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No. 2 of 2013

I assent

DR. JOYCE BANDA
PRESIDENT
9th April, 2013

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An Act to provide for the management, conservation, use and control of water resources; for the acquisition and regulation of rights to use water; and for matters connected therewith or incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Water Resources Act, 2013, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette*.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"aquifer" includes a geological structure or formation and an artificial landfill permeated or capable of being permeated permanently or intermittently with water;

"Authority" means the National Water Resources Authority established under section 8;

"authorized" means authorized by or under this Act;

"authorized person" means a person acting on behalf of the Minister or the Authority to whom powers have been delegated under section 15 and includes an officer, servant or agent of an authority or any person acting on behalf of the authority;

"borehole" includes a borehole, well, excavation or other opening in the ground or any natural or artificially constructed or improved underground cavity which is used—

(*a*) for intercepting, collecting, obtaining or using ground water; or

(*b*) for disposing of any water or waste below the surface of the ground;

"catchment", in relation to a watercourse or any part thereof, means the area from which any rainfall will drain into, the watercourse or part of the watercourse through surface flow to a common point;

"catchment management committee" means a committee established under section 26;

"catchment area" means an area designated as such under section 25;

"charges", in relation to the use of water from a water resource, includes fees, levies and premiums of any kind;

"construct" includes alter, improve, maintain and repair;

"domestic purposes" includes the provision of water for household and sanitary purposes and for the watering and dipping of stock;

"domestic sewage" includes faecal matter, urine, household slops and other liquid house refuse;

"domestic use" includes use for the purpose of—

(*a*) human consumption, washing and cooking by persons ordinarily resident on the land where the use occurs;

(*b*) watering not more than thirty livestock units;

(*c*) irrigating a subsistence garden; and

(*d*) watering a subsistence fish pond;

"easement" means a right to enter a land owned or occupied by another person for all or any of the following purposes—

(*a*) to construct works on or in that land;

(*b*) to store water on or in that land; or

(*c*) to carry water, drainage or waste under, through or over that land;

"enclosed spring water" means water in a spring which—

(*a*) is situated wholly within the boundaries of the land owned by any one landholder; and

(*b*) does not naturally discharge water into a watercourse abutting on, or extending beyond, the boundaries of that land;

"effluent" means any liquid discharged as a result of domestic, commercial, industrial or agricultural activities;

"environment" means all aspects of the surroundings of humans, including the physical, biological, economic, cultural and social aspects;

"existing right" means any right to abstract and use water or to discharge effluent—

(*a*) which at the commencement of this Act was lawfully acquired, is possessed by, and is being exercised by, any person; or

(*b*) lawfully acquired by any person before the commencement of the Act for the purpose of supplying water to the public;

"hydrological station" includes a gauging, recording or monitoring station or an investigation or monitoring borehole or ancillary works constructed or installed on land;

"inspector" means a person appointed by the Minister or the Authority to exercise the powers of an inspector under this Act;

"in-stream habitat" includes the physical structure of a water resource and the associated vegetation in relation to the bed of the water course;

"ground water" means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground, and includes water in interstices below the water table;

"land" includes premises;

"landholder", in relation to land, means the registered owner of the land or the person in whom the land is otherwise vested by, and includes—

(*a*) any person who by any established right, custom or estate whatsoever is, or is entitled to be, the holder or possessor of land;

(*b*) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the allotment of land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions; and

(*c*) any person to whom a mining lease or mining location has been granted under the Mines and Minerals Act;

Cap. 61:01

"licence" means a licence issued under this Act;

"livestock unit" means a mature animal with a live weight of 250 kilograms and for purposes of this definition—

(*a*) one head of cattle shall be deemed to be 0.7;

(*b*) one horse shall be deemed to be 0.6;

(*c*) one donkey shall be deemed to be 0.4;

(*d*) one goat shall be deemed to be 0.15;

(*e*) one sheep shall be deemed to be 0.15,

of a livestock unit;

"natural resources" means land, soil and water in their physical aspects together with the natural vegetation associated therewith, and the normal balance between them;

"occupier" means any person in occupation of the land or any part of the land or premises;

"owner" includes—

(*a*) the person for the time being receiving the rent of the land in connection with which the word is used, whether on his own account or as agent or trustee for any other person; or

(*b*) the person who would receive the rent if the land were let to a tenant;

"permit" means a permit issued under this Act;

"pollute", in relation to water, means directly or indirectly to alter the physical, thermal, chemical, biological or radioactive properties of any water so as to render the water less fit for any beneficial purpose for which it is, or may reasonably be, used or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, fish or aquatic life or other organisms or to plants; and "pollution" has a corresponding meaning;

"premises" includes any building or structure whether of a temporary or permanent nature and any vehicle or vessel;

"public consultation", in relation to any application made, or action proposed to be taken, under this Act, has the meaning assigned to it in section 156;

"regional office" means an office of the Authority established under section 13;

"reserve", in relation to a water resource, means that quantity and quality of water required—

(*a*) to satisfy basic human needs for all people who are or may be supplied from the water resource; and

(*b*) to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the water resource;

"resource quality", in relation to a water resource, means the quality of all the aspects of a water resource including—

(*a*) the water quality stipulated for the reserve;

(*b*) the quantity, pattern, timing, water level and assurance of in-stream flow;

(*c*) the physical, chemical and biological characteristics of the water;

(*d*) the charter and condition of the in-stream and riparian habitat; and

(*e*) the characteristics, condition and distribution of the aquatic biota;

"riparian habitat" means the dynamic complex of plant, animal and micro-organism communities and their non-living environment adjacent to and associated with a watercourse;

"shared waters" means such water resources as form, or are traversed by, the boundaries of Malawi with any of its neighbouring states;

"spring" means water emerging from beneath the surface of the ground otherwise than as a result of drilling or excavation operations;

"stream" means the water contained in a watercourse, and includes a river;

"subsistence fish pond" means a fish pond appurtenant to, or used in connection with, a dwelling or group of dwellings for subsistence of its residents, the produce of which is predominantly consumed by the residents and is not sold or bartered;

"subsistence garden" means a garden, not exceeding 0.5 hectare in area, appurtenant to, or used in connection with, a dwelling or group of dwellings for the subsistence of its residents, the produce of which is predominantly consumed by the residents and is not sold or bartered;

"surface water" means water flowing, stored or found on the surface of the ground;

"swamp" means any shallow depression on which water collects either intermittently or permanently and where there is a small depth of surface water or a shallow depth of ground water and a slight range of fluctuation either in the surface level of the water or of the ground water level so as to permit the growth of aquatic vegetation;

"underground water" means water naturally stored or flowing below the surface of the ground and not necessarily apparent on the surface of the ground;

"use", in relation to water, includes to withdraw, pump, extract, take, use or reuse or to divert for the purpose of using or reusing that water;

"water" includes—

(*a*) water flowing or situated upon the surface of any land;

(*b*) water flowing or contained in—

(i) any river, stream, watercourse or other natural course for water;

(ii) any lake, pond, swamp, marsh or spring, whether or not it has been altered or artificially improved;

(*c*) ground water;

(*d*) such other water as the Minister may, from time to time, declare to be water;

"Water Tribunal" means the Water Tribunal established under section 122;

"water resource" means any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below ground;

"water right" subject to the provisions of section 38, includes any existing right;

"water table" means—

(*a*) in pervious granular or detrital material, the upper surface of the body of free water which fills all openings in material that is sufficiently pervious to permit percolation; and

(*b*) in fractured impervious rocks and in solution openings, the surface at the contact between the water body in the openings and the overlying ground air;

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

"works" means any structure, apparatus, contrivance, device or thing for carrying, conducting, providing or utilizing water or liquid waste, but does not include hand utensils or such other contrivances as may be prescribed by rules made under this Act.

(2) In interpreting this Act, an interpretation which promotes the objectives of the Act shall be preferred to one which does not.

Application of the Act

3. The Minister may, from time to time, by notice published in the *Gazette* declare part of this Act not to apply to an area defined in the notice for a purpose defined in the action plan.

Objectives

4. The objectives of the Act are—

(*a*) to promote the rational management and use of the water resources of Malawi through—

(i) the progressive introduction and application of appropriate standards and techniques for the investigation, use, control, protection, management and administration of water resources;

(ii) the regulation of all public and private activities which may influence the quality, quantity, distribution, use or management of water resources;

(iii) the coordination, allocation and delegation of responsibilities among Ministers and public authorities for the investigation, use, control, protection, management or administration of water resources;

(*b*) to allow for the orderly development and use of water resources for all purposes including domestic use, the watering of stock, irrigation and agriculture, industrial, commercial and mining uses, the generation of hydroelectric or geothermal energy, navigation, fishing, preservation of flora and fauna and recreation in ways which minimize harmful effects to the environment; and

(*c*) to control pollution and to promote the safe storage, treatment, discharge and disposal of waste and effluents which may pollute water or otherwise harm the environment and human health.

Water vested in the State

5. All water resources are hereby vested in the State, subject to any rights of a user granted by or under this Act or any other written law.

Public ownership of beds and banks of watercourses and lakes and of adjacent land strips

6.—(1) The bed and banks of watercourses and lakes and the adjacent land strips are declared public land and the Authority shall determine and regulate the management thereof.

(2) No person shall cultivate or carry out any activity within the bed and banks of watercourses and lakes and their adjacent land strips except as determined by the Authority under subsection (1).

(3) The Minister, in consultation with the relevant authorities, shall determine the width of the land which is subject to this section.

(4) The Minister, in consultation with the relavant authorities, shall facilitate payment of compensation for loss of property within any land which is a subject matter of this section.

(5) Any person who contravenes subsection (2) commits an offence.

Powers and duties of the Minister

7.—(1) The Minister shall, in accordance with this Act have, and may, exercise control over every water resource.

(2) The Minister shall promote the investigation, conservation and proper use of water resources throughout Malawi and ensure the effective exercise and performance by any authorities or persons under the control of the Minister of their powers and duties in relation to water.

(3) The Minister shall be assisted in the discharge of his duties under this section by the Authority established under this Act.

Part II—National Water Resources Authority

Establishment of the Authority

8.—(1) There is hereby established an Authority to be known as the National Water Resources Authority.

(2) The Authority shall be—

(*a*) a body corporate with perpetual succession and a common seal;

(*b*) have power, in and by its corporate name, to sue and be sued; and

(*c*) in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

(3) The powers and functions of the Authority shall be exercised and performed under the direction of a governing board, which shall consist of—

(*a*) The following members appointed by the Minister—

(i) a representative of one of the established catchment management committees;

(ii) one representative of associations of water users;

(iii) one representative of a non-governmental organization (NGO) engaged in the water sector; and

(iv) one member as the Minister may, in his discretion, appoint from the private sector as representing key private sector stakeholders.

(*b*) the following *ex-officio* members—

(i) the Secretary responsible for water development or his designated representative;

(ii) the Secretary responsible for health, or his designated representative;

(iii) the Secretary responsible for tourism, or his designated representative;

(iv) the Secretary responsible for agriculture, or his designated representative;

(v) the Secretary responsible for irrigation, or his designated representative;

(vi) the Secretary responsible for land matters, or his designated representative;

(vii) the Secretary responsible for natural resources, or his designated representative;

(viii) the Secretary responsible for environment, or his designated representative; and

(ix) the Secretary responsible for transport, or his designated representative;

(4) In making the appointments, other than of the *ex-officio* members, the Minister shall have regard to—

(*a*) the educational qualifications, experience, expertise, character and integrity of potential candidates for membership; and

(*b*) the degree to which water users, or water users of particular kinds, are represented on the board at the time the appointment is made.

(5) A member, other than an *ex-officio* member, shall hold office for a period of three years and may be eligible for re-appointment from time to time.

(6) The Minister shall designate one member who is not a public officer to be the Chairperson of the Authority.

(7) Members of the Authority shall elect from amongst their number a Vice-Chairperson.

(8) An appointment under this section may be revoked, by the person or his successor in office, who made the appointment.

(9) For the purposes of this section, a vacancy in the office of Chairperson shall be deemed to be an absence from office of the Chairperson.

(10) The terms and conditions of service of a member, including the remuneration, allowances and other expenses to which he is entitled, shall be as determined by the Authority and approved by the Minister.

(11) The office of a member shall become vacant if—

(*a*) he dies, resigns or is removed from office;

(*b*) he absents himself, without valid reasons, from three consecutive meetings of the Authority of which he has had notice;

(*c*) he is adjudged bankrupt;

(*d*) he is adjudged or declared, by any competent court or tribunal, to be of unsound mind; or

(*e*) he is convicted of an offence punishable by imprisonment without an option of a fine.

(12) On vacation of office by a member, the vacancy shall be filled by a person appointed in accordance with the relevant provision of section 8 (3) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(13) The Authority shall meet at least four times in every year.

(14) Except as otherwise provided by or under this Act—

(*a*) meetings of the Authority shall be held at such times and places as are fixed by the Chairperson; and

(*b*) the procedure for the convening of meetings and for the conduct of business at those meetings shall be as determined by the Authority.

(15) Half of the members of the Authority shall constitute a quorum at any meeting of the Authority.

(16) The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson and in the absence of both the Chairperson or the Vice-Chairperson, a member appointed by the members then present, and forming a quorum shall preside at a meeting of the Authority.

(17) A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present shall be the decision of the Authority.

(18) The presiding member at a meeting of the Authority shall cause a record of the proceedings at the meeting to be made.

(19) Records made for the purpose of subsection (17) may be destroyed after the expiry of the period determined by the Authority.

(20) The first meeting of the Authority shall be called by the Minister in such manner as the Minister thinks fit.

Disclosure of interest

9.—(1) A member who has a direct or indirect pecuniary interest—

(*a*) in a matter which is being considered, or is about to be considered, at a meeting of the Authority; or

(*b*) in a thing done or about to be done by the Authority,

shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure at such a meeting that the member concerned—

(*a*) is a member, or is in the employment, of a specified company or other body;

(*b*) is a partner, or is in the employment, of a specified person; or

(*c*) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Authority shall cause particulars of any disclosure made under subsection (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection, free of charge, by any person.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing under subsection (1) or (2), the member shall not, unless it is otherwise determined—

(*a*) be present during any deliberation, or take part in any decision, of the Authority with respect to that matter; or

(*b*) exercise or perform any powers or functions under this Act with respect to that thing,

as the case may require.

(5) Subsection (4) shall not apply to a member whose interest consists merely of the fact that the member is the holder of a permit.

(6) A contravention of subsection (4) shall not in itself invalidate any decision of the Authority or the exercise or performance of any power or function under this Act.

Powers and functions of the Authority

10.—(1) The Authority shall have the following powers and functions—

(*a*) to develop principles, guidelines and procedures for the allocation of water resources;

(*b*) to monitor, and from time to time reassess, the National Water Policy and the National Water Resources Master Plan;

(*c*) to receive and determine applications for permits for water use;

(*d*) to monitor and enforce conditions attached to permits for water use;

(*e*) to regulate and protect water resources quality from adverse impacts;

(*f*) to manage and protect water catchments;

(*g*) in accordance with guidelines in the National Water Policy, to determine charges to be imposed for the use of water from any water resource;

(*h*) to gather and maintain information on water resources and from time to time to publish forecasts, projections and information on water resources;

(*i*) to liaise with the relevant stakeholders for the better regulation and management of water resources;

(*j*) to advise the Minister concerning any matter in connection with water resources;

(*k*) to assist the Minister in the coordination of hydrological and hydrogeological investigations;

(*l*) to coordinate the preparation, implementation and amendment of a water action plan and to recommend the water action plan to the Minister;

(*m*) at the request of the Minister, advise any other Minister who may request advice on—

(i) issues of policy relevant to the investigation, use, control, protection, management or administration of water; or

(ii) any other issue that may be referred to it;

(*n*) whether on request or otherwise, to review the law relating to water and advise the Minister on any amendments that may be required for the improvement or better administration of that law;

(*o*) to advise the responsible Minister, as the case may require, on any dispute between agencies involved in water management that may be referred to it; and

(*p*) to undertake any other functions conferred upon it under this Act or referred to it by the Minister from time to time.

(2) The Authority may, with the consent of the Director of Public Prosecutions given under the Criminal Procedure and Evidence Code, undertake the prosecution of any offences arising under this Act or in connection with the performance of its functions. Cap. 8:01

(3) The Authority shall have such other powers and functions as may be conferred or imposed on it by or under this or any other Act, or as may be reasonably incidental to the exercise or performance of any power or function so conferred or imposed.

(4) Except as to the contents of any report or recommendation made by it, the Authority shall, in the exercise and performance of its powers and functions be subject to such directions as may be given from time to time by the Minister.

(5) A summary of any directions given under subsection (4) during a financial year shall be published in the Authority's annual report prepared under section 23 (1).

Committees of the Authority

11.—(1) The Authority may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Authority may appoint as members of a committee established under subsection (1) persons who are or are not members of the Authority and such persons shall hold office for such period as the Authority may determine.

(3) Subject to any specific or general direction of the Authority, a committee established under subsection (1) may regulate its own procedure.

Invited persons

12.—(1) The Authority may in its discretion at any time and for any period invite any person, and the Minister may in like manner nominate an officer in the public service, to attend any meeting of the Authority or of any of its committees and take part in the deliberations of the meeting, but such person or officer shall not be entitled to vote at the meeting.

(2) Section 9 shall apply *mutatis mutandis* to a person or an officer attending a meeting of the Authority pursuant to subsection (1).

Regional offices

13. The Authority may establish such regional offices in or near any catchment area as the Authority may determine.

Staff of the Authority

14.—(1) There shall be an Executive Director of the Authority who shall be appointed by the Authority on such terms and conditions as the Authority may determine.

(2) The Executive Director shall be the chief executive officer of the Authority and, subject to the directions of the governing board, shall be responsible for the management of the affairs of the Authority.

(3) The Authority may appoint such other officers and staff as may be necessary for the exercise and performance of its powers and functions, upon such terms and conditions as it may determine.

Delegation of powers and functions

15.—(1) The Minister may, in writing, delegate to the Authority any of his powers or functions under this Act other than—

(*a*) the powers conferred by this section;

(*b*) the power to make regulations; and

(*c*) the power to determine appeals.

(2) Delegation under subsection (1) may be in relation to a matter or class of matters or to any part of Malawi.

(3) The Minister may in writing, revoke a delegation under subsection (1), and the fact that the Minister has delegated a power or function shall not prevent him from exercising that power or function.

(4) Powers and functions delegated under subsection (1) shall be exercised or performed in accordance with the conditions set out in the instrument of delegation.

(5) A person to whom a power or function has been delegated under this section shall have all necessary power to exercise the powers or functions delegated notwithstanding that the person would not be legally empowered were it not for this section.

(6) The person exercising the delegated powers or functions under this section may receive written or oral submission from any person on any matter within the delegation.

(7) Where in the exercise of a delegated power or performing a delegated function the opinion or discretion of the Minister is required, the person may, unless the contrary intention appears, exercise or perform the power or function upon his own opinion or discretion as the case may require.

(8) Where there is a conflict between matters to which regard has to be made with respect to the provisions of this Act and the instrument of delegation, the person acting on behalf of the Minister or an authorized person shall apply the provisions of this Act.

Water resources investigation

16.—(1) The Authority shall provide for—

(*a*) the collection, collation and analysis of data concerning the occurrence, flow, characteristics, quality and use of any water or waste;

(*b*) the systematic gauging and recording of rainfall and of the volume, flow and quality of other water or waste;

(*c*) the construction, operation and removal of gauging, recording and monitoring stations and investigation and monitoring boreholes; or

(*d*) the sampling and analysis of any water or waste.

(2) The Authority may do anything necessary or expedient for or in connection with the exercise of the powers conferred by subsection (1).

Authority's powers to require records, etc.

17.—(1) The Authority may require any class or type of persons, or the person on whom notice is served, as the case may be, to—

(*a*) keep and maintain records;

(*b*) install, operate and maintain equipment;

(*c*) take samples, dispose of them in a particular manner or submit them to such analysis by such person or class of persons; or

(*d*) provide information to a person,

concerning the investigation, use, control, protection, management or administration of any water or concerning any waste, as may be prescribed in a regulation or notice.

(2) Anything required to be done by a regulation made or a notice given under subsection (1) shall be done at the expense of the person to whom the notice or regulation applies, unless the Authority otherwise determines.

(3) A person who contravenes or fails to comply with or causes or allows any person to contravene or fail to comply with this section, commits an offence.

(4) Any person who furnishes any information under this section or who causes or allows any statement or representation to be made which he knows to be false or misleading in a material particular commits an offence.

National monitoring of, and information on, water resources management

18.—(1) The Authority shall provide for a national monitoring and information system on water resources.

(2) The system shall provide for—

(*a*) the collection and management of data and information regarding water resources and their management; and

(*b*) procedures for gathering data and the analysis and dissemination of information on water resources.

(3) For the purposes of the system established under this section, the Authority may, by order require any person, within a reasonable time or on a regular basis, to provide it with specified information, documents, samples or materials.

(4) Regulations made under this Act may specify requirements for the keeping of records and the furnishing of information to the Authority.

(5) On payment of the prescribed fee, any member of the public—

(*a*) shall have access to information contained in any national information system; and

(*b*) shall be supplied with a copy of the Authority's annual report.

Sources of funds

19.—(1) The funds of the Authority shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of the Authority;

(*b*) any fees, charges, etc., payable under this Act;

(*c*) such other moneys and assets as may vest in or accrue to the Authority in the course of its functions; and

(*d*) such moneys or other assets as may accrue to, or vest in the Authority by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties from any person.

(2) The Authority shall keep proper books of accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Public Finance Management Act. Cap.37:02

(3) The accounts of the Authority shall be examined and audited annually by auditors appointed by the Authority and approved by the Minister.

Application of revenue from permit charges and licence fees Cap. 37:02

20.—(1) Without prejudice to the provisions of the Public Finance Management Act, the Authority shall retain in a fund managed by it all of the revenue from water use charges payable under a permit, to be applied by the Authority in meeting costs incurred in the performance of its functions.

(2) Without prejudice to the generality of subsection (1), funds retained by the Authority under that subsection may be applied for the payment of compensation payable by the Authority under this Act, whether or not the payment is subsequently recoverable from a permit holder or other person.

Investment powers of the Authority

21.—(1) The Authority may invest any sums which are not immediately required for its objects.

(2) Subject to the provisions of the Public Finance Management Act, the Authority may borrow either temporarily by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions under this Act. Cap. 37:02

Financial year of the Authority

22. The financial year of the Authority shall be the period commencing on the date of commencement of this Act and ending on the following 30th June and thereafter it shall be a period of twelve months ending on 30th June every year.

Annual reports

23.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Authority shall submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve and shall include information on the financial affairs of the Authority, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Authority may consider appropriate or as the Minister may direct;

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly and subsequently the report shall be published.

Progress reports

24. The Authority shall, at the end of each financial year, produce a progress report on its activities during that period and shall publish the report.

Part III—Catchment Management Committees

Catchment areas

25.—(1) In accordance with the National Water Policy, the Authority may, by notice published in the *Gazette*, designate a defined area from which rainwater flows or drains into a water-course, to be a catchment area for the purposes of this Act.

(2) A catchment area designated under this section may include two or more sub-catchment areas.

Establishment of catchment management committees

26.—(1) A catchment management committee may be established for a specific catchment area, after public consultation, on the proposal of the community and stakeholders concerned, or the Authority may establish a catchment management committee on its own initiative.

(2) A proposal to establish a catchment management committee shall at least contain—

(*a*) a proposed name and description of the proposed catchment management committee;

(*b*) a description of the major water resources in the proposed catchment area, including information about the current status of protection, use, development, conservation, management and control of those resources;

(*c*) the proposed functions of the catchment management committee;

(*d*) the proposed funding of the catchment management committee;

(*e*) the feasibility of the proposed catchment management committee in terms of locally available technical, financial and administrative capacity; and

(*f*) an indication of the consultation made in developing the proposal, and the result of the consultation.

(3) The Authority may call for information additional to that required under subsection (2) and may conduct an investigation regarding the establishment of a proposed catchment management committee.

Procedure for establishment of catchment management committees

27. The Authority may, in consultation with the Minister and after receiving a proposal containing the information required in terms of section 26 (1) and any additional information called for or acquired on investigation under section 26 (3) or on its own initiative by notice in the *Gazette*—

(*a*) establish a catchment management committee, give it a name and determine its area; or

(*b*) change or amend the name or area of an existing catchment management committee.

Composition of a catchment management committee

28.—(1) The members of a catchment management committee shall be chosen from among—

(*a*) representatives of ministries, departments or other public bodies responsible for matters relating to water resources in the catchment area;

(*b*) representatives of any regional development authorities and local authorities whose areas of jurisdiction or any part thereof fall within the catchment area concerned;

(*c*) representatives of farmers within the catchment area concerned;

(*d*) representatives of the business community operating within the catchment area concerned;

(*e*) representatives of the non-governmental organizations engaged in water resources management programmes within the catchment area concerned; and

(*f*) other persons who have demonstrated competence in matters relating to the management of water resources.

Functions of catchment management committees

29.—(1) Without prejudice to the provisions of section 25, a catchment management committee shall, in relation to the catchment area for which it is appointed, advise officers of the Authority at the appropriate regional office concerning—

(*a*) water resources conservation, use and allocation;

(*b*) the grant, adjustment, cancellation or variation of any licence and permit under this Act; and

(*c*) any other matters pertinent to the proper management of water resources.

(2) Subject to the relevant Catchment Management Strategy, a catchment management committee may also undertake, on its own initiative and with funding received pursuant to section 31, water resources conservation activities and works.

Authority to assist catchment management committees

30.—(1) The first meeting of a catchment management committee shall be called by the Authority in such manner as the Authority thinks fit.

(2) The Authority shall facilitate the activities of the catchment management committees by making available secretariat services and logistical and administrative support.

Funding and auditing of operational activities of catchment management committees

31.—(1) Catchment management committees wishing to engage in water resources conservation activities and works pursuant to section 29 (2)—

(*a*) shall obtain from the Authority, on request, a percentage from the proceeds of the collection of water charges, in accordance with section 120; and

(*b*) may obtain money from any other lawful source, including the Water Resources Trust Fund established under section 121, for the purpose of carrying out their functions.

(2) Catchment management committees engaging in water resources conservation activities and works and, which for these purposes receive and manage funds, shall submit to the Authority or to the provider of other funding, where applicable, an annual audited statement of their accounts.

Catchment Management Strategy

32.—(1) The Authority shall, at its own initiative or at the initiative of the relevant catchment management committee, formulate a catchment management strategy for the management, use, development, conservation, protection and control of water resources within each catchment area, in consultation with the relevant catchment management committee and following public consultation.

(2) In the process of formulating a catchment management strategy the Authority shall consult with the departments in charge of, respectively, forestry and the environment, and it shall take into account, but shall not be bound by, any relevant prior determination made by either department pursuant to the legislation in force.

(3) It shall be the duty of the Authority to review the catchment management strategy from time to time.

(4) A catchment management strategy shall—

(*a*) be consistent with the National Water Resources Master Plan;

(*b*) prescribe the principles, objectives, procedures for the management, use, development, conservation and control of water resources within each catchment area;

(*c*) contain water allocation plans which set out principles for allocating water; and

(*d*) provide mechanisms and facilities for enabling the public and communities to participate in managing the water resources within each catchment area.

(5) The catchment management strategy, in force for the time being, shall be published in the *Gazette*.

(6) Without prejudice to the generality of subsection (4) (*d*), the catchment management strategy shall encourage and facilitate the establishment and operation of associations of water users and for conflict resolution and cooperative management of water resources in catchment areas.

(7) The Minister, the Authority and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to any catchment management strategy in force under this section.

Sensitization of users of water on protection and management of watercourses and water bodies

33. The catchment management committees shall, with the technical assistance of the Authority, and with funding obtained in accordance with section 31, be under a duty to promote and sensitize all users of watercourses and water bodies within the applicable water management area on the protection and management of the watercourses and water bodies and the conservation and equitable, efficient and sustainable utilization of such watercourses and water bodies in conformity with national legislation and with regional and international water and environmental conventions.

Part IV—National Water Policy and National Water Resources Master Plan

National Water Policy

34.—(1) The Minister shall publish in the *Gazette*, the National Water Policy in accordance with which the water resources of Malawi shall be managed, protected, used, developed, conserved and controlled.

(2) The Minister shall periodically review the National Water Policy and may, from time to time, publish in the *Gazette* the revised policy.

(3) The National Water Policy shall prescribe the principles, objectives, procedures and institutional arrangements for the management, protection, use, development, conservation and control of water resources.

(4) The Minister, the Authority and all public bodies shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the National Water Policy.

National Water Resources Master Plan

35.—(1) The Minister may, on the basis of data progressively generated under water resources investigations, require the Authority to—

(*a*) prepare, review and keep up-to-date, a comprehensive plan for the investigation, use, control, protection, conservation, management and administration of water resources for the nation; and

(*b*) recommend any revision of it.

(2) The National Water Resources Master Plan shall, among other things, address matters relating to—

(*a*) a water balance for each catchment area that compares forecasted water demand with data and information regarding water availability;

(*b*) proposed options for meeting forecasted demand for each catchment area in which forecasted water demands exceeds available supply, which options may include—

(i) water demand management programmes;

(ii) necessary infrastructure construction;

(iii) any other measure, including appropriate legal reforms considered necessary in achieving the objectives of the National Water Resources Master Plan;

(*c*) the protection of water resources from over-exploitation and from pollution; and

(*d*) the conservation of water resources, including through the recycling and re-use of wastewater, the harvesting of rainwater, and any other suitable conservation practice and technique.

(3) The Minister shall submit the National Water Resources Master Plan recommended to him under subsection (1) to the Cabinet with his recommendations within twenty-one days of receiving it.

(4) The detailed components of the National Water Resources Master Plan and procedures for its preparation, revision and recommendations to and consideration by the Minister may be as prescribed by the Minister, and if the Minister does not prescribe, as may be determined by the Authority.

Plan to be adhered to

36. After approval by the Cabinet, the Minister shall by notice published in the *Gazette*, issue the National Water Resources Master Plan which shall be binding to all persons and public authorities.

Part V—Water Abstraction and Use

Reservation of water resource

37.—(1) The Minister, in consultation with the district councils concerned may, by notice published in the *Gazette*, reserve part or all of the flow of a watercourse, including any ground water resource and the water stored in a public reservoir to—

(*a*) meet the domestic use of the water users concerned; or

(*b*) reasonably protect aquatic and wetland ecosystems, including their biological diversity, and to maintain essential ecosystem functions.

(2) Any water resource reserved under subsection (1) shall be taken into account in—

(*a*) the licensing of water abstractions under section 39; and

(*b*) the issuing of a permit for effluent discharge under section 92.

(3) The Minister may allow the use of a reserved water resource if such use is compatible with the purposes of the reserve.

(4) The Minister, the Authority and all public bodies shall, when exercising any power or performing any function in relation to the water resource concerned, take into account and give effect to the requirements of the reserved water resource.

Abstraction of water for domestic use, use of groundwater, and rainwater harvesting

38.—(1) Subject to subsection (4), a person having lawful access thereto may abstract water from a water resource for domestic use without obtaining a licence from the Authority under this Part.

(2) A person having lawful access thereto may abstract and use water for domestic use, subject only to public health and environmental limitations, and any other limitations that may be imposed from time to time by the Authority for purposes of efficient water management practices or in prescribed emergency circumstances.

(3) A person having lawful access thereto may abstract and use groundwater—

(*a*) where none of the necessary works are situated—

(i) within one hundred metres of any body of surface water, other than inclosed spring water, or

(ii) within a groundwater conservation area;

(*c*) by means of hand-dug boreholes; or

(*d*) by means of a borehole not deeper than ten metres.

(4) Subsection (1) shall not apply to a person who abstracts water in bulk from a water resource and supplies it to others for domestic use.

(5) A person has the right to harvest rainwater on his own land or on communal land and to use it for domestic purposes.

Abstraction and use of water subject to licence

39.—(1) No person shall abstract and use water unless authorized to do so under this Part.

(2) A licence under this Part shall be required for any of the following purposes—

(*a*) the abstraction, impoundment and use of water from a water resource; and

(*b*) the drainage of any swamp or other land.

(3) A person who—

(*a*) not being the holder of a licence under this Part, constructs or employs any works for the abstraction or impoundment of water; or

(*b*) being the holder of a licence under this Part, constructs or employs any such works in contravention of the conditions of the licence,

commits an offence.

(4) A holder of a licence authorizing the construction of works who, without the permission of the Authority, takes water from any water resource by means of any work authorized by the licence before the whole of the works authorized by the licence have been inspected and cleared commits an offence.

Application for licence

40.—(1) A person wishing to abstract and use water shall apply to the Authority in the prescribed form for a licence and the application shall contain the following information—

(*a*) the name of the applicant;

(*b*) the water resource from which the proposed abstraction will be made;

(*c*) the proposed location of the abstraction;

(*d*) the type and location of the proposed beneficial use;

(*e*) the names of owner or occupier of the land upon which the proposed beneficial use will be made;

(*f*) the proposed rate and volume of the abstraction;

(*g*) the proposed timing of the abstraction;

(*h*) a description of any waterworks necessary to accomplish the proposed abstraction and put the abstracted water to beneficial use and a proposed schedule for the completion of such waterworks;

(*i*) description of the proposed treatment, if any, that will be given to the abstracted water, including any chemicals proposed to be applied to the water;

(*j*) a description of the volume, rate and chemical composition of any effluent or return flow resulting from application of the abstracted water to beneficial use and a description of the location that any such effluent or return flow is expected to enter a water resource; and

(*k*) any additional information the Minister may prescribe.

(2) The Authority shall, on receipt of an application under subsection (1), give public notice of the application in the prescribed manner.

(3) Any interested person may notify the Authority within such period as may be prescribed that he objects to the grant of a water right and specify the grounds of such objection, upon receipt of such objection the Authority shall invite the person objecting to a hearing.

(4) The Authority shall consider every application and any objections made to it in respect thereof and after consulting such persons and authorities as it may deem necessary, submit the application together with its recommendations to the Minister.

(5) The application for a licence to abstract and use water shall be accompanied by—

(*a*) the prescribed charge; and

(*b*) where applicable, an environmental impact analysis of the proposed abstraction of water upon the environment and existing water users and water resources.

(6) The Authority may, after taking into consideration any objection that may be raised and after consultation with any person or public authority as it may see fit, grant a licence to the applicant.

(7) A grant of a licence under this Part shall not imply representation or guarantee by the Authority, authorized person or public authority that water is or will be available in the place and at the times indicated in the licence.

Criteria for issuing a licence

41.—(1) The Authority shall take the following matters into consideration in determining whether or not to issue a licence—

(*a*) whether or not the proposed abstraction and use of water are consistent with—

(i) the objectives referred to in section 4 and the National Water Policy;

(ii) the National Water Resources Master Plan; and

(iii) any reservation of water made under section 37;

(*b*) the impact of the proposed abstraction upon existing water users, water resources and the water reserved or allocated for environmental uses;

(*c*) the safe yield of the aquifer from which the abstraction is proposed, if the application is for abstraction of ground water;

(*d*) the conformity of the proposed use with the efficient water management practices;

(*e*) the likely effect of the proposed abstraction—

(i) on the quality of any water resource, and on aquatic ecosystems dependent on the resource;

(ii) on Malawi's obligations relating to shared waters;

(*f*) the need to ensure the efficient and beneficial use of water resources;

(*g*) any catchment management strategy applicable to the relevant water resource;

(*h*) the likely effect of the proposed water use on the water resource and on other water users;

(*i*) the existence of any traditional community and the extent of customary rights and practices in, or dependent upon, the water resource to which an application for the licence relates;

(*j*) the investments already made and to be made by the water user in respect of the water use in question;

(*k*) the strategic importance of the proposed water use;

(*l*) the probable duration of the activity or undertaking for which a water use is to be authorized; and

(*m*) any additional criteria the Minister may prescribe.

(2) The Minister may issue more than one licence to abstract and use water from one water resource, subject to such terms and conditions that will enable concurrent use of the same resource by the applicants.

(3) A licence shall, subject to this Act, remain in force for the period specified in it, and may be renewed from time to time on application by the licensee, which shall be filed no less than six months before the due expiration date of the licence.

Contents of the licence

42.—(1) A licence to abstract and use water shall specify—

(*a*) the duration of the licence, which shall be determined in accordance with the provisions of section 55;

(*b*) the location of the abstraction and location of the use;

(*c*) the water use or uses for which it is granted;

(*d*) the name and other details of the person to whom it is granted;

(*e*) the conditions under which it is granted;

(*f*) the frequency of review of the licence;

(*g*) whether the licence is subject to periodic review, suspension, amendment or cancellation in accordance with this Act;

(*h*) any fees and charges payable as prescribed in section 119; and

(*i*) any other matter as may be prescribed.

Terms and conditions of licence

43. A licence to abstract and use water shall be issued subject to—

(*a*) the achievement of the goals and objectives of the National Water Resources Master Plan;

(*b*) the protection of the environment and water resource from which the abstraction is made, the stream flow regime, and other existing and potential use of the water resource, including uses by virtue of customary rights and practices, by—

(i) setting out the specific volume of water or percentage of flow which may be abstracted;

(ii) setting out the rate of abstraction;

(iii) specifying the place where water may be abstracted;

(iv) specifying the times when water may be abstracted and used, or not used;

(v) limiting the volume of water which may be impounded and stored;

(vi) specifying locations where a watercourse may be impounded and where water would be stored;

(vii) requiring the licensee to become a member of a local association of water users, where appropriate, before water may be abstracted; and

(viii) adding any such terms regarding protection of the water resource, and stream flow regime or existing or potential uses of water resource which the Minister determines to be appropriate;

(*c*) proper water management, by—

(i) specifying efficient water resources management practices and general requirements for any water use, including water conservation measures;

(ii) requiring monitoring, analysis and reporting by the licensee on every water use dependent upon the licence, including bulk uses or local authority uses, by specifying the aspects of water use to be monitored and reported, and the devices to be used for such monitoring;

(iii) requiring the preparation and approval of a water resources management plan;

(iv) requiring the licensee to make water available to any person specified in the licence; and

(v) adding any such terms regarding proper water resources management which the Authority determines to be appropriate;

(*d*) the proper discharge or disposal of any return flow or effluent, by—

(i) specifying the water resource to which and the manner in which return flow or effluent shall be returned or disposed of;

(ii) specifying permissible levels for some or all of the chemical or physical components of the return flow or effluent;

(iii) specifying the treatment to which the return flow or effluent shall be subject, before its return or disposal;

(iv) specifying the volume and rate of discharge of return flow or effluent which may be returned or disposed of;

(v) adding such terms regarding discharge or disposal of excess flow or effluent which the Authority determines to be appropriate; and

(*e*) the accommodation of any reasonable requirements of a community.

Reference of licences to other authorities

44.—(1) Where the Authority proposes to grant, or to amend the terms of, a licence under this Part, it shall refer the proposal, together with a copy or summary of the application and appropriate plans, specifications and other information to any relevant public authority.

(2) A public authority to which a proposal is referred under subsection (1) shall inform the Authority in writing within thirty days after the day on which the proposal was referred to it—

(*a*) whether the proposal is supported or whether there are objections to it;

(*b*) whether, and if so, what special terms should be included in the proposed licence or amendment.

(3) The Authority shall—

(*a*) take into account any report and comments received under subsection (2);

(*b*) refuse to grant the proposed licence or make the proposed amendment if a competent public authority submits a written report objecting to the proposal on the grounds that public health is likely to be endangered by the proposed licence or amendment; and

(*c*) refuse to grant the proposed licence or make the proposed amendment if an Environmental Impact Assessment carried out pursuant to the provisions of the Environment Management Act and the Environment Impact Assessment Guidelines determines that the environmental is likely to be endangered by the proposed licence or amendment. Cap. 60:02

Exemption of works

45. Subject to guidelines established by the Minister from time to time, the Authority may exempt—

(*a*) a public authority; or

(*b*) a class of persons or works,

from all or any of the provisions of section 39 on such conditions as it may deem fit.

Issue of temporary licence

46.—(1) The Authority may, if in its opinion exceptional circumstances warrant such action, grant a temporary licence authorizing, unconditionally or subject to conditions, the use of water from a water resource and construction of the works required therefor, without subjecting the application to public consultation.

(2) In considering whether or not to grant a licence in accordance with this section, the Authority shall have regard to the extent to which the grant of such a licence would be likely to interfere with the domestic requirements of other users.

(3) A licence granted in accordance with this section shall not be granted or renewed so as to be in force for a period exceeding, or for periods which in the aggregate exceed, one year.

Licence conditional on inspection of works

47. Where under section 40 (1) (*h*) a licence includes an authorization to construct necessary works, the licensee shall not commence operations under the licence unless and until the relevant works have been inspected and cleared by the Authority.

Licensee to inform Authority of change of location of water use

48. A licensee shall inform the Authority of any change in the location of use of the water allowed to be abstracted under a licence, including in particular upon the subdivision of the land on which the water is used, or for the benefit of which the water is used.

Variation of a licence owing to change in circumstances, etc.

49.—(1) Whenever it is shown to the satisfaction of the Authority that, owing to increased demand or other cause, the use of water under a licence, or the method or point of diversion or other manner in which the water is so used causes—

(*a*) a deterioration in the quality of water;

(*b*) a shortage of water for domestic purposes; or

(*c*) a shortage of water for any other purpose which in the opinion of the Authority should have priority,

it may vary the licence so as to alter the discharge or quantity of water or any other aspect of water use authorized by the licence, or alter the method or point of diversion or other specifications, terms or conditions of the licence.

(2) No licence shall be varied under this section unless notice of the proposed variation has been served on the licensee and the licensee has been given a reasonable opportunity to show cause to the Authority why the licence should not be cancelled or varied.

Cancellation of a licence

50.—(1) The Authority may cancel a licence where the licensee has—

(*a*) failed to comply with any express or implied condition to which the licence is subject;

(*b*) taken or used more water than he is entitled to take in any period;

(*c*) taken or used water for a purpose other than that for which he is entitled;

(*d*) failed to comply with any provision of this Act; or

(*e*) not made full beneficial use of the licence within the two preceding years.

(2) No licence shall be cancelled under this section unless notice of the proposed cancellation has been served on the licensee and the licensee has been given a reasonable opportunity to show cause to the Authority as to why the licence should not be cancelled.

(3) No compensation shall be payable to any licensee whose licence has been cancelled pursuant to this section.

Cancellation or variation of a licence for a public purpose

51.—(1) Subject to section 52, where the Authority is of the opinion that in order to make water available for a public purpose it is necessary to cancel or vary a licence, the Authority may cancel or vary the licence.

(2) The Minister may, by notice published in the *Gazette*, declare any purpose to be a public purpose for the purpose of this section.

(3) The Authority shall pay compensation to any licensee whose licence has been cancelled pursuant to this section.

Variation of licence following change in flows

52. Where it is established that, for any reason beyond the reasonable control of the Authority, the natural flow in a watercourse available to all users has dropped or is likely to drop so that more water is permitted to be diverted, stored, or used than is available in the watercourse, the Authority shall hold a public hearing into the matter and thereafter may amend any or all licences to divert, store, or use water from that watercourse in an equitable and fair manner as the Authority may deem appropriate.

Variation of a licence at request of licensee

53.—(1) On the application by a licensee, the Authority may vary the licence or any condition attached to a licence in accordance with the application of the licensee or on such conditions as the Authority may deem necessary having regard to the circumstances.

(2) The Authority may vary the licence so as—

(*a*) to vary the point of diversion or abstraction of the water used under the licence;

(*b*) to vary the use of water authorized by the licence; or

(*c*) to permit the mixture of waters authorized to be taken or used with those authorized to be taken or used by another licence, whether held by the same or another licensee;

(*d*) to remedy any defect whereby the licence is incomplete or indefinite in its terms and conditions; or

(*e*) to vary any other term or condition of the licence,

if the Authority is satisfied that the variation is not contrary to the public interest or the rights of others.

(3) A variation relating to—

(*a*) the use of water authorized by the licence; or

(*b*) a term or condition of a prescribed kind,

shall not be made without public consultation.

Effects of expiry or cancellation of a licence to abstract and use water

54. If a licence to abstract and use water expires and is not renewed, or is cancelled the Minister may—

(*a*) require the licensee, at the licensee's expense, to remove any liens or other restrictions preventing the free use of the abstraction works;

(*b*) order the licensee to restore, at the licensee's expense, the state of affairs which existed before a licence was issued, if doing so is reasonable and practicable under the circumstances; and

(*c*) enter into an arrangement with the licensee or any other person for maintenance of the impoundment, abstraction or effluent discharge works.

Lease of licence to abstract and use water

55.—(1) A licensee may lease his licence to another person for a period not exceeding six months, after giving thirty days' notice to the Authority.

(2) A licensee may only lease his licence to another person for a period longer than the period referred to in subsection (1) if such lease is approved by the Authority.

(3) An application for approval of the leasing of a licence under subsection (2) shall be submitted to the Authority for consideration in accordance with subsection (4).

(4) Upon receipt of an application for approval of the leasing of a licence, the Authority shall consider—

(*a*) whether the terms and conditions of the proposed lease is consistent with the terms and conditions of the licence; and

(*b*) any deviation from the terms and conditions of the licence that may impact adversely upon other persons and the environment.

(5) The Authority may, within ninety days from receipt of the application for approval of the leasing of a licence, grant the application with or without conditions or refuse the application.

Succession to a licence to abstract and use water

56. A licence may be passed on to a named licensee as a successor-in-title at death or transfer, but such passage shall not extend the duration of the licence.

Abandonment of permitted or licensed activities

57.—(1) A licensee who ceases to utilize water in accordance with the terms of his licence shall, by notice to the Authority, abandon the whole of the licence or any part capable of separation.

(2) Upon such abandonment, the Authority may direct the licensee to remove, within such time as it may specify, all or any works erected in connection with the licence.

(3) A licensee who neglects or fails to remove the works concerned commits an offence, and the Authority may remove all or any portion of the works, and recover the cost of their removal from the licensee as a civil debt in any court of competent jurisdiction.

(4) Nothing in this section shall be construed as requiring or authorizing a licensee wholly or in part to abandon a licence contrary to the conditions of any mortgage or charge upon the land to which the licence is appurtenant.

Surrender of licence

58.—(1) Where—

(*a*) a licence is to be cancelled or varied by the Authority in pursuance of this Act;

(*b*) a licence has been granted on the basis of false or misleading information supplied by the licensee; or

(*c*) a licence has been granted in contravention of the provisions of this Act or any regulations made under this Act with respect to the terms and conditions of such a licence,

the Authority may, by notice served on the licensee, require the licensee, if he has not already done so, to surrender the licence to the Authority:

Provided however that, if subsection (1) (*c*) a defect has been detected, the Authority shall cure such defect if it is in its power to do so, whereupon this section shall not apply.

(2) A licensee who fails to comply with such a notice commits an offence.

Register of licences

59.—(1) The Authority shall establish and maintain a register of all licences issued and in force including details of the licences and their terms and conditions and the results of monitoring and enforcement action taken by the Authority regarding each licence.

(2) Information contained in the register shall be accessible by the public on payment of the prescribed fee.

Combined licence to abstract and use water and to discharge effluent

60.—(1) Where the same person needs a licence to abstract and use water and a permit to discharge effluent, the Authority shall grant to the person a combined licence to abstract and use water and to discharge effluent.

(2) A person to whom a combined licence has been issued shall not require a separate effluent discharge permit under section 92.

Duration of a licence to abstract and use water

61. A licence to abstract and use water shall be granted for a duration of at least five years.

Renewal of a licence to abstract and use water

62.—(1) A licence to abstract and use water issued under this Part may be renewed at least three months prior to its expiry, if the licensee submits an application for renewal to the Authority in the prescribed manner.

(2) When considering an application for renewal made under subsection (1) the Authority shall consider the application taking into account—

(*a*) the provisions of section 41; and

(*b*) the provisions of section 43.

Right to transfer saved water

63. A person who has saved water whether from harvesting the same or otherwise may transfer to another person the water so saved, in return for a price or free of charge:

Provided that in times of water scarcity it shall be obligatory for any person to transfer saved water to the persons who need the water, as directed by the Authority under section 65.

Easements for works

64.—(1) A licensee who authorizes the construction of works for a portion thereof that would, when constructed, be situated upon lands not held by the licensee shall acquire an easement on, over or through the land on which the works would be situated and, unless the works have previously been lawfully constructed, shall not construct or use the works unless and until he has acquired such an easement by an agreement.

(2) A licensee who wishes to bring water to, or drain water from his land over land owned or occupied by another person, may apply to the Authority for the creation of an easement over that land if he has been unable to obtain an easement by agreement with the owner or occupier of that land.

(3) A licensee who wishes to drain waste from his land over land owned or occupied by another person may apply to the Authority for the creation of an easement over that land if he has been unable to obtain an easement by agreement with the owner or occupier of that land.

(4) On receiving the application under subsection (2) or (3), the Authority shall, in the prescribed manner, give notice to the owner, occupier or any other person having an interest in that land.

(5) A person who has any objection to an application made under subsection (2) or (3) may give notice of objection to the Authority in a manner and within the period that may be prescribed.

(6) Subject to section 152 and after giving a hearing to all persons who have an interest in the land, including the applicant, who wish to be heard, the Authority may create an easement over the land in the prescribed form as may be appropriate.

(7) An easement under subsection (6) may make provision for—

(*a*) the construction of works necessary to carry water or waste across that land;

(*b*) construction of fences, bridges, crossings or other works in that land;

(*c*) the amount of compensation, if any, to be paid to the owner, occupier or other person having interest in that land,

and the person having the easement shall comply with the provisions.

(8) Any person aggrieved by the decision of the Authority under subsection (6) may appeal to the Water Tribunal against the decision, if the decision was made without his consent.

(9) If a person who has an easement fails to comply with subsection (6), the Authority may cancel the easement and notify the person and the Commissioner for Lands.

(10) If the person who has an easement fails to maintain any works he constructed under this section, the owner or occupier of the land on which the works are situated may maintain or repair the works and recover the reasonable costs as a civil debt from the person who has the easement.

(11) Any compensation due under this section which remains unpaid for an unreasonable period may be recovered as a civil debt.

(12) An easement created under this section shall terminate after six months after the date of creation, unless it is registered with the Commissioner for Lands.

Emergency powers in case of shortage of water

65.—(1) For the purposes of this Act, a drought shall be deemed to exist in any area when the Minister, upon such information as seems to him sufficient, by order published in the *Gazette*, declares that a drought exists in that area.

(2) If the Minister, on the advice of the Authority, is satisfied that, by reason of an exceptional shortage of rain or by reason of accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists or is threatened in any area, he may, by order—

(*a*) declare that an emergency exists; and

(*b*) direct a person who has a supply of water in excess of his needs for domestic purposes to supply to the area concerned, or to a specified person in the area, such quantity of water, and for such period, as the order may specify.

(3) Any person so directed by an order under this section who fails to comply with the provisions of the order concerned commits an offence.

(4) An order under this section may require or authorize—

(*a*) the laying of pipes and the construction of works on any land;

(*b*) the entry on to any land by servants or agents of the Authority; and

(*c*) such other measures as the Minister may consider necessary for the giving and taking of any such water.

(5) If a person to whom an order under this section is directed fails to comply with the order, the Minister, or any person deputed by him for the purpose—

(*a*) may take possession of the water supply and operate any works of the person concerned for the drawing, diversion or use of water; and

(*b*) shall have and may exercise the person's rights in connection with them during the period of the order, subject to any conditions imposed by the order.

(6) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and in such a manner as to cause as little damage as possible in so doing, and subject to compensation for any damage done.

(7) The compensation made under subsection (5), or such proportion of it as the Minister may determine, may be recovered by the Minister, as a debt due to the Government, from a person benefiting by the supply of water under the order.

(8) A person who, without lawful authority, hinders or obstructs any person acting in pursuance of an order under this section, or interferes with any works constructed or under construction in pursuance of such an order shall be guilty of an offence.

Part VI—Control and Protection of Groundwater

Groundwater conservation areas

66.—(1) Where the Authority is satisfied that, in any area, special measures for the conservation of groundwater are necessary in the public interest—

(*a*) for the protection of public water supplies; or

(*b*) for the protection of water supplies used for industry, agriculture or other private purposes,

it may, following public consultation, by order published in the *Gazette* declare the area to be a groundwater conservation area.

(2) The Authority may impose such requirements, regulate or prohibit such conduct or activities, in or in relation to a groundwater conservation area as the Authority may think necessary to impose, regulate or prohibit for the protection of the area and its groundwater.

Issuing of licence not guarantee to supply of water

67.—(1) The issuing of a permit under this Part shall not be construed as a guarantee, express or implied of a supply of groundwater.

Permit to drill a borehole or to engage in borehole drilling programme for groundwater exploration

68.—(1) No person shall drill, construct, enlarge or otherwise alter a borehole, or engage in borehole drilling programme, for the purpose of exploring for groundwater, except in accordance with the provisions of a permit issued under subsection (4).

(2) Any person who wishes to drill, construct, enlarge or alter a borehole, or engage in a borehole drilling programme for exploring for groundwater, shall apply to the Authority for a permit to drill a borehole or to engage in borehole drilling programme in the prescribed manner.

(3) An application for a permit to construct or drill a borehole shall be made in the manner and it shall be subject to such terms and conditions as the Authority thinks fit, including a term of duration which shall not exceed one year:

Provided that, where the borehole is intended to be constructed or drilled inside the area of operation of a Water Board—

(*a*) a notice of intent under subsection (1) shall also be filed with such Board; and

(*b*) such Board may advise the Authority as to why, in the Board's opinion, an application should not be granted, but the Authority shall not be bound by the advice of the Board.

(4) Upon receipt of the application for a permit under subsection (2), the Authority shall, among other things, consider—

(*a*) the safe yield of the aquifer from which the abstraction of water is proposed to be made; and

(*b*) the conformity of the proposed use with efficient water management practices.

(5) After considering the application in accordance with subsection (3), the Authority may issue a permit to drill a borehole or to engage in a borehole drilling programme subject to the prescribed terms and conditions, and such other conditions as the Minister may prescribe.

(6) The provisions of Part V shall apply, with the necessary changes, to a permit to drill a borehole or to engage in borehole drilling programme issued under this section in relation to the renewal, transfer, succession, suspension, variation or cancellation of such permit.

(7) Unless otherwise exempted, a person constructing a borehole shall keep a record of the progress of the work, which shall include—

(*a*) measurements of the strata passed through and the specimen of such strata;

(*b*) measurements of the levels at which water was struck; and

(*c*) measurements of the quantity of water obtained at each level, the quantity finally obtained and the rest level of the water.

(8) A person to whom subsection (7) applies shall allow any person authorized by the Authority, at any reasonable time—

(*a*) to have free access to the borehole;

(*b*) to inspect the borehole and the material excavated from it;

(*c*) to take specimens of such material and of water abstracted from the borehole; and

(*d*) to inspect and take copies of or extracts from the record required to be kept under this section.

(9) Where the person constructing a borehole on any land is not the occupier of the land, the obligation to allow any person authorized by the Authority to exercise his rights under this section shall be the obligation of the occupier of the land as well as of the person constructing or drilling a borehole.

(10) The Authority may by notice, whether conditionally or subject to specified conditions, exempt any person, in such circumstances as may be specified in the notice, from the operation of subsections (7) and (8).

Submission of records

69. A person constructing or drilling a borehole, if required to keep records under this Part, shall, within one month of the cessation of the construction, send to the Authority—

(*a*) a complete copy of the record, together with the specimens referred to in the record; and

(*b*) particulars of any test made, before such cessation of the construction, of the yield of water, specifying—

(i) the rate of flow throughout the test and the duration of the test; and

(ii) where practicable, the water levels during the test and thereafter until the water has returned to its natural level;

(*c*) a statement of whether, in his opinion (as determined by tasting) the water is suitable for drinking or is highly mineralized, as the case may be; and

(*d*) if required by the Authority, such water samples as it may consider necessary.

Tests on neighbouring boreholes

70.—(1) Where any borehole is being constructed within eight hundred metres of an existing borehole, the Authority may, by notice require the person constructing the borehole to apply tests, to be specified in the notice, to the existing borehole and to supply to the Authority the particulars of the results of such tests including the rate of pumping and rest levels of water.

(2) Where the borehole to which the tests are to be applied is situated on the property of a person other than the person constructing the borehole and the person constructing the well or borehole is unable for any reason to apply the test, the Authority may, by notice, require the person upon whose property the existing borehole is situate to apply the tests to be specified in the notice to him, and to supply to the Authority the particulars of the results of such tests.

Contractor deemed to be constructor

71. Where any contractor constructs or drills a borehole on land belonging to or occupied by any other person, the contractor shall be deemed, for the purposes of this Act, to be the person constructing or drilling the borehole, and he shall be jointly and severally liable with the owner of the land to the discharge of the obligations under section 69.

Records may be required to be treated as confidential

72.—(1) A person constructing or drilling a borehole or the owner or occupier of the land on which construction takes place may give notice to the Authority requesting that—

(*a*) any copy of, or extract from, the record required to be kept under this Act; or

(*b*) any specimen taken or any other particulars connected with the borehole,

be treated confidentially.

(2) In response to such a notice, the Authority shall, if sufficient cause has been shown, thereupon not allow such copy, extract, specimen or other particulars, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person other than a member of the Authority without the consent of the person giving the notice:

Provided that, if at any time the Authority gives notice to the person that, in its opinion, his consent is unreasonably withheld—

(*a*) the person may, within three months after the notice given by the Authority, appeal to the Water Tribunal; and

(*b*) if, at the expiration of that period, no such appeal has been made or, after hearing the appeal, the Water Tribunal does not make an order restraining it from doing so, the Authority may proceed as if such consent had been given.

Waste of groundwater

73.—(1) No person shall—

(*a*) cause any groundwater to run to waste from any borehole, except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining or repairing the borehole;

(*b*) conduct the water from any borehole through any channel or conduit so that more than twenty per cent (20%) of the water is lost between the point of extraction and the point of use:

Provided that, where the water from any borehole is conducted through channels or conduits together with water from other sources, no person shall permit the waste of more than twenty per cent (20%) of the water in conducting the water from the point of extraction from the borehole to the point of use;

(*c*) use any water from any borehole for the purpose of domestic use or the watering of stock, except where such water is carried through pipes fitted with float valves or other satisfactory means of control, to prevent waste:

Provided that, where groundwater interferes or threatens to interfere with the execution or operation of underground works, whether water works or not, the Authority may, in any particular case, by notice permit such water to waste upon such conditions, regarding quantity and method of disposal, as the notice may specify.

Contamination and pollution of groundwater

74. Every person abstracting groundwater by means of a borehole shall, in order to prevent contamination or pollution of the water—

(*a*) effectively seal off to a sufficient depth any contaminated or polluted surface or shallow water in rock openings or soft broken ground;

(*b*) effectively seal the top of the borehole between the surface casing and the internal pump column, and the suction or discharge pipe;

(*c*) dispose of all return or waste water by means other than by return to the borehole;

(*d*) extend the borehole casing to a point not less than twenty centimetres above the elevation of the finished pump house or pump pit floor;

(*e*) use either welded or screw type borehole joints on the casing, if made of metal;

(*f*) dispose of effluents or drainage from any household, stable, factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such seal or groundwater; and

(*g*) carry out such other work as the Authority may by order direct, from time to time, for the prevention of contamination or pollution.

Authority may order special measures to safeguard groundwater resources

75. If—

(*a*) during the construction of or drilling a borehole, water is encountered in an aquifer;

(*b*) water from a water table or lower aquifer tends to flow from the upper aquifer to the lower aquifer; and

(*c*) in the opinion of the Authority this is likely to prove detrimental to the groundwater resources of the area,

the Authority may order what special measures shall be taken by the owner of the borehole so that the water from the higher aquifer cannot flow to the lower aquifer.

Artesian boreholes to be cased

76. Every artesian borehole and every sub-artesian borehole shall be efficiently cased, capped or furnished with such appliances as will readily and effectively arrest and prevent the flow therefrom over the surface of the ground or wasting from the borehole through the strata through which it passes.

Defective boreholes

77.—(1) Any borehole which encounters salt water, in this Part referred to as a "defective borehole", shall be securely cased, plugged or sealed off by the owner of the borehole, so that the salt water is confined to the strata in which it was found, and such casing, plugging or sealing shall be done in such a manner as effectively to prevent the salt water from escaping from the strata in which it was found into any other water-bearing strata or on to the surface of the ground.

(2) This section shall apply to boreholes constructed or drilled before or after the commencement of this Act.

Interference with defective borehole, etc.

78. Any person who re-cases or removes the plugs or seals from a defective borehole, or deposits or causes or knowingly permits the deposit of, any dirt, rubbish or other material in any such borehole, except with the written permission of the Authority, commits an offence.

Application to carry out work on a defective borehole

79.—(1) Before any defective borehole is re-cased or the plugs are removed, the owner of the borehole, or his duly authorized representative, shall file with the Authority an application for permission to carry out such re-casing or the removal of the plugs or seals.

(2) The application shall contain such information as the Authority may require in relation to—

(*a*) the name and address of the owner of the borehole;

(*b*) its location, depth and size;

(*c*) the amount and location of casing or sealing in the borehole;

(*d*) the distance below the surface of the ground to the water level in the borehole;

(*e*) the strata penetrated;

(*f*) the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum; and

(*g*) any other matter specified by the Authority in respect of the borehole.

(3) The application shall also state the methods proposed for re-casing, re-plugging or resealing of the borehole.

Instructions to deal with defective borehole

80. The Authority, after consideration of any application under section 79, may call for additional data, and may make such investigation as it considers necessary, and if the borehole is found to contain salt water, shall by order give instructions to the applicant, specifying—

(*a*) the work that shall be done by the owner to place it in a satisfactory condition; and

(*b*) the time that shall be allowed to complete the work, and may inspect such work while it is in progress.

Authority may inspect borehole

81. The Authority may on its own initiative, or upon information or complaint from any source, make an examination of any borehole suspected of containing salt water, and may by order issue instructions for curing any defects in the borehole.

Sworn statements to be submitted

82.—(1) Upon completion of the works in pursuance of any instructions issued under this Act—

(*a*) the contractor who carries out the work; or

(*b*) if the work is done without a contractor, the owner of the borehole,

shall file with the Authority a statement sworn or affirmed specifying in detail the manner in which such work was done.

(2) The statement shall be filed within thirty days after the completion of the work.

Additional work on defective borehole

83.—(1) Upon receipt of a statement under section 82, the Authority shall determine, either from the statement or from inspection or test, whether the work has been satisfactorily performed.

(2) If the Authority determines that the work has not been satisfactorily performed, it shall, by order, issue additional instructions specifying the additional work required to place the borehole in a satisfactory condition, and specifying the time for the completion of such additional work.

(3) Upon the completion of such additional work, a statement sworn or affirmed shall be filed with the Authority as provided for in section 82.

Licensing of borehole drillers and constructors

84.—(1) No person shall engage in the trade of drilling or construction of boreholes unless the person is licensed as a borehole driller or a borehole constructor in accordance with the provisions of subsection (2).

(2) The Authority on application made to it in the prescribed manner and after being satisfied that the applicant meets the requirements specified in subsection (3) shall issue the applicant with a licence as a borehole driller or borehole constructor.

(3) The Minister shall prescribe the requirements including professional qualifications, terms and conditions that any person wishing to be issued with a licence as a borehole driller or borehole constructor under subsection (2) shall comply with and the circumstances under which a licence may be cancelled or suspended.

Part VII—Protected Areas and Controlled Activities

Protected areas

85.—(1) Where the Authority is satisfied that special measures are necessary for the protection of a catchment area or part thereof, notably from deforestation and from other land degradation activities, it may, with the approval of the Minister, by order published in the *Gazette*, declare such an area to be protected area.

(2) The Authority may impose such requirements, and regulate or prohibit such conduct or activities, in or in relation to a protected area as the Authority may think necessary to impose, regulate or prohibit for the protection of the area and its water resources.

Controlled areas in relation to drought

86. The Minister may, in relation to any water source, where the situation so requires due to shortage or anticipated shortage of water, by notice published in the *Gazette* and in such other manner appropriate for such area as the Minister may see fit, on the advice of the Authority, declare any part of Malawi to be a controlled area and establish a comprehensive and integrated plan for managing land, water and other natural resources within that area.

Controlled activities

87.—(1) Activities which constitute controlled activities include—

(*a*) irrigation of any land with waste water generated through any industrial activity or a water work;

(*b*) an activity aimed at the modification of atmospheric precipitation;

(*c*) artificial recharge of an aquifer with any waste or water containing waste; and

(*d*) any activity regarded by the Minister as likely to have a detrimental impact on water resources and declared by him as a controlled activity.

(2) Before declaring an activity as a controlled activity the Minister shall publish a notice in the *Gazette*—

(*a*) specifying the activity or class of activities proposed to be declared;

(*b*) listing all activities previously already declared controlled activities; and

(*c*) invite written comments on the proposed declaration to be received by him not later than sixty days after publication of the notice.

(3) No person shall undertake a controlled activity except under a permit granted by the Authority under Part VIII of this Act, *mutatis mutandis.*

Part VIII—Prevention and Control of Water Pollution

Prohibition of pollution

88.—(1) A person or public authority who, unless authorized under this Part, causes or allows—

(*a*) effluent to come into contact with any water;

(*b*) effluent to be discharged directly or indirectly into water; or

(*c*) water to be polluted,

commits an offence.

(2) Without prejudice to the provisions dealing with the safeguarding of existing lawful uses of water, subsection (1) shall apply to permits granted and works constructed before the commencement of this Act.

(3) In any proceedings for an offence under subsection (1), proof of the existence of a drain, pond, dump or other means by which effluent may be conveyed, retained or deposited as to come into contact, directly or indirectly, with water shall be *prima facie* evidence of pollution of that water.

(4) A person or public authority contravening subsection (1) through which damage is caused shall be liable to pay the cost of remedying the damage caused and restoring the environment, as far as is possible, to the condition that would have existed if the damage had not been caused.

(5) Where a person or authority fails to comply with subsection (4), the Authority may—

(*a*) apply to court for enforcement of compliance with the provisions; or

(*b*) enter any land and take such measures as may be necessary to ensure compliance with the provisions.

(6) In any proceedings under subsection (5), the court may, on application by the Authority acting on its own initiative or at the request of a catchment management committee or a Local Authority, require that person or authority to pay into court a sum not being less than one hundred per cent (100%) of the cost estimated by the Authority of remedying the damage caused and restoring the environment.

Pollution of water resources from an activity or process

89.—(1) Any person who owns, controls, occupies or uses land on which an activity or process is or was performed and which, unless authorized under this Part, causes, has caused or is likely to cause pollution of a water resource, shall take all such measures as may be necessary to prevent any such pollution from occurring, continuing or recurring.

(2) Measures referred to in subsection (1) may include—

(*a*) ceasing, modifying or controlling any activity or process causing the pollution;

(*b*) complying with any prescribed effluent standard or waste management practices;

(*c*) containing or preventing the movement of pollutants;

(*d*) eliminating any source of the pollution;

(*e*) remedying the effects of the pollution; and

(*f*) remedying the effects of any disturbance to the bed and banks of a watercourse.

(3) The Authority may direct any person who fails to take the measures required under subsection (1) or any one of them to—

(*a*) commence taking specific measures before a specific date; and

(*b*) complete them before a specific date.

(4) If a person fails to comply or to comply adequately with a directive given under subsection (3) the Authority may take the measures it considers necessary to remedy the situation and recover all costs incurred as a result thereof from the following persons—

(*a*) any person who is or was responsible for or who directly or indirectly contributed to the pollution or the potential pollution;

(*b*) the owner of the land at the time when the pollution or the potential pollution occurred or his successor in title;

(*c*) the person in control or in use of the land at the time when—

(i) the activity or the process was performed, or

(ii) the situation existed; or

(*d*) any person who negligently failed to prevent—

(i) the activity or the process being formed;

(ii) the situation from arising; or

(*e*) any other person who, in the opinion of the Authority, benefited from the measures undertaken by it under subsection (4), to the extent of such benefit.

Declaration of prohibited substances by the Authority

90. The Authority shall prescribe a list of substances which shall not be discharged under any circumstances under this Part.

Standards of effluent quality

91. The Minister shall, after consultation with competent authorities, prescribe standards of effluent quality with which effluent discharges shall comply.

Application for effluent discharge permit

92.—(1) A person who wishes to discharge effluent shall apply to the Authority for a discharge permit in the prescribed manner.

(2) The Authority shall, on receipt of an application under subsection (1), give public notice of the application in the prescribed manner.

(3) Any person with an interest in the outcome of the application made under this section may give notice of objection to the Authority in a manner and within the time prescribed.

(4) In determining whether or not to issue a permit to discharge effluent, the Authority shall consider the following—

(*a*) whether the proposed discharge is consistent with the National Water Resources Master Plan;

(*b*) the use of water from any source to which the discharge will be made;

(*c*) the standards for waterborne contaminants adopted by a competent authority;

(*d*) the impact of the discharge on existing water uses;

(*e*) the impact of the proposed discharge upon groundwater;

(*f*) any impact of the proposed effluent discharge upon the environment, including owners and occupiers of land and water resources in the vicinity of the proposed effluent discharge or construction of effluent treatment facility or disposal site;

(*g*) the effect of the proposed effluent discharge on Malawi's obligations relating to shared watercourses;

(*h*) the need to ensure the efficient and beneficial use of water resources; and

(*i*) any additional criteria the Minister may prescribe.

Contents of the permit

93. A permit to discharge effluent shall specify—

(*a*) the name and other details of the person to whom it is granted;

(*b*) the location of the discharge;

(*c*) the location of the relevant effluent treatment facility, if any;

(*d*) the limits of any constituent elements of the discharge;

(*e*) requirements for waterproofing or covering the relevant effluent treatment facility, if any;

(*f*) the duration of the permit, which shall be determined in accordance with the provisions of section 96;

(*g*) the conditions under which the permit is granted;

(*h*) the frequency of review of the permit; and

(*i*) whether the permit is subject to periodic review, suspension, amendment or revocation under this Act.

Terms and conditions of a discharge permit

94. A permit to discharge effluent shall be issued subject to—

(*a*) the protection of any water resource to which the discharge will be made as well as any existing or potential uses of the water resource, including environmental uses, by—

(i) setting out the specific volume of effluents that may be discharged;

(ii) setting out the rate of discharge;

(iii) specifying the concentration of certain constituents of the effluent;

(iv) specifying the times, if any, when effluents may not be discharged;

(v) specifying the locations where a discharge may, or may not, be made; and

(vi) adding only such terms regarding the protection of the water resource which the Authority may determine to be appropriate;

(*b*) the protection of any water resource, including groundwater, in the vicinity of a relevant effluent treatment facility, if any, by—

(i) specifying the location of the effluent treatment facility;

(ii) limiting the type, volume, composition or concentration of effluent discharged to the effluent treatment facility;

(iii) specifying the requirements for lining or covering the effluent treatment facility;

(iv) specifying the requirements for operating, managing or closing the effluent treatment facility; and

(v) adding any such terms for the protection of residents, water uses or water resources in the vicinity of the effluent treatment facility which the Authority may determine as appropriate;

(*c*) proper efficient discharge management, which—

(i) requires the monitoring, analysis and reporting on every discharge specifying the aspects of the discharge to be monitored and reported and specifying the devices to be used for such monitoring;

(ii) requires the preparation for the approval of the Authority of an effluent discharge management plan;

(iii) requires the payment of charges;

(iv) may require the addition of any such terms regarding proper effluent management which the Authority may determine to be appropriate; and

(v) requires the protection of public health.

Reference of permits to other authorities

95.—(1) Where the Authority proposes to grant, or to amend the terms of an effluent discharge permit, it shall refer the proposal, together with a copy or summary of the application and appropriate plans, specifications and other information to any relevant public authority.

(2) A public authority to which a proposal is referred under subsection (1) shall inform the Authority in writing within thirty days after the day on which the proposal was referred to it—

(*a*) whether the proposal is supported or whether there are objections to it; or

(*b*) whether, and if so, what special terms should be included in the proposed permit or amendment.

(3) The Authority shall—

(*a*) take into account any report and comments received under subsection (2);

(*b*) refuse to grant the proposed permit or make the proposed amendment if a competent public authority submits a written report objecting to the proposal on the grounds that public health is likely to be endangered by the proposed permit or amendment; and

(*c*) refuse to grant the proposed permit or make the proposed amendment if an Environmental Impact Assessment carried out pursuant to the provisions of the Environment Management Act and the Environmental Impact Assessment Guidelines determines that the environment is likely to be endangered by the proposed permit or amendment.

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Duration of permit to discharge effluent

96.—(1) The duration of a permit to discharge effluent may not exceed a term of five years.

(2) Subject to sections 98 and 101, a permit to discharge effluent expires at the end of its term of duration.

Renewal of permit to discharge effluent

97.—(1) A permit to discharge effluent may be renewed at least three months prior to its expiry if the permit holder submits an application for renewal to the Authority in the prescribed manner.

(2) When considering an application for renewal submitted under subsection (1), the Authority shall consider the application using the criteria for determination of applications referred to in section 92.

Review of permit to discharge effluent

98.—(1) The Authority, at any time during the duration of a permit to discharge effluent, may review such permit and amend the terms and conditions, if it considers it to be in the public interest.

(2) Before the Authority amends the terms and conditions of a permit to discharge effluent under subsection (1), the Authority may invite the permit holder to make representation in respect of the amendment.

Transfer of permit to discharge effluent

99.—(1) A holder of a permit to discharge effluent may apply to the Authority for approval to transfer his permit to another person.

(2) Upon receipt of an application for transfer of a permit to discharge effluent, the Authority shall—

(*a*) evaluate whether the terms and conditions of the proposed transfer are consistent with the terms and conditions of the permit;

(*b*) evaluate any deviation from the terms and conditions of the permit that may have an adverse impact upon other persons or the environment; and

(*c*) give the proposed transferee and any interested persons an opportunity to make representations with regard to the application, if they so wish.

(3) The Authority, within sixty days of receipt of the application for a transfer of a permit to discharge effluent, may grant the application, with or without additional conditions, or deny the application.

Succession to permit to discharge effluent

100. A permit to discharge effluent may pass to the named person as a successor-in-title at death or transfer, but that passage of the permit to a successor-in-title does not extend the duration of the permit.

Suspension and cancellation of permit to discharge effluent

101.—(1) Subject to subsection (2), the Authority may cancel a permit to discharge effluent, or suspend it in whole or in part, if—

(*a*) the permit holder fails to comply with this Act or any of the terms or conditions of the permit;

(*b*) the permit holder fails to commence discharge operations or effluent treatment facility construction operations within the period stipulated in the permit;

(*c*) having commenced with the discharge of effluent or construction of an effluent treatment facility, the permit holder ceases the discharge or construction; or

(*d*) it is in the public interest to do so.

(2) The Authority may not suspend or cancel a permit referred to in subsection (1), without giving the permit holder an opportunity to make representations within thirty days of receipt of the notification of the Authority's intention to suspend or cancel such permit.

Effects of expiry or cancellation of permit to discharge effluent

102. If a permit to discharge effluent expires and is not renewed, or is cancelled prior to its expiry, the Authority may—

(*a*) order the permit holder to restore, at the permit holder's expense, the state of affairs that existed before the permit was granted, if doing so is reasonable and practicable under the circumstances; or

(*b*) enter into an arrangement with the permit holder or any other person for the maintenance of the effluent discharge works.

Pollution of water resources from spillage

103.—(1) If an incident occurs in which a harmful substance which may find its way into a water resource spills, then the person responsible for the incident or the owner of the substance involved in the incident or the one in control of the substance involved in the incident at the time of the incident or any other person with knowledge of the incident shall, as soon as reasonably practicable after obtaining knowledge of the incident, report to—

(*a*) the Minister;

(*b*) the Authority;

(*c*) the Malawi Police Service or to the relevant District Council; and

(*d*) the relevant catchment management committee.

(2) The person responsible for the incident, the owner of the substance involved in the incident and the person in control of the substance involved in the incident at the time of the incident shall—

(*a*) take all reasonable measures to contain and minimize the effects of the incident;

(*b*) perform clean-up procedures;

(*c*) remedy the effects of the incident;

(*d*) take such measures within such specified time as the Authority may either verbally or in writing direct; and

(*e*) compensate any affected community for any and all damage suffered to life and property.

(3) Any verbal directive by the Authority shall be confirmed in writing within fourteen days, otherwise the directive shall be deemed to have been withdrawn.

(4) If the person specified in subsection (2) fails to comply or to adequately comply with a directive of the Authority, or if the Authority be unable to give the directive timeously it may itself take the measures it considers necessary to—

(*a*) contain and minimize the effects of the incident;

(*b*) perform clean-up procedures; or

(*c*) remedy the effects of the incident.

(5) The Authority may recover all reasonable costs incurred by it from the persons specified in subsection (2) jointly or severally as a result of taking measures under subsection (4).

Part IX—Government Waterworks

Powers of Authority to undertake works

104.—(1) Subject to the provisions of this Act and the National Water Resources Master Plan prepared under Part IV the Authority may for purposes of sustainable development of water resources or the performance of any of its functions under this Act—

(*a*) construct, use or operate any works;

(*b*) abstract and impound the water from any watercourse or borehole, or

(*c*) alter the course of any watercourse.

(2) Any land needed for purposes of subsection (1) may be acquired in any manner provided by law for the acquisition of land for public purposes.

State schemes and community projects

105.—(1) In this Part—

"community project" means a project operating under a licence for one or more purposes which are—

(*a*) connected with the use of water or the drainage of land situated entirely or for the most part, within a given area; and

(*b*) classified by the Authority, with the approval of the Minister, as community purposes,

which has been declared by the Authority by notice published in the *Gazette*, to be a community project for the purposes of the Act;

"state scheme" means—

(*a*) a scheme, whether formulated in detail or not, for the use for any public purpose of the whole or part of a water resource; or

(*b*) a scheme for draining any land,

which has been declared by the Minister after consultation with the Authority, by notice published in the *Gazette*, to be a state scheme for the purposes of this Act.

(2) For the purposes of the definition of "state scheme" in subsection (1), "public purpose" includes any of the following—

(*a*) the supply of water, or of electrical energy derived from the energy of moving water, to the public or any section of the public;

(*b*) the drainage or reclamation of lands;

(*c*) the protection of any water resource, its source or catchment;

(*d*) identification and development of a retarding basin for the control and management of flood water or any other measures for its control or disposal;

(*e*) the conservation or improvement of water quality;

(*f*) the distribution and allocation of water among the beneficiaries of the scheme;

(*g*) the measurement of water; or

(*h*) the storage or impoundment of water for purposes of bulk distribution, including the construction of reservoirs for impounding surface run-off and for regulating stream flows.

Precedence of schemes and projects

106.—(1) A state scheme shall take precedence over all other schemes for the use of water or the drainage of land.

(2) A community project shall take precedence over all other schemes for the use of water or the drainage of land, except a state scheme.

(3) The Minister—

(*a*) may direct that a state scheme or community project be executed in augmentation, modification or improvement and, subject to the provisions of this Act, so as to supersede any other works for the use of water; and

(*b*) may at any time order that any works contemplated or under execution or completed be aided from public moneys to such extent as may be appropriated by Parliament.

Construction of works for state schemes

107.—(1) The Authority may, after reasonable notice to any landholder concerned, construct and maintain upon any land such works as it may deem necessary or desirable for the purposes of any state scheme.

(2) Compensation on just terms shall be payable by the Government to the owner of the land on which any such works are constructed, but in assessing the amount of compensation payable, the Minister shall take into consideration any benefit accruing to the land by the construction of the works and any adverse effect on the land caused by the works, as the case may be.

(3) The cost of construction and maintenance of any such works shall be paid out of moneys appropriated by Parliament.

Community projects

108.—(1) The Authority shall not issue a licence to abstract and use water to a community project unless—

(*a*) the proposed project is approved by the persons owning or occupying at least two-thirds ($^2/_3$) of the particular area concerned in the project; and

(*b*) provision is made by the project for any adequate alternative supply of water to be supplied to permit holders likely to be adversely affected and unable to benefit from the scheme.

(2) No licence for a community project shall be cancelled or varied except with the consent of the Minister.

Contribution towards schemes and projects

109. Any person who, in the opinion of the Minister, will benefit from the scheme or project shall, if the Minister so determines, contribute towards the cost of the state scheme or community project in cash or in kind.

PART X—SAFETY OF DAMS AND FLOOD MANAGEMENT

Definitions

110.—(1) In this Part—

"approved professional person" means a person registered under the Engineers Act, and National Construction Industry Act, and approved by the Authority after consultation with the Engineers Board and the National Construction Industry Council as the case may be; Cap. 53:03 Cap. 53:05

"dam" includes any existing or proposed structure which is capable of containing, storing or impounding water, including temporary impoundment or storage, whether that water contains any substance or not;

"dam with a safety risk" means any dam—

(*a*) which can contain, store or dam more than 50,000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres, measured as the vertical difference between the lowest downstream ground elevation on the outside of the dam wall and the non-overspill crest level or the general top level of the dam wall;

(*b*) belonging to a category of dams declared under section 112 (2) to be dams with a safety risk; or

(*c*) declared under section 112 (3) (*a*) to be a dam with a safety risk;

"owner of a dam" or "owner of a dam with a safety risk" includes the person in control of that dam; and

"task" includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring or abandoning a dam with a safety risk.

Blockage of watercourses

111.—(1) No person shall engage in any construction activity that blocks or otherwise impedes the flow of water in a watercourse unless a licence authorizing the activity has been obtained in accordance with the provision of Part V of this Act.

(2) Subsection (1) shall apply regardless of whether an activity is directly instrumental to the abstraction of water from the watercourse or not:

Provided however that, if the activity is directly instrumental to the abstraction of water from the watercourse, the relevant abstraction licence shall imply an authorization to carry out a construction activity under this section.

(3) The Authority may take all reasonable measures to remove or to mitigate the effects of an unauthorized blockage of a watercourse and may recover the cost of such measures from the person or persons responsible for the blockage.

(4) Any person responsible for causing the unauthorized blockage of a watercourse shall be responsible for any damage to persons, property, or the environment caused by the unauthorized blockage, which damage shall be determined and assessed by a court of law.

(5) The Authority may bring an action for damage against any person or persons responsible for the blockage of a watercourse, for the purpose of compensation for any damage to the environment caused by the blockage.

Control measures for dams with safety risk

112.—(1) An owner of a dam shall—

(*a*) before submitting an application for a licence under Part V or within the period specified, provide the Authority with—

(i) any information, drawings, specifications, design assumptions, calculations, documents, copies of the Environmental Impact Assessment Report and test results requested by the Authority; and

(ii) a copy of the Environmental Impact Assessment Report and certificate issued in accordance with the Environment Management Act; and

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(*b*) give any person authorized by the Authority access to the dam, to enable the authorized officer to determine whether—

(i) the dam is a dam with a safety risk;

(ii) the dam should be declared to be a dam with a safety risk;

(iii) a directive should be issued for specific repairs or alterations to the dam; or

(iv) the owner has complied with any provisions of this Act applicable to the dam.

(2) The Authority may by notice published in the *Gazette* declare a category of dams to be dams with a safety risk.

(3) The Authority may—

(*a*) direct the owner of a dam with a safety risk to submit, at the owner's cost, and within a period specified by the Authority, a report by an approved professional person regarding the safety of that dam; and

(*b*) direct the owner of a dam with a safety risk to undertake, at the owner's cost, and within a period specified by the Authority, any specific repairs or alterations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.

(4) The Authority shall afford affected persons the opportunity to petition for the review and evaluation of any dam reasonably believed to be a dam with a safety risk and shall provide the owner of any dam that is the subject of such a petition, a right to respond.

(5) If the owner of the dam fails to comply with the directive contemplated in subsection (3) (*b*), within the period specified, the Authority may undertake the repairs or alterations and recover the costs from the owner.

(6) Before issuing a directive, the Authority shall—

(*a*) be satisfied that the repairs or alterations directed are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and

(*b*) consider the impact on public safety, property, the resource quality and socio-economic aspects if the dam fails.

Responsibilities of approved professional persons

113.—(1) When carrying out a task under this Part, an approved professional person also has a duty of care towards the Government and the general public.

(2) An approved professional person appointed to carry out a task on a dam shall—

(*a*) ensure that the task is carried out according to acceptable dam engineering practices;

(*b*) keep the prescribed records;

(*c*) compile the prescribed reports; and

(*d*) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.

(3) An approved professional person appointed to carry out a dam safety evaluation shall—

(*a*) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and

(*b*) compile a report on the matters contemplated in (*a*) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

Registration of dams with safety risk

114.—(1) The owner of a dam with a safety risk shall register that dam with the Authority.

(2) An application for registration shall be made within one hundred and twenty days—

(*a*) after the date on which the dam with a safety risk becomes capable of containing, storing or impounding water;

(*b*) after the date on which an already completed dam is declared to be a dam with a safety risk; or

(*c*) after publication of a notice declaring a category of dams to be dams with a safety risk, as the case may be.

(3) A successor-in-title to an owner of a dam with a safety risk shall promptly inform the Authority of the succession, for the substitution of the name of the owner.

Factors to be considered in declaring dams with safety risk

115. In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Authority shall consider—

(*a*) the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams;

(*b*) the extent of potential loss or harm involved;

(*c*) the cost of any prescribed measures and whether they are reasonably achievable;

(*d*) the socio-economic impact if such a dam fails;

(*e*) in the case of a particular dam, also—

(i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;

(ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and

(iii) the manner in which the water is contained, stored or impounded in that dam.

Exemptions

116.—(1) The Minister may, on the recommendation of the Authority, exempt a dam belonging to a certain category, by notice published in the *Gazette,* from compliance with any provision of this Part or any regulation made under this Act, on conditions determined by the Minister on the recommendation of the Authority.

(2) The Minister may withdraw the exemption or impose further or new conditions in respect of the exemption.

(3) Before recommending an exemption, the Authority shall consider—

(*a*) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality;

(*b*) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;

(*c*) the supervision involved in the dam or category of dams;

(*d*) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water in, inspection or abandonment of the dam or category of dams and the effectiveness of these measures;

(*e*) the knowledge and expertise of the persons involved in any task relating to the dam or category of dams;

(*f*) comments solicited from the surrounding communities;

(g) the costs relating to the dam or category of dams;

(*h*) any security provided or intended to be provided for any damage which could be caused by the dam or category of dams;

(*i*) recommendations made in an environmental impact assessment or an environmental audit report; and

(*j*) whether the dam or category of dams are permitted in terms of a licence or any other authorization issued by or under any other Act.

Regulations regarding dam safety and prevention of flood risk

117.—(1) The Minister may make regulations regarding dam safety including—

(*a*) the establishment of a register of approved professional persons for dealing with dams with a safety risk;

(*b*) the provision of technical audit of the work of approved professional persons;

(*c*) classifying dams into categories;

(*d*) standard specifications regarding the construction, maintenance and repair of dams;

(*e*) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and in the manner prescribed;

(*f*) requiring the registration of a specific dam with a safety risk, and setting out the procedure and the processing fee payable for registration;

(*g*) requiring an approved professional person appointed for a specific purpose for a specific dam to submit information, drawings, reports and manuals; and

(*h*) specifying time periods that shall be complied with.

(2) In making regulations under subsection (1), the Minister shall consider—

(*a*) the expertise required for the effective design, construction, alteration, repair, operation, maintenance and abandonment of a dam in the category concerned; and

(*b*) the qualifications and experience needed to provide the expertise for a particular category of tasks.

(3) Before making regulations under subsection (1), the Minister shall consult the relevant professional categories and any other appropriate statutory bodies.

Measures for flood mitigation and control

118. For the purpose of preventing or minimizing the risk of flooding and flood damage, the Authority may do any of the following—

(*a*) prohibit the construction on submersible lands or dikes, levees or other structures likely to hinder the run-off of flood-water; provided that authorization may be granted for the development of such structures if they are determined to be necessary for the protection of already existing residences or other private structures;

(*b*) alter or demolish dikes, embankments, levees, structures or other works, irrespective of their legal status, if they are determined by the Authority to hinder water run-off or to extend the flood plain with harmful results;

(*c*) prohibit the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protective dikes, embankments or levees;

(*d*) cooperate with Local Authorities in determining the geographic extent of floodplain areas and assist such Authorities in regulating the development and use of lands within such areas; and

(*e*) in consultation with the Ministry responsible for Local Government, develop regulations providing for the control and management of storm water within municipal areas.

Part XI—Water Charges and Financial Provisions

Charges

119.—(1) The Minister may, on the recommendation of the Authority, by notice published in the *Gazette*, prescribe charges for—

(*a*) services provided by the Minister, the Authority, a public authority or authorized person under this Act;

(*b*) the abstraction and use of water under a licence granted under this Act;

(*c*) the discharge of effluents under a discharge permit granted under this Act; or

(*d*) any other licence or permit granted under this Act.

(2) The water abstraction charges determined by the Minister shall be based on a pricing strategy that takes into consideration—

(*a*) the need to differentiate among geographical areas, categories of water uses and water users;

(*b*) the need to achieve an equitable and efficient allocation of water and water conservation;

(*c*) the need to adhere to sound water management practices based on the "user pays" and the "polluter pays" principles; and

(*d*) the need to provide for incentives for timely payment of the charges and disincentives for non-payment of same.

Collection and use of water fees and charges

120.—(1) The Authority shall levy and collect charges and fees prescribed under section 119 (1) and it shall deposit the proceeds from the collection thereof into a separate account owned and operated by the Authority.

(2) A percentage of the proceeds from the collection of water charges and fees, to be determined on a yearly basis by the Minister on the recommendation of the Authority, shall be earmarked for use by the catchment management committees for their statutory purposes and paid out to them on request:

Provided that such percentage shall in no case be less than twenty per cent (20%) of the total amounts collected in any one year.

(3) The Authority shall apply the balance of the proceeds from the collection of charges in the pursuit of its statutory purposes.

(4) The Authority shall submit yearly to the Minister an audited statement of accounts under this section.

Water Resources Trust Fund

121.—(1) There is hereby established a fund to be known as the Water Resources Trust Fund (hereinafter referred to as the "Fund").

(2) The objective of the Fund is to assist in financing the conservation and management of water resources in Malawi.

(3) There shall be paid into the Trust Fund—

(*a*) such moneys as may be appropriated by Parliament for the purposes of the Fund;

(*b*) such moneys as may be received by the Fund from donations, grants, and bequests from whatever source; and

(*c*) such other moneys as may, by or under any Act, be payable to the Fund.

(4) The Fund shall be managed by trustees from time to time appointed and holding office under a trust deed, to be drawn-up by the Minister.

(5) The trustees shall develop and apply principles governing the grant of moneys from the Fund and for achieving the objective of the Fund.

(6) There shall be paid from the Fund such grants as the trustees may, from time to time, authorize in furtherance of the objective of the Fund.

Part XII—Water Tribunal

Establishment of Water Tribunal

122.—(1) There is hereby established a tribunal to be known as the Water Tribunal.

(2) The Water Tribunal shall have jurisdiction throughout Malawi, with power to conduct hearings anywhere in Malawi.

Composition of the Water Tribunal

123.—(1) The Water Tribunal shall consist of the following persons appointed by the Minister—

(*a*) a Chairperson;

(*b*) a Deputy Chairperson; and

(*c*) three other persons.

(2) The Minister shall appoint the Chairperson, and the Deputy Chairperson of the Water Tribunal on the recommendation of the Judicial Service Commission, provided that the Chairperson shall be a person qualified to hold the office of a judge of the High Court of Malawi.

(3) Only persons with knowledge of law, engineering, water resources management or related field, may be appointed to the Tribunal.

(4) A member of the Water Tribunal shall hold office for a period of five years and may be reappointed for one more period of five years.

(5) The terms and conditions of the members of the Water Tribunal shall be determined by the Minister in consultation with the Minister of Finance.

Vacancy in the office of a member of the Water Tribunal

124.—(1) The office of a member of the Water Tribunal shall become vacant if the member—

(*a*) dies or resigns;

(*b*) becomes bankrupt;

(*c*) adjudged or declared to be of unsound mind;

(*d*) is convicted of an offence punishable by imprisonment; or

(*e*) has had his appointment terminated in accordance with subsection (2).

(2) The Minister may, after consultation with the Judicial Service Commission and after giving the member an opportunity to make representations and after considering those representations, for good reason terminate the appointment of any member of the Water Tribunal.

Support staff and funds of the Water Tribunal

125.—(1) Administrative support for the Water Tribunal shall be provided by officials of the Ministry responsible for water affairs.

(2) Expenses of the Water Tribunal shall be paid out of money appropriated by Parliament for that purpose.

Indemnity of the Tribunal and its members

126. The Water Tribunal and the members of the Water Tribunal shall not be liable for an act or omission committed in good faith in the course of performing their functions under this Act.

Jurisdiction of the Water Tribunal

127.—(1) An appeal shall lie to the Water Tribunal at the instance of any aggrieved person who has a right or proprietary interest which is directly affected by a decision or order of the Authority, the Minister or a catchment management committee concerning any matter regarding water resources management, a permit or licence under this Act, and the Water Tribunal shall hear and determine any such appeal.

(2) In addition, the Water Tribunal shall have such jurisdiction to hear and determine disputes, and shall have such other powers and functions, as may be conferred or imposed on it by or under this or any other written law.

Time for lodging appeal

128. No appeal shall be entertained by the Water Tribunal unless it is lodged, where no period is so prescribed, within thirty days after the date on which written notice was served on the appellant notifying him of the decision or order against which he wishes to appeal:

Provided that the Water Tribunal may in any case, for good cause shown, admit an appeal after the time limited for lodgment of an appeal has expired.

Determination of appeals and disputes
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129.—(1) In proceedings on any matter before it, the Water Tribunal shall have and may exercise all the powers vested in Commissioners under the Commissions of Inquiry Act.

(2) In determining an appeal, the Water Tribunal may affirm, quash or vary the decision or order concerned, as justice requires.

(3) In determining a dispute, or in exercising any other function, the Water Tribunal shall decide the matter on the merits of the case and may make such order as, in its judgment, will do justice between the parties.

(4) Any person aggrieved by the decision of the Water Tribunal may apply to the High Court for judicial review:

Provided that on a matter of law, an appeal shall lie to the High Court.

Rules and procedures of the Water Tribunal

130. The Water Tribunal shall determine its own procedures and rules for or with respect to the lodgment, hearing and disposal of appeals and other matters before it.

Part XIII—Associations of Water Users

Establishment and purposes of associations of water users

131.—(1) An association of water users (hereinafter called an "association") may be established by the agreement of the simple majority of a group of water users, at their initiative or also at the initiative of the Authority, for one or a combination of the following purposes—

(*a*) to manage, distribute and conserve water from a source used jointly by the members of the association;

(*b*) to manage groundwater resources in a Groundwater Conservation Area established under Part VI;

(*c*) to acquire and operate an abstraction licence or a discharge permit under this Act;

(*d*) to resolve conflicts between members of the association related to the joint use of a water resource;

(*e*) to collect water user charges and fees on behalf of the Authority; and

(*f*) to represent the special interests and values arising from water used for a public purpose, such as in an environmental or conservation area.

(2) A group of water users for the purpose of subsection (1) shall comprise any user of water from a common stream or other source irrespective of the purpose of that use.

Approval and registration of associations of water users

132.—(1) The proposed members of an association shall prepare a constitution in the form set out in the Schedule hereto and submit such constitution to the Authority for approval in accordance with the procedure as the Minister may prescribe in regulations made under this Act.

(2) The Minister may, by regulation, amend the constitution set out in the Schedule hereto.

(3) Upon request of a group of water users intending to establish an association, the Authority shall provide assistance in formulating the constitution.

(4) A management committee shall be the executive organ of the association and shall be elected and have the powers as set out in the constitution prepared under subsection (1).

Registration of associations of water users, compulsory membership implied

133.—(1) Upon approval by the Authority of the constitution prepared under section 132, the association shall be registered in the Register maintained by the Authority in accordance with section 134.

(2) With effect from the date of registration in the Register, all water users within the area of an association as defined in the constitution shall be required to become members of the association and shall be bound by the constitution.

(3) Any person who has reasonable grounds to object to becoming a member of an association of water users under subsection (2) shall lodge an appeal to the Minister in accordance with the provisions of section 142.

(4) The Authority shall cause membership of an association to be recorded on the abstraction licence or on the effluent discharge permit of each member issued in accordance, respectively, with Parts V and VIII of this Act and in the Register maintained by the Authority in accordance with section 134.

Register of associations of water users

134.—(1) The Authority shall establish and maintain a Register in which it shall record the particulars of associations registered with the Authority.

(2) The Authority may determine additional particulars of associations registered with the Authority to be included in the Register.

(3) Information contained in the Register shall be accessible by the public on payment of prescribed fee.

Power of Authority to give directions

135. In any case where the Authority is satisfied that an association does not perform its functions satisfactorily, it may give directions to the association relating to the performance of the functions of the association. Such directions may refer to—

(*a*) the division and distribution of water amongst the members of an association;

(*b*) the management and protection of any water source;

(*c*) the drainage of the land where water is used; and

(*d*) any other matter which the Authority considers necessary or desirable.

Disestablishment of associations of water users

136.—(1) The Minister may, on the recommendation of the Authority, by notice published in the *Gazette,* disestablish an association of water users—

(*a*) in the circumstances provided for in the constitution of the association;

(*b*) if it is in the best interest of the association or its members;

(*c*) if an investigation of its affairs or financial position reveals that disestablishment is appropriate;

(*d*) if the Authority has taken over a power or duty of the association as a result of dissensions among the management committee or its members; or

(*e*) if the association is no longer active or effective.

(2) Before disestablishing an association of water users the Minister shall—

(*a*) publish a notice in the *Gazette*—

(i) stating the intention to disestablish the association of water users;

(ii) setting out the reasons for disestablishing the association of water users; and

(iii) inviting written comments on the proposal, which comments shall be submitted by a date which may not be earlier than sixty days after the publication of the notice; and

(*b*) consider all comments received by the specified date.

(3) Upon disestablishment of an association of water users, the Authority shall enter a corresponding record in the Register it keeps under section 134, and on the abstraction licence or on the effluent discharge permit of each member, issued in accordance with Parts V and VIII of this Act, respectively.

Winding-up of affairs of associations of water users

137.—(1) When an association of water users is disestablished, its affairs shall be wound-up—

(*a*) as provided for in its constitution; or

(*b*) by a person appointed by the Minister in accordance with directives given by the Minister if the constitution does not provide for winding-up.

(2) The costs of winding-up an association of water users shall be a cost against the estate of the association.

(3) If the affairs of an association of water users are wound-up, the Minister may direct that an amount equivalent to any financial contribution with interest made to the association from public funds be reimbursed, before assets are distributed among the members of the association.

(4) No transfer duty, other tax or duty is payable in respect of the transfer of any assets under subsection (3).

Part XIV—Miscellaneous Provisions

Entry by Authority for monitoring of water resources

138.—(1) An employee or agent of the Authority, on the instructions of the Authority, may without warrant enter onto any land and inspect any water resource located within or accessible from the land concerned, in order to take such measures as the Authority may think fit for the purpose of—

(*a*) conserving or regulating the water resource, or preserving it from pollution or protecting the bed over which it lies or flows;

(*b*) removing any obstruction from, or for clearing and deepening, the bed; or

(*c*) preventing the illegal diversion, waste or pollution of the water resource or interference with any such bed.

(2) A person authorized by the Authority may enter and remain on land for purposes of performing functions or exercising powers conferred under this Act and may take such measures and construct or operate works as may be necessary for the investigation, monitoring, use, control, protection, management or administration of water resources.

(3) Subject to section 152, an authorized person may enter any land for the purpose of investigating water resources and may—

(*a*) construct works;

(*b*) install and equip gauging, recording and monitoring stations;

(*c*) investigate or monitor boreholes and ancillary works on any land;

(*d*) make surveys;

(*e*) take measurements or samples; or

(*f*) make alterations or remove any of the above.

(4) Whatever is attached to land does not become part of the land for the purposes of giving the owner or occupier of land a proprietary interest in it.

Obligations on entry on land

139.—(1) In exercising the powers under section 138, the authorized person shall—

(*a*) cooperate, as much as possible, with the owner or occupier of the land;

(*b*) stay on the land only for as long as it is reasonably necessary;

(*c*) remove from the land, on completing any works, all plant, machinery, equipment, goods or buildings brought on to the land, other than anything that the owner or occupier of the land agrees may be left there; and

(*d*) leave the land as nearly as possible in the condition in which it was prior to the entry being made.

(2) Subject to section 138 (1) an authorized person shall not enter on to the land or premises without first giving reasonable notice, whether written, verbal or otherwise, to the landholder or other responsible person in charge of the land or premises, and any such entry shall be at a reasonable hour:

Provided that an authorized person may enter without giving notice if—

(*a*) he has reason to believe that a provision of this Act or of any regulation or order made under this Act has been or is about to be contravened;

(*b*) he is unable to give notice within a reasonable time having regard to all the circumstances; or

(*c*) he has reasonable grounds for not giving notice.

(3) If so requested by the owner or occupier of the land or premises, the authorized person shall produce evidence of his right or permission, as the case may be, to enter on to the land.

(4) It shall be the duty of any person exercising any powers under this section to do so with the reasonable care and in such manner as to cause as little damage as possible in so doing.

Inspection of land in relation to water use

140.—(1) An inspector may enter land for purposes of—

(*a*) inspecting works or use of water; or

(*b*) taking samples or making tests, to find out whether—

(i) water is being wasted, misused or polluted;

(ii) the terms of any water permit, waste discharge permit or any other permit granted under this Act are being complied with; or

(iii) an offence is being committed against this Act, regulation or an order made under this Act is otherwise being complied with.

(2) An inspector may, without warrant, enter any land or premises for the purpose of ascertaining whether there is or has been any contravening of the provisions of this Act or of any regulation or order made under this Act in relation to any water resource.

Establishment of bodies to implement international agreements

141.—(1) The Minister, acting in consultation with other relevant Ministers, may establish bodies to implement—

(*a*) international agreements relating to the management and development of water resources; or

(*b*) regional agreements relating to the management and development of water resources shared with other countries in the promotion of regional cooperation over shared water resources.

(2) Whenever it appears to the Minister expedient to do so, he may consult with his counterpart within the Southern African Development Community (SADC) on matters relating to water resources management in line with the SADC Protocol on Shared Watercourses.

(3) The Minister may share relevant information with other state, regional and international organizations regarding water and water research, subject to the limitations such as requirements of state security.

General appeals

142.—(1) Except as otherwise provided under this Act, any person aggrieved by a decision of the Authority, authorized person or public authority made under this Part of the Act may, within one month, appeal to the Minister in a prescribed manner.

(2) A person who fails, without reasonable cause or neglected to exercise his right of objection under this Act, shall not have a right to appeal under subsection (1).

(3) Where a person is still aggrieved with the decision of the Minister, he may appeal to the Water Tribunal.

General offence and penalty

143. A person who neglects or fails to comply with any order or requirement given or imposed on him by or under this Act commits an offence and on conviction shall be liable to a fine of one million Kwacha (K1,000,000) and to four (4) years imprisonment.

Specific offences

144.—(1) Any person who diverts, dams, stores, abstracts or uses water or constructs or maintains any waterworks or in any way interferes with the flow of watercourse other than in accordance with a right granted under this Act commits an offence and, upon conviction shall be liable to a fine of five million Kwacha (K5,000,000) and to eight (8) years imprisonment.

(2) Any person who discharges effluents in contravention to the provisions of this Act commits an offence and upon conviction shall be liable to a fine of ten million Kwacha (K10,000,000) and to ten (10) years imprisonment.

(3) Any person who fails to comply with a notice given by the Authority requiring him to take measures specified therein to avoid or mitigate damage to water resources commits an offence and shall be liable to an administrative penalty.

(4) Any person who continues to exercise a water right previously granted to him after suspension or variation of the same by the Minister commits an offence and shall be liable to an administrative fine.

(5) Any person who continues to exercise a water right previously granted to him after determination or diminution of the same by the Minister commits an offence and shall be liable to an administrative penalty.

(6) Any person who fails to comply with any condition, express or implied, subject to which a right was granted or who abstracts or uses water for a purpose other than the one authorized in the grant, commits an offence and shall be liable to an administrative fine and in addition to any requirement which the Minister may impose.

(7) Any person who prevents, obstructs or refuses entry upon his land by the Authority or any member or agent thereof for purposes of inspecting any works thereon or ascertaining the amount of water being abstracted commits an offence and shall be liable to an administrative penalty.

(8) Any person who refuses, fails or neglects to demolish or to change the use of waterworks as required of him by the Authority commits an offence and shall be liable to an administrative penalty and in addition to any suspension of right which the Authority may impose.

(9) Any person who refuses, fails or neglects to demolish any unlawfully constructed works after being ordered by the Authority to demolish the same commits an offence and shall be liable to an administrative fine and where the Authority demolishes the unlawful works, the Authority shall recover all expenses incurred as a civil debt from the person.

(10) Any person who, after being ordered by the Authority to modify or to demolish works previously constructed under a right which has been determined, refuses, fails or neglects to do so commits an offence and shall be liable to an administrative penalty.

(11) Any person who prevents, constructs or refuses entry upon his land by the Authority or any member or agent thereof for the purposes of conducting investigations and surveys commits an offence and shall be liable to an administrative penalty.

(12) Any person who interferes with or damages a hydrometeorological station, water quality station, hydrological station, hydrogeological station, groundwater monitoring station or any equipment thereof of works connected therewith commits an offence and shall be liable to an administrative penalty and if the equipment or works, as the case may be, have been damaged so as to require replacement or reconstruction, the person responsible shall be liable further to pay the costs of replacement or reconstruction, as the case may be.

(13) Any person who prevents, obstructs or refuses entry upon any land by a representative or agent of a catchment management committee for the purposes specified under this Act commits an offence and shall be liable to an administrative penalty.

(14) Any person who refuses or fails to submit himself to the jurisdiction of a catchment management committee by refusing, failing or neglecting to comply with directions, rules, regulations, by-laws or guidelines of the catchment management committee commits an offence and shall be liable to an administrative penalty.

(15) Any person who fails to provide the Minister within the time specified by him with any data, information, documents or materials required by the Minister under this Act commits an offence and shall be liable to an administrative penalty.

(16) A water management institution which fails to make information at its disposal available to the public under this Act commits an offence and shall be liable to an administrative penalty.

(17) Any person who undertakes a controlled activity without a permit granted under this Act commits an offence and shall be liable to an administrative penalty and the controlled activity undertaken shall thereupon be forthwith stopped by the Minister.

Miscellaneous offences

145.—(1) No person shall—

(*a*) wilfully obstruct, molest or hinder any inspector or other employee of or person authorized by the Minister or the Authority acting in the exercise or performance of his powers and functions under this Act;

(*b*) without the written permission of the Authority, knowingly or wilfully—

(i) deface, alter or remove; or

(ii) cause to be defaced, altered or removed,

any survey mark, water gauge, weir or measuring device or other work, structure or appliance installed with the approval of the Authority for the purposes of water control or investigation;

(*c*) wilfully hinder or interrupt, or cause to be hindered or interrupted, any permit holder, or his employee, contractor or agent, in the lawful exercise or performance of any powers and functions under this Act;

(*d*) without lawful authority, wilfully let off or discharge water from the works of any permit holder so that the permit holder loses the use of that water;

(*e*) without lawful authority, lay, erect or construct, or cause to be laid, erected or constructed, any work to connect with the work of any permit holder which is capable of drawing water from that work;

(*f*) unlawfully interfere with the works or water supply of any permit holder; or

(*g*) neglect or fail to comply with any lawful order given under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence.

(3) Any person who—

(*a*) causes or allows water to be wasted or misused; or

(*b*) takes or uses water for a purpose other than provided by the water permit,

commits an offence.

(4) Any person who—

(*a*) assaults, threatens, resists, obstructs, hinders or delays the authorized person or a public authority in the performance of any function or duty under this Act; or

(*b*) allows or encourages another person to do any of the acts under paragraph (*a*),

commits an offence.

(5) Where a person is convicted under subsection (2), the court may, in addition to any other penalty, order that person to pay, by way of compensation, any person who may have suffered any damage as a result of the action for which that person is convicted.

(6) Any person who—

(*a*) interferes;

(*b*) attempts to interfere; or

(*c*) allows another person to interfere, with any hydrological station,

commits an offence.

Proceedings for offences

146. Without prejudice to the rights of any person to bring proceedings in respect of an offence, the Minister or the Authority may, subject to section 148, institute and maintain criminal proceedings in any court against any person accused of an offence under this Act or under any rules or regulations made under this Act.

Penalties for offences

147.—(1) Any person convicted of an offence under this Act, or under any regulations or rules made under this Act for which no other penalty is provided shall be liable to a fine of one million Kwacha (K1,000,000) and to four (4) years imprisonment and where the person continues the contravention, shall be liable to a fine of five thousand Kwacha (K5,000) for every day during which the offence continues.

(2) A person who is convicted of the same offence subsequently shall be liable to a fine of ten million Kwacha (K10,000,000) and to ten (10) years imprisonment and where the person continues the contravention, shall be liable to a fine of twenty thousand Kwacha (K20,000) for each day during which the offence continues.

(3) Where under this Act penalty is provided for a continuing or subsequent offence, the penalty shall apply—

(*a*) in the case of a continuing offence, if the person continues to contravene the provision for which he was convicted after the date on which he was convicted; or

(*b*) in the case of a subsequent offence, if the person contravenes the same provision for which he was convicted earlier.

Administrative penalties

148.—(1) If the Authority is satisfied on reasonable grounds that a person has contravened this Act, the Authority may impose administrative penalties on the person by doing one or more of the following—

(*a*) giving the person a written warning;

(*b*) directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes—

(i) to remedy the effects of the contravention;

(ii) to compensate persons who have suffered loss because of the contravention;

(iii) to ensure that the person does not commit further contravention;

(*c*) requiring the person to pay monetary penalty of two million Kwacha (K2,000,000); or

(*d*) requiring the person to pay monetary penalty of ten thousand Kwacha (K10,000) for each day during which the contravention continues.

(2) Before taking action under subsection (1), the Authority shall give the person written notice of the proposed action, specifying the grounds for it and the facts supporting those grounds, and allowing twenty-one days after the notice is given for the person to ask for a hearing on the matter. If the person requests a hearing on the matter, the Authority shall hold a hearing before taking the action. The hearing shall be held in private unless the person consents to the hearings being held in public.

(3) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and, on conviction shall be liable to a fine of five million Kwacha (K5,000,000) and to five (5) years imprisonment.

(4) Where the administrative penalty imposed by the Authority is a monetary penalty and the person on whom the monetary penalty has been imposed does not pay the monetary penalty for more than thirty days from the date of the initial demand in writing by the Authority, the amount in respect of the monetary penalty shall be recoverable by the Authority as a civil debt.

Offences by bodies corporate relating to state of mind

149.—(1) Where it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that—

(*a*) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his actual or apparent authority; and

(*b*) the director, employee or agent had the state of mind.

(2) A reference in subsection (1) to the state of mind of a person includes a reference to—

(*a*) the knowledge, intention, opinion, belief or purpose of the person; and

(*b*) the person's reasons for the intention, opinion, belief or purpose.

(3) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Offences by bodies corporate relating to liability of directors

150. Where an offence against a provision of this Act or regulations made hereunder is committed by a body corporate, each director of the body corporate also shall be guilty of the offence and on conviction shall be liable to the same penalty unless it is established that he took reasonable precaution and exercise due diligence to avoid the commission of the offence.

Penalties for offences by bodies corporate

151. Where a body corporate is convicted of an offence under this Act, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to five times the amount of the maximum pecuniary penalty that could be imposed by the court on an individual convicted of the same offence.

Damage caused by the Minister, etc., to be compensated

152.—(1) Where damage is caused to land through the exercise of powers conferred upon the Minister, the Authority or an authorized officer by this Act, the Government shall compensate all parties having an interest in that land.

(2) For purposes of this section, damage to land includes—

(*a*) deprivation of possession of the surface land;

(*b*) damage to the surface of land and any improvements, trees or crops;

(*c*) damage to stock; or

(*d*) all consequential damage.

(3) Compensation under this section may be—

(*a*) in the form of money;

(*b*) provision of an alternative supply of water;

(*c*) exchange of land for another piece of public land; or

(*d*) any other type of compensation which the Minister may consider appropriate.

(4) In calculating monetary compensation—

(*a*) for damage to land under this section;

(*b*) in respect of compulsory acquisition of any interest in land.

Prescribed guidelines

153. The Minister may, on the advice of the Authority, from time to time, prescribe guidelines to be followed by any authorized person or public authority while exercising their powers under this Act.

Decision to be in regard to objectives

154. While exercising his powers and functions under this Act, the Minister, Authority, authorized person or any other person shall have regard to—

(*a*) the objectives of this Act;

(*b*) any relevant international agreement regulating the use of water to which Malawi is a party;

(*c*) the provisions of the water action plan;

(*d*) any policy of the Government concerning the decentralization of administrative responsibilities;

(*e*) any guidelines prescribed by the Minister under this Act; and

(*f*) any delegation that may have been made by the Minister.

Protection of the Minister and others from liability

155. No matter or thing done or omitted to be done by—

(*a*) the Minister, the Authority, a catchment management committee or the Water Tribunal;

(*b*) any person acting under the direction of the Minister; or

(*c*) any member of or person acting under the direction of the Authority, the catchment management committee, the Water Tribunal authorized under this Act,

shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject the Minister or any such member of the Authority, Committee, or Water Tribunal or person in his personal capacity to any action, suit, claim or demand whatsoever.

Public consultation

156.—(1) A requirement imposed by or under this Act for a person (in this section called the "designated person") to undertake public consultation in relation to any application made, or action proposed to be taken, under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that application or action.

(2) The designated person shall publish or broadcast, as the case may be, a notice, in relation to the application or proposed action—

(*a*) in the *Gazette*;

(*b*) in at least one national newspaper circulating in the area to which the application or proposed action relates; and

(*c*) in at least one local radio station broadcasting in that area.

(3) The notice shall, in each case—

(*a*) set out a summary of the application or proposed action;

(*b*) state the premises at which the details of the application or proposed action may be inspected;

(*c*) invite written comments on or objections to the application or proposed action;

(*d*) specify the person or body to which any such comments are to be submitted; and

(*e*) specify a date by which any such comments are required to be received, not being a date earlier than thirty days after publication of the notice.

(4) The designated person shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action which are in the possession of the designated person.

(5) The designated person shall consider—

(*a*) any written comments received on or before the date specified under subsection (3) (*e*); and

(*b*) any comments, whether in writing or not, received at any public meeting held in relation to the application or proposed action at which the designated person was represented, or pursuant to any other invited to comment.

(6) The designated person shall publish, through the same media as were employed pursuant to subsection (2), notice of the fact that a copy of the decision in writing of the designated person in relation to the application or proposed action, and of the reasons therefor, is available for public inspection at the same premises as were notified under subsection (3) (*b*).

(7) Where regulations made under this Act so require, the designated person shall cause a public meeting to be held in relation to the application or proposed action.

Regulations

157.—(1) The Minister may make regulations, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may make provision for or with respect to—

(*a*) abstraction of groundwater and works therefor;

(*b*) inspection of works;

(*c*) plans and specifications to be submitted by applicants under this Act;

(*d*) charges for water use under a permit and fees for licences;

(*e*) forms to be used under this Act;

(*f*) provide for the registration of existing users of water and structures;

(*g*) the duration, granting, amending, renewing, suspending, varying or cancelling of permits or licences as the case may be, or any other conditions;

(*h*) provide for and regulate the making of objections and the time in which objections shall be made;

(*i*) provide for the prevention of waste, misuse or pollution of water;

(*j*) providing for the formation, functions and conduct of associations of water users;

(*k*) for safety in dam construction; and

(*l*) generally for the better carrying out of the provisions of this Act.

(3) The Authority may make rules, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed by the Authority.

Cap. 1:01

(4) Notwithstanding section 21 (*e*) of the General Interpretation Act, the regulations or rules made under this section may create offences in respect of any contravention of the regulations or rules and may, for any such offences, impose a fine of up to two hundred and fifty thousand Kwacha (K250,000) and to imprisonment for two (2) years.

PART XV—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

Transitional provisions

158. At the commencement of this Act—

(*a*) no person shall sink any borehole or use any water pursuant to the provisions of the Mines and Minerals Act without a permit to construct or to drill a borehole issued under section 68 of this Act, and without a licence to extract groundwater issued under section 39;

Cap. 61:01

(*b*) no consent for alluvial or river locations under the provisions of the Mines and Minerals Act shall be given without the prior written approval of the Authority, and any consent given shall be subject to conditions that the Authority may require;

Cap. 61:01

(*c*) reference to the Minister in so far as it relates to issues relating to water resources in the Mines and Minerals Act shall be deemed to be a reference to the Minister under this Part of the Act;

Cap. 61:01

(*d*) the provisions dealing with works and uses existing before the commencement of this Act shall apply to existing permits and rights to use water granted under the Mines and Minerals Act exercised by the Minister and the Authority in accordance with the provisions of this Act.

Notification of existing rights

159.—(1) Every person claiming an existing right shall, within twelve months from the date on which this Act comes into operation, notify the Authority of such claim.

(2) Every existing right shall determine if the person entitled thereto fails to notify the Authority in accordance with subsection (1).

Authority to record existing rights and to issue licence

160.—(1) Where the Authority receives a notification under section 159, it shall carry out investigations to verify the existence of the right and if satisfied shall record such right and issue a licence in respect thereof.

(2) Where an existing right has been recorded and a corresponding licence issued in accordance with subsection (1), the existing right shall be subsumed by such licence and dealt with in the manner prescribed for abstraction licences under Part V.

Application of other relevant laws

161. Wherever the provisions of this Act are inconsistent with the provisions of—

Cap. 60:02 (*a*) the Environment Management Act;

Cap. 66:05 (*b*) the Fisheries Management and Conservation Act;

Cap. 63:01 (*c*) the Forest Act;

Cap. 71:01 (*d*) the Inland Shipping Waters Act;

Cap. 72:01 (*e*) the Waterworks Act;

(*f*) the Mines and Minerals Act; or Cap. 61:01

(*g*) any other written law,

the provisions of this Act shall apply.

Repeal and savings Cap.72:03

162.—(1) The Water Resources Act is hereby repealed.

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

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

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

SCHEDULE

Model Constitution of an Association of Water Users (s. 132)

1. The Constitution of the Association of Water Users:

   There is hereby formed the Association of Water Users (hereinafter referred to as the "Association").

   The Association, including its management committee, shall have the status of a legal person and in that capacity it shall be capable of suing and being sued.

   The liability of any venture of the Association shall be limited.

   The members of the Association shall be villagers, institutions, companies, committees and government authorities or any person natural or legal, as may be users of water from sources located within the area of operation of the Association.

2. The objects of the Association:

   The objects of the Association shall be to—(*delete those not applicable*)

   (*a*) manage, distribute and conserve water from a source used jointly by the members of the Association;

   (*b*) to construct, rehabilitate, operate and maintain any works for the purposes of management of the water resource in its area of operation;

   (*c*) arbitrate in the resolution of conflicts among holders of water abstraction licences and/or effluent discharge permits within its area of operation;

   (*d*) agree by consensus of its members equitable reductions in the quantities of water abstracted from the source under its responsibility in times of drought or other restrictions on resource availability;

(*e*) obtain and operate any water abstraction licence and/or effluent discharge permit or any other permit under the provisions of the Water Resources Act; Cap. 72:03

(*f*) do such other things as may be considered necessary by a majority of its members in order to manage the water resources in its area of operation in a fair and equitable manner in accordance with the intent and provisions of the Water Resources Act. Cap. 72:03

3. The area of operation of the Association:

The area of operation of the Association shall be as shown on the attached map.

4. Annual General Meeting and Extraordinary General Meetings:

An annual general meeting shall be held at least once each year, not more than fifteen months following the previous annual general meeting. An extraordinary general meeting of the Association may be called by five per cent of members giving two weeks notice to the Secretary in writing.

One-third of the full number of members representing no fewer than four from each of the upper and the lower area of the catchment or from each village present shall constitute a quorum.

Voting can be exercised by a member or proxy in favour of another member provided the proxy form is in the hands of the Secretary prior to the meeting.

Decisions at the annual general meeting shall be made by simple majority vote, including decisions on the assessments to be levied of members and on the budget of the Association.

5. Management Committee:

A management committee shall be elected at the annual general meeting of the Association and shall consist of six elected members from among the membership of the Association.

The committee so elected may sue and be sued in the name of the Association for moneys or otherwise, and shall have the powers to bind the Association by contract.

The committee shall collect and receive any moneys due to the Association and pay moneys owed by the Association from time to time and open and maintain a bank account through its authorized officers and submit such annual audited accounts to the Annual General Meeting and to the National Water Resources Authority.

The management committee shall meet not less than once in each quarter of the year and all elected members must be present.

The management committee shall decide by a two-thirds majority vote.

The management committee shall also decide the extent, manner and time of levying the assessments laid down by the annual general meeting of the Association.

The management committee shall appoint and employ such employees as may be necessary to fulfil the purposes of the Association.

6. Liability of members:

The liability of members is limited to the amount of unpaid charges and interest thereon owing by them to the Association.

7. Liability of Association:

The Association shall not be liable for any indebtedness other than that contracted by its management committee in conformity with this constitution.

8. General duties of members:

Each member hereby undertakes with other members and each of them as follows—

(*a*) to pay all assessments levied against him/her by the Association;

(*b*) not to draw from the source more water than the amount specified in the member's abstraction licence, or as determined by the committee if this is the object of the Association, and, in general; and

(*c*) to observe the rules of the Association.

Passed in Parliament this fifth day of March, two thousand and thirteen.

H. H. NJOLOMOLE
for: Clerk of Parliament