such compensation, either by way of a capital sum or of periodical payments, as the Water Officer may decide, to such persons as the Water Officer may consider to be injuriously affected by the creation of the easement and in such proportion as the Water Officer may decide and may be made conditional on the construction and maintenance of such bridges and other works as may in the opinion of the Water Officer be necessitated by the severance of the land subject to the easement.

(7) If the person enjoying the benefit of an easement fails to pay such compensation as directed or to construct such bridges and other works within such time as is therefor allowed by the Water Officer, or fails to maintain or repair such bridges or other works after being required so to do by the Water Officer, the Water Officer may by notice in writing addressed to that person determine the easement.

(8) Any compensation due under this section which remains unpaid may be sued for as a civil debt.

(9) Any easement created by agreement between the holder of a water right and any other person may be made appurtenant to the land of the holder of the water right where the water right in respect of which the agreement is made is appurtenant to such land:

Provided that no such agreement shall operate to create an easement appurtenant to the land unless and until a copy of the agreement shall have been forwarded to the Water Officer by the holder of the water right.

28. A Water Advisory Board, or a Water Officer may, for the purpose of this Act, call upon any person to give information on such matters and in such manner as may be prescribed.

Right to call for information

29.-(1) A Water Officer and all persons authorized by him in writing and such officers as the Principal Secretary shall approve may, at all reasonable times, enter upon any land and may inspect any works constructed or under construction thereon and may take measures to ascertain the amount of water abstracted or capable of being abstracted by means of such works or otherwise.

Power to inspect works and require repair, etc

(2) If in the opinion of the Water Officer any works are so constructed, maintained or used or are being so constructed as to constitute a danger to life, health or property, he may require any person for the time being enjoying the benefit of those works to carry out such repairs or to effect such additions or modifications to such works or to carry out such demolitions or to change the use of the works in such manner as he may consider necessary and may by notice in writing suspend any water right until he is satisfied that such requirement has been fulfilled, and thereupon the right shall cease for the period of the suspension.

(3) No compensation shall be payable to the owner or occupier of any land by reason that entry has been made upon such land in pursuance of the provisions of subsection (1) of this section.

30.-(1) A Water Officer may by notice in writing require any person-

Power to require demolition of unlawful works

(a) who has constructed or extended or caused to be constructed or extended any works contrary to the provisions of this Act or of any other written law, not inconsistent with the provisions of this Act, under which such person was required or authorized to construct or extend the same or cause them to be constructed or extended; or

(b) whose water right or existing right in respect of which any works are in existence has been determined under the provisions of this Act or has otherwise come to an end,

to modify, demolish or destroy such works within such period, not being less than thirty days, as may be specified in the notice.

(2) If any person fails to comply with a notice served on him under subsection (1) of this section, it shall be lawful for the Water Officer to cause such works to be modified, demolished or destroyed and to recover, the cost of the modification, demolition or destruction from the person in default by civil suit.

Power to  
establish  
hydrographic  
stations and  
make surveys

31.-(1) The Principal Secretary and all persons authorized by him may at all reasonable times enter upon any land for the purpose of making such investigations and surveys as the Principal Secretary may consider necessary in the interest of the conservation and best use of water and may establish and maintain on any such land, without other authority than this Act, hydrographic stations and other works for the purpose of obtaining and recording information and statistics as to hydrographic conditions.

(2) No compensation shall be payable to the owner or occupier of any land by reason that entry has been made upon such land in pursuance of the provisions of subsection (1) of this section but compensation shall be payable for all damage done and for any land occupied for the construction of works. In the absence of agreement such compensation shall be determined by the High Court on the application of the owner or occupier or of the Minister.

## PART VII

### APPEALS

Appeals

32.-(1) Any person who is aggrieved by the refusal of a Water Officer to grant or renew a water right or by any conditions imposed when granting or renewing a water right, or by the determination or diminution or modification or suspension of any water right, or by the grant of or refusal to grant any easement or by the conditions subject to which any easement is created, or by any direction regarding the disposal of underground water abstracted from any workings or by any requirement that any work should be repaired, added to altered, demolished or destroyed, or that the use of any works be changed, may appeal to the appellate authority whose decision in the matter shall be final.

(2) Notwithstanding the provisions of subsection (1) of this section, no person may appeal against the grant or renewal of a water right or the grant of any easement, who did not make objection to such grant or renewal to the Water Officer under the provisions of subsection (2) of section 15 or subsection (3) of section 27, as the case may be.

(3) In this section, "appellate authority" means, in the case of an appeal against a decision of the Principal Water Officer, the Minister, and in the case of an appeal against a decision of a Regional Water Officer, the Regional Commissioner of the region in which the relevant regional water supply is situate.

## PART VIII

### OFFENCES

Offences and  
Penalties

33.-(1) Any person who in order to procure the grant of a water right willfully makes any statement knowing the same to be false in any material particular or not having reason to believe the same to be true shall be guilty of an offence and liable upon conviction to a fine not exceeding five thousand shillings or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who constructs or extends any works contrary to this Act or fails, without reasonable excuse, to comply with a requirement made under section 29 or willfully obstructs, damages or destroys any works or destroys, defaces or moves any level mark, beacon or other structure or appliance or obstructs, molests or hinders any public officer in the lawful exercise of his powers or duties under, this Act shall be guilty of an offence and liable upon conviction to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment or in the case of a second or subsequent conviction to a fine not exceeding five thousand shillings or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and in every case where the offence is a continuing one to an additional fine not exceeding one hundred shillings in respect of every day during which the offence has continued.

(3) Any person who, contrary to the provisions of this Act, diverts, dams, stores, abstracts or uses water or who, being the holder of an existing right or a water right granted under this Act or the occupier of any land to which an existing right or a water right has been made appurtenant, abstracts or uses water in excess of that authorized or for a purpose other than that authorized shall be guilty of an offence and liable upon conviction to a fine not exceeding one thousand shillings or in the case of a second or subsequent offence to such fine or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in every case where the offence is a continuing one to an additional fine not exceeding one hundred shillings in respect of every day during which the offence has continued.

(4) Any person who pollutes the water in any river, stream or water-course or in any body of surface water to such extent as to be likely to cause injury directly or indirectly to public health, to livestock or fish, to crops, orchards or gardens which are irrigated by such water or to any products in the processing of which such water is used shall be guilty of an offence and liable upon conviction to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment or in the case of a second or subsequent conviction to a fine not exceeding five thousand shillings or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment and in every case where the offence is a continuing one to an additional fine not exceeding one hundred shillings in respect of every day during which the offence has continued.

(5) Any person who being required to give information under any provision of this Act or under any regulation made under this Act refuses without reasonable excuse to give such information or gives information knowing the same to be false, or having reason to believe the same not to be true, shall be guilty of an offence and liable upon conviction to a fine not exceeding five thousand shillings or to imprisonment not exceeding two years or to both such fine and such imprisonment.

## PART IX

## MISCELLANEOUS PROVISIONS

- Registration 34.-(1) Every Water Officer shall keep a register for the registration of every grant or renewal of a water right made by him and of the variation, determination or modification or suspension of a water right or existing water right, and of any easement created or determined by him.
- (2) The Principal Water Officer shall establish a central registry of water rights registered under this Act.
- (3) Every Regional Water Officer shall supply without delay to the Principal Water Officer a copy of every entry made in his register of water rights and shall, upon application being made to him by any other Regional Water Officer or public officer, forthwith provide without fee a copy of any entry in his register of water rights.
- (4) Any person shall, on application to a Water Officer, be entitled to receive certified or uncertified extracts from the register of water rights maintained by such Water Officer.
- (5) Extracts from any register of water rights certified to be under the hand of a Water Officer shall be admissible in evidence in all legal proceedings, civil or criminal, without proof that they are under the hand of the Water Officer purported to have certified the same and shall also be *prima facie* evidence of the facts recorded therein.
- (6) The entry of any easement in a register of water rights under this section shall not affect any requirements as to registration contained in, or be construed as being an effective registration for the purposes of, or in lieu of registration under the provisions of, the Registration of Documents Ordinance or the Land Registration Ordinance.
- Cap. 117  
Cap. 334  
Service of notices
35. A notice under this Act shall be deemed to have been served on, or given to, any person-
- (a) if served on him personally; or
- (b) if left for him at his last known address; or
- (c) if sent by registered post addressed to his last known address.
- Civil liability not affected
36. Subject to any express provisions in this Act, nothing contained in this Act shall affect the civil liability of any person for any damage resulting from the construction, alteration or destruction of any works or the failure to maintain the same in proper repair or from the obstruction, storage or diversion of any water.
- Indemnity  
Cap. 16  
Acts, 1970  
No. 7
37. Without prejudice to the provisions of section 284A of the Penal Code or of the Specified Officers (Recovery of Debts) Act, 1970, no member of a Water Advisory Board or public officer shall be personally liable for any act or default which is done or omitted to be done in good faith in the exercise or purported, exercise of the powers conferred by this Act.



38.-(1) The Chief Justice may make rules of court for regulating proceedings before the High Court and applications thereto under the provisions of this Act and for the fees to be paid in respect thereof.

Power to  
make  
rules and  
Regulations

(2) Subject to the provisions of subsection (1), the Minister may make regulations prescribing anything which may be prescribed under this Act and for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may-

- (a) prescribe the registers and records to be kept and the manner in which they are to be kept;
- (b) provide for the forms to be used and the fees to be paid in respect of any matter required or permitted to be done under this Act;
- (c) provide for the advertisement of applications for the use of water and for the giving of notice to interested persons;
- (d) provide for and regulate the making of objections to a Water Officer and the time within which such objections shall be made;
- (e) regulate the procedure of appeals under section 32 of this Act;
- (f) provide for the formation, functions and Conduct of local associations of water users;
- (g) in the case of a water right or existing right enjoyed by an association of persons, regulate the division and distribution of water between those persons;
- (h) prescribe the matters on which and the manner in which persons may be required to give information as provided in section 28;
- (i) prescribe the quorum of, and the procedure to be adopted by Water Advisory Boards, the manner in which and the extent to which they shall receive evidence and hear arguments by objectors and others, and the manner in which they shall record their findings;
- (j) provide for the transfer, to the land register under the land Registration Ordinance or to a register maintained under the Registration of Documents Ordinance, of particulars of casements which were registered in the Water Grants Record maintained under the Water Ordinance hereby repealed and which subsist on the date upon which this Act comes into operation.

Cap. 334

Cap. 117

Cap. 410

39.-(1) The Water Ordinance is repealed.

Repeal and  
saving  
Cap. 410

(2) For the avoidance of doubts it is hereby declared that the provisions of sections 14 and 15 of the Interpretation of Laws and General Clauses Act, 1972 shall apply in respect of the repeal of the Water Ordinance and its re-enactment by this Act.

Acts, 1972  
No. 30

(3) All certificates, permits and authorities granted under the Water Ordinance and which are valid immediately before the commencement of this Act shall remain valid and continue in effect as if the same had been granted under this Act notwithstanding the repeal of the Water Ordinance by this Act.

Passed in the National Assembly on the twenty-second day of October, 1974.



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*Clerk of the National Assembly*