

(Legislative Supplement No. 66)

LEGAL NOTICE No. 168

THE WATER ACT

(No. 43 of 2016)

IN EXERCISE of the powers conferred by section 142 of the Water Act, 2016, the Cabinet Secretary responsible for matters relating to water makes the following Regulations—

THE WATER SERVICES REGULATIONS, 2021

PART I—PRELIMINARY

1. These Regulations may be cited as the Water Services Regulations, 2021. Citation.

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

“Act” means the Water Act;

“Authority” means the Water Resources Authority established under section 11 of the Act; No. 43 of 2016

“basic water services” refers to water services from an improved source that is within thirty minutes round trip collection time;

“bulk water” means supply of water in bulk by a licensee or a private entity to an agent or other licensees for purposes of resale or distribution to customers;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to water;

“contractor” means any person holding a water service installation licence issued under these Regulations to carry out any water service installation work either individually or as a body corporate or incorporated for voluntary, business, training or teaching purposes in the field either for gain or reward, or at no charge at all;

“county directorate” means the county directorate of water and sewerage services at the respective county government department;

“county government” means a county government established under the Constitution;

“county executive committee member” means the county executive committee member responsible for matters relating to water;

“cure notice” means a notice issued by the Regulatory Board, to a licensee or agent to correct or repair a breach, irregularity or illegality;

“customer” means a person who is the buyer or recipient and end user of water services;

“Director” means the Director of Water Services in the Ministry responsible for matters relating to water services;

“easement” has the meaning assigned to it under the Act;

“Fund” means the Water Sector Trust Fund established under section 113 of the Act;

“inspector” means any water service inspector appointed in accordance with regulation 99;

“licence” means a licence issued under the Act;

“licensee” means a water service provider licensed by the Regulatory Board under the Act;

“price indexation” means a methodology where the price charged for a service is allowed to change by the rate of inflation over the initial price with an adjustment factor (X) based on factors such as technological changes, need to finance development of infrastructure and need to adopt efficient working systems;

“Regulatory Board” means the Water Services Regulatory Board established under section 70 of the Act;

“sewerage services” means the development and management of infrastructure for transport, storage, treatment of waste water originating from centralized and decentralized systems but shall not include on-site sanitation facilities;

“tariff” means the fee that a water services provider may charge for its services;

“trade effluent” means any liquid, whether with or without suspended particles produced as a by-product in the course of any trade or industrial activity undertaken in premises other than domestic premises;

“variation” means any authorized amendment made to a valid licence issued under these Regulations;

“water action group” means a local community-based organization made up of citizens who have volunteered to address issues which affect consumers of water services;

“water services” means any services of or incidental to the supply or storage of water and disposal of waste water including by way of sewerage systems and systems and facilities for the treatment and or disposal of faecal sludge but does not include the provision of on-site sanitation;

“water services infrastructure” means networks, facilities, equipment, applications and assets for water production, transmission, distribution and waste water and faecal sludge disposal facilities, and in these Regulations the terms are used inter changeably;

“water service installation” means the pipes, machinery, apparatus, appliances, devices, material and equipment used or intended for use by a customer for receipt, distribution or use of water supply, consumption or sewerage and fecal sludge disposal systems;

“water service installation licence” means any document or instrument in writing granted under these Regulations to any person authorizing the carrying out of water service installation work;

“water service installation work” means the installation, alteration, or repair, wholly or partially, of a water service installation, but excludes work upon the system of a public water service supplier or other licensee carried out by such public water service supplier or servant of such public water service supplier acting on his behalf;

“water services provider” means an entity established in accordance with section 77 of the Act;

“Water Strategy” means the Integrated National Water Services Strategy formulated by the Cabinet Secretary in section 64 of the Act;

“Water Tribunal” means the Water Tribunal established under section 119 of the Act; and

“waterworks development agencies” means agencies established under section 65 of the Act.

3. These Regulations shall apply to the National Government, national government entities, county governments, county government entities and any other person providing water services in Kenya.

Application of the Regulations.

PART II— COUNTY GOVERNMENT FRAMEWORK FOR WATER SERVICES PROVISION

4. (1) Subject to the provisions of the Constitution and the Act, the county executive committee member shall be responsible for the development and provision of water and sewerage services within the county.

Powers and duties of county executive committee member.

(2) Without prejudice to the generality of the foregoing, the county executive committee member shall —

- (a) formulate and periodically review county policies, strategies and plans for the development and provision of water services;
- (b) on behalf of the county government put in place and maintain measures and arrangements to implement and give effect to the Constitution, national law and national standards on the provision of water and sewerage services;
- (c) coordinate and oversee the development and provision within the county of water and sewerage services;
- (d) mobilise financial and other resources for the development of county public waterworks for provision of water and sewerage services;
- (e) put in place measures to secure the achievement of universal access to basic water and sanitation services within the county within a defined timeframe; and
- (f) on a quarterly basis and from time to time as may be necessary, prepare and submit to the county assembly, a

report on the state of water and sewerage services in the county.

(3) In the performance of his functions and duties under the Act, the county executive committee member shall —

- (a) consult and coordinate with departments, agencies and entities of the National Government and county government whose functions affect the development and provision of water and sewerage services of the county;
- (b) consult with relevant stakeholders including non-governmental organisations, the private sector and consumer groups; and
- (c) be assisted by a director of water and sanitation services who shall be a technical officer in the county public service.

5. (1) In every five year period, and following public consultation the county executive committee member shall formulate a county water and sewerage services strategy.

County water and sewerage services strategy.

(2) The county water and sewerage services strategy shall be formulated in compliance with Article 10 of the Constitution and its objective shall be to fulfill the fundamental human right to clean and safe water in adequate quantities and the right to reasonable standards of sanitation.

(3) The county water and sewerage services strategy shall provide—

- (a) information on areas within the county where access to basic water and sewerage services is inadequate;
- (b) plans and measures for the development and continuous improvement of water and sewerage services within the county;
- (c) an investment programme and a timeframe for the development, expansion and improvement of water and sewerage services in the county;
- (d) pursuant to paragraph (c), the water and sewerage services penetration targets for the county, including the sub-counties, and propose specific measures through which to enhance realization of the targets;
- (e) institutional and financial arrangements and measures for the improvement of access to basic water services within the rural areas and underserved urban areas;
- (f) measures to facilitate the provision of water services in the entire county on a commercially viable and sustainable basis;
- (g) criteria and procedures for the provision by the county government of financial, technical and other assistance to county owned water service providers and community water service providers;
- (h) a plan and targets to reduce and manage levels of non-revenue water by county water service providers;

- (i) an investment programme and a timeframe to increase and sustain availability, supply and storage of bulk water; and
- (j) the community water service providers within the county, and a strategy for monitoring the quality of water services provision.

(4) In addition to the requirements set out in sub regulation (3), each county water and sewerage services strategy shall —

- (a) provide details of the number and location of persons not having access to a basic water supply and sewerage or sanitation, including details of the plan for intervention to rectify this; and
- (b) identify a programme for development of water sources, including cross-county bulk water sources to secure availability for adequate water service provision, including an investment programme; and
- (c) identify needs and set out an investment programme for the development and expansion of sewerage infrastructure.

(5) The strategy shall be published in the Gazette after approval by the county executive committee.

(6) The county water services strategy shall be reviewed periodically and in any case not later than every five years.

(7) Every county public officer and every county organ shall give effect to the gazetted county water and sewerage services strategy in the discharge of duties under this Regulation.

(8) Every water services provider, including private water services providers and community water services providers operating in the county shall take account of the county water services strategy when executing plans and programmes.

6. The county director of water and sanitation shall —

- (a) provide technical support and advice to the county executive committee member in the discharge of his or her functions;
- (b) implement and give effect to the county water and sewerage services strategy;
- (c) register water services providers operating within the county;
- (d) subject to national legislation, formulate rules, standards and guidelines for the provision of water services within the county which are compliant with standards provided by the Regulatory Board;
- (e) on the basis of a collaborative framework established between the county government and the Regulatory Board, enforce rules, guidelines and standards for the provision of water services within the county;
- (f) gather and analyse information and disseminate data on water and sewerage services in the county;

County director of
water and sanitation.

- (g) maintain an inventory of the county public waterworks comprising assets, facilities and other infrastructure for the provision of water and sewerage services;
- (h) provide operational, technical, financial and other support to community water service providers operating within the county; and
- (i) on the basis of a collaborative framework established between the county government and the Regulatory Board, receive and address complaints regarding the provision of water services within the county.

7. (1) The county executive committee member shall, on an annual basis, with the technical assistance of the county director and in consultation with the Regulatory Board, undertake monitoring and evaluation of the performance of each water services provider to ascertain the extent of compliance with the county water services strategy and performance targets.

Annual Monitoring
and Evaluation by
County Executive.

(2) The county executive committee member shall, on the basis of recommendations of the monitoring and evaluation report, take appropriate remedial measures to ensure the continuous improvement of the standard and quality of water and sewerage services provided by water services providers operating in the county.

PART III— ESTABLISHMENT, OPERATION AND FINANCING OF WATER SERVICES PROVIDERS

8. (1) The county government may, pursuant to section 77 of the Act and by notice in the *Gazette*, or through incorporation of a limited liability company, establish one or more county entities as a water and sanitation services provider or providers as the case may be.

Establishment of
County Water and
Sewerage Service
Providers.

(2) A county water services provider established under this regulation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of —

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper discharge of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The county executive committee member shall, in consultation with the Regulatory Board, assign to each county water services provider established under this regulation a water supply area which covers the whole or a portion of the area of geographical jurisdiction of the county government.

(4) In determining the area of supply of a county water services provider, the county executive committee member shall take account of and give effect to the operation within the whole or part of the proposed supply area of community or private water services providers.

(5) In accordance with the transfer plan published by the Cabinet Secretary pursuant to section 152(4) of the Act, the county water services provider shall succeed to and assume the functions, assets, contracts, liabilities and staff of the water services board used for the provision of water services within the area of supply of the county water services provider and such transfer shall be completed not later than twelve months following the establishment of the county water services provider or such longer period as the Cabinet Secretary, in consultation with the county government, may approve.

(6) Where the assets for the provision of water services in part of the supply area of the county water services provider belong to a community water services provider, the county water services provider shall, in accordance with the guidelines issued by the Regulatory Board on provision of water services in rural and underserved areas, enter into an agreement with the community water services provider, the terms of which may provide —

- (a) for the county water services provider to take over responsibility for the provision of water services in the area of supply of the community water services provider and use or acquire the assets and facilities of the community water services provider on terms which may include the payment of lease fees or compensation for the assets;
- (b) that the community water services provider continues to provide water services as an agent or a sub-contractor of the county water services provider;
- (c) that the community water services provider may purchase water in bulk from the county water services provider;
- (d) for the provision of technical and capacity building support to the community water services provider by the county water services provider; and
- (e) other terms necessary to secure the efficient and cost effective provision of water services, consumer protection and accountability within the area supplied by the community water services provider.

9. (1) A county water and sewerage services provider established pursuant to section 77 of the Act shall be responsible for the provision of water and sewerage services, and for development and management of the related infrastructure and facilities, within its area of supply and for this purpose shall hold on behalf of the county government, county public waterworks.

Functions of the
County Water
Services Provider.

(2) A county water and sewerage services provider established under section 77 of the Act shall —

- (a) be a legal person and a corporate entity managed and accounted for as an independent or separate business enterprise;
- (b) have the exclusive right to provide water services within its area of supply;

- (c) provide or put in place arrangements to provide water services to all consumers in its area of supply who desire a water service and are willing to comply with conditions for the supply of water;
- (d) apply for, secure and maintain a licence issued by the Regulatory Board in order to undertake the provision of water services within its area of supply;
- (e) with the approval of the county executive committee member and the Regulatory Board, put in place measures, where necessary for purposes of the better performance of its functions, to contract out aspects of its functions to a private water or sanitation services provider, a community water services provider or another county entity which has the requisite capacity to provide water services.

10. (1) Each county water services provider shall have a board of directors comprising between seven and nine members which shall guide and direct the performance of its functions.

Governance of
Water Service
Providers.

(2) The rules and procedures governing the appointment, composition and qualifications of members of the board of directors of a county water services provider shall give effect to standards and guidelines set by the Regulatory Board but shall in any case not derogate from the following minimum standards —

- (a) the members of the board of directors shall have the minimum educational qualifications, professional experience and skills mix compliant with guidelines set by the Regulatory Board from time to time;
- (b) the board of directors shall have among its members, persons who represent different categories of consumer groups and other stakeholders in the area of supply of the water services provider;
- (c) the board of directors shall not have among its members a person who, at the time of nomination for appointment, is serving as an elected member of a county government, holds office in a political party or is a serving member of Parliament or of the county assembly;
- (d) the county government shall be represented on the board of directors by not more than two officials of the county government; and
- (e) the members of the board of directors other than public officers representing the county government on the board, shall be appointed following a process of open competition but the appointing authority shall ensure that not more than two thirds of the members are of the same gender.

(3) The term of the members of the board of the county water and sewerage services provider shall be three years renewable once which

term shall not be affected by the expiry of the term of office of the county government.

(4) The business and affairs of the boards shall be conducted in accordance with the First Schedule.

11. (1) A county water services provider shall employ a chief executive officer and other staff necessary for performing its functions as a licenced water services provider on terms and conditions of employment approved by its board of directors which terms and conditions shall comply with the water sector benchmark on personnel remuneration as set by the Regulatory Board in line with the guidelines issued by the Salaries and Remuneration Commission.

Staff of county water service providers.

(2) A person employed by a county water services provider shall be a public officer and subject to the laws governing the conduct of public officers.

(3) Without prejudice to sub regulation (1), a chief executive officer of a water services provider shall serve for a term of three years which may be renewed twice subject to satisfactory performance.

12. (1) The funds and assets of a county water services provider shall consist of —

Finances of county water service providers.

- (a) such monies as may be appropriated by the county assembly for the purposes of the county water services provider;
- (b) any monies or property which may in any manner accrue or vest in the county water services provider in the course of the exercise of its functions;
- (c) such monies as may become payable to the county water services provider by way of tariffs, fees and other charges in respect of services rendered by or through it; and
- (d) all monies from any other sources whatsoever donated, lent or granted to the county water services provider.

13. (1) Pursuant to regulation 12(1)(a), the county government may in appropriate cases provide financial assistance to enable a water services provider which satisfies the criteria stipulated in the county water services strategy meet a portion of its operation and maintenance costs.

County government financial support to the water services provider

(2) The county government may additionally set up a Dedicated Fund into which the county government and others may place funds for supporting the provision of water services to underserved areas.

(3) The Dedicated Fund may be available to a community water service provider that meets the criteria in rule 18.

(4) The rules governing the operation of the Dedicated Fund shall be prescribed by the County Executive Committee in consultation with the Regulatory Board.

14. (1) All funds of a county water services provider and all revenues arising from provision of water services by a county water services provider shall not form part of the general revenues of the county government but shall be retained by the water services provider for its purposes.

Ring fencing of water revenues.

(2) Any excess of revenue over expenditure at the end of the financial year shall not be paid over to the county government but shall be retained by the county water services provider to be used for the improvement of water services within the area of supply of the county water services provider.

(3) Every water services provider shall establish and maintain a contingency fund into which it shall pay a portion of its revenues to be used to pay for emergency repairs and meet the costs arising from unforeseen occurrences which can disrupt the provision of water services.

(4) A water service provider shall not make payments out of its revenues to the county government or otherwise provide other financial support that is inconsistent with its core mandate of water services provision unless as provided in these Regulations.

15. (1) Not less than six months before commencement of each financial year, the board of a county water services provider shall cause to be prepared estimates of the revenue and expenditure for that year in line with the approved tariff.

Annual estimates of revenues and expenditures.

(2) The annual estimates shall make provision for all the estimated capital and recurrent expenditure of a county water services provider for the financial year concerned.

(3) The annual estimates shall also make provision for such amounts as are required to pay any portion of the principal or interest of loans or advances if any secured by or on behalf of the water services provider to finance the capital costs of developing and or rehabilitating infrastructure or facilities and or acquiring equipment and other assets for the provision of water services.

(4) The board shall submit the estimates to the county executive committee member for approval and inclusion in the annual budget of the county government.

(5) No expenditure shall be incurred for the purposes of a county water services provider except in accordance with the annual estimates approved as provided under these Regulations.

16. (1) The board of a county water services provider shall keep proper books of account of its income, expenditure, assets and liabilities.

Accounts and audits.

(2) Within three months after the end of each financial year the board of each county water services provider shall submit to the Auditor-General the accounts in respect of that year, together with —

- (a) a statement of the income and expenditure during that year; and

- (b) a statement of the assets and liabilities as at the last day of that financial year.

(3) The annual accounts of a county water services provider shall be prepared, audited and reported upon in accordance with Article 226 and 229 of the Constitution and applicable national and county government legislation.

17. (1) Subject to compliance with the requirements of applicable national law a county water services provider may, in an appropriate case, engage in a public private partnership or other appropriate contractual arrangement for the development and operation of water services infrastructure or the provision of water, wastewater and fecal sludge disposal services.

Private sector participation.

(2) Any assets, facilities and infrastructure developed under a public private partnership to be used for the provision of water or sewerage services shall be deemed to be public property and upon the expiry or other termination of the public private partnership agreement, shall be vested in and be owned by the county government or county water services provider.

18. (1) For purposes of the register of water service providers maintained by the county directorate, each water services provider shall within twelve months of the coming into effect of these Regulations or in respect to water service providers established after the coming into effect of the Regulations, within twelve months of its establishment or such longer period as the executive committee member may allow, submit to the county directorate and to the Regulatory Board information on —

Information on water service providers.

- (a) the area it supplies water services;
- (b) the number and location of customers served;
- (c) an inventory of the facilities and infrastructure available for the provision of water services;
- (d) the particulars of its board of directors or management committee and staff including the technical qualifications of its staff;
- (e) the tariff and other fees it charges;
- (f) particulars of its liabilities;
- (g) the status of its application for a licence and, if licenced, a copy of the licence;
- (h) plans and programmes for the improvement of water services it provides; and
- (i) such other information as the Executive Committee member or the Regulatory Board may reasonably require.

(2) The water services provider shall by the end of June of each calendar year, notify the county director of water and sanitation services and the Regulatory Board of material changes to the information provided in the previous year and the county director and the Regulatory Board shall as soon as practicable thereafter, update the register.

(3) The register shall be posted on the website of the county and the Regulatory Board, and, additionally be open to inspection by members of the public at the offices of the county government and the Regulatory Board during normal working hours.

19. (1) The county executive committee member shall facilitate the development and operation of community or private water service providers in rural areas within which the county water service providers do not provide adequate water services.

Operation of
community water
projects

(2) Where following viability studies, it is recommended that community water service providers should form associations in order to achieve their objectives, the county executive committee member shall put in place the appropriate measures to facilitate such associations.

(3) For purposes of enhancing the efficiency and cost effectiveness of the water services provided by community water services, the county executive committee member may put in place measures to encourage community water service providers to consolidate and outsource to a common services provider, services including billing services, pump maintenance services and other similar services or engage the services of a contractor to provide professional management services.

(4) A community water services provider which takes steps to enhance efficiency and cost effectiveness through clustering, outsourcing of services or engagement of professional management services among other measures shall be eligible to financial, technical and other support from the county government prior to achieving financial viability.

PART IV – APPLICATION FOR LICENCE

20. (1) Within twelve months of the coming into force of these Regulations or such extended period as the Regulatory Board may allow, a person providing or intending to provide water services shall apply to the Regulatory Board for the issuance of a licence in accordance with section 74 of the Act.

Application for a
licence.

(2) A complete water services provision licence application shall comprise of –

- (a) a duly completed application form in the format developed by the Regulatory Board ;
- (b) a map of the proposed service area;
- (c) documents of incorporation of the water services provider including evidence that the board complies with sections 79 and 80 of the Act and these Regulations ;
- (d) a statement evidencing the applicant's administrative, technical and financial capacity to provide the services and perform the functions authorized by the licence;
- (e) a plan for the provision of efficient, affordable and sustainable water services including as appropriate details of planned infrastructure improvements;

- (f) the proposed tariff structure which may differentiate between different classes of consumers and different categories of water use, whether domestic, industrial, commercial, institutional, agricultural and others including a proposed tariff for the disposal of domestic wastewater and trade effluent;
- (g) a letter of support from the county government within whose area of jurisdiction the water services are to be provided;
- (h) required permits and authorisations including a business licence, water use permits, an environmental impact assessment licence where required, and county government planning permission for planned infrastructure projects where practicable;
- (i) evidence of stakeholder consultation; and
- (j) any other information as may be required by the Regulatory Board.

21. (1) The Regulatory Board in accordance with section 74 of the Act, shall invite the applicable county government to provide written submissions prior to making a determination on an application.

Public consultation.

(2) The Regulatory Board or the county government may convene a meeting to discuss the views of the county government before or after the written submissions in sub regulation (1) are made.

(3) Where the Regulatory Board does not receive a written response from a county government, the Regulatory Board shall consequently request the county government to submit its views, make two reminders within three months and thereafter the Regulatory Board shall proceed to make a determination on the application.

(4) For purposes of sub regulation (3), any written communication to a county government shall be addressed to the county executive member with a copy to the county secretary and shall be delivered physically and a return on delivery received by the person making the delivery.

22. The Regulatory Board shall charge an application fee for the issuance of a licence in accordance with section 89 of the Act.

Application fee.

23. (1) The Regulatory Board shall make a determination on an application for a licence within six months after the water service provider lodges a complete application.

Determination of an application.

(2) The Regulatory Board shall prior to making a determination undertake public consultations with residents and stakeholders of the geographical area to be served by the applicant including at least one public meeting for oral submissions of views and invitation of written submissions.

(3) The Regulatory Board shall issue public notices for the public consultation and ensure that the notices are widely disseminated to residents and stakeholders through newspapers, radio, websites and other means of public dissemination.

(4) The Regulatory Board shall take into consideration any written submissions by any person objecting to the application.

(5) Upon conclusion of a public consultation exercise, and before making a determination on the application, the Regulatory Board shall provide feedback on how the submissions by the public, residents, stakeholders, county government, objectors and any other persons were taken into account in determining the application.

(6) Where the Regulatory Board does not determine the application within six months of receipt of the application, any fee charged by the Regulatory Board under section 86(3) of the Act shall be refunded to the applicant.

(7) Any applicant or person who objected to the application may, if aggrieved by the decision of the Regulatory Board, appeal to the Tribunal within thirty days of formal notification of the decision by the Regulatory Board.

24. (1) Any person opposed to the grant of a licence may object in writing to the Regulatory Board.

Objections to grant of a licence.

(2) The Regulatory Board shall notify the water service provider and the objector of its decision, and in the event of rejection of an application or objection, of the reasons for the decision.

25. A water service provider or objector may, if aggrieved by the decision of the Regulatory Board under regulation 24, appeal to the Water Tribunal within thirty days of the date of notification of the decision.

Appeals to the Water Tribunal.

26. The Regulatory Board may, upon consideration of an application for a licence, issue to the water service provider a licence in accordance with the Act.

Issuance of a licence.

27. (1) A licence issued by the Regulatory Board shall be valid for such period as set by the Regulatory Board not exceeding ten years.

Licence.

(2) The Regulatory Board may issue a licence to an applicant if it is satisfied that the applicant has —

- (a) a demarcated service area;
- (b) appropriate skills and capacities to provide the licenced services;
- (c) commitment from the county government and other financiers to support the costs of infrastructure development and network expansion as outlined in the licensee's business plan and, to the extent necessary, recurrent expenditure to attain sustainability;
- (d) possession of water permits from identified sources from the Authority and sewage discharge permits from the Authority and, as applicable, the National Environment Management Authority;
- (e) possession of infrastructure, networks and facilities for water production, treatment, transmission, storage and distribution and infrastructure for waste water and fecal sludge collection, storage, treatment and disposal or reuse;

- (f) an initial draft three year business plan showing resources of water, capital outlays, estimates of water to be sold and revenue projections to attain sustainability;
- (g) a tariff structure including a structure for the receipt into its system and disposal of waste water and domestic effluent which is compliant with standards set by the Regulatory Board;
- (h) a framework for engagement with community and other water service providers providing water services in the licensee's service area; and
- (i) the population to be served and growth projections as well as a strategy and a timeframe for achieving universal access to a sustainable water supply and sanitation service; and
- (j) met the commercial viability criteria set out by the Regulatory Board.

28. The Regulatory Board shall undertake a mid-term review of the licence and evaluate performance on all the conditions of the licence and the targets set and shall issue any orders and impose any conditions and targets to ensure efficient and economical supply of water in the licensee's area of supply.

Mid-term review of a licence.

29. A licence may be renewed upon expiry provided that the licensee shall have made a complete application for renewal of the licence at least six months before its expiry.

Renewal of licence.

30. Where a water service provider, without due cause, fails to submit a complete application for renewal of a licence on time, the Regulatory Board may place the licenced water services provider under a special regulatory regime.

Consequences of default for application for renewal.

31. (1) A licence issued by the Regulatory Board to a water service provider shall empower the licensee to —

Scope of a licence.

- (a) develop and maintain infrastructure and networks for the provision of water within its area;
- (b) develop and maintain infrastructure and networks for the safe reuse, recycling or disposal of waste water or fecal sludge within its area;
- (c) promote the use of recycled or treated wastewater for landscaping, construction and industrial use;
- (d) purchase, lease or acquire, premises, plant, equipment and facilities for provision of water services within its area of water service provision in the county;
- (e) purchase, lease or otherwise acquire land or request for its compulsory acquisition in accordance with section 110 of the Act and the Land Act;
- (f) collect from consumers the tariff approved by the Regulatory Board;

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- (g) impose a charge for accepting into its sewerage system and treating wastewater from industrial and other trade premises within its supply area and where it provides desludging and or exhauster services, impose a charge for treating the fecal sludge and or wastewater.
- (h) enter into agreements with any person, whether in the form of a public private partnership, sub-contract, agency or otherwise for the provision of the licenced services or a part of the services;
- (i) undertake works which are necessary or required for the protection of or collection, conveyance or treatment of the water resources which the water service provider is authorised to abstract, impound or divert for the purposes of providing the licenced services;
- (j) with the approval of the Regulatory Board, prohibit or restrict with respect to the whole or any part of the licensee's area of supply, the use of potable water for such purposes as the licensee may specify where, and during periods which, in the licensee's opinion there is a serious deficiency or threat of deficiency of water available for distribution and supply;
- (k) approve, authorise, restrict or prohibit acts or omissions which pose a risk of damaging, destroying or compromising the integrity of the infrastructure, works or facilities used by the licensee for the provision of the licenced water or sewerage services;
- (l) take appropriate enforcement action against persons who damage, destroy or compromise the integrity of infrastructure, works or facilities used by the licensee for the provision of the licenced water or sewerage services; and
- (m) provide services which are necessary and incidental to the provision of the licenced water services.

(2) The restrictions in paragraph (j) may include such uses of potable water as the Regulatory Board may approve including construction of buildings, road construction, commercial and industrial activities, landscaping or similar non-domestic uses.

(3) A licence issued by the Regulatory Board to a water service provider shall not —

- (a) confer any rights of proprietorship over water services infrastructure; or
- (b) be capable of being sold, leased, mortgaged, transferred, attached, assigned, demised or encumbered without the approval in writing of the Regulatory Board and the county government.

32. The Regulatory Board may require a water service provider to deposit a guarantee or other acceptable security for the purpose of securing payment of any expenses recoverable from the licensee, for or

Deposit of guarantee or security.

towards the costs incurred in discharging the functions of the licensee in case of default.

33. (1) The Regulatory Board shall establish a comprehensive register of all the water service providers indicating —

Register of all water service providers.

- (a) the location and address of each water service provider;
- (b) in the case of a registered association, or public benefit organization, the nature of the association or organization and the particulars of its registration;
- (c) the conditions if any attached to the licence;
- (d) the daily yield of the source used by each water service provider;
- (e) the volume of water sold by each water service provider;
- (f) the quality of water sold by each water service provider;
- (g) the quality and quantity of effluent and or fecal sludge treated and or disposed of; and
- (h) the tariff charged by the water service provider.

(2) The register shall be a public document accessible for inspection at no charge and shall be publicized or posted on the website of the Regulatory Board and placed at such places as the Regulatory Board shall determine.

34. (1) On the basis of information provided by the water services provider, the Regulatory Board shall maintain and update on a biannual basis the following maps of each licensee's licence area —

Maps.

- (a) the service area map showing the licensee's network of the water and sewerage facilities;
- (b) a map showing the areas in which the licensee provides services through an agreement or other arrangement with a community or other water services provider; and
- (c) an un-serviced area map showing unserved areas.

(2) The maps shall be stored in digital and hard copy format and shall be available on the website of the Regulatory Board.

PART V—SYSTEMS AND STANDARDS FOR OPERATION OF WATER SERVICES

35. A water services provider shall be managed on a commercial basis and in accordance with sound business principles.

Operation of water services.

36. (1) A licenced water services provider shall implement —

Implementation of standards and systems.

- (a) a tariff which —
 - (i) in an urban area enables the water services provider to meet the capital and operation and maintenance costs of providing the licenced water services without recourse to public funds; and

- (ii) in a rural, low income urban or peri-urban area enables the water services provider to meet the operation and maintenance costs of providing the licenced water services without recourse to public funds.
- (b) a non-revenue water management system which is compliant with standards established by the Regulatory Board;
- (c) financial, commercial, management and administrative systems to enable it operate an efficient and cost effective water service;
- (d) a workplace occupational health and safety systems compliant with legal standards;
- (e) consumer satisfaction monitoring and customer complaints handling procedures and systems; and
- (f) legal compliance and compliance monitoring systems.

(2) Without prejudice to sub paragraphs (i) and (ii), a county government and the national government may provide financial support to ensure continuity of service provision in urban, peri-urban and rural areas.

37. (1) A water services provider shall establish, publicise and implement a schedule of water supply according to which it supplies water services.

Schedule of water supply.

(2) Where there is a planned interruption to the schedule, a water services provider shall notify customers who are likely to be affected by the interruption not less than twenty hours prior to the planned interruption and shall indicate the expected duration of the interruption.

(3) Where an unplanned interruption to water services occurs, the water services provider shall notify customers as soon as is reasonably practicable and not less than twelve hours after the discovery of the interruption and appraise customers on the progress made to address the cause of the interruption and the expected time or day of resumption of normal service.

(4) Where an interruption in services extends for a period longer than seven days, the water services provider shall take remedial measures to the extent practicable to provide consumers with a basic supply of water through bowsers and other mobile means.

(5) Where such interruptions arise from damage to pipes or other infrastructure by a contractor carrying out works, the contractor shall repair the damaged pipes or infrastructure within such time as the water service provider stipulates and pending the restoration of the water supply, the contractor shall meet the costs of providing an alternative water supply to the affected consumers.

38. A water service provider may, on any land belonging to it or on land over which it has acquired any easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land or otherwise preventing water belonging to the water service provider or which it is for the time being authorised to abstract, from being polluted.

Execution of works.

39. Prior to construction of any such works, the water services provider shall obtain consent of the Authority if the proposed work will affect or is likely to affect any water resource.

Consent for execution of works.

40. A water services provider, may, with the consent of the road authority or other state organ concerned and subject to such conditions as may be imposed by such authority or state organ, carry the drain, sewer or other work under, across or along any road or road reserve or public place, whether within or outside the area of water service of the licensee.

Approvals from state authorities.

41. (1) A licensee shall include a suitable programme as prescribed by the Regulatory Board for sampling the quality of potable water provided by it to its customers in its business plan.

Sampling programme.

(2) The water quality sampling programme shall specify the points at which potable water provided to customers will be sampled, the frequency of sampling and for which substances and determinants the water will be tested.

(3) A licensee shall compare the results obtained from the testing of the samples with standards as established or approved from time to time by the Kenya Bureau of Standards.

(4) Should the comparison of the results indicate that the water supplied poses a health risk the licensee shall inform the Regulatory Board and the local officer in charge of public health and it shall also take steps to inform customers —

- (a) that the quality of water it supplies poses a health risk;
- (b) of the reasons of the health risk;
- (c) of any precautions to be taken by customers; and
- (d) of the time frame, if any, within which it may be expected that water of a safe quality will be provided; and
- (e) that sampling records shall be kept for a period of not less than three years and the same shall be available on request by any customer.

(5) A licensee who does not comply with this rule commits an offence and is liable on conviction to such penalties as are prescribed in these Regulations.

PART VI—EFFLUENT AND WASTEWATER DISPOSAL

42. A licenced water services provider shall provide, operate and maintain in each urban area, township, market or trading centre or other locality with a concentration of population exceeding such numbers as the Regulatory Board may from time to time determine, following consultation with the county government, determine systems of effluent, wastewater and faecal sludge management, treatment and disposal which are compliant with standards set by the Regulatory Board.

Effluent and wastewater disposal systems.

43. (1) A licenced water service provider shall, within two years of the issue of its licence, or such extended period as the Regulatory Board may approve, formulate and submit to the Regulatory Board and the county government a plan for the progressive improvement of

Effluent and wastewater disposal plan.

infrastructure and systems for effluent, faecal sludge and wastewater treatment and disposal in its area of service.

(2) The plan shall propose a time frame for the development of the infrastructure, a budget and a resource mobilisation plan.

(3) The plan shall also provide measures and procedures for private persons or community groups to establish, operate and charge a fee for the use of effluent or faecal sludge treatment plants established as a private or community enterprise under a contract with the licensee.

44. (1) A person, other than a person discharging wastewater from premises used solely for residential purposes, who intends to discharge effluent or other wastewater from commercial, industrial, institutional or other premises shall obtain consent from the licenced water services provider to discharge any trade effluent into the sewers of the licensee.

Control of trade
effluent

(2) An application for consent under sub-rule (1) shall state —

- (a) the nature and composition of the trade effluent;
- (b) the maximum quantity of the effluent which it proposes to discharge on any one day;
- (c) the highest rate at which it is proposed to discharge the effluent; and
- (d) any other information required by the licensee.

(3) The consent of the licenced water services provider to discharge trade effluent into its wastewater management system shall be subject to conditions including —

- (a) a condition requiring the applicant to subject the effluent to pre-treatment in accordance with standards imposed by the Regulatory Board before discharge;
- (b) the payment to the water services provider of an effluent discharge fee based on the tariff structure approved by the Regulatory Board;
- (c) a requirement that any tap or point of access through which effluent or non-potable water can be accessed shall be clearly marked with a durable notice and signs indicating that effluent or the non-potable water is a public health risk; and
- (d) any other requirements to be met to protect the integrity and sound operation of the wastewater management system.

(4) A licensee shall only be obliged to accept the quality and quantity of trade effluent of any other substance into a sewerage system that the sewerage treatment plant of that system is capable of purifying or treating to ensure that any discharge to the ambient environment complies with any standards prescribed by the Authority and or the National Environmental Management Authority as the case may be.

(5) For purposes of exercising its mandate to receive effluent into its sewerage system, a licensee may inspect pre-treatment facilities handling trade effluents.

(6) Any person who contravenes the provisions of this regulation commits an offence and shall be subject to penalties under the Act.

(7) A person aggrieved by the decision of the licensee on an application under this regulation, may within thirty days of the decision appeal to the Water Tribunal.

PART VI—TARIFFS

45. (1) A licenced water service provider shall implement the tariff approved and gazetted by the Regulatory Board for the prescribed period.

Implementation of tariffs by water service provider.

(2) A licenced water service provider shall be required to lodge a tariff review application not less than six months prior to expiry of the current tariff.

(3) The Regulatory Board shall send written notification to each licenced water service provider, not less than nine months prior to expiry of the current tariff including a copy to the respective County Executive Committee member.

46. (1) Not less than six months before the expiry of the regular tariff, the water services provider shall make an application to the Regulatory Board for a regular tariff review.

Application for regular tariff review.

(2) The application shall follow the format stipulated by the Regulatory Board and shall attach the water services provider's —

- (a) status report of the water services using the reporting format provided by the Regulatory Board;
- (b) three year business plan detailing the applicant's customer base, growth projections and infrastructure development programme;
- (c) proposed tariff supported by the findings of a tariff study whose report shall also be attached;
- (d) report of stakeholder consultations undertaken on the proposed tariff; and

any other information it considers relevant to the application.

(3) The Regulatory Board shall consider the application and take into account —

- (a) the cost effectiveness of the water service;
- (b) the optimality of the water service by reference to relevant national and international benchmarks;
- (c) affordability of the proposed tariff, including proposals on cushioning consumers who, on account of poverty, cannot afford the proposed tariff;
- (d) willingness to pay by consumers;
- (e) the views of the county government;
- (f) the feedback from stakeholder consultations; and

(g) any other relevant considerations.

(4) Before determining the application, the Regulatory Board shall, undertake consultations with the respective county government, the public and the residents and stakeholders within the area within which the licensee operates.

(5) The Regulatory Board may approve the proposed tariff either as proposed or with amendments or conditions and upon approval, shall issue a notice in the Gazette setting a date from which the new tariff will apply.

(6) The Regulatory Board shall undertake tariff implementation reviews during the life of a tariff.

47. (1) At any time before the regular tariff review, a water services provider may, for good cause shown to the Regulatory Board, apply for an extraordinary tariff review.

Extraordinary tariff review.

(2) An application for an extraordinary tariff review shall, in addition to meeting the requirements for a regular tariff review, satisfy the Regulatory Board that, due to a change in circumstances which could not have been foreseen during the last regular tariff review or for some other justifiable reason, a tariff review is necessary to ensure a sustainable water service.

(3) An extraordinary tariff review, shall if approved by the Regulatory Board, be gazetted and apply only until the end of the regular tariff period.

48. (1) The Regulatory Board may, at the request of the water services provider as part of the regular tariff review, and for good cause shown, permit the water services provider to implement price indexation by reference to the officially published annual inflation index.

Tariff adjustment.

(2) Permission to implement price indexation may only be granted if has been subjected to stakeholder consultation and, if granted, shall be gazetted and apply only until the end of the tariff period.

(3) The Regulatory Board's decision on a tariff application may be appealed to the Water Tribunal by the water services provider, a consumer within the area of the water services provider or any other person likely to be affected by the decision.

PART VIII—CLUSTERING

49. (1) The Regulatory Board may, for purposes of securing a commercially viable water service, require two or more water service providers to cluster for purposes of provision of the licenced water services.

Clustering of water service providers.

(2) Clustering shall be undertaken in accordance with the requirements of these Regulations and shall additionally comply with clustering guidelines issued from time to time by the Regulatory Board.

50. A proposal for clustering may be initiated by a water service provider or two or more water service providers acting jointly, the county government, the Regulatory Board, a consumer group or

Proposal for clustering water services providers.

consumer groups acting jointly, or a stakeholder group within the area of supply of the water services to be clustered through a letter to the County Government within whose area of jurisdiction at least one of the water services providers to be clustered operates.

51. As soon as practicable following receipt of the proposal to undertake clustering the county executive committee member shall, following public consultation, prepare a feasibility study on the proposal which shall address —

Feasibility study and report.

- (a) the financial, technical, operational, socio-economic, environmental, legal and other relevant implications of the proposed clustering;
- (b) the type of clustering that is appropriate in the circumstances;
- (c) the financial support if any required of the county government to bridge funding gaps if any of the clustering;
- (d) the clustering process including milestones and benchmarks;
- (e) an awareness programme;
- (f) the governance arrangements under the new clustered service provider;
- (g) transitional arrangements; and
- (h) other relevant considerations.

52. (1) If, on the basis of the recommendations of the report of the feasibility study, the proposal to undertake clustering is approved by the county executive committee and the Regulatory Board, the clustering process shall be overseen by a joint committee comprising members of the board of directors of the water service providers participating in the clustering and three other persons appointed by the county executive committee member on the basis of their knowledge and experience of the water sector.

Operationalization of clustering.

(2) The joint committee shall continue as a transitional mechanism and upon conclusion of the clustering process and appointment of the new Board of Directors, shall stand dissolved.

(3) Where the clustering involves a merger or a takeover of a licenced water services provider which is a corporate entity, upon conclusion of the clustering exercise, the water services provider ceasing to exist shall be dissolved by a resolution of an annual general meeting or extraordinary general meeting and compliance with the requirements under the Companies Act and other applicable laws.

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53. (1) A water services provider providing water services as a clustered service shall, within one year of the conclusion of the clustering exercise, apply for a new service provision area licence and a new tariff in accordance with the procedure for applying for a licence and tariff review under regulation 20 and 45.

Application for a new service provision area licence and new tariff.

(2) If satisfied that the applicant meets the licensing requirements under section 86 of the Act and regulation 20 the Regulatory Board may issue the licence:

Provided that where the applicant has not met the licensing requirements under section 86 of the Act and regulation 20, the Regulatory Board may issue the applicant with a provisional licence conditional on the applicant satisfying any outstanding requirements within a defined timeframe not exceeding two years.

54. (1) In this Part “clustering” means a formal arrangement between two or more licenced water service providers involving the —

Clustering and commercial viability.

- (a) merger of two or more water service providers;
- (b) a takeover of one water service provider of another water service provider;
- (c) the joint provision of water services;
- (d) the transfer of the whole or part a water service from one licensee to another;
- (e) a variation in the area of supply of two or more licensees;
- (f) provision by a water services provider of water services in the whole or part of the area of supply of another;
- (g) an extension by a county water services provider of its services to rural or underserved areas of the county;
- (h) or other similar arrangement.

(2) Where clustering involves the provision of water services in more than one county by a water services provider, the proposal to undertake clustering shall require the approval of the county executive committees of both or all counties within whose area of jurisdiction the water services are to be provided.

(3) “Commercial viability” means, in respect to an urban water service, the ability to meet capital and operation and maintenance costs out of the water revenue and, in respect to a rural water service or a water service serving a low income urban area, the ability to meet operation and maintenance costs out of the water revenue year on year taking account of the input costs of providing the licenced service, the extent of non-revenue water, the consumer base, the efficiency of the service, applicable national and international benchmarks for sustainable water service and other relevant considerations.

PART IX—BULK WATER SUPPLY

55. (1) Bulk water supply services which are primarily intended to supply water in bulk to a water services provider in a county or counties other than the county in which the bulk water abstraction works are located shall be undertaken by waterworks development agencies established under section 65 of the Act.

Bulk water supply services by waterworks development agencies.

(2) In accordance with the transfer plan published by the Cabinet Secretary pursuant to section 152(4) of the Act, waterworks development agencies shall succeed to and assume the functions, assets, contracts, liabilities and staff of the water services board used for the provision of cross-county bulk water supply within the area of jurisdiction of the waterworks development agency and such transfer

shall be completed not later than twelve months following the establishment of the waterworks development agency or such longer period as the Cabinet Secretary, in consultation with the county governments within whose area of jurisdiction the cross- county bulk water services are to be provided, may approve.

56. A licenced water services provider may establish works for bulk water supply where the works originate and terminate in the county in which the bulk water is to be supplied or the capital costs of developing a cross-county bulk water supply infrastructure and facilities are provided entirely out of the budget of the county government or of the water services provider developing the bulk water supply infrastructure.

Establishment of works for bulk water supply.

57. (1) A person desiring to supply water in bulk or operating an existing bulk water supply system shall make an application to the Regulatory Board for a bulk water supply licence.

Application for bulk water supply licence.

(2) A separate application shall be made for each bulk water supply system.

(3) A complete bulk water supply application shall be accompanied by, in respect to the proposed bulk water supply —

- (a) a feasibility study;
- (b) a business plan;
- (c) a proposed framework for the collaborative management of the bulk water works comprising a committee of representatives of the county governments within whose area of jurisdiction the bulk water works are to be located and, where appropriate, the national government;
- (d) where the county governments concerned have by a resolution of the county assemblies, agreed to assume responsibility for the payment of the liabilities associated with the bulk waterworks, an extract of the resolution duly certified by the clerk to the county assembly and a draft agreement for the handover of the ownership of the bulk water works to a joint authority established or to be established by the county governments within whose area of jurisdiction the bulk water works are to be located;
- (e) required permits and authorisations including a water use abstraction permit, an environmental impact assessment licence, physical planning permission and other applicable authorisations;
- (f) a proposed bulk water supply tariff;
- (g) a draft bulk water supply agreement with the water services providers to be supplied in bulk drawn on the basis that the capital and operational costs of the bulk water supply shall be met out of the revenues of the bulk water service without resort to public funds;
- (h) where resort to public funds is necessary in order to provide the bulk water service, evidence of the commitment of the

county or national government as appropriate to offset part or the whole of the capital and or operational costs out of public funds;

- (i) evidence of stakeholder consultations including the feedback of the county governments within whose area of jurisdiction the bulk water works are to be developed; and
- (j) any other information relevant to the application.

58. (1) Following the receipt of the application under regulation 57, the Regulatory Board shall undertake public consultation in respect to the application.

Public consultation on application for bulk water supply licence.

(2) In determining the application, the Regulatory Board shall provide feedback indicating how it has taken account of and addressed the representations made by stakeholders during the public consultations.

59. (1) Within six months of receiving a complete application for a bulk water supply licence, the Regulatory Board shall determine the application and may approve, approve with conditions or reject the application.

Determination of application for bulk water supply licence.

(2) The licence shall specify the bulk tariff which shall be subject to indexation, regular review and extraordinary review according to a schedule and on terms and conditions stipulated by the Regulatory Board.

60. The application for a licence under this Part may also be made by a Joint Authority or Joint Committee established within the scope and meaning of Article 189 of the Constitution.

Application by Joint Authority or Joint Committee.

61. The decision of the Regulatory Board on a bulk water supply application shall be subject to appeal to the Water Tribunal.

Appeal to the Water Tribunal.

PART X—FEES AND LEVIES

62. (1) A licensee shall pay to the Regulatory Board, as the case may be, on issue of the licence and at prescribed intervals thereafter, such licence fees as the Regulatory Board may, following consultation with the Cabinet Secretary, determine.

Annual regulatory fee.

(2) The licence fee shall be determined by reference to a schedule of fees published in the Gazette from time to time by the Regulatory Board.

63. (1) Pursuant to section 109 of the Act, the Regulatory Board may impose a sewerage services levy on all water services within the area of a licensee at a rate to be determined and gazetted from time to time following approval of tariffs.

Sewerage services levy.

(2) The sewerage services levy shall be used to cover part of the capital costs of developing waste water and faecal sludge management, treatment and disposal infrastructure within the area of supply of the water services provider.

(3) The water service provider shall maintain a separate account for funds collected from the sewerage services levy which shall be

administered in accordance with Fund Administration Rules issued from time to time by the Regulatory Board.

64. (1) Pursuant to section 117(2) of the Act, the Cabinet Secretary shall impose a levy of 3% of the monthly water consumption bill of each consumer as a water consumption levy to come into effect on a date to be notified by the Cabinet Secretary in the Gazette and which shall be payable into a Fund maintained by the Water Sector Trust Fund.

Water consumption levy.

(2) The proceeds of the water consumption levy shall be used in accordance with the objects of the Fund under section 114 of the Act and on the basis of funding principles and criteria formulated by the Water Sector Trust Fund in consultation with the Cabinet Secretary and county governments.

(3) The Cabinet Secretary may, from time to time, following public consultation, review the water consumption levy in sub regulation (1) and notify any change through a notice published in the *Gazette*.

65. (1) The levy imposed under section 117(2) of the Act shall be collected by licenced water service providers and maintained in a separate bank account established for the purpose.

Levies bank account.

(2) A licenced water service provider shall keep books of account and other books and records in relation to its water consumption levy bank account and submit an annual audit of such books and records to the Regulatory Board.

66. The Regulatory Board shall have the right to inspect the records of the sales of water services by a licenced water services provider to verify that the account in regulation 65(2) is operated in accordance with the requirements of these Regulations and guidelines issued by the Regulatory Board from time to time.

Inspection of sales records.

67. Rules and guidelines for operating the water consumption levy bank account shall require that within fifteen days of the end of each month, a water services provider shall remit to the Water Sector Trust all of the monies collected as a water services consumption levy.

Operation of levies bank account.

68. A licenced water services provider shall charge an administration fee of not more than 0.1% of the proceeds of the water consumption levy to cover the costs of collecting and administering the levy.

Administration fee.

69. (1) Notwithstanding regulation 65, the Regulatory Board may, taking account of a licenced water services provider's cash flow situation, from time to time grant to a licenced water services provider leeway to make payment on different instalment terms, provided that this shall not result in the water services provider defaulting on its payment within a financial year.

Failure to remit levies.

(2) Where, despite the leeway provided by the Regulatory Board under sub regulation (1), the water services provider fails to remit the water consumption levy, the Regulatory Board shall submit the non-compliance as a grievance to the Water Tribunal for determination.

**PART XI—ADMINISTRATION OF CERTAIN WATER SUPPLY
AND INFRASTRUCTURE SERVICES**

70. (1) A licenced water services provider shall ensure the availability and development of sources of water for abstraction as necessary to enable it supply adequate quantities and quality of water to consumers.

Availability and development of water sources.

(2) A licenced water services provider shall apply for and secure an abstraction permit from the Water Resources Authority, access rights, easements and source development agreements as may be necessary to enable it obtain such raw water as it requires for the performance of its functions.

(3) A licenced water services provider that has been issued an abstraction permit by the Authority shall pay such water use charges to the Authority as required under the applicable Water Resources Regulations.

(4) Where the water services provider does not have access to adequate sources of raw water for supply to consumers within its area of supply it shall, with the approval of the Regulatory Board, make arrangements for the purchase of water in bulk.

71. (1) A water services provider desiring access for purposes of performing the licenced functions may acquire easements in accordance with the Third Schedule of the Act.

Easements, access rights, property rights etc.

(2) A water services provider which acquires easements, access rights or property rights over land on or over which its facilities and infrastructure is constructed shall ensure that it has obtained and registered the property or access rights in its name and have in its custody the relevant title documents.

(3) A water services provider shall take steps to obtain and maintain in its records “as built” drawings of its facilities and infrastructure, geo-referenced maps and plans and other relevant documents which show the location and layout of the water infrastructure.

(4) Where the access rights to point water sources are enjoyed by community members on traditional or other non-statutory basis, the water services provider shall take steps to document the nature and extent of the access rights.

72. (1) A water services provider within whose area of supply a borehole is to be drilled shall be entitled to be consulted on the permit application and to issue a “no-objection.”

Borehole construction within supply area.

(2) In considering its “no-objection”, a water services provider shall take account its ability to provide the water services in respect to which the application for the borehole has been made and, if it reasonably believes that it can provide the required water services within a period not exceeding one year, shall decline the request for a “no-objection.”

(3) A water services provider shall maintain an inventory of small scale service providers including boreholes constructed within its exclusive area of supply and if within a period of one year of construction of a borehole the water service provider is able to provide water services to the owner of the borehole it shall require the owner of the borehole to discontinue the use of the borehole, with a notice period of one year, and to take supply of water from the water services provider.

(4) Where a water services provider wishes to take water from the borehole for supply to its customers, it shall enter into a contract with the owner of the borehole for the purchase of water from the owner of the borehole.

(5) Any dispute between the owner of the borehole and the water services provider over a “no-objection” or the use of the borehole by the water services provider for the provision of water to the water service provider’s customers shall in the first instance be submitted to the county director of water and sanitation for an amicable resolution and, if not resolved, be submitted to the Water Tribunal for determination.

(6) For purposes of exercising its mandate to supply water services within its area of supply, within three months of the coming into effect of these Regulations, owners or operators of boreholes in the supply area of each water service provider, whether private or public persons, shall submit to the Authority, the county government and the county water service provider, a copy of the permit or other authorization of the borehole, information on the use to which the water of the borehole is put and the number of households or establishments served by the borehole.

73. (1) A licenced water services provider, following consultation with the county government and stakeholders, shall formulate rules compliant with water vending guidelines issued by the Regulatory Board, for regulating, within the area of supply of the water services provider, water vending through kiosks or mobile means including water tankers.

Regulation of water vending.

(2) Rules made by the water services provider shall require water vendors, among other things, to —

- (a) acquire a permit from the water services provider;
- (b) source water for vending only from approved sources;
- (c) charge rates approved by the water services provider which are compliant with guidelines issued by the Regulatory Board;
- (d) operate vending kiosks or water tankers at approved locations; and
- (e) file annual reports according to a reporting format approved by the water services provider.

(3) A water services provider shall put in place measures to ensure that its staff members do not operate water vending businesses within its area of supply.

74. (1) Where there exists within the area of supply of water service provider a source of supply of water other than that supplied by the water services provider which, in the opinion of the water for drinking and domestic purposes, the licensee may, in collaboration with the Authority and the public health officer, order such source of supply to be closed and shall by order, compel user such water to take a supply from the water services provides.

Closure of unsafe supplies of water.

(2) A person who disobeys an order of the water services provider given under this regulation commits an offence and is liable to prescribed penalties and the water services provider shall be entitled to close the source of supply either temporarily or permanently until remedial measures are implemented.

75. (1) A water services provider shall ensure that water services in rural areas and underserved areas which are supplied by community water service providers or private water service providers under an arrangement with the county water services provider meet water quality and service quality standards set by the Regulatory Board for rural and underserved areas.

Water quality and service standards for rural and underserved areas.

(2) Where a community service provider or small scale private water services provider is unable to meet the set water quality or service standards and such failure poses a public health risk, the water services provider with the approval of the Regulatory Board and the County Executive Committee member may require the community water services provider or private water services provider as the case may be to cease further supply and the licenced water services provider shall henceforth assume responsibility for the provision of water services in the area.

76. (1) As soon as is reasonably practicable after being licensed, a licenced water services provider shall make rules governing the receipt of septic tank sludge into the sewerage system or faecal sludge treatment and disposal facility operated by or under a contract with the water services provider.

Septic tank sludge management.

(2) Rules made by water services providers shall —

- (a) require that persons providing exhauster services within the area of supply of a water services provider register with the water services provider using a form of registration to be provided by the water services provider;
- (b) require that the water services provider maintain a database of exhauster services within its area of supply including information on the persons providing exhauster services including their names or the names of their businesses, contact details and physical locations, particulars of the motor vehicles and other facilities used to provide the exhauster services and the areas of operation of the exhauster services;

- (c) impose fees for the use of the sewerage system or faecal sludge treatment and disposal facility of the water services provider to dispose of septic tank sludge;
- (d) require persons operating exhauster services to comply with standards set by the water services provider for the acceptance of septic tank sludge into its sewerage or faecal sludge treatment and disposal system.

(3) In order to facilitate the operation of exhauster services, a licenced water services provider shall provide and maintain discharge points for exhausters which meet standards set by the Regulatory Board.

(4) Where it is of the opinion that there is inadequate provision in its area of supply for the management and exhaustion of septic tank sludge a county water service provider may, with the consent of the Regulatory Board and the county executive committee member establish and operate an exhauster service in its area of supply.

PART XII—APPROVALS AND CONSTRUCTION OF WORKS AFFECTING INFRASTRUCTURE, ETC

77. (1) No person shall be qualified to plan, design and operate water services infrastructure unless he holds, or works under a person who holds, a valid licence issued by the Cabinet Secretary as a qualified water sector professional and is in good standing from the Engineers Board of Kenya.

Requirement to obtain water sector professional or contractor licence.

(2) No person shall be eligible to work as a contractor unless he is licenced by the Cabinet Secretary in the appropriate category of contractor for the works to be undertaken.

(3) No person shall be eligible to provide services as a water sector professional unless he holds a valid licence as a qualified water sector professional issued by the Cabinet Secretary and he possesses the requisite skills to work as a water sector professional.

(4) Any person who lays, fits or connects any pipes, trunks, mains, fittings, equipment, appliances or other connections to the water reticulation or sewerage system belonging to a licensee without the requisite authorization issued under these Regulations commits an offence and is liable on conviction to the penalties prescribed in section 147 of the Act.

(5) Any person whether an owner or occupier of premises or otherwise, who permits an unlicenced person to lay, fit or connect any pipe, trunk, mains or other connections to the existing water reticulation or sewerage system belonging to a licensee commits an offence and is liable on conviction to the penalties prescribed in section 147 of the Act.

78. The Cabinet Secretary, on the recommendation of the Technical Advisory Committee established under the applicable water resources regulations and the Regulatory Board, may —

Issuance, variation, suspension or cancellation of water sector professional or contractor licence.

- (a) issue, vary, suspend or cancel licences of water sector professionals or contractors in the water services sector in accordance with the applicable regulations;

- (b) inquire into and resolve complaints made against licenced water sector professionals and contractors.

79. (1) A person who intends to undertake construction works which may affect water and sewerage infrastructure operated by a water services provider, shall apply for the approval of the water services provider on terms and conditions set by the water services provider, which may include the payment of a fee.

Approval of construction works.

(2) A person who undertakes works under this regulation without the approval of the water services provider commits an offence and is liable on conviction to the penalties prescribed under section 147 of the Act.

(3) Where damage is caused to infrastructure belonging to or used by the water services provider through construction works, the person responsible for the construction works shall, in addition to any other prescribed penalties, be liable to a surcharge of the full cost of repairs or replacement and it shall not be a defence to any action taken against the person responsible, whether civil or criminal, that the water services provider had approved the works.

(4) The provisions of this regulation shall apply equally to public entities undertaking construction works as they do to private contractors undertaking works for private persons or under a contract with public bodies.

80. (1) Where a developer of property intends to undertake plumbing, sewerage and related works for connection of private property to the mains operated by a water services provider —

Certification of property development works connecting to water mains.

- (a) the developer shall present the plans for such plumbing and sewerage works to the water services provider for inspection and approval, prior to commencement of construction; and
- (b) upon completion of the works, the water services provider shall inspect the works and if the works comply with the approved plans, certify the works as approved for connection to the mains.

(2) A developer who fails to comply with this regulation commits an offence and is liable on conviction to the penalties prescribed under section 147 of the Act.

81. (1) No person shall cause a water fitting or sanitation fitting to communicate with any pipe, cistern or other receptacle or works used, or capable of being used, for the conveyance or reception of water or effluent other than water supplied by a licensee or its agents.

Allowing of new water or sanitation fitting.

(2) No newly laid pipe or other water fitting shall, in the course of installation or alteration by any person other than a licensee, be covered until such pipe or water fitting has been examined and approved by the water services provider or other person authorized by him.

(3) No pipe or other water fitting shall be connected with a main, and no additional water fittings, except taps replacing old taps, shall be connected with existing water fittings, until they have been

inspected by the water services provider or his agent and a certificate of approval given by him.

(4) The licensee shall ensure and enforce the regulations of installation work in the licenced area as a condition of the licence.

PART XIII—INSPECTION, EVALUATION AND MONITORING

82. (1) A licenced water services provider shall establish and maintain an inspectorate service with adequate resources and staff.

Inspectorate service.

(2) An inspector employed by the water services provider may enter any premises to which it provides water or sewerage services in order to inspect and monitor —

- (a) the distribution system;
- (b) the water metre;
- (c) water storage systems;
- (d) the sewerage system;
- (e) such other elements of the water and sewerage services as it may deem appropriate.

(3) An inspection may only be undertaken between the hours of 8 am and 6 pm except in an emergency.

(4) A water services provider shall communicate to its customers the recommended methods and procedures of verifying the identity of inspectors seeking entry into premises and maintain at all times a customer help line to which customers may telephone to verify any information provided to them by the inspector.

(5) Where the water and sewerage services provider has knowledge of, or suspects the illegal or unauthorized access to, and use of its water or sewerage services in any premises, it shall apply to the appropriate court for a warrant to enter and search the premises.

(6) Nothing in this sub-rule shall prevent a water services provider from disconnecting and terminating the water services from a point outside the premises in question.

(7) Notwithstanding sub regulation (1), a county water service provider may utilize inspectorate services operated by the respective county government provided that suitable arrangements are made to dedicate and train inspectors on matters relevant to water services, and this arrangement is approved by the Regulatory Board as being satisfactory.

83. (1) A licenced water services provider shall, at such intervals as the Regulatory Board may require, submit reports to the Regulatory Board using such reporting formats as the Regulatory Board may stipulate, on the nature and condition of its waterworks, facilities, installations and systems to enable the Regulatory Board ascertain the extent of compliance with prescribed standards.

Reporting by
licenced water
service providers.

(2) The Regulatory Board shall additionally put in place arrangements for collaboration with county governments and other

regulatory agencies with a statutory mandate to inspect, approve and or certify constructions, works and buildings.

(3) An inspection of, or approval or certificate issued to, a licenced water services provider by a county government or regulatory body pursuant to a collaborative arrangement with the Regulatory Board shall be sufficient evidence of compliance by the licenced water services provider with the standards prescribed by the Regulatory Board unless the Regulatory Board, for good cause, determines otherwise.

PART XIV— REPORTING AND RECORD KEEPING

84. (1) The Regulatory Board shall prepare an annual report of its work and activities within three months after the end of the each financial year.

Annual Reports by the Regulatory Board.

(2) The Regulatory Board shall publish and publicise the annual report in sub regulation (1).

85. (1) The Regulatory Board shall maintain a national database and geo-referenced information system on water services.

National database and georeferenced information system.

(2) For purposes of sub regulation (1), each water services provider shall maintain equipment, accurate records and accounts relating to all aspects of its operations as shall be prescribed in the licence.

86. (1) Each water services provider shall, using a format provided by the Regulatory Board, submit to the Regulatory Board annual reports showing the status of —

Annual reports by water service provider.

- (a) the water service;
- (b) network expansion and rehabilitation;
- (c) commercial and business growth;
- (d) progress towards financial sustainability and viability; and
- (e) any other information specified by the Regulatory Board in its format of reporting.

(2) If required by the Regulatory Board, licenced water service providers shall additionally submit to the Regulatory Board quarterly reports on the status of its compliance with the terms and conditions of the licence using a format provided by the Regulatory Board.

(3) Each licensee shall submit to the Regulatory Board an audited financial report within six months of the end of the financial year.

87. Each licensee shall provide information to the public on its plans and operations in the form, substance and frequency determined by the Regulatory Board.

Public reporting and transparency.

88. (1) Any person requiring water service data maintained in the national monitoring and georeferenced information system on water services maintained by the Regulatory Board shall make an application in a standard form as may be prescribed.

Obtaining water service data.

(2) The applicant shall pay a prescribed fee to be published in the *Gazette* for the data, unless the Regulatory Board is satisfied that the data is to be used for research or non-commercial purposes.

(3) Data provided by the Regulatory Board to an applicant shall not be transferred to a third party and the Regulatory Board shall not be liable for any errors or omission in the data.

PART XV—COMPLAINTS

89. (1) Each water services provider shall establish a mechanism for handling complaints which meets guidelines stipulated by the Regulatory Board.

Complaints mechanism.

(2) For the purposes of sub regulation (1), the water services provider shall —

- (a) provide easy access to information and where applicable contact details of the local water action groups;
- (b) maintain a customer service centre with qualified staff for the purpose of addressing and resolving consumer applications, consumer service requests and complaints.

(3) A water action group, customer or other member of the public may lodge complaints concerning the licenced water services through the consumer complaints mechanism established by the water services provider.

(4) Notwithstanding the generality of sub regulation (1), the procedures for lodging complaints shall provide for —

- (a) notification to customers of the right to complain;
- (b) availability of a complaint form or any other written method for raising complaints; and
- (c) maintenance of a log of customer complaints.

(5) Each licensee shall file its complaint handling procedures with the Regulatory Board, within sixty days after the issue of the licence.

90. (1) A person who is not satisfied with the handling of his or her complaint by the water services provider may submit a written complaint by providing the information set out in the Second Schedule to the appropriate office of the Regulatory Board.

Complaints to the Regulatory Board.

(2) The officer of the Regulatory Board shall reply to the complainant, copying all other relevant parties, within twenty one days of receiving the complaint, stating what action is being taken, the decision of the Regulatory Board on the matter and any recommendation to the water services provider for resolving the matter.

(3) If a party is dissatisfied with the decision of the officer of the Regulatory Board, he or she may forward the matter to the Chief Executive Officer of the Regulatory Board.

(4) The Chief Executive Officer shall within twenty one days of receiving the complaint respond to the complainant, copying all

relevant parties, stating the final decision of the Authority including whether the Chief Executive Officer upholds or annuls as the case may be, the decision of the officer in sub regulation (2) and give reasons for his decision, and any recommendations to the complainant;

(5) If the complainant is dissatisfied with the final decision of the Regulatory Board, he or she may appeal the decision at the Water Tribunal.

(6) Each complaint lodged at the Regulatory Board shall be given a complaint number which shall be used for purposes of monitoring actions taken to remedy a complaint and the response to the complainant.

(7) The Chief Executive Officer of the Regulatory Board shall on an annual basis provide to the Cabinet Secretary a summary of the complaints received and action taken to address the complaints.

PART XVI—CONSUMER ENGAGEMENT

91. (1) Water services providers and the Regulatory Board shall adopt a mechanism of engagement with consumer groups that are registered as community based organizations involved in water issues within the counties.

Water action groups.

(2) Consumer groups who have entered into a recognition agreement with the water services provider shall be referred to as water action groups.

(3) The modalities of engagement with water action groups shall be set out in guidelines issued from time to time by the Regulatory Board.

92. The water action groups shall be responsible for the provision of information to consumers and shall act as a liaison between the water services provider and consumers.

Information by water action groups.

93. Water action groups shall follow up on resolution of consumer complaints by water services providers and submit unresolved complaints to the Regulatory Board as part of the water action group's operational reports, detailing the complaints and feedback on water services providers.

Consumer complaints and follow-up.

94. The Regulatory Board shall supervise and oversee the operation of the mechanism relating to consumer engagement and the protection of consumer interests.

Supervision and oversight of consumer complaints mechanism.

PART XVII—COMPLIANCE AND ENFORCEMENT

95. (1) The Regulatory Board may take enforcement action against a licenced water services provider for any of the following reasons—

Enforcement action against licenced water service providers.

- (a) serious or repeated breach of the licence conditions;
- (b) discovery of intentional misrepresentation by the licensee in its application for the licence;

- (c) operating in breach of legal requirements;
- (d) cessation of the licensee to meet the requirements to hold such licence;
- (e) failure to pay the prescribed fees for licensee or other obligation to the Regulatory Board; or
- (f) other sufficient cause.

(2) Where the Regulatory Board intends to take enforcement action against a licensee, the Regulatory Board shall issue a notice to show cause specifying the breach, a time frame for the required response and the consequences of failure to provide a response.

(3) After due consideration of such representations, the Regulatory Board may —

- (a) make a finding on the offending act or conduct and prescribe the time during which the licensee may remedy the offending act or conduct; or
- (b) require the payment of a penalty or fee as specified in the Act or these Regulations; and
- (c) recommend to the county government —
 - (i) the dissolution of the board of directors of the water services provider and its replacement with another board;
 - (ii) the variation of the licenced area;
 - (iii) any other action which it deems appropriate given the circumstances.

(4) A person aggrieved by the decision of the Regulatory Board under this regulation may within fifteen days from the date on which the decision is received, appeal to the Water Tribunal.

96. (1) Where despite a recommendation to the county government to take action against a licensee which is in default, the county government is unable, has failed or neglected to take action or take action effectively against the water services provider and it appears to the Regulatory Board that a licensee or an agent has persisted in its —

Cure Notice.

- (a) failure to adhere to a compliance programme agreed to without there being mitigating circumstances for that failure;
- (b) failure to adhere to agreed standards of improved services in the water quality, service delivery, facilities maintenance and capital works expansion and rehabilitation failure to adhere to the approved tariff without any mitigating circumstances;
- (c) neglect of sound business principles and good governance as stipulated in its licence;
- (d) failure to deal with the bank account into which levies are deposited as required in guidelines issued by the Regulatory Board;

- (e) intention to sell, lease, mortgage, transfer, attach, assign, demise or encumber a licence, or assets used for the provision of water services without authority; or
- (f) commission of a serious breach of the terms and conditions of its licence,

the Regulatory Board shall give an order for the licensee or agent to remedy that breach, specifying the action required to remedy the breach and a timeframe.

(2) The Regulatory Board may place the licensee under a “special regulatory regime” and direct —

- (a) a member of staff of the Regulatory Board or any agent of the Regulatory Board, or a licensee, as the case may be, to sit in the licensee’s or agent’s board or committee meeting to monitor the implementation of the order and the decisions being made in the licensee or the agent, as the case may be;
- (b) the licensee or the agent to transmit weekly reports of billings received and expenditures on operations and transactions to the Regulatory Board or the licensee as the case may be, and bank certificates for all its accounts;
- (c) an official from the Regulatory Board or an agent appointed for that purpose be placed in the concerned licensee or agent to monitor the day to day operations of the licensee or agent and to provide direction and technical assistance to the staff and board of directors of the licensee or agent for any length of time, that is deemed necessary to effect the cure.

(3) The Regulatory Board shall conduct regular inspections to ensure that the licensee complies with the terms of the licence and the cure notice is implemented by the concerned licensee or agent as the case may be.

(4) The costs of the “special regulatory measures” under this regulation shall be to the account of the licensee or agent as the case may be.

(5) If after six months of the special regulatory measures being undertaken or other extended period as determined by the Regulatory Board it still appears to the Regulatory Board that a licensee or agent is still unable or unwilling to meet obligations or continues to be in breach of obligations, the Regulatory Board may in addition to the measures in sub regulation (1) and (2) —

- (a) mandate that an agent of the Regulatory Board appointed to enhance financial discipline shall become a mandatory signatory to the accounts of the concerned licensee or agent;
- (b) direct the commencement of disciplinary or other punitive process against key office staff responsible for network expansion and maintenance, billing, meter reading and disconnection or financial matters, subject to their right to be heard, and take steps to integrate the billing system with the financial management system at the cost of the concerned licensee or agent;

- (c) direct the concerned licensee or agent, as the case may be, to take measures to review and rationalize its staff complement to ensure efficiency ratios if the staff size and capacity is contributing to the breach and implement a time plan to execute it;
- (d) direct or recommend to the relevant board or appointing authority the suspension of chief officers of the concerned licensee or agent, as the case may be, on tangible grounds identified, and subject to the concerned chief officers' right to be heard;
- (e) recommend to the County Government the taking of measures against the board of directors of the concerned licensee, or take remedial or punitive measures against the board of directors or management committee of the concerned agent, subject to their right to be heard; and
- (f) implement all other recommendations that have emerged from the regular inspections conducted.

97. (1) The special regulatory measures provided for in the Regulations shall be —

Special Regulatory Regime.

- (a) for a particular duration, not exceeding six months in the first instance, and subject to extension by a further period not exceeding six months;
- (b) intended to achieve improved results in the licensee and the agent;
- (c) funded from the operations of the concerned licensee and or agent performance guarantee which shall have been issued;
- (d) an integral part of the licence and the service provision agreement.

(2) Where the special regulatory regime fails, the Regulatory Board shall by order effect the transfer of the licensee's functions as envisaged in section 103 of the Act.

98. (1) The Regulatory Board may delegate to any person the exercise of any of the powers or performance of its function under these Regulations.

Delegation by Regulatory Board.

(2) The person to whom power is delegated under sub regulation (1) shall have the power to carry out inspection and enforcement functions of the Regulatory Board, and all other functions except licensing and prosecutorial functions.

99. (1) The Regulatory Board may, from time to time, by notice in the *Gazette*, appoint any person or class of persons to be water services inspectors for the purposes of these Regulations.

Water services inspector.

(2) An inspector shall have power of entry, inspection and apprehension, during normal working days and hours, for any offence under the Act.

(3) A person who obstructs or hinders or knowingly makes false or misleading statements to an inspector who is carrying out duties under sub regulation (2), commits an offence and is liable on conviction to the penalties prescribed in the Act.

PART XVIII—GENERAL OFFENCES

100.(1) An employee of a licenced water services provider shall have immunity from liability and prosecution for any losses arising from action taken in good faith in execution of lawful duties.

Offences by employees.

(2) Notwithstanding sub regulation (1), any actions of an employee of a licenced water services provider involving solicitation and receiving of bribes and corrupt practices shall be punishable, as appropriate, under the Public Officer Ethics Act, Penal Code, the Anti-Corruption and Economic Crimes Act or any other applicable law.

Cap. 183
Cap. 63
Act No. 3 of 2003

(3) An employee of a water services provider who—

- (a) wilfully fails to read a metre when it is his or her duty to do so;
- (b) wilfully fails to disconnect water services to a customer who has defaulted in making payment contrary to rules set by the water services provider;
- (c) wilfully fails to notify the water services provider of an illegal or unauthorized access and utilization of the water or sewerage services; or
- (d) colludes with other persons to allow or assist such persons illegally to access and use water services contrary to rules set by the water services provider

commits an offence and is liable upon conviction to not more than six months imprisonment or a fine of not more than twenty thousand shillings or both such fine and imprisonment.

(4) For purposes of this regulation, an employee of a water services provider includes a person engaged on casual terms of service, as well as a contractor when performing duties falling within the scope of this regulation.

101. Any person who impersonates an employee of a water services provider commits an offence and is liable upon conviction to a sentence of six months imprisonment, or a fine not more Twenty Thousands shillings, or both such fine and imprisonment.

Impersonation of staff of water service provider.

102.(1) Any person who wilfully vandalizes, damages or destroys infrastructure or a facility of a water and sewerage services provider commits an offence and is liable on conviction, to the penalties prescribed in section 147 of the Act.

Vandalism of water and sewerage services infrastructure.

(2) Upon conviction for a second or subsequent offence involving the wilful destruction or vandalism of infrastructure or facilities belonging to a water services provider, the offender shall be liable in addition to any other prescribed penalty to a surcharge of an amount equivalent to the value of the vandalized infrastructure which surcharge shall be recoverable as a civil debt through a suit in a court of competent jurisdiction.

103. (1) Any person who illegally connects to, diverts and utilizes for any purpose, water or sewerage services provided by a water services provider commits an offence and is liable upon conviction to the penalties prescribed in section 147 of the Act.

Illegal connection to water services.

(2) Upon conviction the offender shall additionally be liable to a surcharge of the full value of the water services illegally utilized, with interest computed at the rate of 12% per annum until paid in full, which surcharge shall be recoverable as a debt owed to the water services provider.

104. (1) Any person who wilfully contaminates or pollutes water which is used or intended to be used for domestic supply by discharging contaminants into it, throws waste or other contaminating matter into or otherwise handles such water in such a manner as to contaminate it, commits an offence and is liable upon conviction to the penalties prescribed under section 147 of the Act.

Contamination of water and supply to domestic premises.

(2) Any person who supplies water to domestic premises which he knows or ought to know is not fit for domestic consumption without issuing a warning to persons who are likely to consume it to the effect that the water is not fit for consumption and should be treated prior to being consumed, commits an offence and is liable on conviction to the penalties prescribed under section 147 of the Act.

105. Any person who —

Further offences.

- (a) undertakes or carries out any water service or sanitation infrastructure services or works without being the holder of a licence appropriate for the category of services or works undertaken or carried out or without being under the direction of a suitably licenced qualified water sector professional or contractor;
- (b) contravenes or fails to comply with any of the terms and conditions of any water service licence granted under these Regulations or wilfully gives false or misleading information in relation to water service works or services;
- (c) submits or causes to be submitted to a public water service provider or to the Regulatory Board a completion certificate which he knows or has reason to believe is false in any material particular;
- (d) being a water service or sanitation service contractor, undertakes or carries out by himself, his servant, or agent any water service installation work at any time whilst his business or any branch thereof is not registered or while the registration of such business or branch is suspended or cancelled;
- (e) being a water service or sanitation service contractor, undertakes or carries out, by himself, his servant or agent any water service installation work except under the direction of a licenced water sector professional holding a licence of a type appropriate to such work or installs a pump on a service line, or
- (f) being an owner or occupier of any premises or any developer or main contractor of any premises under construction, causes or permits to be carried out upon the premises any

water service installation work in contravention of these Regulations,

commits an offence and is liable on conviction to the penalties prescribed in section 147 of the Act.

106. A person who commits an offence under these regulations for which no express penalty is provided shall on conviction be liable to the penalties prescribed under section 147 of the Act.

Penalties.

107. The Water (Services Regulatory) Rules are hereby revoked.

Revocation.
L.N 137 of 2012
108.

FIRST SCHEDULE

(r. 10(4))

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF BOARDS
OF COUNTY WATER SERVICES PROVIDERS

1. Meetings

The Board shall meet for the dispatch of business at such times and places as it shall appoint, or failing any such appointment, as the Chairperson shall appoint:

Provided that the Board shall meet not less than four times in any financial year.

2. Special meetings

The Chairperson or any three directors may, by not less than twenty-four hours' written notice to all other directors, summon a special meeting of the Board at the headquarters of the Corporation at any time.

3. Notice of meetings

Except where a shorter period is appointed notice of the date, time and place of each meeting shall be given in writing at least five clear days beforehand to every director at such address in Kenya as the director shall have notified to the Corporation [company] from time to time:

Provided that the failure of any director to receive such notice shall not invalidate any proceedings.

4. Quorum

The quorum necessary for the transaction of business by the Board shall be not less than two thirds of the members of the Board.

5. Chairperson

The Chairperson shall preside at meetings of the Board:

Provided that if he is not present at the start or at any time during a meeting, the Vice Chairperson shall chair, and if both are absent, the directors present, if a quorum, may choose one of their number to act as chairperson during the Chairperson's absence from that meeting.

6. Voting

Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting:

Provided that in the case of any equality of votes, the Chairperson of the meeting shall have a second or casting vote.

7. Minutes

The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat.

8. Other procedures

Subject to the provisions of this Schedule, the Board may determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.

9. Disclosure of interest

- (1) If a director is directly or indirectly interested in any contract, proposed contract, or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of the matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

10. The common seal

The affixing of the common seal of the Corporation [company] shall be authenticated by the signatures of the Chairperson or some other director authorized generally or specially by the Board to act for the purpose, and of an employee of the Corporation [company] authorized generally or specially by the Board to act for the purpose.

11. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Corporation [company] by any person generally or specially authorized by it for that purpose.

12. Proof of documents

Any document purporting to be a document duly executed or issued under the seal of the Corporation [company] or on behalf of the Corporation [company] shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

SECOND SCHEDULE

(r. 90(1))

COMPLAINTS HANDLING

INFORMATION TO BE GIVEN BY COMPLAINANT UNDER THESE REGULATIONS

<i>Item</i>	<i>Information</i>
(a)	Name of Complainant
(b)	Contact address, telephone number, email address (if any) of Complainant
(c)	Nature and location of the problem
(d)	Date that problem occurred
(e)	Name and, if available, the contact details of all parties to the dispute or complaint
(f)	Any other relevant details
(g)	Signature of the Complainant

Dated the 7th July 2021.

SICILY K. KARIUKI,
Cabinet Secretary for Water and Sanitation and Irrigation.