WATERWORKS ACT

(No. 17 of 1995)

(Published 8th December 1995)

Act

No.17 of 1995

ARRANGEMENT OF SECTION

SECTION

PART I – PRELIMINARY

1. Short title and commencement

2. Interpretation

PART II - WATER BOARDS, MEMBERSHIP, POWERS AND DUTIES

3. Water Boards

4. Water-areas

5. Control of waterworks

6. Constitution of the Board
7. Record of proceedings
8. Officers and servants
9. Remuneration of members of the Board
10. Powers to make standing orders

PART III –FURTHER POWERS OF THE BOARD

11. Purposes for which waterworks may be constructed
12. Power to carry pipes, etc, through any land
13. Compensation, etc.

14. Power to enter land

15. Power of entry at specified times

16. Power to suspend, etc., supply of water

17. Power to construct public fountains

18. Supply of water in or outside water-area

19. Board to supply water

20. Power to instal water-borne sewerage sanitation schemes

PART IV - SERVICES AND SUPPLY OF WATER

21. Request for supply of water
22. Construction and connexion of services

23. Expenses, by whom borne

24. Services may be constructed by me Board

25. Supply pipes to be the property of me Board

PART V - OPERATION OF WATER-BORNE SEWERAGE SANITATION

26. Provision of public sewers and sewerage disposal work

27. Board to keep map showing public sewers

28. Power of the Board to alter or close public sewers

29. Certain maners not to be passed into.sewers or drains

30. Right of owners and occupiers within the water-area to drain into public sewers

31. Use of public sewers by owners and occupiers without the water-area of the Board

32. Sewer connexions in streets and through private land
33. Procedure in regard to making public sewers

PART VI - FINANCIAL PROVISIONS

34. Rates

35. Board to make changes for supply of water

36. Rates and charges to be charged on premises to which they relate

37. Revenue of the Board 38. Disposal of funds

39. Investment powers

40. Expenditure of the Board

41. Advances from the Government

42. Borrowing powers

43. Estimates and accounts

44. Keeping of accounts

45. Audit of the Board's accounts

46. Auditor may require production of documents and may summon persons

47. Report by the auditor

48. Minister may act on receipt of auditor's report

PART VII - INQUIRIES

49. Inquiries by the Minister

PART VIII - OFFENCES

50. Injuries, pollution, etc.

51. Waste, etc.

52. Change of occupancy

53. Fraudulent measurement

54. Foul accumulation of earth

55. Penalry for unauthorized building over or near to pipes, etc.

PART IX - BY-LAWS

56. Power of the Board to make By-laws

PART X - MISCELANEOUS

57. Recovery of penalties.

58. Limitarion of rime for prosecution
59. Burden of proof in certain cases

60. Recovery of moneys

60. Legal representarion of the Board

62. Proof of documents

63. Good faith shall be defence to personal liability
64. Minister may make rules

65. Election to transfer to employment wich the Board

PART XI - TRANSITIONAL PROVISIONS

66. Power to, take over existing waterworks

67. Taking over water-borne sewerage sanitation

68. Vesting of rights liabilities et.c.

PART XII - REPEALS AND SAVINGS

69. Repeal and Savings

An Act to provide for the establishment of Water Boards water-areas and for the administration of such water-areas for the development, operation and maintenance of waterworks and water-borne sewerage sanitation systems in Malawi and for matters incidental thereto or connected therewith

ENACTED by the Parliament of Malawi as follows-

PART I - PRELIMINARY

1. This Act may be cited as the Waterworks Act; 1995, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette* . Short title and commencement

2. In this Act, unless the context orherwise requires- Interpretation

"Board" means a Water Board specified in the Schedule;

"domestic purposes" includes every kind of ordinary house hold purpose, but does not include the use of any engine or machine, any mining operations, the flushing of any sewer, or drain, purposes connected wich any trade, manufacture or business, the cleansing of any road, path or pavement or garden purposes;

"fathering ground" means any natural or artificial surface which collects the rainfall or which contains any spring, well or stream from which water is or is intended to be drawn for the purpose or a water-works;

"main" means any pipe laid by the Board for the purpose of providing either a general supply of water as distinct from a supply to individual consumers or a general conveyance of sewerage as distinct from the conveyance of sewerage from individual connexions and includes any apparatus used in connexion with such a pipe;

"member" means a member of the Board appointed pursuant, to section 5, and includes the Chairman of the Board;

"meter" means any appliance used to measure or ascertain the amount of water taken or used from the waterworks by means of any service;

"occupier" in relation to premises, means any person lawfully occupying such premises;

"premises" includes any land, with or without buildings and any building, room, hut or shed which is held or occupied as a distinct or separate holding or tenancy;

"public fountain includes any fountain, standpipe, valve, tap or appliance used or intended to be used for, or in connexion with, the supply of water to the public from the waterworks erected by the Board and which is the property of the Board;

"service" means all pipes, valves, cisterns, casks, fittings and other appliances through which water flows or is intended to flow after leaving the meter on any premises, and which are intended for the supply of water to such premises only;

"supply pipe" means all pipes, valves, and apparatus between the main and the meter;

"water-area" means the area declared under section 4 to be the water-area of the Board;

"waterworks" means all reservoirs, dams, weirs, tanks, cisterns, tunnels, boreholes, filter beds, conduits, aqueducts, and all other structures or appliances used or constructed for the obtaining, storage, conveyance, supply measurement or regulation of water which are so used or capable of use by or on behalf of the Board, and includes any land occupied by, or under the control of, the Board for the purposes of such structures or appliances, but does not include any service.

PART II - WATER BOARDS, WATER-AREAS, MEMBERSHIP, POWERS AND DUTIES

Water Boards

3.-(1) There is hereby established for each water-area (in this Act otherwise referred to as the "water-area") a Water Board (in this Act otherwise referred to as the "Board") as specified in the Schedule.

(2) The Board shall be a body corporate with perpetual succession and a common seal, with power to alter and change the same from time to time, and shall, under chat name, be capable of suing and being sued and, subject to the provisions of this Act, of purchasing or otherwise acquiring, holding or alienating property, real or personal, and of doing all such acts and things as bodies corporate may by law do or perform.

(3) The powers of the Board shall include power to levy and enforce payment of rates in accordance with this Act, and power to engage in research or investigation in connexion with water supplies and water-borne sewerage sanitation either alone or by arrangement or in conjunction with other persons.

Water-area

4.-(1) The Minister may, from time to time, by notice published in the *Gazette*, declare any area to be a water-area of the Board.

(2) The Minister may, in the like manner, alter, amend, reduce or extend the boundaries of a water-area and assign another name thereto.

Constitution of the Board

5.- (1) The Board shall consist of a Chairman, a representative of local authorities, the Secretary for Education, the Secretary for Health and nine members, all of whom shall be appointed by the Minister, and five of whom shall be appointed to represent the interest of the water ratepayers in the water-area.

(2) The Minister may appoint alternate members to act in case any member is unable to be present at any meeting of the Board through illness or other cause.

(3) The Chairman and members of the Board shall, without prejudice to the power of the Minister, at his discretion, to earlier terminate such appointment, hold office for such periods, not exceeding two years, as the Minister may specify in the notice of appointment.

Control of waterworks

6. The Board shall, except for rural water supply areas, have the control and administration of all waterworks and all the water in such waterworks and the management of the supply and distribution of such water in accordance with this Act.

Record of proceedings

7. The Board shall cause proper records to be kept of all its proceedings and kindred matters.

Officers and servants

8.-(1) The Board shall appoint the chief executive of the Board and may designate him by such title as the Board considers appropriate and shall also appoint the clerk to the Board.

(2) The Board shall have power to appoint all other officers and servants of the Board necessary for the due and proper performance of its duties and powers.

(3) The appointment of the officers and servants shall be upon such terms and conditions of service as the Board may determine.

(4) The Board may establish and maintain pension, superannuating or other funds as it may consider desirable for the provision of payments or other allowances on death, superannuation, resignation, retirement or discharge of its officers and servants.

(5) The Board may make rules, subject to the approval of the Minister, for the payment of moneys out of the revenue of the Board to such funds and for the contribution of moneys to superannuation or provident funds by such officers and servants.

(6) The Board may contract with insurance companies and other bodies for the maintenance of such funds subject to the approval of the Minister.

Remuneration of members of the Board

9. A member of the Board who is not an officer in the public service shall be paid out of the funds of the Board such remuneration and allowances, if any, as may be prescribed.

Power to make standing orders

10. The Board may, from time to time, make standing orders for regulating -

(a) the mode and order of proceedings of the Board;
(b) the quorum necessary to constitute a meeting of the Board;
(c) the method of convening meetings of the Board;
(d) the place of meetings; and
(e) other matters relating to its meetings and procedure.

PART III - FURTHER POWERS TO THE BOARD

Purposes for which water works may be constructed

11. The Board may make, construct and maintain all such works as are necessary and convenient for the purpose of creating, maintaining and extending waterworks for supplying water for domestic, public and business purposes, for the extinction of destructive fires, for cleansing streets, lanes, gutters and sewers, and for all other purposes to which water and waterworks are supplied or are applicable.

power to carry pipes, etc. through any land Cap. 69:02

12.- (l) The Board may, for the purpose of the construction maintenance, carrying on or extension of any works, carry any pipe or other equipment through, over or under any land whatsoever, subject to the Public Roads Act:

Provided that the Board shall not be entitled under this section to interfere with any existing building.

(2) The Board shall, at least one month before carrying any pipe or other equipment through, over or under any public or private land without the consent of the owner and occupier of such land or any customary land without the consent of the occupier of such land give notice of the intended work either by notice published in the Gazette, or in

(3) Such notice shall describe the nature of the intended work and shall name a place where the plan of the intended work is open for inspection at all reasonable hours, and a copy or such notice shall either be –

(a) served on every person resident in Malawi whose place or residence is known and who is known or believed to be the owner or occupier of any land through, over or under which it is intended that any pipe or other equipment shall be carried; or

(b) displayed in a conspicuous position on such land.

(4) If the owner, lessee, or occupier of any land through, over or under which it is intended that any pipe or other equipment shall be carried objects to the intended work and serves notice in writing of such objection at the Office of the Board at any time within the said month, the intended work, in so far as it affects the land or a person serving such notice of objection, shall not be commenced, without the sanction of the Minister.

(5) The Minister may appoint such person or persons as he may think fit to make inquiry on the spot into the propriety of the intended work and into the objections thereto and to report to the Minister on matters with respect to which such inquiry was directed and, on receiving the report of such person or persons, the Minister may make an order disallowing or allowing, with such modifications as he may deem necessary, the intended work.

(6) If the person serving the notice of objection is not satisfied with any order made under subsection (5) he may within fifteen days of the making thereof, appeal to the High Court, which shall decide whether it is reasonably necessary for the pipe or other equipment to be carried through, over or under the land in respect of which the objection is made by the route proposed or by any other route.

(7) The Court on hearing such appeal may order that the pipe or other equipment shall be carried through, over or under such land by the proposed route or by such other route as it may deem reasonable.

Compensation, etc

13.-(1) The Board shall make good all public and private roads, streets, and paths disturbed by its waterworks operations to the reasonable satisfaction of the highway authority or owner thereof. The Board shall also pay compensation for all loss or damage caused in the execution of any power by this Act conferred:

Provided the owner or occupier of any land through, over or under which any pipe is placed, shall not be entitled to any rent or way-leave fee in respect of such pipe.

(2) In case any dispute shall arise as to whether any road, street or paths has been adequately made good or as to the amount of compensation to be paid under subsection (1), such dispute may be referred to a Resident Magistrate having jurisdiction in the District in which the cause of dispute arose. Such Resident Magistrate shall have jurisdiction in respect of all such disputes irrespective of the amount thereof and may make such award as he deems reasonable to the person entitled thereto.

(3) Either party to the dispute may appeal from such decision to the High Court.

Power to enter land

14. Any officer or servant of the Board, duly authorized in writing by the Board, and any contractor executing any work for the Board, together with his agents and servants, may after due notice, at any time between 6 a.m. and 6 p.m. enter upon any land for the purpose of surveying, setting out and marking the line of any intended pipe or other equipment.

Power of entry at specified times

15. Any person duly authorized by the Board in writing may, any time between 6 a.m. and 6 p.m. or in the case of urgency at any other time, for the purposes hereinafter mentioned, enter into and upon any premises within the water-area through, over or under which any service or waterworks are laid-

(a) to inspect any service and to ascertain whether there is any waste, leakage, obstruction or damage to any service or meter therein and anything in connexion therewith;

(b) to regulate, repair, alter or make additions to any service or meter;

(c) to ascertain the amount of water taken or used; and

(d) to disconnect the supply of water to any premises or to diminish, withhold or suspend, stop, turn off or divert the supply of water to any premises.

Power to suspend, etc. supply of water

16. It shall be lawful for the Board or any person duly authorized by it in writing, to diminish, withhold, suspend, stop, turn off or divert the supply of water through or by means of any service or public fountain either wholly or in part, or whenever the Board may think fit, and without prejudice to any water rate, meter rent or other sums due or to become due under this Act-

(a) whenever the available supply of water from the water works shall in the opinion of the Board be insufficient;

(b) whenever it may be expedient or necessary for the purpose of extending, altering or repairing the waterworks or for the purpose of connexion of service;

(c) whenever any public fountain is damaged or the waters thereof are polluted or wasted;

(d) if the construction or laying of any service by the owner of any premises is not made altered or readjusted in accordance with this Act;

(e) if there is default in the payment of any moneys due under this Act from the occupier or owner of the premises or so long; as such default continues or at the request of the owner of the premises; or

(f) in case of fire, sabotage, riot, bombing, war or civil commotion or other emergency; and

(g) if any act or thing is done or omitted contrary to this Act in relation to any damage, waste, pollution or abuse of the water-works or any service, meter or public fountain.

Power to construct

17. It shall be lawful for the Board, subject to the Public Roads Act, to construct public fountains and connexions with the mains in, over or under any public road,

street or path in, over or under land held under lease from the Government. fountains Cap. 69:02

Supply of water in or outside water area

18. The Board shall have power to enter into contracts to supply water from its waterworks or water-borne sewage sanitation services to any persons including any local authority, inside or outside the water-area on such terms and conditions - as the Minister may approve.

Board to supply water

19. Subject to section 21, the Board shall provide a supply of potable water sufficient for the domestic purposes of the inhabitants within the water-area;

Provided that the Board shall not be required to deliver such water at a height greater than that to which such water will flow by gravitation through the Board's mains from the service reservoir or tank from which such water is taken.

Power to instal water-borne sewerage sanitation schemes

20. The Board shall have power to install and operate waterborne sewerage sanitation schemes within the water-area.

PART IV – SERVICES AND SUPPLY OF WATER

Request for supply for water

21. –(l) An owner or occupier of any premises within the water-area may make a request, on the prescribed form, for a supply of water, from the Board.

(2) Where a water main owned by the Board lies within 100 metres of any boundary of premises for which a supply of water for domestic purposes has been so requested, the Board shall, promptly but not later than sixty days after the receipt of the request, and on payment of the prescribed fee, lay a suitable supply pipe from the main to a point within the premises as near to the boundary as the Board may deem convenient.

(3) Where a supply of water from the Board is requested for purposes other than domestic purposes, or where no water mains owned by the Board lies within 100 metres of any boundary of premises for which a supply of water has been requested, the Board shall offer to provide a supply of water on such terms and conditions as it may decide, having regard to the costs which would be incurred making such supply of water available.

Construction and connexion of service

22.-(1) Any person owning or occupying any premises may, with the approval of the Board, construct or alter a service for the supply of water from the waterworks. The construction or alteration of the service, including the nature, size and quality of the materials and fittings, shall be in accordance with the By-laws made under this Act. On the completion of the construction or alteration of a service to the satisfaction of the Board, such service shall be connected by the Board to the waterworks, subject to payment of the fee specified for such connexion in such By-laws.

(2) No person shall make any alteration to any service without the prior approval of the Board.

Expenses by whom borne.

23.-(1) Save as provided to subsection (2), the expense of constructing, altering, maintaining or readjusting all services shall be borne by the owner of the premises to which such services are laid.

(2) Where such services already comply with this Act or with any By-laws made

under this Act, the expenses of altering or readjusting any service shall be borne by the Board:

Provided that where any work is carried out either -

(a) at the request of the owner of the premises; or

(b) as a necessary consequence of any action the owner of the premises may take with respect to such premises, the expenses shall be borne by the owner.

Services may be constructed by the Board

24. The Board may, in discretion, construct, alter or repair any service at the request of the occupier, and on completion thereof the person who made such request shall pay the cost and expenses thereof in such manner and to such extent as the Board may require.

Supply pipes to be the property of the Board

25. All supply pipes shall be the property of the Board.

PART V - OPERATION OF WATER-BORNE SEWERAGE SANITATION

Provision of public sewers and sewerage disposal work

26.-(1) The Board may, within its water-area and also, subject or to the prior approval of the Minister, without its water-area -

(a) construct and maintain a public sewer-

(i) in, under or over any street, or under any cellar or vault below any street; and

(ii) in, or over any land forming part of a street, after giving reasonable notice to every owner and occupier of that land;

(b) construct water-borne sewage disposal works on any customary land or public land or land acquired or lawfully appropriated for the purpose.

(2) In the exercise of its powers under subsection 1 (a) (ii), the Board shall make good, or shall pay for any damage done or occasioned to any private land by reason of the exercise of the said powers, failing which the Board shall be liable to pay compensation to the owner or occupier of the private land.

Board to keep map showing public sewers

27.-(1) The Board shall keep deposited at its offices, for inspection by any person at all reasonable hours, free of charge, a map showing and distinguishing all public sewers existing or in course of construction within its water-area or under its control.

(2) Where some of the public sewers are reserved for soil and waste water only for storm water only, the map referred to in this section shall show also the purposes which each sewer is intended to serve.

Power of the Board to alter or close public sewers

28. The Board may alter the size or course of any public sewer vested in it, or may discontinue and prohibit the use of any such sewer, either entirely, or for the purpose of soil and waste water drainage, or for the purpose of storm water drainage, but, before any person who is lawfully using the public sewer for any purpose is deprived by the Board of the use of the sewer for that purpose, the Board shall provide a public sewer equally effective for his use for that purpose and shall at its expense make his drains or sewers to communicate with the sewer so provided.

Certain matters

29.-(1) No person shall throw, empty, or turn, or suffer or permit to be thrown or emptied

not to be passed into sewers or drains

or to pass, into any public sewer, or into or any drain or private sewer communicating with a public sewer-

(a) any matter likely to injure the sewer or drain, or to interfere with the free flow of its contents, or to affect prejudicially the treatment and disposal of its contents; or

(b) any chemical refuse or waste steam, or any liquid of temperature higher than forty three degrees Celsius, being refuse or steam, which, or a liquid which when so heated, is, either alone or in combination with the contents of the sewer or drain, dangerous or the cause of a nuisance, or prejudicial to health; or

(c) any petroleum spirit, or carbide of calcium.

(2) A person who contravenes any of the provisions of this section shall be liable to a fine of K200 and to a further fine of K100 for each day on which the offence continues after conviction there for.

Right of owners and occupiers within the warer-area to drain into public sewer

30. Subject to this section and section 33, the owner or occupier and of any premises, or the owner of any private sewer, within the water-area of the Board shall be entitled to have his drains or private sewer made to communicate with any available public sewer of the Board and thereby to discharge soil and waste water and storm water from those premises or that private sewer;

Provided that nothing in this section shall entitle any person -

(a) to discharge directly or indirectly into any public sewer-

(i) any liquid from a manufacturing process or any liquid from a factory, other than domestic sewage or storm water except by agreement with the Board;
(ii) any liquid or other matter the discharge of which into public sewers is prohibited under this Act or any other law; or

(b) where separate public sewers are provided for soil and waste water and for storm water, to discharge directly or indirectly –

(i) soil or waste water into a sewer provided for storm water; or

(ii) except with the approval of the Board, storm water into a sewer provided for soil and waste water; or

(c) to have his drains or private sewer made to communicate directly with a storm water overflow; or

(d) to have his drains or private sewer made to communicate with a public sewer provided for soil and waste water unless and until he satisfies the Board that the premises to be drained have a sufficient water supply available; or

(e) to have his drains or private sewer made to communicate with any

public sewer if such sewer is situated in excess of thirty metres of the curtilage of the premises.

Use of public sewers by owners and occupiers without the water-area of the Board

31. Subject as hereinafter provided, the owner or occupier of premises and the owner of any private sewer without the water-area of the Board shall have the like rights with respect to drainage into the available public sewers of the Board as he would have had or under section 30 if his premises or private sewer were situate with in its water-area and that section shall apply accordingly;

Provided that, without prejudice to the prohibition contained in section 30 against the discharge of certain liquids or other matters into public sewers or into some public sewers or the right of the Board under section 33 to refuse to permit a communication to be made on any of the grounds set out in subsection (1) of that section and to require the drain or private sewer to be laid open for inspection, the Board may, in the case of a drain or private sewer from premises outside its water-are, refuse to permit a communication to be made except upon such reasonable terms and conditions as may be prescribed or as the Minister may approve. Such terms and conditions may include -

(a) compliance with any reasonable requirements to the Board that the premises to be drained shall be sanitary or in a proper state of repair; and

(b) such reasonable payment or periodical payment, subject to any special or general directions of the Minister, as the Board may see fit to impose.

Sewer connections in streets and through private land

32. For the purpose of making or maintaining a communication with a public sewer it shall be lawful for the Board to construct or repair a lateral drain or, with the prior consent of the Board and in through such manner as it may approve, for the owner of any building to construct or repair a drain or private sewer, as the case may be, in, on or over any land, but where such land does not form part of a street, the Board or owner shall give to every owner or occupier of such land reasonable notice and shall be liable to make good or, at the option of the Board or the owner undertaking the works, to pay for any damage done or occasioned by reason of the exercise of the said power;

Provided that the works intended to be carried out in exercise of the powers herein conferred shall not interfere unduly with the amenities or future development of the land or any adjacent land and, in case of dispute, a person aggrieved may appeal to the Minister.

Procedure in regard to making communication with public sewers

33.-(1) A person who wishes or who is required to have his drains or private sewers made to communicate with a public sewer shall give to the Board notice of his proposals in writing in such public waters manner as may be prescribed and at any time within twenty-one days of the receipt thereof the Board may by notice to him refuse to make the communication if it appears to the Board that the mode of construction of the drain or private sewer is not in conformity with the rules in force governing the same or that the condition of the drain or private sewer or the matter carried or to be carried thereby is such that the making of the communication would be prejudicial to the sewerage system of the Board and for the purpose of examining the mode of construction and condition of the drain or private sewer the Board may, if necessary, require it to be laid

open for inspection.

(2) If no such notice as aforesaid is served on such person, the Board shall, with all reasonable despatch, cause the communication to be made by means of a lateral drain to the public sewer in such manner as may be prescribed or as the Board may decide, but it shall not be obligatory on the Board to make the communication until the estimated cost of the work has been paid to it or security for payment has been given to its satisfaction.

(3) If any payment so made to the Board exceeds the expenses reasonably incurred by it in the execution of the work, the excess shall be repaired by it and, if and so far as those expenses are not covered by the payment made to it, the Board may recover the expenses, or the balance thereof, from the person for whom the work was done.

(4) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street and the taking of any steps which the Board may consider necessary for repairing, relaying or safeguarding any pipes, drains, lines or any other works which may be or are liable to be disturbed or damaged by or in the course of making such communication.

(5) Any lateral drain so constructed shall vest in the Board (but shall not thereby become a public sewer) and the maintenance, repair and renewal of the same from time to time shall be carried out by the Board at the expense of the owner of the premises served by such drain.

(6) Any person (other than a person lawfully acting on behalf of the Board) who causes a drain or sewer to communicate with a public sewer and any person who fails to comply with or acts in contravention of any of the provisions of this section, shall be liable to a fine of K400, and, whether proceedings have or have not been taken in respect of that offence, the Board may close any communication made in contravention of any of such provisions, and recovery from the offender any expenses reasonably incurred by it in so doing.

PART VII – FINANCIAL PROVISIONS

Rates

34. The rates levied by the Board shall be an annual levy in respect of any premises or part thereof and may take the form of a fixed sum, a sum calculated by reference to area or a sum calculated by reference to value and may be levied in respect of developed or undeveloped land and irrespective of whether there is a supply of water to the premises.

Board to make charges for supply of water

35.-(1) The Board shall make such charges as are approved, within a reasonable time, by the Minister for the supply of quantities of water measured by meter, for the rental of meters, or for the provision of other services. Such charges may differ in respect of different classes of consumers.

(2) Such charges shall be levied and enforced in accordance with rules made by the Minister.

(3) Such rules may provide for -

(a) different rates being fixed and levied in respect of different classes of premises or parts thereof;

(b) rates to be increased in response to price inflation.

(4) A schedule showing the tariff of rates and charges payable to the Board shall be available for inspection at the offices of the Board and shall be advertised in such

other manner as the Minister may, on the advice of the Board, prescribe.

36. All rates and charges levied and made under this part shall, as from the date they fall due, be deemed to be a charge upon the premises to which they relate and shall be recoverable from the occupier, and if he fails to pay, from the owner of the premises or any subsequent owner or occupier or the agent of any such owner or occupier.

Rates and charges to be charged on premises to which they relate

Revenue of the Board

37.-(1) The annual revenue of the Board shall include-

(a) income from all rates levied and all charges made, by the Board;

(b) one half of all fines imposed by a competent court for the contravention either of this Act or of by-laws made by the Board;

(c) all other fees, dues or rents recoverable by the Board;

(d) all sums received by the Board from the Government on revenue account; and

(e) interest on moneys invested by the Board.

(2) For the purpose of subsection (1) *(b)* every court imposing such a fine shall pay one-half thereof to the Board.

Disposal of funds

38. All moneys received by the Board shall be paid into a bank licensed or registered under any law for the time being in force in Malawi and shall be credited in the name of the Board to such account as they may belong.

Investment powers

39. The Board may invest all or any portion of its moneys –

(a) in the purchase of any security issued by or on any deposit account maintained by the Government;

(b) on deposits of any bank or building society licensed or registered under any law for the time being in force in Malawi; and

(c) in any other form or manner approved by the Minister acting either alone or in consultation with the Minister of Finance –

Expenditure of the Board

40.-(1) The expenses incurred by the Board in the execution of the powers and duties conferred on it under this Act or in the discharge of any liability incurred in pursuance thereof shall be defrayed out of the funds of the Board.

(2) The Board may create such general and other reserves as may be approved by the Minister and charge thereto such appropriations as may be authorized in the annual estimates of the Board.

Advances from the Government

41. It shall be lawful for the Board from time to time to obtain from the Government advances of money required for the proper carrying out of this Act. The money so advanced and the interest thereon, if any, shall constitute a liability of the Board and shall be charged on the property and annual revenues of the Board, present and future, subject however to the provisions of any agreement or other arrangement existing at the commencement of this Act.

Borrowing powers
Cap.37:01

42.-(1) Subject to the provisions of the Finance and Audit Act, it shall be lawful for the Board from time to time to raise loans, whether by way of bank overdraft or otherwise, in such amounts and on such conditions as may be approved by the Minister for the proper carrying out of this Act, and such loans may, subject to the provisions of any agreement or other arrangement existing at the commencement of this Act, be secured on the property and annual revenues of the Board, including any lands which may be specially placed at the disposal of the Board under any law;

Provided that this section shall not be deemed to confer any power of alienating such lands other than in accordance with the powers that are conferred by such law.

(2) Where any such loan shall be raised by means of stock, the provisions of any law that may be applicable and in force in Malawi with regard to the issuing of stock, the provisions to be made for the payment of interest thereof and for the redemption thereof at the rime or times fixed for repayment and the proceedings to be taken in case of default shall apply.

Estimates and accounts

43. The Minister may make rules prescribing the manner in which the Board shall make and submit estimates of its revenue and accounts expenditure or revenue and capital accounts, provided for the submission by the Board of annual statements of account, and prescribing the financial year in respect of which estimates shall be made and accounts submitted.

Keeping of accounts

44.-(1) The Board shall cause a true account to be kept of all its financial transactions during each financial year.

(2) The Board may keep such capital, renewals and other special accounts as it may consider necessary or as the Minister may direct.

(3) All the accounts of the Board shall be open to inspection by any member of the Board.

Audit of the Board's accounts

45. The accounts of the Board shall be audited from time to time by an auditor appointed by the Board.

Auditor may require production of documents and may summon persons

46.-(1) The auditor may, by writing under his hand, require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investments of the Board which he may deem necessary for the purpose of the audit. He may summon in writing all such persons as he may think proper to appear before him personally at the offices of the Board at a time to be fixed in such summons, for examination in connexion with any documents or matter relating to the audit.

(2) For the purpose of any such examination, the auditor may take evidence upon oath. The auditor is hereby empowered to administer oaths for such purpose.

(3) Any person who without just cause fails or refuses to produce any document the production of which has been duly required by the auditor, or who having been so summoned -

(a) without just cause, neglects or refuses to comply with the summons;

(b) having appeared before the auditor, refuses without just cause to be examined on oath or to take such oath;

(c) having taken such oath, refuses without just cause to answer such questions pertaining to the audit as are put to him, shall be guilty of an offence and be liable to a penalty of K500 for every such refusal or neglect and, in default of payment, such person shall be liable to imprisonment for three months;

Provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act, matter or thing required of him under this section.

Report by the auditor

47. After completion of the audit of the accounts of the Board, the auditor shall report thereon in writing both generally and on any specific matters as the Minister may direct. The auditor shall send a copy of such report to the Board and the Board shall consider the report within two months after receipt thereof, whereupon a copy of the auditor's report together with the Board's comments thereon shall be sent by the Board to the Minister.

Minister may act on receipt of auditor's report

48.-(1) If on receipt of the report of the auditor, the Minister is satisfied that an expenditure has been incurred without proper authority, he may, by order in writing, surcharge any person responsible for such expenditure for the whole or any part thereof.

(2) If, on receipt of the report of the auditor, the Minister is satisfied that -

(a) any failure to collect money due to the Board;

(b) any loss of money or property;

(c) any damage to property;

has occurred by reason of any wilful or wrongful act or any negligence by a member of the Board or person in its service, the Minister may, by order in writing, surcharge such member or person for the whole or any part of any money or property due to the Board.

(3) Any money or property surcharged on any person under this section shall be a debt to the Board and shall be payable by such person within one month, or such longer period as the Minister may approve, of the date of service upon him of the Minister's order.

(4) Any person aggrieved by an order of surcharge may, within one month from the date of the service of the order on him, appeal to the High Court which may confirm, vary or set aside such order.

PART VII - INQUIRIES

Inquiries by the Minister

49. (1) If the Minister has reasonable cause to suspect that –

(a) the Board has failed to observe or perform any of the duties or obligations conferred or imposed upon it by this or any other Act;

(b) the Board has done or performed any act, matter or thing without due authority, he may in his discretion, appoint a person or persons to inquire into such matter.

Cap.

(2) The Commissions of Inquiry Act shall apply to any inquiry under this Part, provided that for the purposes of an inquiry under this Part, those powers vested by the Commissions of Inquiry Act in the Minister responsible for the administration of that Act shall be deemed to be vested in the Minister responsible for the administration of this Act.

(3) If, upon an inquiry under this Part, the Minister is satisfied that the Board has done or suffered any of the acts, matters or things referred to in subsection (1) (a) or (b), he may by order in writing, require the Board to remedy the same within such time as he may appoint.

(4) If the Board fails to comply with an order of the Minister made under subsection (3), the Minister may, in addition to any other powers conferred on

by this Act –

(a) suspend the exercise by the Board of any of the powers conferred upon it by this or any other Act for such period as he may think fit;

(b) remove from office all or any of the members and, in his discretion, appoint new members;

and during such period, or as the case may be, pending the appointment of new members, confer upon any person the exercise of any powers so suspended or of the members.

(5) The expenses incidental to –

(a) any inquiry under this section;

(b) the exercise of any of the powers of the Board under sub-section (4), shall be paid by such person as the Minister may direct. If the Minister directs payment by the Board, such expenses shall be charged upon the annual revenue of the Board.

PART VIII – OFFENCES

Injury, pollution etc.

50. Any person who wilfully and negligently causes damage to any waterworks, public fountains, public sewers, services, or meters, or who unlawfully draws off, diverts or take water from the same or from any streams or waters by which the waterworks are supplied, or pollutes any such water or allows any foul liquid, gas or other noxious or injurious matter to enter into the waterworks, public sewers or any services connected therewith, shall be guilty of an offence and shall, for every offence, be liable to a fine of K2,000, and to a further penalty of K500 for each day during which the offence continues.

Waste, etc.

51. Any person who wilfully or negligently misuses or wastes or causes or allows to be misused or wasted any water passing into, through or upon or near any premises from any waterworks shall be guilty of an offence and be liable to a fine of K2,000. The liability to such fine shall not prejudice the remedy by suspension of supply or otherwise as proved by section 16.

Change of occupancy

52. Every change of occupancy of premises shall be notified to the Board. Such notification shall be made by the new occupier within seven days after going into occupation. Any person who fails to comply with this section shall be guilty of an offence and be liable to a fine of K200.

Fraudulent measurement

53. Any person who alters, or causes or permits to be altered, any service with intent to avoid the accurate measurement or register of water by means of any meter, or to obtain a greater supply of water than he is entitled to and to avoid payment therefore or who wilfully or negligently causes damage to any meter shall be guilty of an offence and be liable to a fine of K2,000 and any service so altered or meter so damaged shall be replaced or repaired by the Board at the expense of the person convicted, and the cost of replacing or repairing any such service or meter may be recovered upon the order of a magistrate in the same manner as any penalty herein provided may be recovered upon conviction.

Foul accumulation of earth

54. Any person who puts or accumulates or allows to be put or to remain or to accumulate, on any premises occupied or owned by him or his servants, or who shall not remove or cause to be removed or take such steps as may be necessary to prevent, upon notice in writing from the Board, any foul, noisome or injurious matter or any earth, deposit or excavated material in such manner or place that it may be washed, fall or be carried into the waterworks or the gathering grounds thereof shall be guilty of an offence and be liable to a fine of K2,000 and for each day during which such matter, earth, deposits or excavated material remains unremoved after notice in writing from the Board, requiring

the same to be removed, to a further penalty of K500 for each day during which the offence continues.

Penalty for unauthorised building over or near to pipes, etc.

55. Any person who without the consent of the Board (which consent shall not be unreasonably withheld), knowingly causes any building, works or construction of any kind whatsoever to be or erected, performed or carried out, over abutting or adjoining any pipe or other equipment, the property of the Board, shall be guilty of an offence and be liable to a fine of K2,000 and a further fine of K500 for each day during which the offence continues after written notice has been served on such person by the Board; and the Board may cause such building, works or construction erected, performed or carried out in contravention or this section, to be altered, removed, or demolished or otherwise dealt with as it may deem fit, and may recover any expenses incurred by the Board in so doing from such person.

PART IX - BY-LAWS

Power of the Board to make by-laws

56.-(1) The Board shall have power, subject to the approval of the Minister, which approval shall be granted within a reasonable time, to make, alter or revoke by-laws for any such matters or things as may be found necessary for the proper carrying out of this Act and more especially for any of the following purposes –

(a) the supply of water to all premises within the water-area;

(b) the regulation of the use and the prevention of pollution, misuse, waste of, or any interference with, any water supplied by or under the control of the Board;

(c) the regulation of the use and the prevention of pollution or any interference with any water-borne sewerage sanitation scheme operated by the Board;

(d) the prevention of pollution of gathering grounds, the water-works and the water therein;

(e) the method and manner in which water may be taken from public standpipes;

(f) the form in which application for a supply of water may be made;

(g) the construction, laying, fighting, alteration or readjustment of service, and the nature, quality, size and pattern thereof and all meters used therewith;

(h) the duties of the officers and servants of the Board, their proper behaviour and conduct;

(i) the form of all notices required to be given or sent under this Act and the issuing and service thereof;

(j) the regulation of fishing in any water under the control of the Board, and the determination of fees payable in respect of any licence or right to fish granted by the Board;

(k) the regulation and control of sailing or boating on any water under the control of the Board and the determination of the fees payable in respect of any licence or

right to sail or boat granted by the Board;

(l) the prohibition and regulation of the entry of any person into any waterworks occupied by or under the control of the Board;

(m) the prescription of the conditions of any licence which may be granted under this Act, the form of such licence and the fees payable; and

(n) the regulation of bathing or washing any person, animal or thing in any water under the control of the Board.

(2) The by-laws made under this Act may provide for a penalty for the breach of any of their provisions -

(a) upon first conviction, of a fine of up to Kl,000 or imprisonment for up to one month;

(b) on a subsequent conviction, of a fine of up to K2,000 or imprisonment for up to three months; and

(c) in the case of a continuing offence, of a fine of up to K200 in respect of each day on which the offence continues.

PART X – MISCELLANEOUS

Recovery of penalties

57. All penalties under this Act may be recovered on summary conviction, and shall be addition to any other remedy or proceeding, whether civil or criminal which may be taken in pursuant to any other law in force in Malawi.

Limitation of time for prosecutions

58. Any complaint or information in pursuance of this Act shall be made or laid within and not three months from the time when the matter of such complaint or information arose afterwards -

Burden of proof in certain cases

59. When in any proceedings under this Act any person is summoned or otherwise dealt with as the occupier of premises, if he alleges that he is not the occupier of such premises, he shall bear the burden of the proof of such allegations.

Recovery of moneys

60. All moneys, other than penalties or fines payable or recoverable under this Act shall be recoverable at the suit of the Board in a court of competent jurisdiction as a civil debt.

Legal representation of the Board

61. In any action, suit or prosecution against, by, or on behalf of the Board, the Board may be represented by its chief executive officer (by whatever title designated), the clerk to the Board or by any other officer of the Board authorized in writing by the chief executive officer, unless in the case of prosecution, the Director of Public Prosecutions, otherwise directs.

Proof of the documents

62. in any proceedings under this Act, a document certified by clerk to the Board as a copy of a resolution or order passed or made by the Board or as a copy of the appointment or of any authority given to an officer of the Board shall be evidence that the solution, order, appointment or authority was duly passed, given or made by the Board.

Good faith shall be defence to personal liability

63. No act matter or thing done or omitted by –

(a) any member of the Board;

(b) any officer or other person in the service of the Board;

(c) any person acting under the direction of the Board,

shall, if such act, matter or thing was done or omitted in good faith in the execution of his duty, render, any such member, officer or person personally liable to any action, liability, claim or demand whatsoever.

Minister may make rules

64. The Minister shall have power, on the advice of the Board, to make rules prescribing any matter or thing which may or should be prescribed under this Act and generally to carry into effect the provisions thereof.

Election to transfer to employment with the Board

65.-(1) Any person who, immediately prior to me commencement of this Act is employed in the Department of Water may, at any time within twelve months thereafter, by notice in writing to the Minister, elect to become an employee of the Board or retire from the public service on the terms and conditions on which he was employed prior to the commencement of this Act.

(2) After the expiry of twelve months from the date of commencement, no person to whom subsection (1) applies shall be entitled to elect to become an employee the Board.

(3) A person who becomes an employee of the Board pursuant to subsection (1) shall enter such service on such terms of employment and under such conditions of service as may be applicable to employees of the Board;

Provided that in no case shall such terms of employment or conditions of service be less favourable than the terms and conditions he enjoyed, or were applicable to him, while employed in the Department of Water immediately prior to the commencement of this Act.

PART XI –TRANSITIONAL PROVISIONS

Power to take over existing waterworks

66. Upon the commencement of this Act, the Board shall take over -

(a) all waterworks for which the Minister is responsible;

(b) such other government operated waterworks for which another Minister is responsible as the Minister may, after consultation with that other Minister and the Board, declare by Order published in the *Gazette.*

Taxing over water-borne sewerage sanitation

67. The Board shall, upon the commencement of this Act, and after consultations between the Minister and the Minister responsible for local authorities, take over the assets, plant and machinery in respect of a water-borne sewerage sanitation system installed and being operated in the water-area by the local authority of the water-area.

Vesting of rights, liabilities, etc.

68. Any right, liability or obligation arising in respect of –

(a) the waterworks transferred to the Board from the Government pursuant to section 66; or

(b) any assets, plant and machinery of a water-borne sewerage sanitation system transferred to the Board from a local authority pursuant to section 67,

which may be enforced by or against the Government or a local authority, as the case may be, shall become instead enforceable by or against the Board to the same extent as it would have been enforceable by or against the Government or the local authority.

PART Xll - REPEAL AND SAVINGS

Repeal and savings

69.-(1) The following Acts are hereby repealed -

CaP. 72:01 (a) the Waterworks Act;

Cap. 72:02 (b) the Blantyre Waterworks Act; and

Cap. 72:04 (c) the Lilongwe Waterworks Act.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) in force immediately before the commencement of this Act-

(a) shall, unless in conflict with this Act, continue in force and be deemed to be subsidiary legislation made under this Act;

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Acts repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

SCHEDULE **s. 2**

WATER BOARDS

1. Blantyre Water Board

2. Lilongwe Water Board

3. The Northern Region Water Board

4. The Central Region Water Board

5. The Southern Region Water Board

Passed in Parliament this fifteenth day of November, one thousand, nine hundred and ninety-five.

R. L. GONDWE

Clerk of Parliament

CORRIGENDUM

Malawi Gazette Supplement dated 15th November, 1995

(No. 6C), Press Trust Reconstruction Act, 1995 – delete the words

"Act No. 16 of 1995" and *substitute* therefore the words "Act No. 15 of 1995."

Printed and published by the GOVERNMENT PRINTER, ZOMBA, MALAWI-6877-(Price K7.20)