

**DRAFT**

**WATER RESOURCES MANAGEMENT AND  
REGULATION BILL**

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# **WATER RESOURCES MANAGEMENT AND REGULATION BILL**

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**GRENADA**

**ACT NO      OF 20[ ]**

**AN ACT** to provide the institutional framework for the sustainable management, conservation, controlled allocation, development, use and regulation of the water resources in Grenada, Carriacou and Petite Martinique, by establishing

the National Water Resources Management Unit and to provide for connected matters.<sup>1</sup>

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives and by the authority of the same, as follows:

## **PART I**

### **PRELIMINARY**

#### **Short title and commencement**

1. (1) This Act may be cited as the

#### **WATER RESOURCES MANAGEMENT AND REGULATION ACT, 202[]**.

(2) This Act shall come into operation on a date to be fixed by the Minister by Order published in the *Gazette* and different days may be appointed by the Minister under this section in respect of different Parts or provisions of this Act.

#### **2. Interpretation<sup>2</sup>**

In this Act -

“abstract” means the process by which water in its natural environment may be artificially removed through a manmade structure or through the process of changing the flow of the water from its usual course to another course;

“abstraction licence” means an abstraction licence granted pursuant to section 32;

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<sup>1</sup> The Consultant has removed the need to provide for a regulatory regime for the delivery of water supply and sewerage services, as the policy decision has been taken, as per the most recent drafting instructions set out in the Report and Matrix submitted, for NAWASA to continue to be the sole supplier of potable water and sewerage services.

<sup>2</sup> In light of the observation made under footnote 1, the definitions which related to the provision of water supply and sewerage services have been removed from the draft Bill. These will be incorporated either in the Amendment to the NAWASA Act or any service agreement which may be entered into between the Commission and NAWASA, which is outside the remit of the scope of works of this Consultancy.

“abstraction licensee” means a person who holds a valid abstraction licence granted pursuant to this Act;

“allocation” means the quantity of water set aside for a specific purpose or that for which an abstraction licensee or permit holder is entitled to take or use for a particular purpose, as specified in the abstraction licence or permit;

“Appeals Tribunal” means the Appeals Tribunal established pursuant to section 54;

“appointed day” hereinafter used in or with reference to a provision of this Act, means the appointed day under section 1 in respect of the provision concerned;

“applicant” means a person who makes an application for an abstraction licence or a permit under this Act;

[“appropriate authority” means the Minister responsible for public utilities or an officer or body having functions under any law over any water resource, or activity situated in a catchment area, and includes an authorised officer, body or institution under any of the following enactments -

- (a) the Forest Soil and Water Conservation Act;
- (b) the Grand Etang Forest Reserve Act;
- (c) the Fisheries Act;
- (d) the Physical Planning and Development Control Act;
- (e) the Public Health Act;
- (f) the Disaster Risk Management Act; and

- (g) any treaty, agreement or convention relating to the management of water resources to which the State is a State Party;]<sup>3</sup>

“aquifer” means a geological structure or formation or an artificial landfill permeated or capable of being permeated permanently or intermittently with water;

[“Authority” means the Water and Sewerage Authority established under the National Water and Sewerage Authority Act;]

“borehole” means any hole, well, excavation or other opening in the ground or any naturally or artificially constructed or improved underground cavity, which could be used, is used, or may be used, for the purpose of intercepting, collecting, obtaining or using groundwater or for disposing of any water or waste below the surface of the ground, or which extends to an aquifer;

“Bureau of Standards” means the Bureau of Standards established pursuant to the Standards Act;

“catchment” means a geographical area which naturally drains into a water resource and from which the water resource receives surface or groundwater flow that originates from rainfall;

“Commission” means the Public Utilities Regulatory Commission, (PURC) established pursuant to section 4 of the Public Utilities Regulatory Commission Act;

“Director” means the Director of the Water Resource Management Unit, appointed pursuant to section 8;

“dispose” includes transfer, destroy, sell, abandon or dismantle;

“domestic use” in relation to the abstraction of water, means the use of such water for –

- (a) drinking, washing, cooking and sanitary purposes in connection with a residence; or

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<sup>3</sup> Please ensure that the relevant legislation is listed correctly. Note also that the definition was redrafted to provide more clarity.



- (b) subsistence gardening, the watering of stock or pen keeping, in connection with a household; and

excludes the use of such water for commercial purposes;

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

“effluent” means waste water or fluid of domestic, agricultural or industrial trade or other origin, treated or untreated and discharged directly or indirectly into a water source;

“environment” means all aspects of a person’s surroundings, including the physical, biological, economic, cultural and social aspects of such surroundings;

“environmental flow” means the water provided within a water resource to maintain ecosystems and their benefits, where there are competing users and where flows are regulated by means of waterworks or management constraints;

“functions” includes powers and duties;

“gathering ground” means any area of land which collects rainwater and declared to be a gathering ground under section 14;

“Government” means the Government of Grenada, Carriacou and Petit Martinique;

“ground water” means all water naturally stored or flowing below the surface of the ground and not apparent on the surface of the ground and includes water occurring or obtaining in or obtained from any bore or aquifer;

“management” in relation to a water resource includes –

- (a) planning the sustainable development of the water resource and providing for the implementation of the Master Plan or any other plan relating thereto; and

- (b) promoting and carrying out the necessary functions to ensure the rational and optimal development, utilization, protection, conservation, and control of the water resources;

“Master Plan” means the National Water Resources Management Master Plan prepared in accordance with in Part III;

“Minister” means the Minister responsible for public utilities;

“owner” in relation to any building or land, means a person, other than a mortgagee not in possession, who for the time being –

- (a) is entitled to dispose of the right of ownership of the building or land, whether in possession or reversion; or
- (b) holds or is entitled to the rights and profits of the building or land under a lease or agreement, where the unexpected term thereof exceeds [ ] years;

and includes, where the person referred to in paragraph (a) or (b) is absent or under any disability, the agent of such person or, if there is no such agent, the occupier of the building or land;

“pollution” in relation to water means any direct or indirect alteration of the physical, thermal, chemical or biological properties of water so as to make it –

- (a) less fit for any biological purpose for which it is or may reasonably be expected to be used; or
- (b) harmful or potentially harmful to –
  - (i) the welfare, health and safety of human beings;
  - (ii) any aquatic or non-aquatic life or property or the environment;

“prescribed” means prescribed by Regulations;

“raw water” means water which does not meet the quality standards for potable water set under any law in force in the State;

“raw water supply service” includes the, storing, transporting and distribution of raw water and the offering for sale or the sale of raw water;

“reserve” in relation to a water resource, means the quantity or quality of water required to –

- (a) satisfy the basic human needs of all the people who are or may be supplied from the water resource; and
- (b) protect aquatic ecosystems, in order to secure ecologically sustainable development and use of the water resource;

“Regulations” means Regulations made pursuant to section 55;

“State” means the State of Grenada, Carriacou and Petite Martinique;

“subsistence garden” means a garden, used in connection with a dwelling or group of dwellings, for the subsistence of the residents of the dwelling, the produce of which is predominantly consumed by the residents;

“Unit” means the Water Resources Management Unit established pursuant to section 7;

“water” means water in its natural state, including--

- (a) water flowing or situated upon the surface of any land;
- (b) water flowing or contained in any natural course for water or any lake or spring, whether or not it has been altered or artificially improved;
- (c) estuarine or coastal water;
- (d) groundwater;

- (e) rainwater; and
- (f) water contained by waterworks acquired, constructed, improved or operated for the purposes of providing a water supply service;

“watercourse” includes all rivers, streams, ditches, gullies, culverts, dykes and passages through which water flows, whether on the surface or underground, except water mains and sewers;

“water control area” means an area declared a water control area under section 41;

“water resource” includes –

- (a) any surface of any land upon which water is situated or is flowing; and
- (b) any water course;

“waterworks” has the meaning assigned to it under section 2 of the National Water and Sewerage Authority Act;

### **3. Objects of Act**

(1) The object of this Act is to ensure that the State’s water resources are managed, developed, protected, conserved, allocated and used in a manner that is consistent with, or conducive to, the fundamental principles set out in section 5.<sup>4</sup>

(2) In order to achieve the objective, set out in subsection (1), suitable institutions, with appropriate stakes and gender representation shall be established.

### **4. Statement of Policy**

(1) It is hereby declared to be the policy of the Government to –

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<sup>4</sup> In light of the fundamental principles provided under Clause 5 of the Bill, it appears more apt to link the objectives of the Act to the detailed principles as provided thereunder.

- (a) ensure the orderly and co-ordinated development and use of the State's water resources; and
- (b) conserve and protect the water resources of the State for the benefit of present and future generations of Grenadians.<sup>5</sup>

(2) The Minister shall, in keeping with the policy requirements under subsection

(1) –

- (a) promote a national policy for the provision of water in the State and ensure the effective execution of that policy by the entities responsible thereof;
- (b) ensure that the discharge of the functions with respect to the provision of water supplies, including the augmentation, distribution and proper use of water resources, are carried out by the unit in such manner so as to secure the effective execution of the policy.

(3) The Minister, acting on the recommendation of the [Commission] [Unit], shall collate and publish information from which assessments can be made of the actual and prospective demand for water and the actual and prospective water resources in the State.

## **PART II**

### **WATER RESOURCES MANAGEMENT AND ADMINISTRATION**

#### **5. Fundamental Principles governing the management of water resources**

(1) In addition to the Statement of Policy specified under section 4, the provisions of this Act shall be interpreted and be reasonably and fairly applied in a manner that is consistent with and promotes the following fundamental principles –

- (a) water resources shall be managed in an integrated and sustainable manner;

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<sup>5</sup> Paragraph (c) has been deleted as the Bill will no longer provide for the regulation of water supply and sewerage services.

- (b) water is a basic human need and, as such, domestic use shall enjoy priority of allocation use;
- (c) the environment is a water user and shall enjoy second priority of allocation use to the human need;
- (d) there shall be equitable access to water by every person, in support of a healthy and productive life;
- (e) water shall be used efficiently, sustainably and beneficially, in the public interest;
- (f) there shall be no private ownership of water and no authorisation for its use shall be in perpetuity;
- (g) the State shall be the trustee of the country's water resources and shall ensure that water is allocated equitably, and managed and controlled in a sustainable and equitable manner, in the public interest, while promoting economic, environmental and social values;
- (h) there shall be equity among genders in accessing water resources and, in particular, women shall be empowered and fully participate in issues and decisions relating to the sustainable development of water resources and in the use of water;
- (i) the water resources of the State shall be managed and controlled sustainably, beneficially, reasonably and equitably for the needs of the present and future generations; and
- (j) the management and utilization of water resources shall take into account climate change adaptation.

(2) A person exercising jurisdiction under this Act shall, in relation to any decision or order, or the performance of any function, be guided by the following principles of sustainable integrated water resources management and sustainable development -

- (a) the precautionary principle;
- (b) the polluter pays principle;
- (c) the principle of eco-system integrity;
- (d) the principle of public participation in the development of policies, plans and processes for the management of the water resources; and
- (e) the principle of common but differentiated responsibilities.

## **6. Promotion of Master Plan**

A person who exercises any function under this Act or any other enactment having a bearing on the provision of the management of water resources, shall strive to promote and have regard to the Master Plan developed pursuant to the provisions of Part II, in respect of the management of water resources.

## **7. Establishment of Unit**

(1) There is hereby established, a department of Government to be called the Water Resources Management Unit, which shall be responsible for managing the water resources of the State, in accordance with the provisions of this Act and, subject to the provisions of this Act, the Unit shall have sufficient independence and autonomy to effectively carry out its functions.

(2) The Unit shall be under the portfolio of the ministry responsible for utilities and the Director shall, subject to the provisions of this Act, be the principal advisor to the Government on all matters pertaining to the management of water resources.

## **8. Appointment of Director and staff of Unit**

(1) For the due administration of the Unit, there shall be appointed by [the Public Service Commission] -

- (a) a Director, who shall be responsible for the day-to-day management and operation of the Unit; and

- (b) such other officers as may be necessary for the efficient carrying out of the functions of the Unit.

(2) The Director may, in writing, delegate to officers of the Unit, such functions as the Director considers appropriate, with the exception of the power to delegate.

(3) The Director shall not be divested of any function delegated or assigned under subsection (2) and may at any time –

- (a) withdraw any delegation or assignment made under that subsection; or
- (b) vary or set aside any decision made under such delegation.

(4) Before delegating or assigning a function under subsection (2), the Director shall consider the capacity of the officer to exercise or perform the function that is to be assigned or delegated.

## **9. Commission to have regulatory oversight of the Unit.<sup>6</sup>**

The Commission is hereby declared to have regulatory oversight of the Unit and, in that regard, shall –

- (a) ensure that the policies of the Government in relation to the management of water resources are implemented by the Unit in an effective and efficient manner;
- (b) advise the Unit on such matters related to water resources management, as the Director may refer to the Commission or as the Commission sees fit;
- (c) oversee and monitor the preparation and implementation of the Master Plan and any other plan or order developed by the Unit pursuant to this Act;
- (d) monitor the grant of abstraction licences and permits by the Unit;

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<sup>6</sup> Subclause (2) of this clause has been deleted. The functions of the Commission in respect of the Unit are already clearly provided for in this Clause.



- (e) provide advice to the Director on matters related to the management of water resources; and
- (f) review reports requested by the Commission from the Unit and provide such technical, legal or administrative guidance as it deems fit or as may be required.

## **10. Functions of the Unit**

(1) The primary function of the Unit shall be to promote and adopt a dynamic, gender-sensitive, integrated, interactive, participatory and multi-dimensional approach to the management of water resources, which includes human, land, environmental and socio-economic considerations.

(2) Without prejudice to the generality of subsection (1) and subject to the provisions of this Act, the Unit shall -

- (a) advise the Minister on matters of policy relating to the management of water resources;
- (b) identify and protect potential sources of water;
- (c) conserve, protect and preserve the water resources and take into account the environment, climate change and the challenges posed by climate change by -
  - (i) measuring, minimizing and managing the impacts of climate change on the water resources, using effective adaptation approaches;
  - (ii) being proactive in adopting watershed protection, wetlands and infrastructure programmes;
  - (iii) developing tools, standards, guidelines and best practices to understand and measure the nature and magnitude of chemical, biological and physical effects of climate change on water resources;

- (iv) applying environmental science, technology and information to guide and support proactive climate change planning and management;
  - (v) ensuring extensive participation in intergovernmental and inter-agency research planning related to climate change;
  - (vi) investing in climate change education on issues related to water and supporting the sharing of information about Government's responses to the impacts of climate change;
- (d) plan for and ensure the sustainable and rational utilization and management of water resources based on public needs and priorities within the framework of national economic developmental policies;
- (e) provide access to water resources of acceptable quantity and quality for various purposes;
- (f) in consultation with the institution responsible for national statistics, establish and maintain an information system, which shall be accessible to the public, and for which regulations shall prescribe the content to be included therein, and such information system shall include relevant hydrological, hydrogeological, meteorological, climatological, water quality, water storage and supply and use data, and relevant information on potentials for the use of water;
- (g) provide public forecasts, projections and information on water resources;
- (h) receive and consider applications for abstraction licences and permits and make recommendations to the Minister for the approval of such applications and the suspension or revocation of such abstraction licences and permits;
- (i) promote public awareness concerning the management of water resources;
- (j) undertake the preparation of the Master Plan and such other plans as the Unit may deem necessary in the carrying out of its functions;

- (k) allocate water resources in conformity with the provisions of this Act;
- (l) protect and control the quality and quantity of water resources in accordance with the provisions of this Act;
- (m) advise the Commission in relation to water related emergencies pursuant to section 24;
- (n) advise the Minister in relation to gathering grounds pursuant to section 14;
- (o) exercise planning functions as provided under this Act in relation to the Master Plan and such other plans as it may deem necessary in relation to its functions;
- (p) prepare and submit to the Commission for approval, annual reports on the state of the water resources in the State;
- (q) enforce and implement the provisions of this Act; and
- (r) perform such other functions relating to the management, conservation, controlled allocation, development, use and regulation of water resources as may be assigned to it by or under this Act or any other enactment.

(3) The Minister may, after consultation with the Commission and the Director, give to the Unit such directions of a general character as to the policy to be followed by the Unit in the carrying out of its functions as appear to the Minister to be necessary in the interests of the State and the Unit shall give effect to any such directions.

(4) The Unit shall liaise, consult, collaborate and co-operate with all relevant appropriate authorities, in the management of water resources and may, for such purposes, have joint programmes, plans, strategies and policies, taking into account any national policy with respect to water resources.

(5) Pursuant to subsection (4), the Director shall promote the development of procedures and protocols with the relevant appropriate authorities and other government departments and agencies, to promote the management of water resources and shall ensure that these procedures and protocols are implemented and reviewed regularly.

(6) Where -

- (a) the Unit reasonably suspects that an abstraction licensee or a permit holder is in breach of any of the provisions of this Act, any Regulations made hereunder, or an abstraction licence or a permit held by an abstraction licensee or permit holder;
- (b) an allegation of breach is made to the Unit against an abstraction licensee or a permit holder;

the Unit may conduct such investigation as it considers necessary in relation to the abstraction licensee or permit holder and may do any of the following -

- (A) compel the production of documents and records in the custody or control of the abstraction licensee or permit holder;
- (B) compel the appearance of an employee of an abstraction licensee or permit holder or any other person, for the purpose of ascertaining compliance with this Act or the abstraction licence or permit;
- (C) inspect, examine or make copies of any document or record in the possession of the abstraction licensee or permit holder, that is relevant to the abstraction licence held by the abstraction licensee or the permit held by the permit holder;
- (D) require the verification of income and all other matters pertinent to an abstraction licence or permit;

(E) inspect any premises for the purpose of ascertaining compliance with the provisions of this Act, any regulations made hereunder or an abstraction licence or permit; or

(F) seize or remove any document or records relating to the abstraction licence or permit, for the purpose of examination or inspection.

## **11. Revenue of Unit**

(1) For the proper discharge of its functions, the funds and resources of the Unit shall consist of –

- (a) such sums allocated annually for the purpose in the Estimates of Revenue and Expenditure; and<sup>7</sup>
- (b) all other sums or property, which may in any manner become payable to or vested in the Unit in respect of any matter incidental to its functions.

(2) All sums received by the Unit in respect of application fees, licence fees and permit fees and other charges imposed by the Unit under this Act shall be paid into the Consolidated Fund.

(3) Notwithstanding the provisions of any other enactment, the Unit shall be exempt from the payment of any duties and taxes, in relation to its functions.

## **12. State rights in water<sup>8</sup>**

(1) Notwithstanding the provisions of any other enactment, the property in, and the right to, the use and flow of all water, at any time in the State, shall be for all purposes, vested in the State, except only in so far as private rights have been established under abstraction licenses and permits granted under this Act.

(2) The right to water may not be acquired by prescription.

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<sup>7</sup> The term “and /or” cannot be used in legislation as it creates uncertainty in the interpretation of the provision. Based on the comments made in relation to this provision, it appears that “and” is the appropriate word to be used in this regard.

<sup>8</sup> In light of the query raised in relation to the term “water”, see revised definition of the term in clause 2.

### **13. Preparation of Master Plan**

(1) Subject to the provisions of this section, the Director shall cause to be prepared by the Unit and submitted to the Commission for approval, a draft Master Plan on water resources for the State.

(2) The Commission shall not approve the draft Master Plan or any revision thereof pursuant to subsection (7) unless the Commission has advised the Minister in respect thereof.

(3) For the purpose of preparing the draft Master Plan, the Unit may -

- (a) collect from any source, data and information relating to water resources, and to water resources generally;
- (b) consult with and obtain data and information relating to water resources from such person or organization or from any agency or department of Government or local authority, as the Director thinks appropriate; and
- (c) undertake such studies and investigations and carry out such other activities as may be necessary or relevant to the preparation of the draft Master Plan.

(4) In preparing the draft Master Plan, the Director shall ensure that such steps as are necessary to co-ordinate the Master Plan with the plans of any department or agency of Government for national or regional economic and physical development and shall have regard to such plans relating to the development of water resources by non-state actors.

(5) The Director shall ensure that the draft Master Plan -

- (a) identifies objectives for the management of water resources, taking into account all relevant considerations, including the desirability of economic efficiency, the protection of health, safety and welfare of individuals, the protection or encouragement of economic activity and the protection of the environment and the enhancement of environmental values;

- (b) identifies, describes and lists in relation to the State-
    - (i) the occurrence, quantity, quality and availability of water;
    - (ii) the current uses of water; and
    - (iii) the activities which are dependent or affected by, or related to water and its uses;
  - (c) identifies and describes the projected needs for water and recommends projects, programmes and other steps which, in view of such needs, should be undertaken in respect of the development of water resources and the control, abstraction and storage of water and the supply, distribution, drainage and disposal thereof;
  - (d) having regard to the current and projected needs for water identified pursuant to paragraph (c) and the projects and programmes and other steps recommended thereunder, indicates the objectives in relation to water quality whether in respect of the State generally or in respect of regions thereof, and the programmes designed to achieve these objectives;
  - (e) indicates and evaluates the ways in which all projects and programmes proposed in the draft Master Plan in respect of the current and projected use of water will achieve the objectives identified pursuant to paragraph (a).
- (6) If the Commission is satisfied with the draft Master Plan, the Commission shall –
- (a) subject to subsection (7), and by notice published in the Gazette, declare the draft Master Plan to be the approved Master Plan and shall specify in such notice, the date on which the Master Plan takes effect;
  - (b) cause the Master Plan to be made available to all departments and agencies of Government and to local authorities and any body which the Commission thinks may be affected by the Master Plan, in view of

the nature of the activities in which the body is engaged; and

- (c) cause a notice to be published in at least one newspaper in weekly circulation in the State stating that the approved Master Plan is available to the general public for inspection at the Unit, on payment of the prescribed fee.

(7) The Chairman of the Commission shall ensure that a copy of the Master Plan is submitted to the Minister who shall, not later than [ ], upon receipt of the Master Plan, cause the Master Plan to be tabled in Parliament and the Master Plan shall be subject to affirmative resolution.

(8) The Director shall cause to be prepared by the Unit and submitted to the Commission for approval, an annual revision of the whole or any part of the Master Plan, which is for the time being in effect pursuant to this section and for the purposes of such revision, the Director and the Commission shall have the like functions as are exercisable under this section in relation to the draft Master Plan.

(9) The Minister shall, not later than six months upon receipt of the completed annual revision of the whole or any part of the approved Master Plan, cause a copy of that revision to be tabled in Parliament and the approved Master Plan shall be subject to affirmative resolution.

(10) A failure on the part of any person to observe any provision of the Master Plan, which is in operation, shall not by itself render the person liable to any proceedings; but in any matter before the Unit, any provision of the Master Plan which appears to the Unit to have been breached, shall be taken into account by the Unit in dealing with the matter.

(11) All ministries and departments of Government and statutory bodies shall take cognisance of the Master Plan in performing any function that may touch and concern the water resources, water supply or sewerage services.

### **PART III**

## **WATER QUANTITY AND WATER QUALITY MANAGEMENT**

### **14. Gathering grounds**



(1) All areas of land on which water is collected for the purposes of water works and which are declared to be a protected forest or protected reserve pursuant to the provisions of the Forest, Soil and Water Conservation Act, are hereby declared to be gathering grounds under this Act.

(2) The Minister, acting on the advice of the Director shall, as soon as practicable after the appointed day, publish a list specifying the boundaries of all areas of land declared to be gathering grounds in accordance with this section.

(3) Where the Minister, acting on the advice of the Director, is satisfied that an additional gathering ground is required for the purposes of extending or augmenting the water supply, the Minister shall cause the limits or areas thereof to be marked out and shall, subject to subsection (5), by order published in the Gazette and in at least one newspaper in circulation in the State, specify the boundaries of the area and declare the area to be a gathering ground.

(4) Where an order is published pursuant to subsection (3), the land declared to be a gathering ground shall be acquired by the Government and compensation shall be payable to the owner of the land in accordance with the provisions of the [Land Acquisition Act].

(5) No area of land within the limits of a gathering ground shall be granted, devised or otherwise disposed of except in accordance with such conditions as may be laid down by the Minister.

(6) All areas which were declared to be protected areas under the National Water and Sewerage Authority Act, shall continue to be protected areas under the management of the Unit, subject to the provisions of this Act.

(7) All areas which were declared as catchment areas under the National Water and Sewerage Authority Act shall continue to be catchment areas under the management of the Unit, subject to the provisions of this Act.

## **15. Protection of defined area around gathering grounds**

(1) The Minister, acting on the advice of the Director, Chief Forestry Officer and the Sanitary Authority, may, by Order published in the *Gazette* and for the purpose of protecting the quantity or quality of water in any gathering ground –

- (a) define an area of land around a gathering ground, which is in need of protection;
- (b) prohibit or regulate the doing, within that area of land, of any act specified in the Order; and
- (c) construct mechanisms to restrict access to that area of land.

(2) Where an Order is published in the *Gazette* pursuant to subsection (1), the Government shall pay adequate compensation to the owner of the land for the loss of the use prohibited or regulated.

(3) Notwithstanding subsection (1)(b), the acts prohibited or regulated by the Order made by the Minister pursuant to this section shall include –

- (a) the placing, depositing or discharging, within the area, of material of any kind that is likely to impair the quality, or significantly reduce the quantity, of the water or the storage capacity of the gathering ground; or
- (b) other acts or omissions as may be considered likely to impair the quality, or significantly reduce the quantity, of the water or the storage capacity of the gathering ground.

(4) A person who contravenes an Order made pursuant to this section commits an offence and shall be liable on summary conviction before a Magistrate to a fine not exceeding [ ] or to imprisonment for a term not exceeding [ ].

## **16. Environmental flow level or volume of water resource**

(1) The Director shall cause to be specified, where it is appropriate so to do, and after consultation with the Commission and the appropriate authority, the environmental flow or volume of any water resource, taking in to consideration any relevant use of water.

(2) Where a specification is made under subsection (1), it shall set out -

- (a) the control points at which the flow, level or volume of the water is to be measured;
- (b) the method of measurement which is to be used at each control point;
- (c) the flow, level or volume which is to be the environmental flow, level or volume at each control point; or, where appropriate, the acceptable flow, level or volume at each control point for different areas, times and periods.

(3) The Unit shall provide -

- (a) at the request of any person, such information relating to the flow, level or volume of any water resource;
- (b) reasonable facilities for the inspection by any person of any records which document the flow, level or volume of any water resource; and
- (c) for the making of copies of, or extracts from, any records relating thereto, upon payment of the prescribed fee.

## **17. Reserve**

(1) Subject to subsections (2) and (3), the Director shall, after consultation with the Commission, by notice published in the *Gazette* and in a newspaper in weekly circulation in the State, specify the reserve for all or part of a water resource.

(2) Before determining and specifying a reserve under subsection (1), the Director shall –

- (a) publish a notice in the *Gazette* and in a newspaper in weekly circulation in the State–
  - (i) setting out the proposed reserve;
  - (ii) inviting written comments to be submitted, on the proposed reserve and specifying an address to which and a date before

which comments are to be submitted, which date may not be earlier than thirty days after publication of the notice; and

- (b) consider all comments received within the date specified in paragraph (a) (ii).

(3) Every person shall observe the Reserve as specified under this section when exercising any function under this Act.

#### **18. Ambient standards, water resource quality and monitoring and pollution control**

The Unit shall, in collaboration with the appropriate authority -

- (a) recommend to the Bureau of Standards, ambient water quality standards and ensure that the standards are maintained; and
- (b) monitor the water resource quality and prevent and control the pollution of water resources.

#### **19. Declaration of water management area**

(1) The Minister, acting on the advice of the Unit may, by notice published in the *Gazette*, declare an area as a water management area for the purpose of protecting any water resource, watershed, wetland, environment or ecosystem at risk of depletion, contamination, extinction or disturbance from any source, including aquatic and terrestrial weeds, and such notice shall include -

- (a) a description of the purposes for which the area is so defined;
- (b) the geographic boundaries of the area; and
- (c) the limitations and prohibitions applicable within the area.

(2) The Minister shall not declare any area as a water management area without giving the owner of any land within the proposed water management area, the opportunity to make representations regarding the need for the water

management area, the proposed boundaries of the area or the land use, limitations and prohibitions proposed for the area.

(3) The boundaries of any water management area shall be determined in a manner which takes competing uses of the area concerned into consideration.

(4) If the declaration of a water management area results in or requires the acquisition of land, such acquisition, including any compensation, shall be conducted in accordance with the [Land Acquisition Act].

## **20. Effect of declaration of water management area**

(1) A person shall not undertake or cause to be undertaken, any activity that impairs or conflicts with the purposes for which a water management area is declared under section 19.

(2) Without prejudice to the generality of subsection (1), the Minister may prescribe limitations to be observed within a water management area, which shall include, among others, a prohibition or limitation -

- (a) on the abstraction of water;
- (b) on the erection of any structures; or
- (c) on the discharge of waste.

(3) If a limitation under subsection (2) (a) or (c) affects an abstraction licence issued under this Act, the limitation shall, to the extent possible, be assessed and distributed proportionately among all affected abstraction licensees.

## **21. Amendment of declaration of water management area and withdrawal of declaration**

The Minister may, acting on the advice of the Unit and by notice published in the *Gazette*-

- (a) amend the geographic boundaries of a water management area, or any prohibition or limitation applicable to the area, if circumstances in respect of the area change or so require; or

- (b) withdraw a declaration of a water management area, if the circumstances under which the declaration was made no longer exist.

## **22. Pollution of water resources**

(1) A person who discharges or disposes of –

- (a) any organic or inorganic matter, including water containing such matter into a water resource, whether directly or indirectly or through drainage or seepage, so as to cause pollution of the water resource; or
- (b) any effluent or waste water, which has been produced by, or results from, the use of water for any purpose, into a water resource, whether directly or indirectly or through drainage or seepage;

commits an offence and shall be liable on summary conviction before a Magistrate to a fine not exceeding [ ] or to imprisonment for a term not exceeding [ ].<sup>9</sup>

(2) It shall be a defence to a charge under subsection (1) where the person so charged provides evidence to show that the person exercised due care and took all reasonable steps necessary to prevent the discharge or disposal.

(3) In addition to any penalty imposed under subsection (1), the court may order a person convicted to –

- (a) take such remedial action, as the Court may consider necessary;
- (b) reimburse the Unit for any remedial action taken by the Unit; and
- (c) pay compensation for any damage caused.

## **23. Steps to control or prevent water pollution**

(1) Where the Unit, after consultation with the appropriate authority, is satisfied that the activities of any person may lead or give rise to, the pollution of a water resource, the Director may, by notice in writing, order the person to take

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<sup>9</sup> Note the proposed amendment to this Clause in light of the query made.

such measures, within a specified period as may be directed in the circumstances, including all or any of the following -

- (a) ascertain whether the water polluted is potable or not;
- (b) the installation of devices to test and monitor the quality and quantity of gases, liquids or solids in any water, effluent or wastewater;
- (c) the sinking of boreholes to test and monitor the quality and quantity of groundwater;
- (d) the provision of facilities for the taking of samples by the Unit;
- (e) the testing or monitoring of any water, effluent or wastewater and the submission to the Unit, of the results of such testing and monitoring;
- (f) the taking of reasonable measures for the control or prevention of pollution;
- (g) the construction or installation of waterworks or devices for the control or prevention of pollution; or
- (h) the preparation and submission to the Unit of a report providing information concerning the person's existing or proposed activities.

(2) Subject to subsection (3), a person who without reasonable excuse, fails to comply with an order made under subsection (1) commits an offence and shall on summary conviction before a Magistrate be liable to a fine not exceeding [ ] or to term of imprisonment not exceeding [ ].

(3) In addition to the penalty imposed under subsection (2), the court may order the person concerned to –

- (a) take any remedial action, as the Court may consider necessary;
- (b) reimburse the Unit for any remedial action taken by the Unit; and
- (c) pay compensation for any damage caused.

(4) A person who is aggrieved by a requirement to take any measures under subsection (1) may appeal to the [Minister] [Commission], within thirty days of the directive of the Unit.<sup>10</sup>

## **24. Water-related emergencies**

(1) Where the Commission acting on the advice of the Unit, is satisfied that -

- (a) the flow of water or the level of water in any water resource in an area has fallen or is likely to fall below the normal level of the water resource as prescribed;
- (b) the flow of water or the level of water in any water storage works in an area has fallen or is likely to fall below the level specified in an abstraction licence;
- (c) the abstraction of water from any borehole in an area is likely to diminish unduly the groundwater in the area or adversely affect the flow of any water in any water resource; or
- (d) certain circumstances, such as an exceptional shortage of rain, or contamination of a water resource, have brought about a shortage of water in an area;

the Commission shall forthwith, by order published in the *Gazette* and one newspaper of weekly circulation in the State and by any other media, declare a water-related emergency and direct the Unit to take any action specified under subsection (2).

(2) Pursuant to subsection (1) the action which the Commission may direct the Director to take include –

- (a) permitting the taking of water from any other source specified in the order;

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<sup>10</sup> Given that the policy is to have the Commission provide regulatory oversight of the Unit, please consider whether it may be better policy to have the appeal procedures effected through the Commission, which already has its established appeal procedures which may be expanded in this regard.



- (b) prohibiting or limiting the use of water for any purpose specified in the order;
- (c) prohibiting or limiting the taking by any person of water from a source specified in the order if, the Commission is satisfied that the taking of water from that source depletes or otherwise affects the supplies available to the public;
- (d) prohibiting any activity which may cause the contamination of the water; or
- (e) any other matter as appears to the Commission, acting on the advice of the Director, to be expedient to meet the water-related emergency.

(3) An Order made under subsection (1) shall be revoked by the Commission by order published in the *Gazette* and in at least one newspaper in weekly circulation in the State and by any other media, as soon as practicable after the deficiency or threatened deficiency is rectified or removed.

(4) A person who contravenes a provision of an Order made pursuant to subsection (2) (b), (c) or (d) commits an offence and shall on summary conviction before a Magistrate be liable to a fine not exceeding [ ] or to imprisonment for a term not exceeding [ ].

## **PART IV**

### **ABSTRACTION OF WATER**

#### **25. Private use of water**

(1) Notwithstanding anything to the contrary in any existing enactment, the abstraction and use of water in the State and the construction of any works for such abstraction and use, shall be governed by the provisions of this Act, and accordingly, nothing in any existing enactment shall be construed as derogating from any provision made by, or pursuant to, the provisions of this Act.

(2) Subject to sections 24 and 43, the owner of any land and the family and employees of the owner, shall be entitled to abstract and use any water within the

boundary of that land for domestic use; provided that such abstraction or use does not compromise the quality or quantity of the water supply.

(3) The rights under subsection (2) shall not extend to the intentional blocking of access to water by any person.

## **26. Requirement for abstraction licence**

(1) Subject to subsection 25 (2), a person shall not –

(a) abstract and use water; or

(b) construct or alter or cause to be constructed or altered, any works for the abstraction and use of water,

except under and in accordance with a valid abstraction licence granted under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall on summary conviction before a Magistrate be liable to a fine of not exceeding [ ] or to imprisonment for a term not exceeding [ ].

(3) An abstraction licence granted pursuant to this Part shall not have the effect of dispensing with the necessity of obtaining any other permission in relation to the abstraction works, where such permission is required under any law in force in the State.

## **27. Abstraction licence as of right**

A person who has been abstracting water for a continuous period of twenty-four months prior to the appointed day shall, subject to section 25, be entitled, on application made to the Unit in accordance with section 28, within six months of the appointed day, to the grant of an abstraction licence for a period which expires one year after the appointed day.<sup>11</sup>

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<sup>11</sup> In respect of the query raised regarding this provision, the intent of this provision is misconstrued. Clause 34 deals with the period for which an abstraction licence remains valid, having been granted in accordance with Clause 30. This Clause gives a person who has been abstracting water prior to the appointed day, the period of six months to make an application under this Act, to be granted a licence thereunder. The term of the licence thereafter will be subject to clause 34. If the concern is that six months is not sufficient time to allow for

## **28. Application for abstraction licence**

(1) A person who wishes to abstract water for use other than the use to which section 25 (2) applies, shall make an application to the Minister, through the Unit for an abstraction licence, in the prescribed form, accompanied by the prescribed application fee.

(2) An application under subsection (1) shall include -

- (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 name of the owner 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 the waterworks;
- (i) a description of the proposed treatment 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 waste or return flow resulting from application of the abstracted water

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compliance, then a time period needs to be proposed. However, it cannot be five or fifteen years as is currently proposed, in light of the mischief of this provision.

to beneficial use and a description of the location where any waste or return flow is expected to enter a water resource;

- (k) an environmental impact analysis of the proposed abstraction of water on the environment and the existing water users and water resources; and
- (l) any additional information, which the Unit may require.

(3) Where an abstraction licence is required pursuant to this section and the use of the water to which that abstraction licence relates will or is likely to result in the discharge of effluents, then, an application shall also be made to the relevant authority for a licence to discharge such effluents and a copy of the approval for the discharge of effluents, from the relevant authority, shall accompany the application for the abstraction licence.

## **29. Recommendation by Unit**

(1) Subject to subsections (2) and (3) and section 27, where an application is submitted to the Unit pursuant to section 28, the Unit shall consider the following criteria, prior to making a recommendation for the grant or refusal of an abstraction licence to the Minister –

- (a) whether the proposed abstraction and use of water are consistent -
  - (i) with the objective of the Act as set out in section 3 and the fundamental principles governing the management of water resources as set out in section 5;
  - (ii) with the Master Plan and any other order or declaration made under this Act, which may be applicable;
  - (iii) pursuant to section 17, the reserve specified for the area for which the abstraction licence is sought;
- (b) the impact of the proposed abstraction upon existing water users, water resources and the water reserved or allocated for environmental use;

- (c) the safe yield of the aquifer from which the abstraction is proposed, if the application is for the abstraction of groundwater;
- (d) the conformity of the proposed use with efficient water management practices;
- (e) the likely effect of the proposed abstraction on the quality of any water resource, and on the aquatic ecosystems dependent on the water resource;
- (f) the need to ensure the efficient and beneficial use of water resources; and
- (g) any additional criteria, which may be prescribed.

(2) The Unit may, within fourteen days of the receipt of an application, request additional information from the applicant for the purpose of considering the application.

(3) Where the Unit makes a request for information pursuant to subsection (2), the applicant shall submit that information within fourteen days of the request or within a further period of time granted and specified in writing by the Unit.

(4) The Unit shall not unreasonably refuse to give a further time period pursuant to subsection (3).

(5) The Unit shall submit a recommendation for the grant or refusal of an abstraction licence to the Minister, within twenty-eight days of the application being made or information requested pursuant to subsection (2) being submitted, as the case may be.

### **30. Grant or refusal of abstraction licence**

(1) In accordance with a recommendation made pursuant to section 29, the Minister shall grant or refuse an abstraction licence and shall, within fourteen days of the receipt of the recommendation, notify the applicant in writing, of the grant or the refusal and provide reasons in the case where the application is refused.

(2) Where the Minister grants or refuses an abstraction licence contrary to a recommendation made by the Unit, the Minister shall also give reasons, in writing, for such grant or refusal.

(3) A person aggrieved by the decision of the Minister pursuant to subsection (1) shall have the right of appeal in accordance with section 54.

### **31. No recommendation or notice**

(1) If no recommendation is made for the grant or refusal of an abstraction licence by the Unit to the Minister within the period specified in section 29(5), or if no notification is given by the Minister to the applicant within the fourteen day period specified in section 30, the applicant shall have the right to make a case before the Unit and the Unit shall hear the case following an application to the Unit by the applicant.

(2) The application for a hearing before the Unit shall be in the prescribed form.

(3) Where, after a hearing pursuant to subsection (2) -

(a) the application is refused, or

(b) the Unit fails to make a recommendation, or the Minister fails to give a notice within fourteen days of the hearing;

the applicant shall have the right to appeal in accordance with section 54.

### **32. Grant and form of abstraction licence**

(1) An abstraction licence shall be granted on payment of the prescribed abstraction licence fee to the Unit and be in the prescribed form and shall specify

—

(a) the name of the person to whom the abstraction licence is granted;

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

(c) the water use or uses for which the abstraction licence is granted;

(d) the conditions subject to which the abstraction licence is granted;

- (e) the frequency of review of the licence under section 37;
- (f) the duration of the abstraction licence;
- (g) the fact that the abstraction licence is subject to periodic review, suspension, amendment or revocation in accordance with the provisions of this Act; and
- (h) any other matter which may be prescribed.

(2) It shall be an implied term of every abstraction licence granted under this Act that the Minister may, by notice in writing addressed to the abstraction licensee, impose such restrictions as the Minister, acting on the advice of the Unit, deems necessary, where an order is made pursuant to section 24 declaring that any of the circumstances listed thereunder exists.

(3) Where in relation to the grant of an abstraction licence, any condition is imposed in relation to the construction of works, the fact that the Minister, acting on the advice of the Director, is satisfied that the works have been properly constructed shall not operate –

- (a) to imply a guarantee by the Government or the Minister that the works have been properly designed; or
- (b) to support or justify any claim against the Government or the Minister or an officer of the Unit, in connection with such works.

(4) The conditions of an abstraction licence may require that, on grant of the abstraction licence and at prescribed intervals thereafter, the abstraction licensee shall pay charges to the Unit for use of water in accordance with the abstraction licence.

(5) The charges shall be determined by reference to a schedule of charges published in the *Gazette*, from time to time, by the Unit, after approval by the Commission.

(6) The charges to determined pursuant to subsection (5) shall also be guided by public consultation with the relevant stakeholders.

### **33. Easement**

(1) A person who -

(a) is an applicant for an abstraction licence; and

(b) requires an easement, in order to carry out abstraction works, shall satisfy the Director that the owner of the land over which the easement is required has agreed to the grant of the easement.

(2) An easement referred to under subsection (1) may only be constituted by written agreement between the abstraction licensee and the owner of the land over which the easement is required and shall contain a provision which states that the easement is not revocable by the person granting it without the approval of the Director.

(3) If the owner of the land does not agree to an easement, the applicant or the abstraction licensee, as the case may be, may apply to the Director, in the prescribed manner, for an easement and shall serve notice of such application on the owner of the land.

(4) The Director may either dismiss the claim for an easement or grant the claim, with or without modification and subject to such conditions and to the payment of such compensation, as the Director may deem just.

(5) The Director shall notify the applicant and the owner of the land of the decision.

(6) The creation or discharge of an easement shall be registered or recorded by the [Registrar of Lands] [Chief Surveyor].

(7) Until it is registered or recorded pursuant to subsection (6), an easement shall be binding only on the persons who are the original parties to the agreement.



#### **34. Validity of abstraction licence**

Subject to sections 27 and 37 an abstraction licence shall be valid for the period specified therein.

#### **35. Breaches by abstraction licensee**

Where an allegation of breach with respect to an abstraction licence is made by an aggrieved person to the Unit or where the Unit reasonably suspects an abstraction licensee of being in breach of its abstraction licence, the Unit shall conduct an investigation in accordance with section 10(6) and if the Unit finds that

–

- (a) the aggrieved person's allegations or suspicions are substantiated, it shall so notify the abstraction licensee of its finding and, where appropriate, issue directions to the abstraction licensee –
  - (i) requesting the abstraction licensee to stop the breach and take remedial action and stipulating a time period within which such remedial action is to be completed; and
  - (ii) requesting the abstraction licensee to compensate the Government or any person aggrieved for any foreseeable damages caused by the breach within a specific time period;  
or
- (b) the aggrieved person's claim is frivolous or vexatious or that its suspicions are incorrect, the Unit shall cease the investigation and the aggrieved person bringing the action shall be liable for any costs incurred.

#### **36. Renewal of abstraction licence**

An application for renewal of an abstraction licence granted under this Part shall be made in the prescribed manner at least one month prior to its expiry.

#### **37. Review, amendment, suspension and revocation of abstraction licence**

(1) Subject to subsection (3), the Minister, acting on the advice of the Unit, may, at any time during the period of duration of an abstraction licence, and pursuant to such review, amend the terms and conditions of the abstraction licence, if it is in the public interest to do so.

(2) Subject to subsection (3), the Minister, acting on the advice of the Unit, may suspend an abstraction licence if –

(a) the abstraction licensee has failed to pay any fees or charges required to be paid by the Act or Regulations made hereunder;

(b) the abstraction licensee is in breach of -

(i) any provision of this Act or Regulations made hereunder; or

(ii) any direction given pursuant to section 35 or a term or condition subject to which the abstraction licence is granted;  
or

(c) the abstraction licensee notifies the Unit, in writing that the abstraction licensee intends to cease operations for which an abstraction licensed has been granted, for the period stated in the notice.<sup>12</sup>

(3) Before making a recommendation to the Minister to suspend an abstraction licence under subsection (2)(a) or (b), the Unit shall notify the abstraction licensee, in writing, of the proposed suspension -

(a) stating the reasons for suspension; and

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<sup>12</sup> Please note that the suspension in this case is due to the fact that the licensee is to cease operations for a specific time period. Revocation will therefore not be applicable in these circumstances. I have sought to provide for the issue raised in the query by providing for said scenario raised, as a condition for revocation, where the period specified in the notice has elapsed and the licensee has failed to recommence operations. (See the amendment to subclause (7).

(b) requiring the abstraction licensee, in the case of a breach that is capable of being remedied, to remedy the breach within the time specified in the notice; and

(c) the right of appeal conferred by section 54.

(4) Where a notice of suspension in relation to a breach is given pursuant to subsection (3), and the breach can be remedied, the suspension shall not take effect until the expiration of the period specified in the notice under subsection (3)(b).

(5) An abstraction licensee who is served a notice under subsection (3), shall, after remedying the breach which gave rise to the suspension, notify the Unit in writing that the breach has been remedied.

(6) The Unit shall, upon receipt of a notice referred to in subsection (3), cause an inspection to be carried out, within fifteen days of the receipt of the notice and, if, upon inspection, the Unit is satisfied that the breach has been remedied, the Unit shall withdraw the notice of suspension.

(7) The Unit may revoke an abstraction licence if it is satisfied that –

(a) an abstraction licensee has ceased to comply with the provisions of this Act or any Regulations made hereunder;

(b) the application for the abstraction licence contained false or misleading information in a material particular;

(c) the abstraction licensee has failed to remedy the breach which gave rise the suspension of the abstraction licence within the time specified in a notice under subsection (3)(b);

(d) the abstraction licensee has failed to commence operations within the period specified in the notice under subsection (2) (c); or

(e) any fee or charge payable by the abstraction licensee remains unpaid for a period of sixty days after the suspension of the licence.

(8) Where an abstraction licence is revoked pursuant to this section, the abstraction licensee shall return the abstraction licence forthwith to the Unit.

(9) An abstraction licensee who fails to return an abstraction licence that has been revoked under this section, to the Unit, commits an offence and shall on summary conviction before a Magistrate, be liable to a fine not exceeding [ ] or to imprisonment for a term not exceeding [ ].

### **38. Offence of not complying with direction of Unit for abstraction licence**

An abstraction licensee who fails to comply with a direction of the Unit given pursuant to an abstraction licence commits an offence and shall, on summary conviction before a Magistrate, be liable to a fine not exceeding [ ] or to imprisonment for a term of not exceeding [ ].

### **39. Waste of underground water from wells unlawful**

(1) Subject to subsection (2), a person shall not cause or allow any underground water to run waste from any well or other work, except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining, or repairing the well or other work.

(2) Where underground water interferes or threatens to interfere with the execution or operation of any underground works, it shall not be unlawful under this subsection to cause or allow the water to run to waste so far as may be necessary to enable the works to be executed or operated, if no other method of disposing of the water is reasonably practicable.

### **40. Special power of Unit in relation to aquifers**

The Unit shall have the power -

- (a) to determine the safe yield of any aquifer for the purpose of guiding determinations concerning the abstraction and use of water from the aquifer;
- (b) to impose special requirements and restrictions with respect to wells, for the purpose of preventing waste or contamination of water, or loss of artesian pressure; and
- (c) to carry out programmes for the recharge of aquifers;

and for the purpose of paragraph (a), “safe yield” means the amount of water, which may be abstracted from an aquifer, in keeping with the reserve specified under section 17, in that regard.

## **PART V**

### **WATER AND WASTE CONTROL AREAS AND PERMITS**

#### **41. Water Control Area**

(1) Where on the advice of the Unit, the Commission is satisfied that the regulating of water use or classes of use of water in any area is necessary in the public interest, the Commission shall, by order published in the *Gazette* and at least one newspaper in weekly circulation in the State, declare the area as a water control area.

(2) In exercising its authority under subsection (1), the Commission shall have regard to the following factors –

- (a) the ecology, hydrology and hydrogeology of the area;
- (b) the established and projected water demands in the area; and
- (c) the current and projected availability of water in the area.

(3) An order under subsection (1) shall specify the boundaries of the water control area and the abstraction, use or classes of use required to be regulated.

#### **42. Waste Control Area**

(1) Where on the advice of the Unit, the Commission is satisfied that it is necessary to regulate the discharging of wastes or classes of wastes into or on -

- (a) any land;
- (b) any sewer or drain;
- (c) any bore; or

(d) any water,

to protect the water resources from pollution or reduction in water quality, the Commission shall by order published in the *Gazette*, declare the area to be a Waste Control Area.

(2) In exercising its authority under subsection (1), the Commission shall have regard to the factors listed in section 41(2), and to the necessity of protecting the health of the public and the requirements of established and intended uses of the water resources, including protection of the fauna and flora of watercourses, in addition to the desirability of protecting and enhancing the environment.

(3) An order under subsection (1) shall specify the boundaries of the Waste Control Area and the waste or classes of waste required to be regulated.

#### **43. Requirement for permit**

(1) A person shall not use water in a water control area or discharge waste or a class of waste in a waste control area, except in accordance with a permit for the purpose granted to that person by the Minister, acting on the recommendation of the Unit.

(2) A person who contravenes subsection (1) commits an offence and shall on summary conviction before a Magistrate be liable a fine not exceeding [ ] or to imprisonment for a term not exceeding [ ].

(3) A permit granted under this section shall not have the effect of dispensing with the necessity of obtaining any other permission for the discharge of waste, where such permission is required under any law in force in the State.

#### **44. Permit as of right.**

A person who has been using water in a water control area for a continuous period of at least of 24 months immediately prior to the appointed day, shall, subject to section 47, be entitled, on application made to the Unit in accordance with section 45, within 6 months of the appointed day, the grant of a permit for a period which expires one year after the appointed day.

#### **45. Application for permit.**

(1) Subject to subsection (2), a person may in the prescribed form apply to the Minister, through the Unit, for a permit to –

- (a) abstract or use water in a water control area; or
- (b) discharge waste or a class of waste in a waste control area.

(2) A person shall submit the application made under subsection (1) to the Unit together with the prescribed application fee.

#### **46. Recommendation by Unit for permit.**

(1) Subject to subsections (2), (3) and (4) and to section 44, where an application is submitted to the Unit under section 45, the Unit shall, having regard to the following factors, make a recommendation to the Minister for the grant or refusal of a permit to that applicant and shall give reasons for the recommendation of refusal –

- (a) the ecology, hydrology and hydrogeology of the area;
- (b) the established and projected water demands in the area; and
- (c) the current and projected availability of water in the area.

(2) The Unit may, within 14 days of the receipt of an application, request additional information from the applicant for the purpose of considering an application.

(3) Where the Unit makes a request for information under subsection (2), the applicant shall submit that information within 14 days of the request or within a further period of time granted and specified in writing by the Unit.

(4) The Unit shall not refuse to grant a further time period under subsection (3) unless it is reasonable to do so.

(5) The Unit shall submit a recommendation made under subsection (1) to the Minister within 28 days of the application being made or information requested under subsection (3) being submitted, as the case may be.

#### **47. Grant or refusal of permit**

(1) In accordance with a recommendation made under section 46, the Minister may grant or refuse a permit and shall, within 14 days of the receipt of the recommendation, notify the applicant in writing, of the grant or the refusal and shall give the reasons in writing for a refusal.

(2) Where the Minister grants or refuses a permit contrary to a recommendation made by the Unit, the Minister shall also give reasons, in writing, for such grant or refusal.

(3) A person aggrieved by the decision of the Minister under subsection (1) shall have the right of appeal in accordance with section 54.

#### **48. No recommendation or notice for permit**

(1) If no recommendation is made by the Unit within the period specified in section 46 (5), or if no notification is given by the Minister to the applicant within the 14-day period specified in section 46 (3), the applicant shall have the right to make a case before the Unit and the Unit shall hear the case, following an application made by the applicant.

(2) The application for a hearing before the Unit shall be in the prescribed form.

(3) Where, after a hearing under subsection (1) –

(a) the application is refused, or the Unit fails to make a recommendation;  
or

(b) the Minister fails to give a notice within 14 days of the hearing;  
the applicant shall have the right to appeal under section 54.

#### **49. Grant and form of permit**



A permit shall be granted on payment of the prescribed fee to the Unit and be in the prescribed form and shall –

- (a) clearly establish the scope of the permit;
- (b) include the terms and conditions, in addition to those provided for in this Act, under which the permit is granted, based on the situation regarding the relevant water resources.

#### **50. Validity of permit**

Subject to sections 44 and 52, a permit shall be valid for the period specified therein.

#### **51. Breaches by permit holder**

Where an allegation of breach of the terms of a permit is made to the Unit by an aggrieved person, or where the Unit reasonably suspects that a permit holder is in breach of the permit holder's permit, the Unit shall conduct an investigation in accordance with section 10(6) and if the Unit finds that –

- (a) the aggrieved person's allegations or suspicions are substantiated, it shall so notify the permit holder of its findings and, where appropriate, issue directions to the permit holder including a direction to stop the breach;
- (b) the aggrieved person's allegations are frivolous or vexatious or the suspicions are incorrect, the Unit shall cease its investigations and the person bringing the action shall be liable for the cost incurred.

#### **52. Suspension or revocation of permit**

Where a permit holder fails to comply with a direction given by the Unit under section 51, the Unit shall advise the Minister to suspend or revoke the permit in accordance with the terms of the permit.

#### **53. Offence of not complying with direction of Unit for permit.**

A permit holder who fails to comply with a direction given by the Unit under section 51 commits an offence and shall, on summary conviction before a Magistrate, be liable to a fine not exceeding [ ] or to imprisonment for a term of not exceeding [ ].

## PART VI APPEAL AND MISCELLANEOUS PROVISIONS

### 54. Appeal

(1) There is hereby established, for the purposes of this Act an Appeals Tribunal for hearing and deciding appeals on matters referred to the Appeals Tribunal pursuant to the provisions of this Act.

(2) Subject to the provisions of the section, any aggrieved person, as defined in subsection (5) may appeal to the Appeals Tribunal, within such time and in such manner as may be prescribed, against a decision of the Unit or Minister in relation to a licence or permit granted under this Act.

(3) Before determining the appeal, the Appeals Tribunal shall afford the aggrieved person an opportunity to be heard and to be represented by an attorney-at-law or any other person.

(4) The Appeals Tribunal may –

- (a) dismiss the appeal and confirm the decision;
- (b) allow the appeal and set aside the decision;
- (c) vary the decision;
- (d) allow the appeal and direct that the matter, the subject of the appeal, be determined afresh by the Unit or the Minister.

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<sup>13</sup> The provisions of Part VI have been removed from the Bill. This is due to the instructions on page 71 of the comments re the draft Bill that NAWASA is to remain the sole provider of water supply and sewerage services. This is indeed a paradigm shift from the policy which informed the initial drafting instructions of the Bill. Note also Part III of the legal opinion that was submitted by the Consultant in relation to the role and structure of NAWASA upon the creation of the WRMU to manage the water resources. If the policy decision is to have NAWASA remain the sole provider of water supply and sewerage services, there is therefore no need for this Bill to provide for a license and Tariff regime for service licensees. In addition, NAWASA, having been declared a public utility under the PURC Act, by order of the Minister, (see section 3 (2) of the PURC Act) will be subject to the provisions of that Act. A policy decision must then be taken as to whether NAWASA will be subject to a service agreement with PURC, which will contain conditions, standards and compliance mechanisms (subject of course to the vetting and approval of the Attorney General). In addition, the substantial amendments that were proposed to the PURC will no longer be necessary, save and except for increasing its jurisdiction to have oversight of the WRMU.

(5) For the purposes of this section an aggrieved person is a person –

- (a) who objects to a decision of the Unit or Minister pursuant to this Act with respect to his application for a licence or permit or to any term or condition subject to which the licence or permit, as the case may be, is granted;
- (b) who, not being a person described in paragraph (a), is a person who objects to a decision of the Minister or the Authority on the grounds that it is prejudicial to a right or interest held by the person; or
- (c) who is the holder of a licence or permit under this Act and objects to a decision of the Unit or the Minister relating to or affecting such licence or permit.

(6) The Constitution and procedure of the Appeals Tribunal shall be prescribed in Regulations made hereunder.

## **55. Regulations**

(1) The Minister, acting on the advice of the Unit, may make regulations generally for the better carrying out of the objects and purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations in relation to –

- (a) the form and manner of making an application for any licence or permit required under this Act, the maps, documents or information which shall accompany such application;
- (b) the provisions relating to any licence or permit which may be granted under this Act, including the form thereof, particulars which shall be specified therein and the terms and conditions subject to which such licence or permit may be granted;
- (c) the grant, suspension and revocation of a licence or permit granted under this Act;
- (d) the establishment and maintenance of a register or registers in respect of licences and permits granted under this Act;

- (e) the registration and recording of easements constituted in accordance with this Act;
- (f) the control of water quality;
- (g) the time within which and the manner in which an appeal to the Appeals Tribunal Act against a decision of the Unit or the Minister;
- (h) the fees and charges payable in respect of any licence or permit granted under this Act or the rendering of any service or the doing of anything required to be rendered or done under this Act and the manner of payment thereof;
- (i) compensation where such compensation is payable under this Act;
- (j) any other matter required by this Act to be prescribed.

(2) Any regulations made pursuant to subsection (1) shall be subject to affirmative resolution.

**56. Act binds the Crown**

This Act binds the Crown.

Passed by the House of Representatives this    day of                    20[ ]

.....  
Clerk to the House of Representatives

Passed by the Senate this            day of                    20[ ].

.....  
Clerk to the Senate

