

Approved for tabling in the House.

B. SNA
23/2/2022

REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- SIXTH SESSION (2022)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE IRRIGATION (GENERAL)
REGULATIONS (LEGAL NOTICE No. 199 OF 2021)

FEBRUARY 2022

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 FEB 2022	DAY: Wed
TABLED BY:	Hon. William Kiamket Chair, Delegated Committee
CLERK-AT THE-TABLE:	Benson Inzafu

*The Directorate of Audit, Appropriations
& other Select Committees
The National Assembly,
Parliament Buildings,
NAIROBI.*

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ABBREVIATIONS

LN	Legal Notice
NIA	National Irrigation Authority
SI	Statutory Instruments
SO	Standing Order
RIA	Regulatory Impact Statement

CHAIRPERSON'S FOREWORD

The Irrigation (General) Regulations (*Legal Notice No 199 of 2021*), were made by the Cabinet Secretary for Water, Sanitation and Irrigation pursuant to section 34 (1) of the Irrigations Act, 2019 and were published in the Gazette *vide* Legal Notice No. 199 of 2021.

The Regulations were submitted to the Clerk of the National Assembly on 19th October, 2021 and laid in the House on 10th November 2021 being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013, and subsequently referred to the Committee on Delegated Legislation for consideration.

The primary objective of the Regulations is to facilitate better carrying out of the purposes and provisions of the Irrigation Act 2019, which was enacted in August 2019. The purpose of the Regulations is to ensure -

- i. operationalization of the Irrigation Act, 2019 in the spirit of the Irrigation Policy, 2017;
- ii. sustainable development, management, financing, provision of support services and effective regulation of the entire irrigation sector in Kenya; and
- iii. compliance with the Constitution and laws of Kenya, international laws, treaties and agreements and other ratified instruments.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee held a pre-publication scrutiny meeting with the Ministry of Water, Sanitation, and Irrigation on the regulations on 17th December, 2020. Subsequently, the Committee at its scrutiny of the published Regulations established that the Ministry had taking into account the concerns made by the Committee during the pre-publication engagement and had met the requirements of the Constitution and other relevant laws in the development of the Regulations.

Public Participation

Articles 10 and 118 of the Constitution, section 5, 5A, and the Schedule to the Statutory Instruments Act, read together with Standing Order 210 require the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.

During the consultative meetings, the Ministry of Water, Sanitation, and Irrigation demonstrated that it had conducted sufficient public participation and had engaged the relevant stakeholders in the process of developing the Regulations.

Regulatory Impact Statement

In compliance with the Statutory Instruments Act, 2013 (No. 23 of 2013) on the requirement for a Regulatory Impact Statement, the Ministry demonstrated that a regulatory impact assessment had been conducted and the detailed regulatory impact statement was provided.

Having examined the Irrigation (General) Regulations, 2021 (*Legal Notice No 199 of 2021*) against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*), and the Irrigation Act (*No 14 of 2019*), pursuant to which they are made, the Committee resolved to **approve the Regulations for operation by the relevant department in the Ministry.**

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Irrigation (General) Regulations (Legal Notice No 199 of 2021)**

HON. WILLIAM KASSAIT KAMKET, M.P.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) Accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

The Hon. William Kassait Kamket, M.P. (Chairperson)

Tiaty Constituency

KANU

The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)

Mbeere North Constituency

Jubilee Party

COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

Jubilee Party

The Hon. William Kamoti, M.P.

Rabai Constituency

Orange Democratic Movement

The Hon. William Cheptumo, M.P.

Baringo North Constituency

Jubilee Party

The Hon. Martha Wangari, M.P.

Gilgil Constituency

Jubilee Party

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

Jubilee Party

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

Wiper Democratic Movement – Kenya

The Hon. Alice Wahome, M.P.

Kandara Constituency

Jubilee Party

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

Orange Democratic Movement

The Hon. Robert Mbui, M.P.

Kathiani Constituency

Wiper Democratic Movement -Kenya

The Hon. George G. Murugara, M.P.

Tharaka Constituency

Democratic Party

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

Wiper Democratic Movement -Kenya

The Hon. Jennifer Shamalla, M.P.

Nominated

Jubilee Party

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

Orange Democratic Movement

The Hon. Munene Wambugu, M.P.

Kirinyaga Central Constituency

Jubilee Party

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. Patrick Mariru, M.P.

Laikipia West Constituency

Jubilee Party

The Hon. Sammy Seroney, M.P.
Nominated
Wiper Democratic Movement – Kenya

The Hon. Tindi Mwale, M.P.
Butere Constituency
Amani National Congress

The Hon. Robert Gichimu, M.P.
Gichugu Constituency
Jubilee Party

The Hon. Edith Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement – Kenya

The Hon. Abdi Koropu Tepo, M.P.
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Mr. Mohamed Jimale
Clerk Assistant II (Team Leader)

Ms. Ruth Mwihaki Gakuya
Clerk Assistant II

Mr. Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Fiona Musili
Research Assistant II

Ms. Noelle Chelangat
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

2.0 CONSIDERATION OF THE IRRIGATION (GENERAL) REGULATIONS, 2021 (L.N. No. 199 OF 2021)

2.1.1 Introduction

1. The Irrigation (General) Regulations, 2021 are made by the Cabinet Secretary for Water, Sanitation, and Irrigation pursuant to Section 34(1) of the Irrigation Act, 2019.
2. The Regulations were published in the gazette on 22nd September 2021, vide Legal Notice No 199 of 2021, submitted to the Clerk, National Assembly on 19th October 2021 and laid in the House on 10th November 2021.
3. The objective of the regulations is to provide for better carrying out of the purposes and provisions of the Irrigation Act 2021 to ensure sustainable development, management, financing, provision of support services, and effective regulation of the irrigation sector in Kenya.
4. The Regulations provide for;
 - i. sustainable development, management, financing, provision of support services and effective regulation of the entire irrigation sector in Kenya; and
 - ii. compliance with the Constitution and laws of Kenya, international laws and treaties, agreements, and other ratified instruments

2.1.2 Overview of the Regulations

- a) **Part I: Preliminary Provisions:** Provide for the definition of terms in order to bring clarity and common understanding to the meaning of specialized words as used in irrigation development.
- b) **Part II: Irrigation Development:** Provides for-
 - a. establishment of all irrigation areas and schemes as stipulated in the act.
 - b. procedures for initiation and development of irrigation schemes
 - c. defining technical requirements for viable and sustainable irrigation scheme development
 - d. ensuring compliance to technical requirements for scheme establishment.
- c) **Part III: Licensing of Schemes:** Makes provisions for the use of Licensing as a tool For;
 - a. ensuring standards and critical conditionality's are adhered to or met prior to any implementation to ensure sustainable irrigation development.
 - b. ensuring compliance with other statutory requirements. i.e. Water Act 2016
 - c. facilitating renewal of licenses to ensure monitoring and enforcement of compliance.
 - d. data collection for strategic and National management decision making.
- d) **Part IV: Management of Irrigation Schemes:** Provides guidance on the management of irrigation schemes so as to ensure the sustainability of irrigation development through;
 - a. provisions for the management of public and community-based smallholder schemes
 - b. promoting good governance in communal irrigation systems
 - c. institutionalizing the irrigation water users association
 - d. provision of oversight mechanisms to proactively respond to issues arising, leading to the non-sustainability of irrigation schemes.
 - e. providing mechanisms to address conflicts in irrigation systems.

- f. institutionalizing irrigation service fee hinged on water rights and use, thus providing assurance for operation and maintenance.
- g. providing oversight mechanisms to ensure prudent financial management of communal irrigation schemes.
- e) **Part V: Irrigation Standards and Quality Control:** Makes provisions to control the quality of irrigation development for safety as well as sustainability by
 - a. establishing standards for irrigation water management
 - b. establishing standards for irrigation infrastructure
 - c. establishing standards for professionals working in the irrigation sub sector.
 - d. provides mechanisms for enforcement
- f) **Part VI: Irrigation Research, Innovation and Training:**
 - a. provides mechanisms for coordination of irrigation research, innovation and training
 - b. provides for inventorization of irrigation technologies in mass use in Kenya.
 - c. provides mechanisms for dissemination of research findings through centres of excellence amongst others.
 - d. provides guidance for training as part of capacity building for sustainability
- g) **Part VII: Financing Irrigation Development:**
 - a. provides modalities for funding of irrigation development.
 - b. provides for cost sharing and cost recovery in irrigation development
 - c. provides for affirmative action for social equity in irrigation development
 - d. provides for safeguards for irrigation farmers on irrigation development under loan arrangements
- h) **Part VIII: Monitoring, Performance Audit and Reporting**
 - a. to provide for information management and monitoring and evaluation of the sector
 - b. provide diagnostic mechanisms for ensuring irrigation scheme sustainability
 - c. irrigation scheme performance assurance
 - d. provide data for national investment decision making
 - e. Provide mechanisms for reporting to both Houses of Parliament
- i) **Part IX: Miscellaneous Provisions:** Ensures adherence to stipulations in the Act and Regulations by providing for Offence and penalty definitions
- j) **Schedules:** Provide details to the specific regulations such as
 - a. Details on technical issues such as standards
 - b. Necessary forms for applications
 - c. Formats for reports
 - d. Templates for agreements
 - e. Guidelines for formation of irrigation water users associations (IWUAs)
 - f. Criteria for performance assessments

2.1.3 Scrutiny of the Instrument

In accordance with section 16 of the Statutory Instruments Act, 2013, the Committee held pre-publication consultations with the Ministry of Water, Sanitation, and Irrigation on 18th December 2020 at Simba Resort in Naivasha where the Committee was taken through a detailed presentation on the provisions of the regulations 2021.

The following issues arose during the plenary -

- a) Public Participation/stakeholders' consultations: the Committee was informed that a series of stakeholders' consultations were held in KALRO Dairy Research Institute in Naivasha and a National Validation Workshop held at the Kenya School of Monetary Studies in January 2020 that was attended by larger representatives of stakeholders likely to be affected by the Regulations. CECs from various Counties also attended as well farmers from different schemes across the country.
- b) The Ministry officials further highlighted that the National Irrigation Authority supports the farmers both technically and through budgetary allocation for their farming produce.
- c) The Committee was apprised *inter alia* that Permit holders who have title deeds of the scheme will be assisted by the National Irrigation Board while communities and families that have settled in these schemes for years and issues of succession within irrigation schemes need clarity.

The Committee held further consultations with the Ministry on the regulations in a meeting held on 17th February, 2022 in which the Ministry confirmed that various issues raised at pre-publication scrutiny had been addressed as follows:-

- a. A clear delineation of responsibilities between National and County governments had been provided for under Regulation 6.
- b. The regulations under Regulations 7. (1), 19. (3) 15, 16 26 87,88 and regulation 110 provide an enabling regulatory environment to the irrigation sector
- c. That while the Irrigation Act, 2019 is explicit that licensing of irrigation schemes is the function of the Cabinet Secretary, the Act provides for the Cabinet Secretary to delegate this function. Therefore, the licensing of small-scale irrigation schemes will be undertaken at the Counties through delegation under the framework of the Intergovernmental Relations Act, 2012.
- d. Administratively, the Cabinet Secretary had developed a guiding framework for the establishment of County Irrigation Development Units, therein providing for licensing small-scale schemes at the county level.

3.0 COMMITTEE OBSERVATIONS

Having examined the Irrigation (General) Regulations, 2021 (*Legal Notice No 199 of 2021*) the Committee made the following observations –

3.1.1 Statutory Timelines

- k) The Regulations were published in the gazette on 22nd September 2021, *vide* Legal Notice No. 199 of 2021, submitted to the Clerk, National Assembly on 19th October 2021, and laid in the House on 10th November 2021 being within the statutory timelines set out in section 11(1) of the Statutory Instruments Act, 2013.

3.1.2 Public Participation

- l) Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.

- m) The Ministry of Water, Sanitation and Irrigation demonstrated that it had conducted sufficient public participation and had engaged various stakeholders on various dates between November 2019 and July 2021. The stakeholders included amongst others; representatives of farmers and irrigation water users associations, Council of Governors, County Governments, Universities, Development Partners, Semi-Autonomous Government Agencies, Private Irrigation Practitioners, Regional Development Agencies, Ministries, National irrigation schemes, Financial Service providers, and the National Assembly and Senate Committees on Delegated Legislation.
- n) The Ministry had also conducted a national validation workshop which was held at the Kenya School of Monetary Studies (KSMS) on 23rd January 2020 and attended by key stakeholders likely to be affected by the Regulations

3.1.3 Regulatory Impact Statement

- o) In compliance with the Statutory Instruments Act, 2013 (No. 23 of 2013) on the requirement for a Regulatory Impact Statement, the Ministry conducted a regulatory impact assessment and submitted a detailed Regulatory impact statement.
- p) The purpose of the Regulatory impact statement is to enable the Ministry, Parliament, stakeholders, and community to be informed of the environmental, social, and economic implications of the implementation of the proposed regulations.

4.0 COMMITTEE RECOMMENDATION

Having examined the Irrigation (General) Regulations, 2021 (*Legal Notice No 199 of 2021*) against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*), and the Irrigation Act (*No 14 of 2019*), pursuant to which they are made, **the Committee recommends that the House approves the Irrigation (General) Regulations, 2021 (*Legal Notice No 199 of 2021*) in accordance with section 34(1) of the Irrigation Act, 2019).**

Signed.....

Date.....

**THE HON. WILLIAM KASSAIT KAMKET, M.P.
(CHAIRPERSON)**

ANNEXURES

1. **Adoption List**
2. **Legal Notice Number 199 of 2021 and the Explanatory Memorandum**
3. **Committee Minutes**






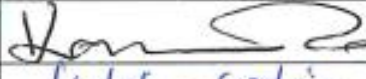


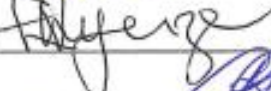


COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Adoption of the Report on the Consideration of the Irrigation (General) Regulations, 2021 (LN No. 199 of 2021)

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: _____ COMMITTEE ON DELEGATED LEGISLATION

	HON. MEMBER	SIGNATURE
1.	Hon. Kassait Kamket, MP (Chairperson)	
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Cecily Mbarire, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Robert Mbui, MP	Virtual reception
8.	Hon. Martha Wangari, MP	Virtual reception
9.	Hon. Ronald Kiprotich Tonui, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	
12.	Hon. Gideon Mulyungi, MP	Virtual reception
13.	Hon. George Gitonga Murugara, MP	
14.	Hon. Jennifer Shamalla, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Patrick Kariuki Mariru, MP	
17.	Hon. (Dr.) Wilberforce Oundo, MP	
18.	Hon. Abdi K. Tepo, MP	
19.	Hon. Edith Nyenze, MP	
20.	Hon. Robert Githinji Gichimu, MP	
21.	Hon. Sammy Seroney, MP	Virtual reception
22.	Hon. Tindi Mwale, MP	
23.	Hon. William Cheptumo, M.P	

MINUTES OF THE 5TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY 17TH FEBRUARY, 2022 AT 10.00 A.M. IN THE COMMITTEE ROOM ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT

- | | | |
|---------------------------------------|---|--|
| 1. The Hon. Kassait Kamket, M.P. | - | Chairperson |
| 2. The Hon. Muriuki Njagagua, M.P. | - | Vice-Chairperson (<i>Virtual attendance</i>) |
| 3. The Hon. Cecily Mbarire, MGH, M.P. | | |
| 4. The Hon. George Murugara, M.P. | | |
| 5. The Hon. Daniel Maanzo, M.P. | | |
| 6. The Hon. Edith Nyenze, M.P. | | |
| 7. The Hon. Jennifer Shamalla, M.P. | | |
| 8. The Hon. Gideon Mulyungi, M.P. | | |
| 9. The Hon. Abdi Tepo, M.P. | | (<i>Virtual attendance</i>) |
| 10. The Hon. Robert Mbui, M.P. | | (<i>Virtual attendance</i>) |
| 11. The Hon. Sammy Seroney, M.P. | | (<i>Virtual attendance</i>) |

ABSENT WITH APOLOGY

1. The Hon. Munene Wambugu, M.P.
2. The Hon. Patrick Mariru, M.P.
3. The Hon. (Dr.) Wilberforce Oundo, M.P.
4. The Hon. Kamoti Mwamkale, M.P.
5. The Hon. Timothy Wanyonyi, M.P.
6. The Hon. Waihenya Ndirangu, M.P.
7. The Hon. Martha Wangari, M.P.
8. The Hon. Robert Gichimu, M.P.
9. The Hon. Alice Wahome, M.P.
10. The Hon. Ronald Tonui, M.P.
11. The Hon. Nicholas Tindi Mwale, M.P.
12. The Hon. William Cheptumo, M.P.

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | |
|-------------------------|---|
| 1. Mr. Mohamed Jimale | - Clerk Assistant II |
| 2. Ms. Ruth M. Gakuya | - Clerk Assistant II |
| 3. Mr. Wilson Dima Dima | - Principal Legal Counsel |
| 4. Mr. Charles Ayari | - Superintendent of Electronics (Audio) |
| 5. Mr. Job Owaga | - Superintendent of Electronics (Audio) |
| 6. Mr. Anthony Wamae | - Serjeant-at-Arms |

MINISTRY OF WATER, SANITATION, AND IRRIGATION

- | | | |
|------------------------------|---|--|
| 1. Dr. Andrew K. Tuimur, CBS | - | Chief Administrative Secretary |
| 2. Mr. Phanuel Webi | - | Director Irrigation Water Management |
| 3. Mr. John Mwandikwa | - | Deputy Director, Public Communications |
| 4. Mr. Maurice Opondo | - | Deputy Director |
| 5. Mr. Allan Abwoga | - | Assistant Director |
| 6. Mr. Bonventure Achonga | - | Assistant director |
| 7. Ms. Joanne Ogolla | - | State Counsel |
| 8. Mr. George Kashindi | - | Legal Counsel |
| 9. Mr. Derrick Ojuku Mahaga | - | Irrigation Officer |

NATIONAL IRRIGATION AUTHORITY

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Gitonga Mugambi | - | Chief Executive officer |
| 2. Mr. Daniel Atula | - | Deputy Director (Operations) |

MIN.NO. /NA/CDL/2022/0033

PRAYER AND PRELIMINARIES

The Chairperson called the meeting to order at 10.14 a.m. with the Prayer. He thereafter invited all those present to introduce themselves.

MIN.NO./NA/CDL/2022/034

ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by the Hon. Sammy Seroney, M.P and Seconded by the Hon. Edith Nyenze, M.P

MIN.NO./NA/CDL/2022/035

CONFIRMATION OF MINUTES

Minutes of the 3rd sitting held on Thursday 10th February 2022 were confirmed as a true record of the proceedings having been proposed by the Hon. Daniel Maanzo, M.P. and seconded by the Hon. Sammy Seroney, M.P.

Minutes of the 4th sitting held on Tuesday 15th February 2022 were confirmed as a true record of the proceedings having been proposed by the Hon. Sammy Seroney, M.P. and seconded by the Hon. Daniel Maanzo, M.P.

MIN.NO./NA/CDL/2022/036

MATTERS ARISING

Under MIN.NO. /NA/CDL/2022/031 – The Committee resolved that the Cabinet Secretary for Education be invited to appear before the Committee on Thursday 24th February 2022 to respond to the Queries by the Committee on Competence Based Curriculum and other Circulars being issues by the Ministry of Education.

MIN.NO./NA/CDL/2022/037

MEETING WITH THE MINISTRY OF WATER, SANITATION, AND IRRIGATION ON THE CONSIDERATION OF THE IRRIGATION (GENERAL) REGULATIONS, 2021

Dr. Andrew K. Tuimur, CBS, Chief Administrative Secretary, informed the Committee that -

1. The Irrigations (General) Regulations(*Legal Notice No 199 of 2021*) are made under Section 34(1) of the Irrigation Act 2019 which provides that the Cabinet Secretary may, in consultation with County Governments, make Regulations for the better carrying out of the purposes and provisions of the Act
2. The regulations provide for:
 - a. the management of national, public, and other irrigation schemes;
 - b. the standards of good on-farm water management;
 - c. the requirements, procedures, and forms for licensing of irrigation schemes;
 - d. the establishment, operations, and governance of IWUAs, Scheme Management Committees, and Dispute Resolution committees;
 - e. prescribe fees payable by irrigation water users based on costs of operation and maintenance of the scheme;
 - f. monitoring and evaluation and audits required under the Act;
 - g. adherence to environmental and public health matters; and
 - h. any other section(s) of the Act that requires regulations to effect- for instance, section (17) and (18) on water storage for irrigation and irrigation research, innovation, and training respectively.
3. Following the pre-publication consultative meeting to appraise the Committee on the regulations held on 17th December 2020 at Simba Resort in Naivasha, the Ministry had addressed various issues raised in that meeting as follows:-
 - a. On making provisions for the delineation of responsibilities between National and County governments, a clear delineation of responsibilities between National and County governments has been provided for under Regulation 6.
 - b. In order that the regulations provide an enabling regulatory environment to the sector especially small scale farmers and the private sector to attract more investment in the sector, the Ministry confirmed that the regulations do provide an enabling regulatory environment to the irrigation sector under Regulations 7. (1), 19. (3) 15, 16 26 87,88 and regulation 110
 - c. On the licensing of small-scale irrigation schemes at the County level, the Irrigation Act, 2019 is explicit that licensing of irrigation schemes is the function of the Cabinet Secretary. However, the Act provides for the Cabinet Secretary to delegate this function Therefore, the licensing of small -scale irrigation schemes will therefore be undertaken at the Counties through delegation under the framework of the Intergovernmental Relations Act, 2012.
 - d. Administratively, the Cabinet Secretary had developed a guiding framework for the establishment of County Irrigation Development Units, therein providing for licensing small-scale schemes at the county level.
4. **Public participation** - public participation was adequately done during the process of developing the Regulations and the evidence of the same was documented.

Committee Resolution

Having examined the Irrigation (General) Regulations, 2021 (*Legal Notice No 199 of 2021*) against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*), and the Irrigation Act (*No 14 of 2019*), pursuant to which they are made, the Committee resolved to **approve** them, having been proposed by the Hon. George Murugara, M.P. and seconded by the Hon. Jennifer Shamalla, M.P.

MIN.NO./NA/CDL/2022/038

**CONSIDERATION OF REGULATIONS RELATING
TO THE RETIREMENT BENEFITS SCHEME**

1. The Retirement Benefits (Individual Retirement Benefits Schemes) (Amendment) regulations, 2021 (LN No. 163 of 2021).

2. The Committee was observed as follows that -

(i) The Regulations are made by the Cabinet Secretary for the National Treasury and Planning in consultation with the Retirement Benefits Authority, pursuant to Section 55 of the Retirement Benefits Act (*No. 3 of 1997*).

(ii) The amendment Regulations were published in the gazette on 10th August 2021, received by the Clerk of National Assembly on 4th November 2021, and tabled before the House on 10th November 2021, being within the statutory timelines contemplated under Section 11(1) of the Statutory Instruments Act.

(iii) The regulations seek to enhance governance in individual retirement benefits schemes by providing for the immediate vesting of employer contributions, safeguarding the integrity of corporate trustees, prohibiting the appointing of related-party service providers, and simplifying the provisions for retention of retirement benefits savings.

(iv) There was attached to the amendment regulations a detailed explanatory memorandum that provides for the justifications of making the amendments.

(v) The explanatory memorandum has a list of public participation meetings held at different stages and the consultation outcomes as evidence of Public participation.

3. The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) regulations, 2021 (LN. No. 164 of 2021).

a) The Regulations, are made by the Cabinet Secretary for the National Treasury and Planning in consultation with the Retirements Benefits Authority pursuant to Section 55 of the Retirement Benefits Act (No. 3 of 1997).

b) The amendment regulations were published on 10th August 2021, received by the Clerk of the National Assembly on 4th November 2021, and tabled before the house on 10th November 2021, and are therefore within the statutory timelines contemplated under Section 11(1) of the Statutory Instruments Act.

c) The regulations seek to enhance governance in occupational retirement benefits schemes by prohibiting the appointment of persons who are related, as party service providers, to ensure integrity in management and simplifying the provisions for retention of retirement benefits savings. Further, it seeks to increase the period for submitting actuarial reports for defined contribution schemes.

d) Attached to the amendment regulations is a detailed explanatory memorandum that provides for the justifications of making the amendments and provides a list of public participation meetings held at different stages and the consultation outcome.

e) The regulations do not require an impact statement since they are meant to apply only to the registered members of the scheme.

4. The Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) regulations, 2021(LN. No. 165 of 2021)

a) The Regulations have been made by the Cabinet Secretary for the National Treasury and Planning in consultation with the Retirements Benefits Authority pursuant to Section 55 of the Retirement Benefits Act (No.3 of 1997).

b) The amendment regulations were published on 10th August, 2021, received by the Clerk of the National Assembly on 4th November, 2021, and tabled before the House on 10th November 2021, being within the statutory timeline contemplated under Section 11(1) of the Statutory Instruments Act.

c) The regulations seek to enhance governance in umbrella retirement benefits in both the public and private sectors by prohibiting the appointment of related-party service providers to ensure integrity in management and simplifying the provisions for retention of retirement benefits savings.

d) The regulatory making authority provided an explanatory memorandum, a list of participants attending public participation, the dates and views collected. The consultation outcome was attached in the explanatory memorandum which indicated that there was no objection to the proposed regulations during the public participation fora held.

Committee Resolution

Having examined the following Regulations against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*,) and the Retirement Benefits Act (*No. 3 of 1997*), pursuant to which they are made –

- 1) The Retirement Benefits (Individual Retirement Benefits Schemes) (Amendment) regulations, 2021(LN. No. 163 of 2021),
- 2) The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) regulations, 2021(LN. No. 164 of 2021), and
- 3) The Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) regulations, 2021(LN. No. 165 of 2021).

The Committee resolved to **approve** them, having been proposed by the Hon. George Murugara, M.P. and seconded by the Hon. Gideon Mulyungi, M.P.

MIN.NO./NA/CDL/2022/039 CONSIDERATION OF THE PARTNERSHIPS (LIMITED PARTNERSHIPS) REGULATIONS, 2021(LN No. 216 of 2021)

The Committee was informed that -

1. The Regulations are made pursuant to powers conferred on the Attorney General under section 76(1) of the Partnership Act,2012, which is the enabling section that empowers the Attorney General to make the Regulations hence was properly invoked.
2. The Regulations were published in the Gazette on 22nd October 2021, received by the Clerk, National Assembly on 29th October 2021, and laid on the table of the House on 9th November

2021 hence within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

3. The purpose of the Regulations is to provide for the proper conduct of the business in the registration of Limited Partnership as well as prescribe fees and forms for effective implementation of the Act.
4. There is attached to the Regulations a detailed explanatory memorandum that provides for the justification for making the Regulations.
5. The explanatory memorandum submitted indicates that the Business Registration Service subjected the Regulations to public participation and sought comments from various stakeholders. Comments were sought through an advertisement in MyGov issue No.7/2020/2021 dated 18th August 2020. The memorandum states the various stakeholders who gave input on the regulation but fails to give evidence of the consultation and its outcomes.
6. The Regulations are meant to necessitate the registration of limited partnerships and may not have any social, economic, or environmental implications on the community hence do not require a regulatory impact statement in the manner specified in sections 6, 7, and 8 of the Statutory Instruments Act.
7. The Regulations seek to provide for the process of application for registration including the reservation of a proposed name for a limited partnership, the documents required and the fees payable, the registration of changes in a limited partnership, the electronic filing of documents with the registrar by mandating the registrar to set up and maintain an electronic registry where documents may be electronically stored and the forms to be used for the various applications stipulated in the Regulations and the fees payable under the Regulations.

Committee Resolution

Having examined the Partnerships (Limited Partnerships) Regulations, 2021, against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*), and the Partnership Act, 2012, pursuant to which they are made, the Committee resolved to **approve** them, having been proposed by Hon. Jennifer Shamalla, M.P. and seconded by the Hon. Sammy Seroney, M.P.

MIN.NO./NA/CDL/2022/040

CONSIDERATION OF REGULATIONS RELATING TO THE DATA PROTECTION

The Committee considered the following:

1. REGULATIONS TO OPERATIONALISE THE DATA PROTECTION ACT, 2021

The Committee was informed that:

- a. It had considered the draft Regulations in a prepublication meeting with the Ministry of ICT, Innovation and Youth Affairs held on 13th and 14th August 2020 at the Windsor Golf and Country club where the Committee made various proposals on the regulations. The Committee's Comments had been taken into consideration in the published regulations.
- b. The Regulations were published in the Gazette on 31st December, 2021, received by the Clerk, National Assembly on 31st December 2021, and laid on the table of the House on 2nd February

2022 and were therefore within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

- c. The Ministry of ICT, Innovation, and Youth Affairs had provided evidence that it had conducted sufficient public participation on the Regulations before publication.
- d. The **Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021** (LN. No. 265/2021) stipulate the procedure for registration of data controllers and data processors by the Office of the Data Commissioner and specify the categories of data controllers and data processors required for mandatory registration with the Office of the Data Commissioner and exempt certain data controllers and data processors but who shall be required to comply with the provisions of the Act and the Regulations enacted therefrom.
- e. The **Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021**. (LN. No. 264/2021) give effect to section 56 of the Data Protection Act, No.24 of 2019 and provide for, among other things, the manner of lodging of a complaint, criteria for admission of complaints, discontinuation of a complaint, withdrawal of a complaint, joint consideration of complaints and the language of proceedings before the Data Commissioner.
- f. The **Data Protection (General) Regulations, 2021** (LN. No. 263/2021) make provisions for the regulation of the processing of personal data to ensure that the privacy of individuals is protected. The regulations further provide prescription and guidance on data protection prerequisites such as the requirement of consent of the data subject for processing of personal data; a collection of personal data; actualization of the rights of data subjects; commercial use of personal data; obligations of data controllers and data processors; data protection by design or default; notification of personal data breaches; transfer of personal data outside Kenya; and the process of undertaking data protection impact assessments.

Committee Resolution

Having examined the following Regulations against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*,) and the Data Protection Act (*No. 24 of 2019*), pursuant to which they are made –

- 1) The Data Protection (General) Regulations, 2021 (LN. No. 263/2021);
- 2) The Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021 (LN. No. 264/2021), and
- 3) The Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021 (LN. No. 265/2021).

The Committee resolved to **approve** them, having been proposed by Hon. Daniel Maanzo, M.P. and seconded by the Hon. George Murugara, M.P.

MIN.NO./NA/CDL/2022/041

THE TAX PROCEDURES (UNASSEMBLED MOTORCYCLES) (AMENDMENT) (NO. 2) REGULATIONS, 2021 (L.N. NO. 223 OF 2021) AND THE TAX PROCEDURES (UNASSEMBLED MOTORCYCLES) (AMENDMENT) REGULATIONS, 2021 (L.N. NO. 192 OF 2021)

The Committee considered the Legal Notice No 192 of 2021 and Legal Notice No. 223 of 2021 following the brief by the Counsel.

Committee Resolution

Having examined the Tax Procedures (Unassembled Motorcycles) (Amendment) (No. 2) Regulations, 2021 (L.N. No. 223 of 2021) and the Tax Procedures (Unassembled Motorcycles) (Amendment) Regulations, 2021 (LN. No. 192 of 2021) against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*,) and the Tax Procedures Act (*No 29 of 2015*), pursuant to which they are made. The Committee resolved to **approve** them, having been proposed by the Hon. George Murugara, M.P. and seconded by the Hon. Robert Mbui, M.P. However, the Committee noted the concerns raised by the public and other stakeholders in their submissions to the National Assembly for consideration. The Committee noted that the National Treasury and Planning should consider the submissions by the Stakeholders for analysis, for the record, and for further consideration in the next review of the Regulations.

MIN.NO./NA/CDL/2022/042

CONSIDERATION OF THE CONSERVATION ORDERS BY THE WATER RESOURCES AUTHORITY (WRA)

The Committee considered the following Orders –

- 1) The Amu Sand-Dunes Groundwater Conservation Area Management Order, 2021
- 2) The Kikuyu Springs Aquifer Groundwater Conservation Area Management Order, 2021;
- 3) The Lake Kenyatta Sub Catchment Conservation Area Order, 2021;
- 4) The Ngarelen Springs Catchment Conservation Area Order, 2021; and
- 5) The Dik Dik Gardens Wetland Conservation Area Order, 2021

Committee Resolutions

Having examined the aforementioned orders against the Constitution, the Interpretation and General Provisions Act (*Cap 2*), the Statutory Instrument Act, (*No. 23 of 2013*,) and the Water Act, (*No. 43 of 2016*), pursuant to which they are made, the Committee resolved to approve them having been proposed by the Hon. Daniel Maanzo, M.P. and seconded by the Hon. George Murugara, M.P.

MIN.NO. /NA/CDL/2022/043

ANY OTHER BUSINESS

The Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2020 (LN No. 28 of 2020);

The Committee received a letter from the Cabinet Secretary, Ministry of Transport, Infrastructure, Urban Development and Public Works submitting the Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2020 (*LN No. 28 of 2020*) together with explanatory memorandum following a Court Order on suspension of the said Rules until the both Houses of Parliament reconsider them.


The Court Directed that the in the event that any or both Houses of Parliament are/is unable to finalise the dealing with the Traffic (Driving Schools, Driving Instructors and Driving Licenses)

Rules, 2020 (LN No. 28 of 2020) within the their reminder of the term, the said Rules shall be dealt with in the next Parliament. The Court halted implementation of the rules hence affected the Ministry and National Transport & Safety Authority's (NTSA) mandate on road safety. The Committee resolved to schedule the business on Thursday 24th February, 2022 for consideration.

MIN.NO. /NA/CDL/2022/ 044

ADJOURNMENT

The meeting was adjourned at 11.08 a.m. The next sitting will be held on Tuesday 22nd February 2022 at 12.00 p.m.

Signed.....

Date..... 22/02/2022

HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)

MINUTES OF THE 60TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON FRIDAY, 18TH DECEMBER, 2020 AT 2.00 P.M. IN THE TSAVO CONFERENCE ROOM, SIMBA LODGE, NAIVASHA, NAKURU COUNTY

PRESENT

1. **The Hon. Muriuki Njagagua, M.P.** - **Vice Chairperson**
2. The Hon. Alice Wahome, M.P.
3. The Hon. Waihenya Ndirangu, M.P.
4. The Hon. Kamoti Mwamkale, M.P.
5. The Hon. Robert Mbui, M.P.
6. The Hon. Daniel Maanzo, M.P.
7. The Hon. Ronald Tonui, M.P.
8. The Hon. Martha Wangari, M.P.
9. The Hon. Patrick Mariru, M.P.
10. The Hon. George Murugara, M.P.
11. The Hon. Abdi Tepo, M.P.
12. The Hon. Munene Wambugu, M.P.
13. The Hon. Edith Nyenze, M.P.
14. The Hon. Sammy Seroney, M.P.
15. The Hon. Robert Gichimu, M.P.
16. The Hon. Tindi Mwale, M.P.

ABSENT WITH APOLOGY

1. **The Hon. Kassait Kamket, M.P.** - **Chairperson**
2. The Hon. Cecily Mbarire, MGH, M.P.
3. The Hon. William Cheptumo, M.P.
4. The Hon. Timothy Wanyonyi, M.P.
5. The Hon. (Dr.) Wilberforce Oundo, M.P.
6. The Hon. Jennifer Shamalla, M.P.
7. The Hon. Gideon Mulyungi, M.P.

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Mohamed Jimale - Clerk Assistant II
3. Mr. Wilson Dima Dima - Principal Clerk Assistant
4. Mr. Charles Ayari - Superintendent of Electronics (Audio)
5. Mr. Eric Kanyi - Fiscal Analyst III
6. Ms. Manzura Ahmed - Secretary
7. Mr. Anthony Wamae - Assistant Serjeant at Arms

Ministry of Water, Sanitation and Irrigation

1. Dr. Andrew K. Tuimur	Chief Administrative Secretary
2. Eng. Samuel Alima	Water Secretary
3. Mr. Aboud Moeva	Irrigation Secretary
4. Mr. D. M. Mutai	Senior Deputy Secretary
5. Mr. Jacob Torutt	CEO - Coast water Works Development Agency
6. Dr. Okoth Owuor	Ag. CEO, Water Services Board
7. Ms. Sharon Obonyo	Ag. CEO, National Water Harvesting Authority
8. Ms. Rachael Makokha	Ag. CEO, North Rift Water Works Development Agency
9. Mr. Robert Garichia	CEO, Water Services Regulation
10. Mr. Fredrick T. Mwamati	CEO, TANATHI Water Works Development Agency
11. Eng. Philip Gichuki	CEO, Tana Water Works Development Agency
12. Mr. Okoth Owuor	Ag. CEO, Water Appeal Board
13. Ms. Agnes Mbugua	CEO, Regional Centre on Ground Water
14. Mr. G. Mugambi	CEO, National Irrigation Board
15. Mr. Abdi.N. Osman	CEO, North Water Works Development Agency
16. Mr. D.K. Bundotich	CEO, Lake Victoria North Water Development Agency
17. Mr. George Odedeh	CEO, L. Victoria South Water Works Development Agency
18. Mr. Patrick Hayombe	Director/CEO, Kenya Water Institute
19. Mr. Douglas M. Mutai	Director, Water Services Regulation Board
20. Mr. Bonaventure Achonga	Ag. Director - Irrigation Water Management
21. Eng. Vincent Kabuhi	Head of Planning, National Irrigation Authority
22. Mr. Stephen Apome	Senior Irrigation Officer, National Irrigation Authority
23. Mr. David K. Thiong'o	Technical Officer, Department of National Water Services
24. Mr. Innocent A. Aremba	Manager, National Irrigation Authority
25. Mr. Dan. T. Mogusu	Head, Surface Water and Hydrology Department
26. Ms. Mary Wainaina	Ag. Director, Water Sanitation and Sewerage Development
27. Mr. James Nduna	Director, Legal Services
28. Mr. Festus Mutuku	Senior Superintendent/Water Hydrologist
29. Mr. John N. Kinyanjui	Ag. Technical Coordination Manager
30. Mr. Daniel Kihara	Chief Finance Officer- Water Sector Trust Fund
31. Mr. David K. Bosuben	Deputy Director, Trans Boundary Water Resources
32. Mr. Joel Tanui	Manager, National Irrigation Authority
33. Mr. Sapien Apore	Senior Irrigation Officer
34. Mr. Collins Okello	Director, Water Services
35. Mr. Darod Bosuben	Deputy Director-TWR
36. Mr. Chemeril Cheyoga	Engineer
37. Mr. Phanuel Webi	Ag. Director
38. Ms. Lisper Machoka	Public Communications Officer
39. Ms. Irene Njiru	Assistant Office Administrator
40. Mr. Nderi Ndiani	Cabinet Secretary's office
41. Ms. Ruth Kimosop	Personal Assistant to the Chief Administrative Secretary
42. Mr. Dominic Rono	Secretary

43. Ms. Beatrice Manyara PAOA

MIN.NO. /NA/CDL/2020/388 PRAYER AND RELIMINARIES

Hon. Muriuki Njagagua, MP, the Vice Chairperson called the meeting to order at 2.30 p.m. and commenced the meeting with the Prayer.

MIN.NO. /NA/CDL/2020/389 CONSIDERATION OF THE DRAFT IRRIGATION (GENERAL) REGULATIONS 2020

The Regulations provide the principles, guidelines and standards for promoting irrigation development within the context of the National Irrigation Master plan, Investment plan and respective Strategic plans through efficient utilization of irrigation water; promoting water harvesting and storage measures and use of recycled waste water for irrigation, streamlining organization of the irrigation sub-sector, professionalization of all irrigation services including feasibility studies design, construction and operation, compliance with all relevant statutory requirements; compliance to quality standards; effective monitoring and evaluation of irrigation schemes; construction and operation by the National irrigation Authority; and participatory and sustainable irrigation development.

The regulations also propose that all areas deemed suitable for irrigation purposes be designated and gazetted as irrigation areas and impose requirements or prohibit developments, practices or activities considered necessary for the protection of such areas.

The Regulations require that all irrigation schemes and actors be registered and licensed. These provisions will enable registration and coordination of all irrigation developments in the country and provide real time data on irrigation development, acreage and production, water requirements, actors etc. to inform subsequent and evidence-based planning in the sub-sector.

The Regulations further provide guidelines to promote irrigation schemes management to ensure transparency, accountability, efficiency and water saving practices. The Regulations propose for the formation of national public irrigation scheme management committees, and County Public Irrigation Scheme Management Committees and defines the tenure rights, obligations of irrigation users and guidelines for the management of schemes by Irrigation Water Users Associations (IWUAs).

Plenary discussions

The following matters arose following the presentation –

- 1) **Public Participation/stakeholders' consultations:** the Committee was informed that a series of stakeholders' consultations were held in KALRO Dairy Research Institute in Naivasha and a National Validation Workshop held at the Kenya School of Monetary Studies in January 2020 that was attended by larger representatives of stakeholders likely to be affected by the Regulations. CECs from various Counties also attended as well farmers from different schemes across the country.

- 2) The Irrigation Authority supports the farmers both technically and through budgetary allocation for their farming produce.
- 3) Permit holders who have title deeds of the scheme will be assisted by the National Irrigation Board while communities and families that have settled in these schemes for years and issues of succession within irrigation schemes need clarity.

MIN.NO. /NA/CDL/2020/390 CLOSING REMARKS

Remarks by the Chairperson, Committee on Delegated Legislation

On his part the Chairperson, Hon Njagagua appreciated Members of the Committee and the Dr. Andrew K. Tuimur, Chief Administrative Secretary and Ministry officials for the fruitful engagement. He advised the Ministry to further review the draft Regulations taking into consideration the deliberations of the meeting.

Remarks by the Chief Administrative Secretary

On his part, Chief Administrative Secretary, Dr. Andrew K. Tuimur, once again conveyed apologies of the CS and PS and appreciated the Committee for their engagement with the Ministry during the pre-publication scrutiny exercise. He assured the Committee that the Ministry will take into consideration the views and comments of the Members before publication of the Regulations.

MIN.NO. /NA/CDL/2020/391 ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 3.50 p.m. to reconvene the following day at 9.30 a.m. in the same venue.

Signed.....
HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)

Date.....17/02/2021

SPECIAL ISSUE

Kenya Gazette Supplement No. 181

1317

22nd September, 2021

(Legislative Supplement No. 82)

LEGAL NOTICE NO. 199

THE IRRIGATION (GENERAL) REGULATIONS, 2021

Arrangement of Regulations

PART I – PRELIMINARY PROVISIONS


- 1 - Citation.
- 2 - Interpretation.
- 3 - Scope of application.
- 4 - Purpose of the Regulations.

PART II – IRRIGATION DEVELOPMENT

- 5 - Guiding principles.
- 6 - Supervision of schemes.
- 7 - Designation of an irrigation area.
- 8 - Establishment of a national, public or strategic scheme.
- 9 - Water for irrigation.
- 10 - Conceptualization of irrigation schemes.
- 11 - Feasibility study.
- 12 - Design and construction of irrigation schemes.
- 13 - Approval for construction of a scheme.
- 14 - Completion report, operation and maintenance manual.
- 15 - Irrigation service providers.
- 16 - Irrigation services.
- 17 - Irrigation development in counties.
- 18 - Development of smallholder schemes

PART III – LICENSING OF SCHEMES

- 19 - Irrigation licence.
- 20 - Application for a licence.
- 21 - Licensing Unit.
- 22 - Compliance.
- 23 - Register of licences.
- 24 - Validity of licences.

 THE NATIONAL ASSEMBLY PAPERS L A I D	
DATE: 10 NOV 2021	DAY: Wed AM.
TABLED BY:	Majority Whip Hon. Wargwa
CLERK-AT THE-TABLE:	M. Mudo

25 - Revocation of licence.

PART IV – MANAGEMENT OF IRRIGATION SCHEMES

26 - Management principles.

27 - Irrigation management.

28 - Establishment of scheme management committees.

29 - Functions of a scheme management committee.

30 - Management committees for national or public schemes.

31 - Management Committees for county public schemes.

32 - Conduct of business of a scheme management committee.

33 - Powers in relation to crops at the scheme.

34 - Powers in relation to use of land.

35 - Land user permit.

36 - Conditions for grant of a permit.

37 - Successor of a permit holder.

38 - Register of permits.

39 - Validity and renewal of a permit.

40 - Revocation of a permit.

41 - Procedure on revocation of a permit.

42 - Service fee.

43 - Access pass.

44 - Housing within a scheme.

45 - Control of livestock.

46 - Emergency situations.

47 - Management by associations.

48 - Functions of an association.

49 - Formation of an association.

50 - Service area of an association.

51 - Name of association.

52 - Legal personality and liability.

53 - Membership of an association.

54 - Management bodies of an association.

55 - General Assembly.

56 - Association management committees.

57 - By-laws of the association.

- 58 - Funds of an association.
- 59 - Application of funds.
- 60 - Capital replacement fund.
- 61 - Irrigation service fee.
- 62 - Support services.
- 63 - Legal and financial supervision.
- 64 - Reporting by associations.
- 65 - Concurrence by supervising entity.
- 66 - Records of an association.
- 67 - Register of associations.
- 68 - Dissolution of an association.
- 69 - Liquidation of an association.
- 70 - De-registration of association.
- 71 - Umbrella association.
- 72 - Name, powers and duties of an umbrella association.
- 73 - Formation of association of irrigation farmers.
- 74 - Transfer of management in public schemes.
- 75 - User right certificate.
- 76 - Obligation relating to information on transferred irrigation system.
- 77 - Irrigation water service provision.
- 78 - Irrigation water service agreement.
- 79 - Variation of irrigation water service agreement.
- 80 - Liability of an irrigation water service provider.
- 81 - Determination of irrigation water use and other service charges.
- 82 - Relationship with public administration.
- 83 - Dispute resolution.
- 84 - Dispute Resolution Committee.
- 85 - Duties of Dispute Resolution Committee.
- 86 - Execution.
- 87 - Appeals.

PART V – IRRIGATION STANDARDS AND QUALITY CONTROL

- 88 - Irrigation quality standards.
- 89 - Irrigation water quality standards.

- 90 - Discharge of water from schemes.
- 91 - Irrigation infrastructure standards.
- 92 - Schemes near wildlife conservation areas.
- 93 - Safety and maintenance of irrigation infrastructure.
- 94 - Water harvesting and storage for irrigation.
- 95 - Erection and construction of irrigation infrastructure.
- 96 - Standards for irrigation firms and professionals.
- 97 - Establishment and role of a technical advisory committee
- 98 - Enlisting of irrigation service providers.
- 99 - Enlisting of foreign irrigation service providers.
- 100 - Application for enlisting as irrigation service
- 101 - Standards for on-farm water management.
- 102 - Capacity building.
- 103 - Irrigation water scheduling.
- 104 - Guidelines for maintenance of irrigation infrastructure.
- 105 - Use of agro and non-agrochemicals in irrigation schemes.

PART VI – IRRIGATION RESEARCH, INNOVATION AND TRAINING

- 106 - Role of irrigation research, innovation and training.
- 107 - Administrative measures by the Cabinet Secretary.

PART VII – FINANCING IRRIGATION DEVELOPMENT

- 108 - Financing irrigation development.
- 109 - Financing irrigation development using public funds.
- 110 - Cost sharing in irrigation scheme development.
- 111 - Irrigation development through loan

PART VIII – MONITORING, PERFORMANCE AUDIT AND REPORTING

- 112 - Irrigation and drainage management information system.
- 113 - Monitoring, evaluation and performance audits
- 114 - Monitoring, evaluation and performance guidelines.

PART IX – MISCELLANEOUS PROVISIONS

- 115 - Recovery or compensation for damage to irrigation infrastructure.
 - 116 - Prohibited activities and practices.
 - 117 - Penalties.
 - 118 - Revocation.
-

SCHEDULES

FIRST SCHEDULE	Content and format of technical reports
SECOND SCHEDULE	Water quality standards
THIRD SCHEDULE	Irrigation professionals, firms and contractors
FOURTH SCHEDULE	Forms
FIFTH SCHEDULE	Monitoring, evaluation and performance audit tools
SIXTH SCHEDULE	Application fees for irrigation scheme licences
SEVENTH SCHEDULE	Formation of associations and Code of Conduct
EIGHTH SCHEDULE	Irrigation management transfer

THE IRRIGATION ACT

(No. 14 of 2019)

IN EXERCISE of the powers conferred by section 34(1) of the Irrigation Act, 2019, the Cabinet Secretary for Water, Sanitation and Irrigation, in consultation with the county governments, makes the following regulations—

THE IRRIGATION (GENERAL) REGULATIONS, 2021

PART I - PRELIMINARY PROVISIONS

1. These regulations may be cited as the Irrigation (General) Regulations, 2021. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
- “Act” means the Irrigation Act, 2019; No. 14 of 2019.
- “agency contract” means a legal agreement between parties on irrigation matters to enable modalities of provision of services;
- “association” means an irrigation water users’ association established and registered in accordance with these Regulations;
- “association management committee” means the body elected by the General Assembly to oversee and supervise the activities of an association;
- “authorised dependant” means, in relation to a permit holder, his father and mother, wives and such of his children as are unmarried and under the age of eighteen years;
- “by-laws” means the by-laws of an association or umbrella association;
- “capital replacement fund” means the capital replacement fund maintained under regulation 59;
- “cluster of irrigation schemes” means a group of irrigation schemes in a defined geographical area being implemented by an authorised agency;
- “County Executive Committee Member” means the County Executive Committee Member responsible for matters relating to irrigation;
- “county public scheme” means a public scheme constructed on public land held in trust by the County Government or land acquired by the County Government for the specific purpose of irrigation;
- “designated irrigation area” means any area of land designated by the Cabinet Secretary in accordance with section 16(1) of the Act as an irrigation scheme and includes national public, county public, smallholder and private irrigation areas;
- “General Assembly” means the supreme decision-making body of an association;
- “good agricultural practices” means a collection of principles to apply for on-farm production and post-production processes, resulting

in safe and healthy food and non-food agricultural product, while taking into account economic, social and environmental sustainability;

“irrigation development” means the conceptualization studies, designing, planning and execution of irrigation projects and programmes;

“irrigation infrastructure” means all infrastructure including water harvesting and storage structures, abstraction, conveyance, distribution, on-farm water application facilities, drainage works and any other related accessories;

“irrigation schedule” means a plan showing the appropriate irrigation frequency and duration;

“irrigation scheme management committee” means the committee established by the Cabinet Secretary or the respective County Governor in accordance with these Regulations;

“irrigation services” means services provided to irrigators which include those listed in regulation 16(2);

“irrigation system” means a system comprising the infrastructure, management and production components;

“land administration” means allocation, succession, transfer, boundary establishment and revocation of tenure rights;

“major irrigation infrastructure” means irrigation infrastructure that can be used to store, abstract and convey water to the service areas of two or more associations;

“Master Register” means the Master Register of associations maintained under regulations 66;

“on-farm water management” means a systems approach towards controlling water on a farm in a manner that provides for the beneficial management of water for satisfying the irrigation and drainage needs;

“public scheme” means a public irrigation scheme established on government land as provided in section 6(2)(c) of the Act;

“quality irrigation water” means water with the right physical, chemical and biological characteristics suitable for irrigated crops, aquaculture, livestock and forestry which does not pose a threat to public safety or environment;

“recycled water” means waste water that has been converted into a reusable form for irrigation;

“register” means a register required to be maintained under these Regulations;

“service area” means the defined area of land served by an irrigation system where an association or other service provider operates;

“supervising entity” means the entity exercising a supervisory role as specified under regulation 6;

“service provider” means any public or private enterprise contracted to carry out any of the irrigation services, specified under regulation 16;

“social equity” means affirmative interventions to enable irrigation development, management and regulation responsive to resource poor communities for livelihood support;

“strategic programme” means an irrigation programme being undertaken by a government agency involving a cluster of irrigation schemes to achieve a strategic national purpose;

“strategic scheme” means an irrigation scheme designated to serve a specified national or county purpose as provided under section 6(2)(c) of the Act;

“umbrella association” means an umbrella irrigation water users’ associations established under regulation 70;

“unit” means a defined part of an irrigation scheme or service area;

“unit representative” means a member elected to represent an irrigation unit at a meeting of the General Assembly;

“unrestricted irrigation” means irrigation water quality allowable for production of all crops;

“water supply point” means a point at which an association or private entity takes responsibility for the management of irrigation water from a dam, a diversion weir, structure, a gate or turn-out, a canal, a lateral, a hydrant, a well, a spring or a pumping station of a main irrigation system.

3. These Regulations shall apply pursuant to and in the furtherance of section 3 of the Act.

Scope of application.

4. (1) The purpose of these Regulations is to ensure—

Purpose of the Regulations.

- (a) sustainable development, management, financing, provision of support services and effective regulation of the entire irrigation sector in Kenya;
- (b) compliance with the Constitution and the Laws of Kenya, international laws, treaties and agreements and other ratified instruments.

PART II—IRRIGATION DEVELOPMENT

5. (1) All irrigation development shall be undertaken within the context of a national irrigation master plan, county irrigation master plan, investment plan and respective strategic plans to support sustainable food security and socio-economic development of the country.

Guiding principles.

(2) The following principles shall be adopted for the promotion of irrigation development—

- (a) compliance with all relevant statutory requirements;

- (b) availability and reliability of irrigation water;
- (c) efficient utilization of irrigation water;
- (d) compliance to quality standards;
- (e) participatory development;
- (f) gender mainstreaming and social inclusion;
- (g) economic, social and environmental sustainability;
- (h) climate change resilience measures; and
- (i) integration of ecosystem services.

6. (1) All irrigation schemes shall have a supervising entity which shall be responsible for

Supervision of schemes.

- (a) overseeing implementation of an irrigation scheme;
- (b) organising and facilitating the registration of associations;
- (c) training and other technical assistance to associations; and
- (d) undertaking such other activities as may be specified in these Regulations.

(2) The irrigation schemes shall be supervised as follows—

- (a) small scale, county public and county initiated irrigation schemes shall be supervised by the County Irrigation Development Unit;
- (b) medium and large scale irrigation schemes including small scale schemes which traverse or straddle more than one county, shall be supervised by the Authority.

(3) Where the Authority is the implementing agency, the Cabinet Secretary shall take up the supervisory roles

(4) Where a government agency is implementing a strategic irrigation project or programme on public land or a community-based project, the agency shall comply with the provisions of these Regulations.

7. (1) Pursuant to section 16(1) of the Act, an area that is deemed suitable for medium and large scale irrigation schemes may be designated as an irrigation area for purposes of the Act.

Designation of an irrigation area.

(2) In designating an irrigation area under paragraph (1), the following criteria shall be considered—

- (a) location and suitability of the land;
- (b) pre-feasibility assessment as set out in Part A of the First Schedule;
- (c) the national government policy or strategic direction including food security and industrial crop production;
- (d) impact of the development;

- (e) number of people affected;
- (f) environmental protection and conservation; and
- (g) participatory process that is documented in case of communal land.

8. (1) Pursuant to section 6(2)(c) of the Act, the Cabinet Secretary may establish a national scheme, public scheme or strategic scheme of any category for purposes of the Act

Establishment of a national, public or strategic scheme.

(2) In establishing a scheme under paragraph (1), the following criteria shall be considered—

- (a) suitable irrigable land of strategic national importance
- (b) irrigation for food security;
- (c) industrial crop production for agro-industries;
- (d) provision of livelihood for poor and vulnerable persons and groups;
- (e) provision of security for investments in land improvements for irrigation;
- (f) foreign exchange generation or import substitution; and
- (g) regional development and employment generation.

(3) Where the establishment of a scheme under this regulation relates to a public scheme meant for settlement, the beneficiaries shall be identified before establishment.

9. (1) Any individual or entity intending to carry out or is carrying out irrigation shall, where the availability and reliability of water resource is not guaranteed, implement water harvesting and storage measures capable of storing flood water sufficient to meet at least three months' water demand where practical.

Water for irrigation.

(2) In addition to paragraph (1), consideration may be given to the use of recycled waste water subject to meeting water quality standards set out in Part A and Part B of the Second Schedule.

(3) Any individual, entity or agency developing bulk water storage structures for irrigation may provide water to irrigation farmers at a tariff approved from time to time by the Cabinet Secretary in consultation with the Water Resources Authority.

(4) Any individual or entity using water for irrigation shall be required to obtain water use rights and meet the attendant obligations in accordance with the Water Act, 2016.

No.4 of 2016.

(5) For public or national irrigation schemes meant for settlement and community-based smallholder irrigation schemes, an irrigation water users association formed in accordance with these Regulations shall be the entity responsible for acquiring the water use rights.

10. An owner, developer or any other person intending to construct an irrigation scheme shall submit to the supervising entity the following—

Conceptualization of irrigation schemes.

- (a) pre-feasibility study report or initial project identification concept note showing viability;
- (b) minutes of resolutions of stakeholders' meetings endorsing or requesting for development of the irrigation scheme where applicable;
- (c) feasibility study report;
- (d) irrigation project design report;
- (e) an authorization for construction from the Water Resources Authority;
- (f) land use authorization from the county or national ministry responsible for land and physical planning; and
- (g) an environmental impact assessment license from the National Environmental Management Authority;
- (h) evidence of relevant easements from relevant agencies and entities;
- (i) in respect to irrigation within private and community-based smallholder schemes, provide proof of land ownership, which may consist of a certified copy of title deed or lease agreement; and
- (j) for community-based smallholder irrigation schemes, evidence of existence of an irrigation water users' association.

11. (1) Any entity or individual seeking to develop an irrigation scheme shall undertake a feasibility study before commencing the construction of the irrigation scheme. Feasibility study.

(2) The feasibility study shall be planned and supervised by a qualified irrigation firm or registered professional and contain the following components—

- (a) hydrological and hydro-geological survey report;
- (b) topographical survey report of appropriate scale;
- (c) soil survey report;
- (d) agricultural development and marketing plan;
- (e) irrigation development plan;
- (f) economic and financial analysis report;
- (g) environmental and social impact assessment report;
- (h) organization, management and institutional details;
- (i) preliminary irrigation and related infrastructure design and cost estimates; and
- (j) community participation plan where applicable.

(3) The feasibility study report shall be prepared in the form set out in Part B of the First Schedule and submitted to the supervising entity for review.

(4) Where upon review under paragraph (3) the report is deemed to be satisfactory, the supervising entity shall, within thirty days of the determination, issue a "no objection" for the proposal to proceed to full design.

12. (1) An irrigation scheme shall be designed and the subsequent construction supervised by a qualified and experienced irrigation firm or professional from appropriate category as set out in Part A of the Third Schedule.

Design and construction of irrigation schemes.

(2) An irrigation scheme shall be constructed by the a contractor from the appropriate category as set out in Part B to the Third Schedule.

(3) A contractor undertaking irrigation works shall be registered in accordance with the section 15 of the National Construction Authority Act, 2011.

No. 41 of 2011.

13. (1) An application for approval to construct an irrigation scheme shall be

Approval to construct a scheme.

(a) made to the supervising entity depending on the category of the scheme;

(c)

(b) accompanied by an irrigation project design report and in case of medium and large scale irrigation schemes, a copy of a *Gazette* notice designating the area of construction as an irrigation area.

(2) The details required in the irrigation project design report shall be based on the category and size of the irrigation scheme to be constructed and infrastructure standards set out under regulation 90.

(3) Upon submission of the detailed design report in paragraph (2) as set out in Part C of the First Schedule, the Authority, County Irrigation Development Unit or other authorised agency shall ensure that it meets the technical requirements before approval.

(4) Upon approval of the proposed irrigation scheme, an authorization certificate for construction shall be issued for commencement of construction of the irrigation infrastructure in the Form 4A set out in the Fourth Schedule.

14. On completion of construction, the implementing agent or agency shall submit the following properties to the supervising entity

Completion report, operation and maintenance manual.

(a) the irrigation scheme completion report in the form set out in Part D of the First Schedule; and

(b) an operation and maintenance manual in the form set out in Part E of the First Schedule.

15. (1) Any irrigation service providers shall be certified by the relevant regulatory bodies.

Irrigation service providers.

(2) The Cabinet Secretary shall prepare and maintain an inventory of irrigation service providers in the form set out in Part A of the Fifth Schedule.

16. (1) Irrigation services include—

Irrigation
services.

- (a) pre-feasibility studies;
- (b) feasibility studies and detailed design;
- (c) installation or construction of irrigation system;
- (d) construction supervision;
- (e) scheme administration and management;
- (f) capacity building for irrigation stakeholders;
- (g) irrigation extension services;
- (h) marketing of irrigated produce;
- (i) insurance and other financial services; and
- (k) any other services as may be determined by the Authority from time to time.

(2) Any person or entity providing the following irrigation services must be enlisted by the Cabinet Secretary—

- (a) pre-feasibility studies;
- (b) feasibility studies and detailed design;
- (c) installation or construction of irrigation system;
- (d) construction supervision;
- (e) scheme administration and management; and
- (f) any other services as may be designated by the Cabinet Secretary from time to time.

(3) An application for enlisting under paragraph (2) shall be made to the Cabinet Secretary in Form 4B set out in the Fourth Schedule.

(4) The irrigation development services shall be provided through the following models—

- (a) directly by Authority or the County Irrigation Development Unit or other government agencies; (b)
- (b) irrigation personnel at both national and county level;
- (c) contracted and agency services;
- (d) public private partnerships;
- (e) irrigation water users' associations;
- (f) small and medium enterprises or non-governmental organizations partnership financing; and
- (g) bilateral or multilateral partnerships.

(5) The procedure for accessing irrigation services shall include—

- (a) request to the service provider; and (c)
- (b) contractual arrangements where applicable.
- (6) Subject to compliance with the applicable national laws, the Authority may, in an appropriate case, engage in a public private partnership or other appropriate contractual arrangement for development, operation and maintenance of irrigation infrastructure.
17. (1) Pursuant to section 14 of the Act, a County Government may by notice in the *Gazette* establish a County Irrigation Development Unit for the better carrying out of its functions with respect to irrigation development. Irrigation development in counties.
- (2) In establishing the County Irrigation Development Unit, a County Government shall take into account the following expertise or professionals in its composition—
- (a) engineers and technicians from the fields of irrigation, agriculture, civil engineering or their equivalent in related fields; and
- (b) experts in the fields of survey and mapping or cartography, agriculture, socio-economics or their equivalent in related fields.
18. Any individual or entity developing or intending to develop a community-based smallholder irrigation scheme shall comply with the provision of regulations 5, 6, 7, 9, 10, 11, 12, 13 and 14 and other relevant provisions of these Regulations. Development of community-based smallholder schemes.
- PART III—LICENSING OF SCHEMES
19. (1) A person or entity shall not operate an irrigation scheme without obtaining an irrigation licence except where irrigation is undertaken at household level for subsistence purposes, and is by use of manual water abstraction and application. Irrigation licence.
- (2) Any association intending to or currently undertaking irrigation development and management within a public scheme meant for settlement shall obtain an irrigation licence.
- (3) The designation of an area as an irrigation area as provided under regulation 7 shall be a prerequisite for issuance of an irrigation licence in case of medium and large scale irrigation scheme.
20. (1) Pursuant to section 6(2)(f) of the Act, an application for an irrigation licence shall be made to the Cabinet Secretary or such other authorised person in Form 4C set out in the Fourth Schedule and accompanied by— Application for a licence.
- (a) the application fee set out in the Sixth Schedule;
- (b) the report of feasibility study undertaken by the professionals or firms specified under regulation 11;
- (c) a copy of the *Gazette* notice designating the area as an irrigation area under regulation 7, where applicable;

- (d) an approved detailed design report in Form 1C set out in the First Schedule taking into account the needs of various irrigation water users, including livestock and fish producers and the impact the irrigation scheme is likely to have on the environment;
 - (e) evidence of approvals from relevant lead agencies including—
 - (i) an environmental and social impact assessment licence issued by the National Environment Management Authority;
 - (ii) an authorization to construct water abstraction works issued by the Water Resources Authority;
 - (iii) water use permit issued by the Water Resources Authority; and
 - (iv) the authority to construct by the National Construction Authority where applicable;
 - (f) evidence of relevant easements from relevant agencies and entities;
 - (g) approvals for construction from the supervising entity;
 - (h) submission of completion certificate and operation and maintenance manual; and
 - (i) in respect to irrigation within private and community-based smallholder schemes, proof of land ownership which may consist of a certified copy of title deed, lease agreement or a letter of allotment.
- (2) The application under paragraph (1) shall be made by
- (a) an individual or legally incorporated body;
 - (b) a public officer on behalf of a public entity; or
 - (c) the authorised officials of an association, where the association possesses the requisite land rights on which the scheme is to be or is being used with lawful access to the water.
- (3) The Cabinet Secretary or the authorised person shall, within thirty days of receipt of the application under paragraph (1), —
- (a) approve the application and issue an irrigation licence in the Form 4D set out in the Fourth Schedule on such terms and conditions as may be specified in the licence; or
 - (b) reject the application and indicate the grounds for the rejection.
- (4) The Cabinet Secretary or the authorised person shall assign a unique scheme number for each licenced scheme.
- (5) Any person or entity operating an irrigation scheme without a valid irrigation licence commits an offence and shall be liable on conviction to a fine not exceeding

- (a) ten thousand shillings or imprisonment not exceeding two months, or both, where the person operates a small scale scheme;
- (b) twenty thousand shillings or imprisonment not exceeding six months, or both, where the person operates a medium scale scheme; or
- (c) fifty thousand shillings or imprisonment not exceeding twelve months, or both, where the person operates a large scale scheme.

21. (1) The Cabinet Secretary or such other authorised person shall put in place the necessary administrative measures to establish and maintain a Licensing Unit to—

Licensing Unit.

- (a) receive and determine applications for irrigation licence; and
- (b) monitor and verify compliance to the licence conditions; and
- (c) enforce conditions attached to the licence for all irrigation schemes.

(2) The Licensing Unit established under paragraph (1) shall have such number of officers, as are necessary for the proper performance of its functions.

22. (1) An officer of the supervising entity, Licensing Unit and other government agencies may access any irrigation infrastructure and related sites to monitor compliance with any conditions of a licence and other provisions of these Regulations.

Compliance.

(2) A person or entity operating an irrigation scheme shall not deny officers of the supervising entities and other government agencies access to irrigation infrastructure and related sites to perform the functions under paragraph (1).

23. The Cabinet Secretary shall maintain a register of all irrigation licences and licensed irrigation schemes.

Register of licences.

24. An irrigation licence shall be valid for a period of three years and may be renewed.

Validity of licences.

25.(1) An irrigation licence may be revoked where—

Revocation of licences.

- (a) the licensee fails to comply with terms and conditions under which the licence was issued;
- (b) the licensee does not comply with the performance audit recommendations and corrective measures; or
- (c) there are supervening circumstances supported by documented evidence which make the irrigation development untenable in the interest of public health and safety, environmental protection and security.

(d)

PART IV—MANAGEMENT OF IRRIGATION SCHEME

26. (1) All irrigation schemes shall be managed in accordance with the principles set out in the Act and these Regulations.

Management principles.

(2) Without prejudice to paragraph (1), the management of an irrigation scheme shall be guided by the following—

- (a) compliance with set rules of operation within an irrigation scheme;
- (b) transparency, accountability, sustainability and efficiency;
- (c) water saving practices are implemented throughout the irrigation process;
- (d) optimal utilization of resources and assets for enhanced productivity;
- (e) service orientation; and
- (f) resilience and business continuity initiatives.

27. (1) Irrigation management shall be through continuous adoption and application of best practices in sector planning, coordination and financing.

Irrigation
management.

(2) The management of a strategic, public or national irrigation schemes shall be through a framework defined at the time of establishment.

(3) A public or national irrigation schemes meant for settlement shall be managed through scheme management committees, Dispute Resolution Committees and irrigation water users' associations.

28. (1) Any scheme management committee shall be established in accordance with section 8(2)(c) of the Act.

Establishment of
scheme
management
committees.

(2) Despite paragraph (1), a scheme management committee for national scheme or public scheme shall be established by the Cabinet Secretary through the Authority in accordance with section 19(1) of the Act.

(3) Despite paragraph (1), a scheme management committee for a county public scheme shall be established by the respective Governor.

29. The functions of a national, public or county public scheme management committee shall include the following—

Functions of a
scheme
management
committee.

- (a) provide oversight on scheme development and management;
- (b) land administration;
- (c) facilitate access rights to land for all irrigation farmers on the respective scheme;
- (d) facilitate scheme administration and management of scheme by the Authority or County Irrigation Development Unit;
- (e) in consultation with the Authority and other stakeholders, promote the production, marketing, safe storage and processing of crops, animal and fish products grown or produced on national irrigation schemes;

- (f) undertake dispute resolution at the scheme level involving various actors; and
- (g) promote good governance and efficient management of the scheme.

30. (1) The scheme management committee for a national or public scheme shall consist of—

Management committees for national or public schemes.

- (a) the County Commissioner of the respective County or his representative who shall be the chairperson;
- (b) the Chief Executive officer of the Authority or his representative who shall be the secretary;
- (c) the County Executive Committee Member or his representative;
- (d) the County Executive Committee Member responsible for matters relating to agriculture or his representative;
- (e) chairperson of the dispute resolution committee of the scheme;
- (f) two representatives of the association or the umbrella association; and
- (g) two representatives from other relevant farmer organizations in the scheme.

(2) Where a scheme straddle two or more counties, each county shall constitute a scheme management committee established pursuant to paragraph (1) and a joint scheme committee established pursuant to paragraph (3).

(3) A joint scheme committee shall consist of□

- (a) the County Commissioners of the respective Counties who shall be co-chairs;
- (b) one representative of the Authority; and
- (c) four other persons from each individual county committees, of which one member shall be a farmer.

31. (1) A scheme management committee for a county public scheme shall consist of—

Management Committees for county public schemes.

- (a) the County Executive Committee Member who shall be the chairperson;
- (b) the County Executive Committee Member responsible for matters relating to county administration;
- (c) the officer in-charge of the County Irrigation Development Unit who shall be the secretary;
- (d) the County Commissioner of the respective County or his representative;

- (e) the Chief Executive officer of the Authority or his representative;
- (f) two representatives of the irrigation water users' association or the umbrella association; and
- (g) two representatives from other relevant farmer organizations in the scheme.

(2) The scheme management committee constituted under paragraph (1) shall be in the county in which the scheme is situated.

32. (1) The scheme management committee shall—

- (a) develop a schedule of their meetings and conduct of business;
- (b) meet on a quarterly basis; and
- (c) hold their meetings at the premises of the scheme.

Conduct of
business of a
scheme
management
committee.

(2) The scheme management committee may invite any professional, expert or stakeholder from a relevant field or entity to attend any of its deliberations.

(3) Every scheme management committee shall constitute a land administration sub-committee and such other special purpose sub-committees for the proper performance of its functions.

(4) The land administration sub-committee constituted under paragraph (3) shall comprise of not more than seven members who shall include—

- (a) the County Commissioner or his representative;
- (b) County Lands Officer;
- (c) the area Chief;
- (d) two farmer representatives from the respective irrigation units;
- (e) a representative of the Authority or County Irrigation Development Unit, as the case may be, managing the scheme who shall be the secretary; and
- (f) the Ward Administrator of the respective administrative area.

33. The Authority or a County Irrigation Development Unit shall, in consultation with the scheme management committee, have power to—

Powers in relation
to crops at the
scheme.

- (a) order the destruction of any crops planted in contravention of the irrigation schedule, designated cropping area or the provisions of these Regulations;
- (b) recover the expenses incurred from the permit holder on destruction of crops under paragraph (a); or
- (c) treat any crops or stocks against diseases, pests or damage of any kind if in its opinion it would be beneficial to a permit

holder's crops or to all the permit holders in the scheme and recover the costs thereof from the permit holder.

34. Where a permit holder has been negligent in the use of his or her land, the use of irrigation water or the cultivation of his crops, the scheme management committee may—

Powers in relation to use of land.

- (a) direct him to take such steps as the scheme management committee may specify to remedy the effects of such negligence; or
- (b) take such measures as it considers necessary to safeguard the crop and to preserve the holding and irrigation water where a permit holder contravenes its directions and recover the costs of any such measures from the permit holder.

35. (1) A person seeking to reside, occupy or carry out irrigation or related business in any part of a national scheme, public scheme or county public scheme meant for settlement shall apply for a land user permit from the Authority or County Irrigation Development Unit, as the case may be.

Land user permit.

(2) Where a person resides, carries out irrigation or related business or occupies an existing national scheme or public scheme, the tenant holding a licence shall be issued with a permit to occupy the land.

(3) The holder of a permit issued under this regulation shall be a *bona fide* member of the registered association of the irrigation scheme.

(4) Every permit issued under this regulation shall be—

- (a) in the Form 4E set out in the Fourth Schedule;
- (b) prepared in duplicate with the original issued to the permit holder and the duplicate retained by the Authority or County Irrigation Development Unit.

(c)

36. (1) Prior to issuing a permit under regulation 34, the Authority or County Irrigation Development Unit shall—

Conditions for grant of a permit.

- (a) cause these Regulations to be read and explained to the applicant in a language which the applicant understands;
- (b) give the applicant a copy of these Regulations; and
- (c) obtain from the applicant, in Form 4F set out in the Fourth Schedule, an acknowledgement that the applicant understands these Regulations and undertakes to observe them.

(2) A permit shall be granted subject to the following conditions on the permit holder—

- (a) devoting his time and attention to the cultivation and improvement of his holding;
- (b) not allowing, without the written permission of the Authority or County Irrigation Development Unit, any other person to occupy his holding or to cultivate it on his behalf,

- (c) maintaining the boundaries of his holding in a manner satisfactory to the Authority or County Irrigation Development Unit;
- (d) maintaining, at all times, his holding and all water distribution, application and drainage infrastructure to the satisfaction of the Authority or County Irrigation Development Unit;
- (e) participating to the satisfaction of the Authority or County Irrigation Development Unit, in maintenance of the irrigation system on or serving his holding;
- (f) cultivating his holding to the satisfaction of, and in accordance with the irrigation schedule laid down by the Authority or County Irrigation Development Unit in consultation with the responsible association;
- (g) complying with all instructions given by the Authority or County Irrigation Development Unit relating to the cultivation and irrigation of his holding; and
- (h) upholding good agricultural practices on his holding.

37. (1) A permit holder may, within reasonable time of being granted a permit and in writing to the Authority or County Irrigation Development Unit, nominate another person to succeed him as permit holder in the event of his death.

Successor of a permit holder.

(2) A person shall not be nominated as a successor of a permit holder under paragraph (1) unless—

- (a) the person has attained the age of eighteen years and if he has not attained that age, his guardian may, within one month of the permit holder's death and with approval of the Authority or County Irrigation Development Unit, appoint a person to act on his behalf until the successor is of age; and
- (b) the permit holder obtains the approval of the scheme management committee.

(3) A permit holder may, at any time and in writing to the Authority or County Irrigation Development Unit, revoke or alter the nomination issued under this regulation.

(4) Where a permit holder dies without nominating a successor in accordance with paragraph (1), the authorised dependant shall, within one month of the death of the permit holder and in writing to the Authority or County Irrigation Development Unit, nominate a successor who must be approved by the scheme management committee.

(5) Within thirty days of the death of a permit holder, an authorised dependant of the deceased permit holder may appeal to the Court against the nomination of a successor under paragraph (4).

(6) Where an appeal under paragraph (5) is successful, the authorised dependant shall, within one month of the determination of

the appeal, nominate a successor in writing to the Authority or County Irrigation Development Unit.

(7) Where—

- (a) no successor is appointed within the time specified under this regulation; (e)
- (b) the person nominated or appointed under this regulation rejects the nomination or appointment;
- (c) the nominated or appointed person fails to assume the responsibilities inherent in such nomination or appointment within a period of three months from the death of the permit holder; or
- (d) the nominated successor is not acceptable to the scheme management committee, the holding shall be deemed to be vacated.

(8) Where a holding is vacated under paragraph (7)—

- (a) the permit in respect of such holding shall be revoked, and a fresh permit may be granted; (d)
- (b) the Authority or the County Irrigation Development Unit may make provision for the cultivation of any such holding and where appropriate recover the costs from the incoming permit holder; and
- (c) reasonable compensation may be paid to the authorised dependant of a permit holder in respect of any improvement to the holding effected by the permit holder.

38. (1) The Authority or the County Irrigation Development Unit shall maintain a register of all permits issued under these Regulations. Register of permits.

(2) The Register maintained under paragraph (1) shall specify the particulars of—

- (a) every permit holder, the number of his holding and the name of the authorised dependant; and (e)
- (b) any successor nominated by the permit holder pursuant to regulation 36(1) and the number of the holding in respect of which the successor has been nominated.

39. (1) The validity period of permit issued under these Regulations shall be— Validity and renewal of a permit.

- (a) perpetual for permit holders under settlement schemes; and
- (b) as per the contract for permit holders under lease agreement.

(2) Subject to regulation 35, every permit may be renewed based on the defined validity period.

40. (1) Before revoking a permit, the Authority or County Irrigation Development Unit shall serve a written notice on the permit holder requiring him to— Revocation of a permit.

- (a) comply with the condition or obligation within a reasonable period of time; or
- (b) show cause, within the period specified in the notice, why the permit should not be revoked.

(2) A permit may be revoked where—

- (a) a permit holder—
 - (i) is imprisoned for a term exceeding six months; or
 - (ii) gives a six months' written notice of his intention to surrender his permit;
 - (iii) fails to comply or show cause as required under paragraph (1);
- (b) a holding is vacated pursuant to regulation 36(7).

(3) Where a permit is revoked due to imprisonment of the permit holder under paragraph (1)(a)(i), a successor may be nominated or appointed in accordance with regulation 36.

(4) A person who is dissatisfied with the revocation of a permit under this regulation may appeal, in writing, to the Cabinet Secretary or the respective County Executive Committee Member, as the case may be

41. (1) Where a permit is revoked under these Regulations, the scheme management committee shall constitute an ad-hoc sub-committee consisting of a representative of the Authority or County Irrigation Development Unit and one representative of both the outgoing and the incoming permit holder.

Procedure upon revocation of a permit.

(2) The ad-hoc sub-committee constituted under paragraph (1) shall assess the amount, if any, due to the outgoing permit holder or his authorised dependant in respect of capital and labour expended by him in improving the holding.

(3) The Authority or County Irrigation Development Unit shall make arrangements for the payment of the amount assessed under paragraph (2) by the incoming permit holder within such time as the Authority or County Irrigation Development Unit considers reasonable.

42. (1) A permit holder shall pay to the Authority or County Irrigation Development Unit through the association, an irrigation service fee in respect of irrigation services on his holding.

Service fee.

(2) The fee charged under this regulation shall be at the rate determined by the Authority or County Irrigation Development Unit and approved by the Cabinet Secretary or County Executive Committee Member, as the case may be, from time to time.

(3) The fee under this regulation may be varied by the Cabinet Secretary or County Executive Member responsible for irrigation in consultation with county governments and other relevant stakeholders.

43. (1) A person shall not drive a motor vehicle over any road, other than a public road, within a public scheme unless he possesses a

Access pass.

valid an access pass issued by the Authority or County Irrigation Development Unit.

(2) A person who fails to comply with any condition of the access pass issued under this regulation commits an offence and shall be liable on conviction to a fine not exceeding five thousand shillings, or to imprisonment for a term not exceeding one month, or to both.

44. (1) The Authority or County Irrigation Development Unit may, where applicable, allocate to a permit holder a house to be occupied by him within the designated area in the scheme, or may authorise a permit holder to erect his own house

Housing within a scheme.

(2) A permit holder shall maintain his house and precincts to the satisfaction of the Authority or County Irrigation Development Unit and relevant agencies.

(3) A permit holder shall not construct any building or undertake any other works of on his holding or elsewhere in the scheme without the prior written consent of the Authority or County Irrigation Development Unit.

(4) Any person who erects a structure or building without the written consent of the Authority or County Irrigation Development Unit commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

45. A permit holder shall not allow any of his livestock on any part of the scheme which is closed to livestock or to cause damage to any crops, water installations, communications or other property

Control of livestock.

46. In the event of an emergency, the Authority or County Irrigation Development Unit, in consultation with the association, may order all permit holders to undertake emergency repair work in any part of the scheme.

Emergency situations.

47. (1) The management of a scheme by an association shall apply to community-based smallholder schemes and public schemes meant for settlement except where the schemes are owned and managed by individual farmers.

Management by associations.

(2) Where an association has inadequate capacity to manage the major works of the irrigation infrastructure, such services may be provided by the Authority, County Irrigation Development Unit or other entity under agency contract as an irrigation water service provider.

(3) Pursuant to section 8(1)(c) of the Act, the modalities for agency contracts shall include the following—

- (a) third party beneficiary contract;
- (b) express contract; and
- (c) best effort contract.

(4) An agency contracted under paragraph (3) shall comply with the provision of regulation 76, 77, 78, 79 and 80.

48. The functions of the association relating to management of a scheme shall include the following—

Functions of an association in management.

- (a) manage an irrigation scheme wholly or partly in its service area and provide irrigation services equitably and timely to members of the association;
- (b) maintain, renovate and improve the irrigation scheme within its service area and to undertake construction and reconstruction works;
- (c) take appropriate measures to combat erosion, salinity, siltation and pollution encroachment;
- (d) make internal rules for the use of irrigation water and collect fees from its members for the services provided;
- (e) procure, maintain and operate irrigation equipment; and
- (f) develop an irrigation schedule informed by agricultural enterprise plan.

49. (1) Pursuant to section 20 (1) of the Act, the residents of a catchment area who are crop farmers, livestock producers, fish pond users, small industry entrepreneurs or otherwise use water for irrigation purposes serviced by a public or community-based smallholder irrigation scheme may form an association which covers an entire scheme or that specific service area.

Formation of an association.

(2) Without prejudice to paragraph (1), persons who qualify to form an association must

- (a) possess land or have access rights to land on the basis of land holding system; and
- (b) use the land with water supplied from a public or community-based smallholder irrigation scheme developed by the National government, a County Government, private or other entities.

(3) The procedure for formation of an association shall be as set out in Part A of the Seventh Schedule.

(4) Where the residents are unable or fail to establish an association within twelve months after the coming into force of these Regulations or after commencement of operation of an irrigation scheme, the supervising entity may compel the residents to form the association.

50. (1) The service area of an association shall comprise of a distinct irrigation system with a defined area of land that can receive irrigation water through the system operated by that association.

Service area of an association.

(2) Each association shall operate within a defined service area.

(3) The service area of an association shall not overlap with the service area of another association.

51. (1) Each association shall have a name and the phrase "irrigation water users' association" shall be included in the name of the association

Name of association.

(2) The name of every association shall be written boldly and be placed where the association conducts its activities.

(3) The name of an association shall be written or stamped on every notice, letter or document signed on behalf of that association.

52. (1) An association formed in accordance with these Regulations shall be duly registered as a legal entity under the Societies Act.

Legal personality
and liability.
Cap. 108.

(2) An association formed in accordance with the Societies Act or the Cooperative Societies Act, prior to the coming into force of these Regulations, shall be recognised as an association under these Regulations.

Cap. 108,
No. 12 of 1997.

(3) Any existing group of farmers owning or managing an irrigation scheme, but registered as a "self-help group" shall register the group as an association in accordance with this regulation.

53. (1) A person who has the user rights over land which is located within the service area of an association in accordance with the appropriate land holding system shall qualify to be a member of the association.

Membership of an
association.

(2) A person who acquires user rights over land located within the service area of an association by succession or any other legal means shall become a member of that association upon payment of any outstanding contributions and fees due to the association from the previous user of that land.

(3) The rights and duties of a member of an association shall—

- (a) be inseparable from the parcel of land located within the service area of an association;
- (b) be transferred with the plots; and
- (c) cease to exist where a plot ceases to lie within the service area as a result of an amendment to the service area of that association.

(4) A person who leases out land located within the service area of an association shall continue to be a member of that association but the lessee shall—

- (a) comply with the by-laws; and
- (b) be responsible for paying the irrigation service fee.

54. (1) The management bodies of an association shall be—

- (a) the General Assembly;
- (b) the Executive Committee;
- (c) the irrigation water users' association management committee; and
- (d) the Dispute Resolution Committee.

Management
bodies of an
association.

(2) An association may provide for the establishment of other committees or special purpose sub-committee in its by-laws.

(3) The powers and duties of management bodies of an association shall be as specified in these Regulations and the by-laws.

55. (1) The General Assembly shall be the supreme organ of an association.

General
Assembly.

(2) The General Assembly shall consist of—

- (a) all members of the association; or
- (b) the representatives of the units as provided in the by-laws.

(3) The powers, duties and procedures of operation of the General Assembly shall be as specified in the by-laws.

56. (1) Every association shall constitute an association management committee elected in accordance with the by-laws.

Association
management
committees.

(2) The association's management committee shall consist of not less than seven members including the chairperson, vice chairperson, secretary, assistant secretary and the treasurer.

(3) The term of office of the association management committee shall be as specified in the by-laws but the period shall not exceed three years.

(4) A member of the association management committee shall not be elected for more than two consecutive terms.

57. (1) Every association shall develop its by-laws which shall contain—

By-laws of the
association.

- (a) the name and address of the association;
- (b) the objects and functions of the association;
- (c) the service area of the association which shall be supported with a plan or map;
- (d) the requirements for membership of the association;
- (e) the rights and duties of the members of the association;
- (f) the powers, responsibilities, and duties of the management bodies and any other employee of the association;
- (g) the procedures for calling and holding meetings of the General Assembly of the association;
- (h) conditions for the election, term of office, suspension and removal of elected officers and members of other bodies of the association;
- (i) provisions on the setting of fees, fines and penalties; and
- (j) conditions for the termination of the activities of the association.

(3) Any by-laws may be amended by a special resolution of two-thirds majority of the General Assembly at a meeting attended by at least seventy percent of the members.

(4) An amendment to by-laws shall be effective from the date it is approved and registered by the supervising entity, and filed with the entity conferring legal status

(5) Every association shall comply with the Code of Conduct for officials and members set out in Part B of Seventh Schedule.

58. (1) The funds of an association shall consist of—

Funds of an association.

- (a) the annual membership fee, dues and levies payable by members of that association;
- (b) the irrigation service charge for the association that consisting of the cost for the provision of service and the profit margin agreed upon by the members of the association,
- (c) gifts or grants;
- (d) loans;
- (e) interest on outstanding fees, due to the association;
- (f) interest on moneys deposited in a bank account opened by that association;
- (g) moneys that accrue to the association from investments made by the association;
- (h) the proceeds of fines or any other sanction imposed on members; and
- (i) payments for services provided by the association.

(2) The association's management committee shall be responsible for collection of the association funds in accordance with the by-laws.

59. (1) The funds of an association shall be used—

Application of funds.

- (a) to cover the cost of operation and maintenance of the irrigation system and cleaning any drainage components;
- (b) to pay the service provider for the operation and maintenance of the irrigation system, where applicable;
- (c) to pay the salaries of the staff of the association and other administrative costs incurred by the association;
- (d) to maintain a capital replacement fund in accordance with regulation 59;
- (e) for loan repayment under cost-sharing arrangements where applicable; and
- (f) any other expenditure as may be approved by the General Assembly.

(2) Where a scheme is developed on cost-sharing or cost-recovery basis, a repayment schedule shall be prepared and each member levied a fee as contemplated in paragraph (1)(c).

60. (1) Every association shall maintain a capital replacement fund for— Capital replacement fund.
- (a) emergency repairs;
 - (b) improvement or renovation of the irrigation and drainage system of the service area; and
 - (c) replacing machinery and equipment.
- (2) The capital replacement fund shall be maintained in an interest-yielding bank account or other acceptable account.
- (3) The capital replacement fund shall be at least ten per cent of the association's annual budget.
- (4) The association shall formulate by-laws to guide the management of the capital replacement fund.
61. An association shall levy an irrigation service fee on each member in proportion to— Irrigation service fee.
- (a) the volume of irrigation water used by that member; or
 - (b) the size of the plot of land used by that member for irrigation purposes.
- (2) The fee levied under paragraph (1) shall be used in accordance with regulation 58.
62. (1) The supervising entity may provide support services to associations by— Support services.
- (a) providing training and create awareness on the establishment and operation of associations;
 - (b) providing technical assistance and support to associations on water management, accounting, financial planning, irrigation techniques and practices, maintenance, social inclusivity and gender mainstreaming;
 - (c) assisting in the formation of new associations in accordance with these Regulations;
 - (d) establishing and maintaining a register of irrigation water users' associations; and
 - (e) conducting legal and financial supervision in accordance with regulation 63.
- (2) The legal and financial supervision under paragraph (1) (e) shall be limited to the activities of the association for which it is the supervising entity.
- (3) The supervising entity may delegate any of the powers and duties specified in paragraph (1)(a), (b), and (d) to another appropriate entity.
63. (1) The supervising entity shall inspect the records of an association where— Legal and financial supervision.

- (a) a written request is filed by half of the members of that association alleging mismanagement of or impropriety in the operations of the association; or
- (b) there is *prima facie* evidence of financial malpractice.

(2) Where the supervising entity finds evidence of financial malpractice or non-compliance with the provisions of these Regulations or the by-laws, the supervising entity shall—

- (a) require that association's management committee to call an extraordinary meeting of the General Assembly within thirty days of its findings
- (b) present the findings to the members of the association during the meeting; and
- (c) guide the general assembly to take corrective measures in accordance with their by-laws.

(3) Where the association's management committee fails to call the extraordinary meeting of the General Assembly in accordance with paragraph (2), the supervising entity shall—

- (a) call the extraordinary meeting; (e)
- (b) present the findings of the investigation to the General assembly;
- (c) facilitate the removal of members of the association management committee involved in the malpractice; and
- (d) ensure the election of new members of the management committee at the meeting.

(4) Where the malpractices constitute a criminal offence, the supervising entity shall report to the relevant state agencies.

64. (1) Within ninety days after the end of each financial year, an association shall submit an annual report to the supervising entity. Reporting by associations.

(2) The report under paragraph (1) shall be in the approved format and accompanied by a copy of the audited accounts of the association.

(3) The financial year of an association shall be determined by the association and specified in the by-laws.

(4) The statement of assets and liabilities and the income and expenditure statement of the association shall be subject to approval by the General Assembly.

65. (1) An association shall seek the written concurrence of the supervising entity before that association— Concurrence by supervising entity.

- (a) amends its by-laws;
- (b) modifies the service area of an association;
- (c) forms an association of irrigation farmers; or

(d) pledges or mortgages assets of that association.

(2) An association seeking concurrence under paragraph (1) shall submit a written request to the supervising entity.

(3) The supervising entity shall, within thirty days of receipt of the application under paragraph (2), determine the application and inform the applicant of its decision.

66. Every association shall maintain the following records—

Records of an association.

- (a) a plan showing the service area of the association;
- (b) a register of fees paid and owed by members;
- (c) a register containing the minutes of the meetings of the General Assembly, association's management committee and other committees or sub-committees where applicable;
- (d) a record of all transactions and contracts entered into by the association;
- (e) an inventory of assets;
- (f) a register containing inspections, studies and surveys conducted on the irrigation system used by the association;
- (g) an operation and maintenance plan;
- (h) records of water supply and distribution;
- (i) a record of operation and maintenance activities;
- (j) complete and accurate books of accounts and financial documents; and
- (k) any other records specified in the by-laws of that association.

67. (1) The Cabinet Secretary shall maintain a Master Register of all associations registered under these Regulations and the Master Register shall be updated annually.

Register of associations.

(2) Every County Executive Committee Member shall maintain a register of all associations within their respective county.

(3) The registers maintained under this regulation shall contain the following information—

- (a) the name and address of the association;
- (b) the date of registration of the association;
- (c) the size and location of the service area of the association;
- (d) the number of members of the association;
- (e) the names, addresses, email and telephone numbers of the members of the association's management committee;
- (f) the inventory and condition of the irrigation system managed by the association; and
- (g) any other relevant information as the Cabinet Secretary may determine.

(4) All *bona fide* associations shall apply to the respective County Executive Committee Member for inclusion in the register established under paragraph (2) in the Form 4G set out in the Fourth Schedule.

(5) Upon enlisting into the register under paragraph (5), the respective County Executive Committee Member shall forward the inventory to the Cabinet Secretary for inclusion in the master register.

(6) Any person may, upon request in writing, access the register within office hours.

68. The General Assembly may, by two-thirds majority vote and upon approval of the supervising entity, dissolve their association on any of the following grounds—

Dissolution of an association.

- (a) the purpose for which the association was formed no longer exists;
- (b) the purpose for which the association was formed is no longer practically implementable; or
- (c) the existence of the association is no longer required.

69. (1) Where an association is dissolved under regulation 67, the supervising entity, in consultation with the association's management committee, shall appoint a licenced liquidator.

Liquidation of an association.

(2) A liquidator appointed under paragraph (1) shall—

- (a) receive records and documents in respect of the properties of the association and protect them from damage;
- (b) keep custody of the assets and properties of the association;
- (c) call on creditors of the association;
- (d) distribute the assets and properties of the association in accordance with the decision of the General Assembly approved by the supervising entity;
- (e) carry out the necessary activities of the association for the proper liquidation of the affairs of the association; and
- (f) represent the association in legal proceedings.

(3) These Regulations and the relevant by-laws shall continue to apply to each association and its members until liquidation proceedings are concluded.

(4) The remuneration of the liquidator shall be paid from the funds of the association.

70. (1) The supervising entity shall, upon conclusion of the liquidation process, notify the respective County Executive Committee Member to delete the name of the association from the register of associations maintained by that county and inform the Cabinet Secretary on the deletion.

De-registration of association.

(2) An association shall be deemed dissolved on the date the details of that association are deleted from the Master Register.

71. (1) Where several distinct service areas managed by individual associations are served by or share common major irrigation infrastructure, the areas may establish an umbrella association.

Umbrella
association.

(2) The establishment of an umbrella association shall be by a decision of the supervising entity or by a majority of members of the associations using irrigation water from the major irrigation infrastructure.

(3) The functions of an umbrella association shall include—

- (a) safeguarding common interests of the respective association;
- (b) administering the whole or part of the major irrigation infrastructure; and
- (c) supplying irrigation water to user associations.

(4) An association that receives water from the major irrigation infrastructure managed by an umbrella association shall be a member of that umbrella association.

(5) An umbrella association shall not—

- (a) supply irrigation water to a person other than a member of the association; or
- (b) undertake an activity within the service area of a member association except by the written permission of that association.

(c)

72. (1) Every umbrella association shall have a unique name which shall consist of the name of the place that umbrella association manages or some other distinctive name followed by the words "umbrella irrigation water users' association".

Name, powers
and duties of an
umbrella
association.

(2) An umbrella association shall be responsible for—

- (a) managing, operating and maintaining a major irrigation system and undertake construction works so as to upgrade its operations;
- (b) issuing by-laws in respect of irrigation water allocation, consumption and collection of fees for the services provided to the member associations;
- (c) procuring, substituting, operating and maintaining irrigation infrastructure on behalf of the members of that umbrella association; and
- (d) supporting its members in capacity building activities.

(e)

(3) An umbrella associations within or operating in public national irrigation schemes meant for settlement shall undertake the activities under paragraph (2) in consultation with the supervising entity.

(4) The members of an umbrella association may provide in the by-laws of that umbrella association that—

- (a) each association may nominate a specified number of members of the association's management committee of that association to serve in the umbrella association; and
- (b) the members nominate under paragraph (4)(a) shall assume the functions of the General Assembly of the umbrella association.

(5) All umbrella associations shall be subject to the provisions of these Regulations.

73. (1) An association of irrigation farmers may be constituted at the county level or the national level by the associations or umbrella associations.

Formation of association of irrigation farmers.

(2) The membership of an association of irrigation farmers shall consist of □

- (a) the associations or umbrella association for associations at county level; or
- (b) the respective county for associations at the national level.

(3) The purposes of the association of irrigation farmers shall be to—

- (a) promote of good governance and management of irrigation schemes;
- (b) capacity building of the respective irrigation water users' associations;
- (c) participate in research, innovation and technology development;
- (d) disseminate of irrigation research information; and
- (e) participate in the formulation of irrigation standards.

(4) An association shall seek prior approval of the General Assembly and consult with the relevant supervising entity before joining the association of irrigation farmers.

(5) An association of irrigation farmers at county level or national level shall prepare by-laws to guide its membership and operations, and shall be registered as a society under the Societies Act.

Cap. 108.

74. (1) The supervising entity, in agreement with an association, may transfer the management and water use rights of the entire or part of the irrigation system in a national, public or strategic scheme meant for settlement to an association.

Transfer of management in public schemes.

(2) A transfer under paragraph (1) shall only take place after both parties have conducted a joint inspection exercise.

(3) Notwithstanding paragraph (1), where the irrigation system lies within the service area of an association, the association may apply to the appropriate supervising entity to transfer to that association, for an indefinite period, the management and water user right of the part of the irrigation scheme.

(4) Where the service area of an association lies in the water supply point of a dam, weir, diversion structure, pump station, or any other type of infrastructure to which water is abstracted from a river, stream, reservoir, pond, or any other natural source, the management of that infrastructure may be transferred to that association.

(5) An irrigation management transfer agreement of an irrigation system shall contain—

- (a) the description of the condition of irrigation system to be transferred;
- (b) the rights, roles and responsibilities of the parties to the agreement in terms of the maintenance of the infrastructure;
- (c) the format for the irrigation management transfer agreement shall be in the form set out in Part A of the Eighth Schedule.

(6) The supervising entity shall ensure the protection and maintenance of the part of an irrigation system that has not been transferred to any association.

(7) Without prejudice to the foregoing, the irrigation management transfer process shall be carried out in accordance with Part B of the Eighth Schedule.

75. (1) Upon conclusion of the irrigation management transfer process, an association may apply to the supervising entity for a user right certificate in respect of a national, public or strategic scheme meant for settlement that lies within the service area of that association.

User right certificate.

(2) The supervising entity shall, within thirty days of receipt of the application, determine the application and inform the applicant of the decision made.

(3) Where the supervising entity approves the application, it shall issue to the applicant a user right certificate in Form 4H set out in the Fourth Schedule.

(4) A user right certificate issued under paragraph (3) shall—

- (a) contain a description of the irrigation system; and
- (b) establish the rights and obligations of that association including acquisition of a water permit and other statutory requirements.

76. (1) An association shall provide to the supervising entity current information relating to the maintenance and condition of a transferred irrigation system.

Obligation relating to information on transferred irrigation system.

(2) A duly authorised officer of the supervising entity may enter into the service area of an association and inspect the condition of the irrigation system transferred to that association.

(3) The authorised officer of the supervising entity may, after the inspection, require the association to undertake specified works, where necessary to—

- (a) prevent damage to the irrigation system in order to ensure the quality of irrigation water supplied; or
- (b) prevent damage to government or third party property due to the usage of the irrigation system.

(4) Where an association fails to comply with a directive given under paragraph (3), that association shall be subject to the appropriate sanctions specified on the agreement.

(5) Where an association fails to successfully carry out the management of the transferred responsibilities, the Authority or County Irrigation Development Unit, as the case may be, shall terminate the transfer agreement and cause the withdrawal of user rights.

(6) The supervising entity shall assume the management responsibilities in the interim, and thereafter take necessary steps for remedial action within a period not exceeding six months.

77. (1) An association may provide irrigation water services or, with the approval of the General Assembly, contract other entities to provide the services.

Irrigation water service provision.

(2) A water service provider responsible for the operation and maintenance of the main irrigation system of an association shall provide that association with irrigation water and other related services where the water supply point of the service area of the association is—

- (a) a gate, a turnout, a pumping station; or
- (b) any other infrastructure on the main irrigation system that is not managed by the association or umbrella association as the case may be.

(3) The conditions to be satisfied by a public agency or a licensed private entity established in respect of the supply of irrigation water and any other related services to an association shall be as specified under Part C set out in the Third Schedule.

(4) A service provider shall provide irrigation water and any other related services referred to in paragraph (2) to an association on the basis of a service agreement signed with the association.

78. (1) An irrigation water service agreement shall be valid for at least five years except where the association requests for a shorter period of service agreement.

Irrigation water service agreement.

(2) Where an association requests for a shorter period under paragraph (1), the term of irrigation water service agreement shall be at least three years.

(3) An irrigation water service agreement shall be made in the form set out in Part C of the Eighth Schedule and include—

- (a) information on the water supply point;
- (b) the season of the year in which irrigation water is to be supplied;

- (c) the procedure for requesting water supply during irrigation season;
- (d) the maximum volume of water the association requires during each irrigation season in accordance with a monthly schedule, subject to any restriction on the service provider to supply the water by any appropriate body;
- (e) measures to be taken to reduce water wastage, pollution and salinity;
- (f) charges and payment conditions;
- (g) liabilities and limitations on the use of water;
- (h) penalties for non-compliance with the conditions of the contract; and
- (i) any other condition necessary to promote the effective use of water or to implement any legal provisions of the service provider concerning the provision of water as stipulated in the relevant enactment.

79. (1) An irrigation water service agreement may be varied or amended with the consent of the association and the concerned service provider.

Variation of irrigation water service agreement.

(2) An irrigation water service provider shall not suspend the supply of water or any other service under a service agreement except where that association delays in payment of any outstanding charges for more than ninety days.

(3) An irrigation water service agreement concluded in accordance with these Regulations may be terminated—

- (a) where one of the parties persistently fails to comply with the terms of the agreement; or
- (b) on the dissolution of the association.

80. (1) An association or irrigation water service provider that fails to supply water to a service area—

Liability of an irrigation water service provider.

- (a) in the agreed quantity; or
- (b) in accordance with a time schedule stipulated in the irrigation water service agreement,
is liable to pay to that association a compensation equitable to the damage suffered by the association.

(2) A member of an association who has suffered a loss as a result of the inability of the service provider to provide irrigation water to that association is deemed to be a party to the contract for the purpose of calculating the amount of compensation to be claimed from the service provider.

(3) For purposes of paragraphs (1) and (2), the supervising entity is responsible for assessing the damage or loss suffered by the association or a member of the association.

(4) A service provider shall not pay compensation in cases of *force majeure*.

81.(1) The amount of irrigation service charge payable by an association to a member or an association to an irrigation water service provider for the supply of water, shall be determined in a transparent manner and through an agreement between the association, the service provider and the supervising entity.

Determination of irrigation water use and other service charges.

(2) The costs of a service provider shall be determined by the service provider in consultation with the supervising entity.

(3) In determining the amount of irrigation service fee chargeable to association members, the following shall be taken into account—

- (a) the costs of the service provider;
- (b) the costs of the association in the provision of irrigation services;
- (c) the water use charges;
- (d) provisions for the capital replacement fund; and
- (e) loan repayment in cost-sharing arrangements where applicable.

(4) The costs of the association in the provision of irrigation services shall be determined by the association in consultation with the members of the association and approved by the General assembly.

82. (1) Subject to the prevailing statutory obligations of an association, a ministry, department or agency of the national government or a County Government shall not—

Relationship with public administration.

- (a) interfere in the formation of an association; or
- (b) obstruct an association in performance of its functions.

(2) Despite paragraph (1), the management committee of an association may, in writing, request for support from a national government Ministry or agency and a County Government for the operation of the association.

(3) Where an association requests for support under paragraph (2), the entity providing support shall respect the autonomy of the association while providing that support.

(4) Where the service area of an association transcends regions, counties or other administrative levels due to the natural flow of a river, each county or other administrative level shall assign committee members to appraise the local administrator concerned on the affairs of that association.

83. (1) Any complaint arising out of irrigation and scheme development, management, water allocations and delivery, financing, operation and maintenance and any other justifiable cause shall be lodged at the irrigation unit level in the first instance.

Dispute resolution.

(2) The irrigation unit leadership shall determine the dispute within thirty days of receiving the complaint.

(3) Where the dispute is not resolved or the complainant is dissatisfied by the decision of the unit leadership, the matter shall be referred to a Dispute Resolution Committee.

84. (1) Every association shall establish a Dispute Resolution Committee consisting of not less than three and not more than five members of the association who are persons of high reputation, integrity and have the requisite competence.

Dispute
Resolution
Committee.

(2) The General Assembly of an association shall elect members of the Dispute Resolution Committee for that association.

(3) A member of a Dispute Resolution Committee shall hold office for a period of three years and shall be eligible for re-election for one further term.

(4) A member of a Dispute Resolution Committee shall not be elected for more than two consecutive terms.

(5) The members of a Dispute Resolution Committee shall elect one of their members as chairperson, who shall preside over the proceedings of the committee.

(6) The Dispute Resolution Committee may invite not more than two members of the community or society of high moral standing to assist in its deliberations.

85. (1) A Dispute Resolution Committee shall hear and determine—

Duties of Dispute
Resolution
Committee.

- (a) disputes relating to water use and distribution of water between members of the association;
- (b) disputes relating to the determination and payment of an irrigation service charge;
- (c) matters relating to contravention of the by-laws of an association;
- (d) matters relating to non-observance of the watering schedule of an association; and
- (e) appeals lodged against the administrative decisions of the association management committee.

(2) Any appeals from the irrigation unit level shall be lodged at the Dispute Resolution Committee within fourteen days from the date of determination.

(3) A Dispute Resolution Committee shall, upon receiving a written or oral complaint on the grounds specified under paragraph (1)—

- (a) promptly conduct investigations into the complaint;
- (b) in cases where the allegation is lodged in writing, issue a summons on the respondent to respond to the allegations and appear before the Committee for the hearing; and
- (c) hear both parties, examine their evidence and undertake a site inspection where necessary.

(4) A Dispute Resolution Committee shall—

- (a) hear the matter within fourteen days of receipt of a complaint; and
- (b) inform the parties of the decision made on the matter not more than seven days after the hearing.

86. A determination made by the Dispute Resolution Committee under these Regulations shall be considered as the decision of a judicial body and shall be executed unless reversed on appeal. Execution.

87. (1) In case of disputes on an irrigation scheme, a dissatisfied party may appeal to the relevant supervising entity. Appeals.

(2) In case of disputes within public or national irrigation schemes meant for settlement, dissatisfied party may appeal to the scheme management committee.

(3) Where a person is dissatisfied with the decision of the Dispute Resolution Committee and the scheme management committee as the case may be, the person shall exhaust the procedures specified in these Regulations before resorting to court of law.

PART V—IRRIGATION STANDARDS AND QUALITY CONTROL

88. Any person who intends to undertake irrigation development shall adhere to the quality standards for water, infrastructure, on-farm water management and discharge of water from schemes as set out in these Regulations. Irrigation quality standards.

89. (1) Any water for irrigation purposes shall meet the applicable quality standards set out in Part A and Part B of the Second Schedule. Irrigation water quality standards.

(2) Residual irrigation water attached to vegetables and fruits at the time of harvest shall comply with domestic water quality limits set out in Part C of the Second Schedule.

(3) For public lawns with which the public may come into direct contact, irrigation water shall have less than or equal to two hundred faecal coliforms per one hundred milliliters, as set out in Part A of the Second Schedule.

(4) The irrigation water quality for unrestricted irrigation shall have less than or equal to one thousand faecal coliforms per one hundred milliliters as set out in Part A of the Second Schedule.

(5) Any person or entity using water for irrigation shall carry out water quality testing in accredited laboratories upon direction by supervising entity or other agency.

(6) Any person or entity using water for irrigation that does not meet the standards set out under these Regulations commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding one year, or to both.

90. (1) All discharge of water from irrigation schemes shall meet the quality standards as set out in Part A of the Second Schedule. Discharge of water from schemes.

(2) Pursuant to paragraph (1), a person or entity discharging water from irrigation schemes shall ensure that—

- (a) ground water is not polluted through unprotected wells, by ensuring that unused wells are sealed by removing pumps, piping and debris, and filling the hole with slurry of cement or bentonite chips;
- (b) surface water is not polluted for adequacy protection of aquatic life and other ecosystem services.

(3) Any person or entity discharging water from an irrigation scheme that does not meet the water quality standards provided under these Regulations commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding one year, or to both.

91. (1) Irrigation infrastructure which includes components for water harvesting and storage structures, abstraction, conveyance, distribution, on-farm application and drainage shall meet the standards set out in these Regulations and other applicable laws.

Irrigation
infrastructure
standards.

(2) The irrigation infrastructure standards for water harvesting and storage structures, applicable under these Regulations shall be based on the Practice Manual for Small Dams, Pans and Other Water Conservation Structures in Kenya, 2015, and other applicable laws.

(3) The design criteria shall observe the guidelines as provided in the National Construction Authority Facilities design Criteria Guidelines of 2016 on irrigation development.

(4) A person who erects or installs any component of an irrigation system shall—

- (a) ensure that it is erected or installed in a manner that makes it efficient, safe and not a risk to the safety and health of persons, livestock, wildlife and the environment; and
- (b) maintain the irrigation infrastructure through observance of safe work procedures in line with the Occupational Safety and Health Act, 2007.

No. 15 of 2007.

(5) The safe work procedures anticipated under paragraph (1) include—

- (a) arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (b) informing all persons employed of—
 - (i) any risks from new technologies; and
 - (ii) imminent danger; and
- (c) ensuring that every irrigation farmer participates in the application and review of safety and health measures.

92. Where irrigation is undertaken within or near a wildlife conservation area, the person or entity undertaking irrigation shall put in place the necessary measures to use the scheme and conserve, protect and manage the wildlife conservation area in accordance with the Wildlife Conservation and Management Act, 2013.

Schemes near wildlife conservation areas.

93. (1) Every irrigation farmer shall report to the association's management committee or the supervising entity any situation which he reasonably believe presents an imminent or serious danger to the safety or health of that farmer or other farmers in the same scheme.

No. 47 of 2013. Safety and maintenance of irrigation infrastructure.

(2) A person who, by virtue of a permit, licence or otherwise, has an obligation in relation to irrigation infrastructure within a scheme shall—

- (a) conduct maintenance or repair; and
- (b) prevent risks to safety and health that may arise from the use of any machinery or substance in the scheme.

(3) A person who designs, manufactures, imports or supplies any article for use in an irrigation scheme shall ensure—

- (a) ensure that the article is so designed and constructed as to be safe and without risks to health when properly used;
- (b) carry out, or arrange for the carrying out of such testing and examination as may be necessary to ensure that the article is safe and without risk to health when properly used;
- (c) take such necessary steps to ensure that there is available, in connection with the use of the article at the scheme, adequate information about the use for which it is designed and has been tested, and about any conditions necessary to ensure that, when put to that use, it shall be safe and without risks to health.

(4) A person who designs or manufactures any article for use at work shall undertake the necessary research to identify, eliminate or minimize any risks to safety or health to which the design or article may give rise.

(5) Without prejudice to the foregoing, a person may not repeat any undertaken test, examination or research in so far as it is reasonable for him to rely on the results thereof for the purposes of this regulation.

94. (1) A person who constructs a water harvesting and storage structure for irrigation shall comply with the standards set by the Water Harvesting and Storage Authority.

Water harvesting and storage for irrigation.

(2) The ancillary structures needed for a particular scheme shall be site specific as specified in the Practice Manual for Small Dams, Pans and Other Water Conservation Structures in Kenya, 2015.

95. The erection and construction of irrigation infrastructure shall comply with the approved list of standards set out by the Kenya Bureau of Standards of 5th April, 2018 including—

Erection and construction of irrigation infrastructure.

- (a) KS IEC 61557-2:2007 Kenya Standard on Electrical safety in low voltage distribution systems up to 1 000 V A.C. and 1 500 V D.C. — Equipment for testing, measuring or monitoring of protective measures Part 2: Insulation resistance, Second Edition;
- (b) KS ISO 7749-1:1995 Kenya Standard on Agricultural irrigation equipment — Rotating sprinklers Part 1: Design and operational requirements, First Edition; and
- (c) KS 1555-4:2018 Kenya Standard — Gully tops and manhole tops for vehicular and pedestrian areas Part 4: Gully tops and manhole tops made of steel reinforced concrete, First Edition.

96. (1) Any firm or professional qualified for purposes of undertaking irrigation development shall be registered and licensed by the relevant professional bodies and enlisted by the Cabinet Secretary in the register of enlisted firms and professionals.

Standards for irrigation firms and professionals.

(2) The register maintained under paragraph (1) shall be published on the Ministry's website.

(3) The categories of qualified firms and professionals for purposes of undertaking irrigation development shall be as set out in Part A of the Third Schedule.

(4) The conditions for enlisting with the Cabinet Secretary and information required for the same may change from time to time.

(5) A firm or professional may be delisted by the Cabinet Secretary upon recommendation by a relevant professional body or a technical advisory committee.

97. (1) The Cabinet Secretary may establish a technical advisory committee for the purpose of enlisting and determination of all matters regarding the quality of works or services carried out by the qualified professionals, firms and contractors under these Regulations.

Establishment and role of a technical advisory committee.

(2) The technical advisory committee shall comprise of

- (a) the Principal Secretary responsible for matters relating to irrigation, who shall be the chairperson; and
- (b) not more than eight other technical persons appointed by the Cabinet Secretary.

(3) A decision on the application for enlisting of qualified professionals, firms and contractors under these Regulations shall be—

- (a) made on the recommendation of the Technical Advisory Committee; and
- (b) communicated to the concerned party within fourteen days from the date of the decision.

98. A person may apply for enlisting as a qualified professional or service provider upon meeting the following conditions—

Enlisting of professional irrigation service providers.

- (a) has a degree or a diploma from any recognized university;
- (b) at least five year's practical experience in a profession or discipline relevant to irrigation services; and
- (c) be a registered member of the respective professional body where the relevant profession is governed by a professional body.

99. (1) Every foreign qualified professional, firms or contractors seeking to provide a service or engaged by an entity to carry out any works shall apply for a permit from the National Construction Authority and then be enlisted by the Cabinet Secretary before undertaking their works.

Enlisting of
foreign irrigation
service providers.

(2) Upon enlisting under paragraph (1), the foreign qualified professionals, firms or contractors shall be deemed as a qualified professional, firms or contractor for purposes of its operations under the Act and these Regulations.

(3) Upon completion of the service or works, the Cabinet Secretary shall delist the foreign professional, firms or contractors.

(4) Where a complaint is made in respect of foreign qualified professionals, firms or contractors, the Cabinet Secretary may immediately suspend the registration and enlisting of such foreign professional, firm or foreign contractor from performing any tasks in Kenya pending the making of a final determination.

100. (1) A person who offers or proposes to provide professional services relating to irrigation shall apply to the Cabinet Secretary for enlisting in the Form 4B in the Fourth Schedule.

Application for
enlisting as
irrigation service
provider.

(2) The conditions for enlisting under paragraph (1) and information required for registration may change from time to time.

(3) Upon receipt of an application under this regulation, the Cabinet Secretary shall require the attendance before the technical advisory committee of the applicant, to validate the evidence provided with the application.

(4) In case of firms or contractors, the Cabinet Secretary shall require the firm or contractor to provide evidence of qualified professionals in their employment.

(5) If, on the basis of the recommendations of the Technical Advisory Committee, the Cabinet Secretary is satisfied that the applicant is qualified to be enlisted, a certificate of recognition shall be issued in Form 4I set out in the Fourth Schedule for such period and on such conditions, as it may deem desirable.

(6) The list of enlisted professionals shall be available to any person during office hours upon request in writing.

101. (1) A person who undertakes irrigation shall practice good on-farm water management under sustainable economic and environmentally sound conditions as per these Regulations and other relevant laws.

Standards for on-
farm water
management.

(2) Pursuant to paragraph (1), the person planning and managing the farm activities shall take into account the following—

- (a) availability and quality of water resources, crop and soil type and based on these, plan water harvesting and storage units if necessary;
- (b) potential pollutants including but not limited to nutrient and pesticide management, soil erosion, animal feeding operations, grazing management and irrigation water management;
- (c) soil moisture conserving technologies to enhance water saving, minimise the delivery and transport of agriculturally derived pollutants, control diffuse pollution, minimise pollutants, slow the transport or delivery of pollutants;
- (d) reduction of soil erosion to prevent surface water pollution and improve water infiltration by ploughing along contours, use of conservational tillage where appropriate, blocking runoff pathways and establishing infield grass strips;
- (e) use of best available technologies or new innovative ideas that optimise water use including new ideas, technologies, methodologies, crop plan and processes;
- (f) consider any conflicting water use demands and the communities' dependency on water resources and or conservation requirements that may exist in the area;
- (g) assess the impact of the water use by local communities;
- (h) protection of water quality by—
 - (i) avoiding runoff and careful use of effluents;
 - (ii) repair damaged guttering and check for leaks;
 - (iii) consider installing reed beds for dealing with lightly contaminated yard runoff;
 - (iv) ensure any effluent from silage clamps is collected, stored and spread in an appropriate way;
 - (v) separate clean and dirty water, recycle the clean water or divert to ditch, on-farm water reservoir or watercourse; and
- (i) adoption of salinity management guidelines and practices, which include irrigation water quality testing, soil salinity assessment and undertake consequent corrective salinity leaching and amendment.

(3) A person planning and managing farm activities shall ensure that runoff liquid from manure yards should be contained where there is risk of water pollution.

102. A person or entity managing an irrigation scheme shall ensure that their employees and workers are trained on a continuous basis to —

Capacity building.

- (a) increase awareness on efficient water use and management;
- (b) conserve and not to pollute water courses during their duties;
- (c) operate and optimize irrigation system performance;
- (d) understand any conflicting water use demands; and
- (e) apply good agricultural practices.

103. (1) The scheme management shall adopt irrigation water schedules based on crop type and stage of growth, soil types, drainage, prevailing climatic conditions and other factors to ensure the irrigation system is operated as designed.

Irrigation water scheduling.

(2) Pursuant to paragraph (1), before adopting any irrigation schedule, an assessment of the relevant factors shall be carried out before commissioning of the irrigation scheme or upon change of crop type.

104. (1) A person or entity that who undertakes irrigation shall maintain and upgrade infrastructure to improve the performance of in-field application systems, check constantly the condition of the irrigation system, pumps, mains and hydrants periodically and repair worn items such as seals.

Guidelines for maintenance of irrigation infrastructure.

(2) Pursuant to paragraph (1), the irrigation system components for in-field water application shall be continuously and routinely assessed to

- (a) ensure irrigation uniformity;
 - (b) check of sprinkler heads for wear or drip lines for blockages;
 - (c) check the system's operating pressures and the differential pressure across any filtration system and the system's flow rates; and
 - (d) ensure the pump is operating at its optimum performance.
- (3) In order to prevent and reduce water losses, the following activities or measures shall be undertaken
- (a) insulating pipes properly;
 - (b) covering all exposed pipe work within seven hundred and fifty millimeters of ground level;
 - (c) ensure all hoses, hand lances and washing equipment have trigger controls;
 - (d) have appropriate maps or plans of water pipes and structures to avoid damage and water loss.
 - (e) position of pipes, fittings and type of material should be noted and clearly marked on the ground surface;
 - (f) check taps, drinkers, troughs and nozzles for leaks as part of a regular six-month audit;
 - (g) replace washers when necessary;

- (h) install a control valve to reduce pressure in the system;
- (i) maps of yard structures should be available in the event of a pollution incident to control the runoff water;
- (j) review water use quarterly and check out for any increase in use that may indicate leaks; and
- (k) conduct a water-use inventory to manage and optimize water use in farm.

105. Any person or entity undertaking irrigation shall adhere to the following requirements□

Use of agro and non-agrochemicals in irrigation schemes.

- (a) use only agro-chemicals permitted under the relevant legislation;
- (b) handle and manage agro-chemicals in a way not to contaminate irrigation water, soil or related environment; and
- (c) handle, store and dispose non-agrochemicals in a manner to avoid any risks to food safety and the environment.

PART VI—IRRIGATION RESEARCH, INNOVATION AND TRAINING

106. (1) Pursuant to section 18 of the Act, the purpose of irrigation research, innovation and training includes□

Role of irrigation research, innovation and training.

- (a) generating and validating appropriate irrigation technologies and innovations;
- (b) harmonizing and domestication of quality standards for irrigation infrastructure, irrigation water and on-farm water management; and
- (c) building capacity of technical staff, irrigation farmers, irrigation water users associations, irrigation service providers and other irrigation sub-sector stakeholders.

(2) Pursuant to paragraph (1) all irrigation research, innovation and training shall adopt the following criteria□

- (a) ensure efficiency and sustainability of the irrigation sector;
- (b) ensure environmental safety;
- (c) address a felt need in the irrigation sector;
- (d) should be cost-effective and ensure returns on investment; and
- (e) impart appropriate irrigation skills, knowledge and attitude to ensure use of efficient technologies and compliance to quality standards and practices.

(3) All technologies and innovations in irrigation shall be registered by the Cabinet Secretary and in accordance with the

Industrial Property Act, 2001 before they are allowed to be used in the country. No. 3 of 2001.

(4) Without prejudice to paragraph (3), the Cabinet Secretary shall maintain a register of irrigation technologies and innovations.

(5) A request for registration of a new technology or innovation shall be accompanied by technical specifications including drawings and any other evidence, where applicable.

(6) Any person or entity that introduces new irrigation technologies or innovations for mass consumption or commercial purposes without registering them with the Cabinet Secretary commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding one year, or to both.

107. Pursuant to section 18(1) of the Act, the Cabinet Secretary may take the following administrative measures to facilitate research, innovation and training Administrative measures by the Cabinet Secretary.

- (a) establish facilities, projects and programs on irrigation research, innovation and training;
- (b) collaborate with relevant stakeholders in conducting irrigation research and training;
- (c) participate in curriculum development for irrigation and drainage courses;
- (d) promote information sharing with relevant stakeholders on new and emerging technologies within the irrigation sub-sector, or
- (e) develop a catalogue of new technologies within the irrigation sub-sector for information purpose.

PART VII—FINANCING OF IRRIGATION DEVELOPMENT

108. (1) Any individual, entity or agency undertaking or intending to undertake development of an irrigation scheme may source funds through an appropriate modality including the following Financing irrigation development.

- (a) private investments;
- (b) financial institutions;
- (c) loans and grants from government and development partners;
- (d) public-private partnerships;
- (e) cost-sharing; and
- (f) cost-recovery.

(2) All agreements for financing irrigation development using public funds shall be approved by the Cabinet Secretary or the Governor, as applicable, with concurrence of the National Treasury.

109. (1) The Authority and county governments shall ensure return on investment when using public funds as envisaged in the Act during the initial appraisal of the scheme. Financing irrigation development using public

(2) Pursuant to paragraph (1), the Authority and the county governments shall undertake economic and financial analysis of the proposed investments using internal rate of return, cost-benefit analysis or any other such parameters where applicable.

funds.

No. 33 of 2015.

(3) Where public funds are used in irrigation development, management and other related activities the Authority, county governments and other agencies shall be subject to the Public Procurement and Disposal Act, 2015 and other relevant laws.

110. (1) The Cabinet Secretary may, with concurrence of the National Treasury, enter into financing agreements to support development of smallholder irrigation schemes through the Authority, county governments and other stakeholders.

Cost-sharing in irrigation scheme development.

(2) Any cost-sharing in irrigation scheme development shall take the form of beneficiaries offsetting part of the total project cost informed by a negotiated financing agreement having taken note of the contributions from the various partners.

(3) The minimum beneficiaries' contribution shall not be less than five per cent of the infrastructure development cost.

(4) The Cabinet Secretary or County Executive Committee Member may waive the minimum cost-sharing contribution for schemes developed on social equity basis for resource poor communities.

111. (1) Where a scheme is developed or is to be developed on cost-sharing or cost-recovery basis, a repayment schedule shall be prepared.

Irrigation development through loan.

(2) Any irrigation scheme developed on cost-recovery or cost-sharing through provision of a loan under bilateral agreements shall have the loan amortized over a period of not less than five years.

(3) The approval process for projects under loans or grants shall require submission of a financing agreement or commitment securing funds for infrastructure construction prior to issuance of approval to construct.

(4) In case of phased irrigation scheme development, due consideration shall be made to ensure that the first phase covers abstraction and conveyance for the entire system and in-field system of at least one irrigation unit is completed and functional.

(5) The Cabinet Secretary shall take administrative action to provide for re-investment of any recovered public funds under cost-recovery mode of financing in irrigation development.

PART VIII—MONITORING, PERFORMANCE AUDIT AND REPORTING

112. (1) The Cabinet Secretary shall develop and maintain an irrigation and drainage management information system to perform the functions of monitoring and reporting.

Irrigation and drainage management information system.

(2) The information management system developed and maintained under paragraph (1) shall have functionality for planning, monitoring, recording transactions, performance measurement and decision making.

(3) The irrigation and drainage management information system shall serve the following purposes—

- (a) establishment of data and information needs for irrigation sub-sector;
- (b) establishment of formats and protocols for geo-referenced data capture, processing and sharing disaggregated data up to the county government level;
- (c) capture of accurate, reliable, timely and verifiable data and information for the subsector;
- (d) capture of data on inputs, immediate outcomes and impacts in irrigation development activities
- (e) organize the irrigation and drainage data and information in a structured manner to facilitate accessibility and sharing amongst stakeholders for effective and efficient planning, coordination, monitoring and evaluation of the sub-sector; and
- (f) establishment of a decision support platform for policy, management and investment decisions.

(4) The irrigation and drainage management information system shall be web-based and shall include information on—

- (a) all areas identified, mapped, delineated and designated as suitable for irrigation;
- (b) all water harvesting and storage structures;
- (c) all licensed irrigation schemes;
- (d) all registered irrigation professional service providers and contractors;
- (e) all registered irrigation water users' associations, umbrellas and irrigation farmers' associations;
- (f) performance status of the licensed irrigation schemes, registered associations and umbrella associations;
- (g) complaints register for all registered irrigation service providers and contractors;
- (h) data on irrigation sector investments; and
- (i) irrigation schemes annual reports.

(5) The format and details of the information under paragraph (3) shall be as set out in Part B of the Fifth Schedule.

(6) The irrigation and drainage information system shall have a public platform giving access to aggregated information and reports about the irrigation sector in Kenya.

(7) Irrigation stakeholders may be granted, upon request, limited access rights subject to the provisions of the Data Protection Act, 2019.

No. 4 of 2019.

(8) The Cabinet Secretary and county governments shall be responsible for data input into the irrigation and drainage information system but may delegate input functions to the Authority or other relevant agencies.

113. (1) Any individual or entity carrying out irrigation or providing irrigation services shall be subjected to, monitoring, evaluation and performance audits by the Cabinet Secretary or a County Government in accordance with these Regulations.

Monitoring, evaluation and performance audits.

(2) The Cabinet Secretary or other authorized person shall carry out periodic monitoring, evaluation and performance audits in all irrigation schemes under its jurisdiction for purposes of—

- (a) ensuring compliance to these Regulations and other relevant laws
- (b) issuing registration certificate and other relevant certifications.
- (c) ensuring efficient irrigation schemes and good on-farm water management; and
- (d) encouraging sustained economic productivity through promotion of marketing.

(3) The Authority, county governments, County Irrigation Development Unit and other authorised agency shall carry out periodic monitoring, evaluation and performance audits in all irrigation schemes under its jurisdiction and submit reports to the Cabinet Secretary semi-annually or as may be required.

114. The procedure and standards for carrying out monitoring, evaluation and performance audits and subsequent reports shall be in accordance with guidelines developed by Cabinet Secretary.

Monitoring, evaluation and performance guidelines.

PART IX—MISCELLANEOUS PROVISION

115. (1) Any individual or entity who owns or manages an irrigation scheme may institute legal proceedings for purpose of recovery or compensation for damage to irrigation infrastructure.

Recovery or compensation for damage to irrigation infrastructure.

(2) Pursuant to paragraph (1) the process shall entail—

- (a) report of the offence to the relevant supervising entity and the police;
- (b) assessment of the alleged damages by the supervising entity or registered professional service provider and a report of the same; and
- (c) filing a case with the relevant court of law for redress in accordance with the Act.

116. Any person who commits an offence under these Regulations for which no specific penalty is provided shall be liable, on conviction, to the penalty provided under section 34(3) of the Act.

General penalties.

117. The Irrigation (National Irrigation Schemes) Regulations, 1977 are revoked.

Revocation. L.N. No. 68 of 1977.

SCHEDULES

FIRST SCHEDULE

CONTENT AND FORMAT OF TECHNICAL REPORTS

PART A: PRE-FEASIBILITY ASSESSMENT CHECKLIST

(r. 7(2)(b))

NO.	ASPECT	STATUS	REMARKS
1	Project proponent		
	Background and purpose of project		
	Location of site		
2.	Land availability		
	Land suitability		
	Land tenure (communal, private, public)		
3.	Topography (Slopes, Plateau etc.)		
4.	Water resources (river, lake, dam, etc.)		
	Adequacy of water resources and sediment load		
	Number of other users for same resource (upstream and downstream)		
5.	Soils and geology		
	Suitability and variability		
6.	Environmental status		
	Likely impact on environment		
7.	Institutional arrangements		
	Stakeholders and their roles		
	Possible organisational arrangements		
8.	Irrigation technological options		
	Abstraction		
	Conveyance		
	Distribution		
9.	Project Construction		
	Complexity		
	Construction materials (source + availability)		
10	Overall project viability		

PART B: IRRIGATION SCHEME FEASIBILITY STUDIES REPORT

(r. 11(3))

1. Introduction
 - Project background
 - Project justification
 - Project location and area
2. Physical Environment
 - Topography
 - Agro ecological zones
 - Main economic activities

-
- Land tenure
 - Communication/ accessibility
 - 3. Water Resource
 - Water Source
 - Hydrological Assessment
 - Hydrogeological assessment (for ground water Use)
 - 4. Soils
 - Soil mapping
 - Soil suitability
 - 5. Agriculture
 - Agricultural development plan
 - Agricultural marketing plan
 - 6. Irrigation development Plan
 - Preliminary scheme layout
 - Preliminary structures design
 - Analysis of options to meet project objectives
 - 7. Institutional arrangements
 - Scheme Organisation
 - Scheme Management
 - 8. Project financing
 - Preliminary project cost estimates
 - Financing arrangements
 - 9. Economic and financial analysis (Internal Rate of Return/Cost-Benefit Analysis)
 - 10. Environment
 - Environmental and social impacts assessment
 - 11. Conclusions
 - Legal, social and environmental feasibility
 - Technical feasibility
 - Financial feasibility
 - Economic feasibility
 - 12. Recommendations and Way forward

PART C: IRRIGATION SCHEME DETAILED DESIGN REPORT FORMAT

(r. 13(3), r. 20(1)(d))

1. Introduction
 - Project background
 - Project justification
 - Project location and Area
 2. Hydrology and water resources
 - Surface water resources
 - Groundwater resources
 - Water balance
 3. Agriculture
 - Agricultural soils (mapped)
 - Agronomic suitability
 - Existing Agriculture
 - Production status
 - Social economic status
 4. Proposed agricultural development plan
 - Size of the proposed irrigation area
 - Selected crops and area allocation
 - Cropping pattern and Rotation
 5. Irrigation development plans
 - Proposed scheme layout
 - Proposed Irrigation method(s)
 - Crop water requirements
 - Irrigation scheme water requirements
 - System design flow
 6. Irrigation development technology option analysis and selection
 - Identification and analysis of technologic options
 - Headworks
 - Water conveyance
 - Water distribution
 - Water application
 7. Features of Irrigation Facilities
 - Head works
-

- Main canals/pipelines
- Sub-main canals /pipelines
- In-field system
- 8. Design of Irrigation Facilities
 - Scheme design components
 - Design of head works
 - Design of conveyance system
 - Design of distribution system
 - Design of hydraulic structures
 - Design of drainage system
 - Design Auxiliary structures
- 9. Cost Estimates
 - Criteria for cost estimates
 - Bill of Quantities
- 10. Implementation Plans.
 - Overall work plan
 - Works by the implementing agency
 - Work by farmers / irrigation water users' association (for community-based systems)

PART D: SCHEME COMPLETION REPORT

(r. 14)



REPUBLIC OF KENYA

SCHEME COMPLETION REPORT

(To be submitted in triplicate)

Scheme Category	Small Scale Scheme	Medium Scale Scheme	Large Scale Scheme	Irrigation Technology to be employed
Tick Box				

PARTICULARS OF PROPONENT		DETAILS	
1. Full name of applicant(s) (In Block Letters)			
2. Category of Applicant – (Private/Individual, community or public)			
3. Identity Number of Applicant (Individual) or Certificate of Incorporation or Registration for Groups, Associations or Companies			
4. Personal Identification Number (where applicable)			
Physical Address where Irrigation scheme is located		Address of Contact Person and Designation	
Gazette Notice Number (Under Section 16(1) of the Act)		Box Number	
Village(s)/Ward(s)		Town	
Sub-County(s)		Post Code	
County(s)		Telephone Contact (Landline)	
		Telephone Contact (Mobile)	
		Email Contact	

WATER RESOURCE DETAILS

5. Name of the water source	
6. Water storage Capacity (m ³)	Nil if Non is constructed
7. Class of Water Resource (As classified by Water Resources Authority- based on water permit)	
EVIDENCE OF RELEVANT APPROVALS/AUTHORIZATIONS	
Environmental Impact Assessment Licence (Issued by National Environment Management Authority under Environmental Management Coordination Act, 2015)	If NIL, state "Nil", if YES, indicate Licence Number and attach copy of the Licence.

Authority to Construct <i>(issued by Water Resources Authority, under the Water Act, 2016)</i>	If NIL, state "Nil", if YES, indicate Permit Number and attach copy of the Permit.
Approval <i>(Approval by National Construction Authority)</i>	If NIL, state "Nil", if YES, indicate Approval Number and attach copy of the approval.
Approval for construction by Supervising Entity (National Irrigation Authority/County Irrigation Development Unit/Other Entity – Specify)	

PARTICULARS OF CONTRACTOR

Name of Contractor		Licence Number	
Box number		Registration No	
Town		Name of Site Agent	
Post code		Period of construction (Months)	
Tel Contact(Landline)			
Tel Contact (Mobile)			

IRRIGATION SCHEME DESCRIPTION

Number of households to be served	
Number of connections	
Total Irrigated Area (ha)	
Scheme Water Requirements (litres/sec)	

PARTICULARS OF SCHEME INFRASTRUCTURE

Water Storage	Capacity		Dimensions		Status	
	Dam					
Water pan						
Farm Ponds						
Abstraction	Weir	Length		Height		
Pump	Size (HP)	Pump capacity (m ³ /sec)				
Conveyance	Pipeline	Size (mm)		Length		
Canal	Bed width	Top width		Depth (including freeboard)		
Distribution system	Pipeline	Size		Length		
		Segment 1				
		Segment 2				
					Status	

		Segment 3			
		Segment 4			
		Segment 5			
	Canal		Size	Length	Status
		Segment 1			
		Segment 2			
		Segment 3			
		Segment 4			
	Segment 5				
Application system	Type	Tick as appropriate	Particulars		Status
	Micro irrigation				
	Sprinkler				
	Basin				
	Furrow				

ATTACHMENTS	Attached (Yes/No)	Comments/Remarks
Copy of Identification documents		
Copy of Land Documents (where applicable)		
Copy of Agreements on Land Use		
Relevant Maps		
As built drawings		
Copy Water Use Permit		
Approval from National Construction Authority (Where applicable)		
Design Report		
Construction completion certificate.		
Letter of Authority to sign as agent		
Comments by Supervising Entity		

I agree to supply any further information which may be required by the Supervising entity.

SIGNATURE

Signature of Project Proponent or duly authorised Agent	
Name	
Date of Application	

SIGNATURE OF OFFICIAL RECEIVING

Signature of NIA/ County Official	
Name	
Position	
Date Received	

All approvals from Government Agencies must be attached

OFFICIAL SECTION – Recommendation for Licencing

(To be filled by Supervising Entity)

	<i>Tick</i>	<i>Date</i>	<i>Officer</i>
Submission			
County Irrigation Development Unit comments received			
Recommended			
Rejected			
Conditional Recommendation			
Authority Recommendations received			
Recommended			
Rejected			
Conditional recommendation			

PART E: SCHEME OPERATION AND MAINTENANCE MANUAL

(r.14)

- Chapter 1 Introduction
- Justification for the manual
 - How to use the Manual
 - Introduction to the irrigation development
- Chapter 2 Irrigation System Components and Design Summary
- Basic irrigation system and components
 - Water storage facility
 - Water abstraction facility
 - Water Conveyance/ Distribution Facility
 - Infield System
- Chapter 3 Institutional arrangements for irrigation system management
- Organizational structure
 - Operation and maintenance structure
 - Operation and maintenance activities
- Chapter 4 Agriculture planning
- Soil and Water Sampling and Testing
 - Crop Calendar, Crop pattern/ rotation
 - Crop production
- Chapter 5 System Operation
- Organizational Structure for System Operation
 - Basic Operation of the Irrigation System
 - Irrigation Water Requirement

	Standard Water Distribution
	Water Scheduling
	Management of Water Shortage
	Water Storage
	Water drainage
Chapter 6	System Maintenance
	Target Components
	Maintenance Operations
	Maintenance planning and implementation
	Emergency Preparedness Plan
Chapter 7	Environmental Management
	Introduction to Environmental Management and Monitoring Plan (EMMP)
	Implementation of Environmental Management and Monitoring Plan
Chapter 8	O&M fee Management (for communal systems)
	O&M Budgeting
	O&M fee collection
Chapter 9	System monitoring and evaluation
	Monitoring parameters & indicators
	Monitoring tools & procedures
	Evaluation and Reporting
Chapter 10	Irrigation records
	Operation and maintenance records
	Production record

SECOND SCHEDULE
WATER QUALITY STANDARDS

PART A: MICROBIOLOGICAL QUALITY GUIDELINES FOR WASTE WATER
USE IN IRRIGATION (r. 9(2); r. 88(2))

Reuse Conditions	Exposed Group	Intestinal nematodes (MPN/L)*	Coliforms (MPN/100 ml)
Unrestricted irrigation (crops likely to be eaten uncooked, sports fields, public parks)	Workers, consumers, public	<1	<1000**
Restricted irrigation (cereal crops, industrial crops, industrial crops, fodder crops, pasture and trees***)	Workers	<1	No standard recommended

**Ascaris lumbricoides*, *Trichuris trichiura* and human hook worms.

** A more stringent guideline (<200 coliform group of bacteria per 100 ml) is appropriate for public lawns, such as hotel lawns, with which the public may come into direct contact.

*** In the case of fruit trees, irrigation should cease two weeks before fruit is picked and fruit should be picked off the ground. Overhead irrigation should not be used.

PART B: STANDARDS FOR IRRIGATION WATER (r. 9(2) r. 88(2))

Parameter	Permissible Level
pH	6.5-8.5
Aluminium	5 (mg/L)
Arsenic	0.1 (mg/L)
Boron	0.1 (mg/L)
Cadmium	0.5 (mg/L)
Chloride	0.01 (mg/L)
Chromium	1.5 (mg/L)
Cobalt	0.1 (mg/L)
Copper	0.05(mg/L)
<i>E.coli</i>	Nil/100ml
Iron	1 (mg/L)
Lead	5 (mg/L)
Selenium	0.19 (mg/L)
Sodium Absorption Ratio (SAR)	6 (mg/L)
Total Dissolved Solids	1200 (mg/L)
Zinc	2 (mg/L)

PART C: QUALITY STANDARDS FOR SOURCES OF DOMESTIC WATER

<i>Parameter</i>	<i>Guide Value (Max Allowable)</i>
pH	6.5 – 8.5
Suspended solids	30 (mg/L)
Nitrate –NO ₃	10 (mg/L)
Ammonia –NH ₃	0.5 (mg/L)
Nitrite –NO ₂	3 (mg/L)
Total Dissolved Solids	1200 (mg/L)
Scientific name (<i>E.coli</i>)	Nil/100ml
Fluoride	1.5 (mg/L)
Phenols	Nil (mg/L)
Arsenic	0.01 (mg/L)
Cadmium	0.01 (mg/L)
Lead	0.05 (mg/L)
Selenium	0.01 (mg/L)
Copper	0.05 (mg/L)
Zinc	1.5 (mg/L)
Alkyl benzyl sulphonates	0.5 (mg/L)
Permanganate value (PV)	1.0 (mg/L)

Nil means less than limit of detection using prescribed sampling and analytical methods and equipment.

THIRD SCHEDULE

IRRIGATION PROFESSIONALS AND FIRMS

PART A: QUALIFIED IRRIGATION PROFESSIONALS (r.12 (1), r. 94(3))

Professionals for irrigation projects depending on the scale of the project shall include:

- (a) Irrigation/Bio systems/Agricultural Engineer - Lead expert/Team leader
- (b) Agronomist
- (c) Agribusiness specialist
- (d) Civil/Dam design engineer
- (e) Hydrologist
- (f) Hydro-geologist
- (g) Soil scientist
- (h) Surveyor/cartographer
- (i) Geotechnical engineer
- (j) Geologist
- (k) Electromechanical engineer
- (l) Environmental specialist
- (m) Sociologist/socio-economist

PART B: CATEGORIES OF IRRIGATION CONTRACTORS (r.12(2))

<i>Category of Scheme</i>	<i>Scheme Description</i>	<i>Category of Contractor</i>	<i>Description of Contractor</i>
Micro Irrigation Scheme	Irrigation schemes less than 10 acres using manual and other energy sources in water abstraction and application	C4, C5, C6 and C7.	Up to Ksh. 200, 000, 000
Small Scale Irrigation Scheme	Irrigation schemes covering less than 100 acres	C3 and C2	Up to Ksh. 300, 000, 000 for C3 and Up to 500, 000, 000 for C2
Medium Scale Irrigation Scheme	Irrigation schemes covering between 100 and 3000 acres	C2 and C1	Up to Ksh. 500, 000, 000 for C2 and Unlimited contract value for C1
Large Scale Irrigation Schemes	Irrigation schemes exceeding 3000 acres	C1	Unlimited contract value

PART C: CONDITIONS FOR IRRIGATION WATER SUPPLY AND RELATED SERVICES (r. 76(3))

1. The Cabinet Secretary shall register irrigation water providers based on technical and commercial capability to

- (a) promote commercial sustainability of irrigation water service providers;
- (b) ensure that the irrigation water providers are capable of meeting routine operation and maintenance costs; and
- (c) have in place proper management for the provision of the irrigation water services.

2. The following shall be the criteria for determining capability of a Water Service Provider

- (a) legal Status: must be a legal entity
- (b) Meet all the necessary statutory requirements:
 - (i) Registered with Water Services Regulatory Board
 - (ii) National Environment Management Authority licences
- (c) Availability of business plan:
Detailing provision of efficient, affordable and sustainable services
- (d) Financial Capability:
 - (i) Capable of meeting operation and maintenance costs for at least two seasons.
 - (ii) Demonstrate positive Cash flow capabilities.
 - (iii) Three to five years financial projections
- (e) Technical Capability:
Have sufficient technical staff such as engineers, hydrologists, water guards, agronomists etc.
- (f) Organisational and Managerial capability:
 - (i) Have the necessary and qualified staff i.e. accountants, human resource managers, procurement.
 - (ii) Properly delineated roles
- (g) Registration with the Cabinet Secretary as a Service provider
- (h) Possess the necessary equipment and machinery for operation and maintenance

FOURTH SCHEDULE

FORM 4A: AUTHORIZATION CERTIFICATE TO CONSTRUCT A SCHEME
(r.13 (4))

REPUBLIC OF KENYA

THE IRRIGATION (GENERAL) REGULATIONS, 2021

APPROVAL FOR CONSTRUCTION

This is to certify that M/S..... is hereby granted approval to construct the above named Irrigation Project in accordance with the submitted Irrigation Design Document and conditions accompanying this approval. This approval is granted under Section _____ of the Irrigation (General) Regulations, 2020

Dated at this day of, 20.....

.....
Supervising Entity /Authorized Agent

FORM 4B

(r.16(3), r.98(1))



REPUBLIC OF KENYA

IRRIGATION (GENERAL) REGULATIONS, 2021

APPLICATION FOR REGISTRATION AS AN IRRIGATION SERVICE PROVIDER

(To be submitted in triplicate)

PARTICULARS OF APPLICANT		DETAILS
Full name of applicant(s) (In Block Letters)		
Identity Number of Applicant (Individual) or Certificate of Incorporation or Registration for Groups or Companies		
Personal Identification Number (where applicable)		
Physical Address		Contact Address of Applicant
Building:	Street /Road:	Box Number
Ward		Town
Sub-County		Post Code
County		Telephone Contact (Landline)

Telephone Contact (Mobile)		Email Contact
Nature of irrigation service (s) to be provided	Choose as appropriate	
Pre- feasibility studies		
Feasibility studies		
Detailed design		
Installation or construction of irrigation system		
Construction supervision		
Scheme administration and management		
Other irrigation services (specify)		

Conditions of registration:

This registration is given on the ground that the applicant is competent in provision of the indicated irrigation service(s). If this is proved otherwise, can lead to de registration

Dr/Eng./Mr/Ms.....

For: CABINET SECRETARY

FORM 4C: APPLICATION FOR IRRIGATION LICENCE

(r.20(1))



REPUBLIC OF KENYA

APPLICATION FOR IRRIGATION LICENCE

(To be submitted in triplicate)

Scheme Category	Small Scale Scheme	Medium Scale Scheme	Large Scale Scheme	Irrigation technology to be employed
Tick Box				

PARTICULARS OF APPLICANT		DETAILS	
Full name of applicant(s) (In Block Letters)			
Category of Applicant – (Private/Individual, community or public)			
ID Number of Applicant (Individual) or Certificate of Incorporation or Registration for Groups or Companies			
PIN Number (where applicable)			
Physical Address where water is to be used		Contact Address of Applicant	
Gazette Notice Number (Under Section 16(1) of the Act)		Box Number	

Village(s)/Ward(s)		Town	
Sub-County(s)		Post Code	
County(s)		Telephone Contact (Landline)	
		Telephone Contact (Mobile)	
		Email Contact	

WATER RESOURCE DETAILS

Name of Basin of the water resource <i>(As Gazetted under the Water Act, 2016)</i>	
Name of the water source	
Capacity of storage (m ³)	
Class of Water Resource <i>(As classified by Water Resources Authority)</i>	
Type of drainage <i>(based on type of irrigation)</i>	
EVIDENCE OF RELEVANT APPROVALS/AUTHORIZATIONS	
Environmental Impact Assessment Licence (Issued by National Environment Management Authority under Environmental Management Coordination Act, 2015)	If NIL, state "Nil", if YES, indicate Licence Number and attach copy of the Licence.
Water Use Permit <i>(issued by Water Resources Authority, under the Water Act, 2016)</i>	If NIL, state "Nil", if YES, indicate Permit Number and attach copy of the Permit.
Approval <i>(Approval by National Construction Authority)</i>	If NIL, state "Nil", if YES, indicate Approval Number and attach copy of the approval.

LAND	
Does applicant own all the land related to the licence application? Yes/No	
If No, have easement(s) been attached (Yes = 1, no = 0)	
OWNERSHIP OF WORKS	
Will the applicant own all the works related to the licence application?	
If No, have agreement(s) been obtained from owner(s) of all works and these agreements are adequate and are attached (Yes/no)	

PERIOD OF CONSTRUCTION OF IRRIGATION INFRASTRUCTURE

16. State the estimated period of construction of the works (months)	
17. State the period for which the licence is required (year – maximum 3 years)	

SCHEME DESCRIPTION

I. SUBSISTENCE IRRIGATION –Irrigation for Household Food Security

Irrigable area in hectares	
Number of households to be served	
Number of connections	
Total Irrigated Area (ha)	
Scheme water demand (litres/day/hectare)	

II. COMMERCIAL IRRIGATION

Type of Crop (hectares)	Type of Production System (Outdoor, Greenhouse, hydroponics)	Type of Irrigation Technology (overhead, micro-sprinkler, drip)	Scheme water demand (litres/day/hectare)	Total Expected Water Requirements (m ³ /day)
TOTAL				

FEES SUBMITTED

Category of Application (Small, medium and Large)	Fees for Examination of Application
AMOUNT PAID	
Receipt Number	

ATTACHMENTS	Attached (Yes/No)	Comments/Remarks
Copy of Identification Documents		
Copy of Land Documents (where applicable)		
Copy of Agreements on Land Use		
Relevant Maps		
Copy of Environmental and social Impact Assessment Report and License		
Copy Water Use Permit		
Approval from National Construction Authority		
Site Assessment Report		
Technical Reports		
Feasibility Assessment Report		
Design Report		
Soil and Water Conservation Plan		

Copy of Receipt for Payment		
Letter of Authority to sign as agent		
County Irrigation Development Unit Comments		
I agree to supply any further information which may be required by the National Irrigation Authority.		

SIGNATURE

Signature of Applicant or duly authorised Agent	
Name	
Date of Application	

SIGNATURE OF OFFICIAL RECEIVING APPLICATION

Signature of Ministry/County Official	
Name	
Position	
Date Application Received	

Note: Shaded areas to be filled in by Ministry/County Officials

All approvals from Government Agencies must be attached

OFFICIAL SECTION

(To be filled by Ministry/County officials)

	<i>Tick</i>	<i>Date</i>	<i>Officer</i>
Submission			
County Irrigation Development comments received			
Recommended			
Rejected			
Conditional Recommendation/ County Irrigation Development Unit			
Authority Regional Office			
Recommended			
Rejected			
Validity Period (months)			
Extension of Validity Period (months)			
Revised Expiry Date			
Inspection of Final Completion			
Date of Issue of Licence			

Note: Shaded Areas to be filled in by Ministry/County Officials

All approvals from Government Agencies must be attached

Approval to commence construction shall be issued by the Authority or County Irrigation Development Unit or other authorised entity in writing.

FORM 4D: IRRIGATION LICENCE

(r. 20(3)(A))



REPUBLIC OF KENYA
IRRIGATION LICENCE

License No.

This License is issued to of (address) in the Sub-county of County, for the Irrigation Scheme on L.R. No for the period from the day of , 20 to the day of , 20 unless sooner terminated, subject to the conditions prescribed by the regulation number of the Irrigation (General) Regulations, 2020.

Dated this day of , 20

.....
*Cabinet Secretary/Authorized Person*CONDITIONS ATTACHED TO IRRIGATION LICENCE

1. This irrigation licence is exclusively issued for the irrigation scheme stated and locality described overleaf.
2. This irrigation licence is not transferrable to any other person or entity other than that stated herein.
3. The boundaries of the irrigation service area are as described on the topographical map in the design report submitted with this application. Any alteration to the service area will make this licence null and void and shall require application of a new licence.
4. The licensee is required to adhere to the provisions of the Environmental Management Plan, submitted with the application; failure to do so is a violation of this licence.
5. The licensee is required to comply with the water quality standards, operate and maintain the irrigation infrastructure and practice good on-farm water management and other provisions in accordance with Irrigation (General) Regulations, 2020, failure of which is a violation of this licence.
6. The licensee shall on notification grant access to an authorised officer of the supervising entity to enter their irrigation scheme/premises for purposes of inspection and monitoring of adherence to licence conditions in accordance with Irrigation (General) Regulations, 2020.
7. In the event the entity granted this licence ceases to exist, this licence becomes null and void; in the case of a deceased licence holder the licence will become null and void at its expiry and cannot be renewed but will require a new application.

FORM 4E: PERMIT TO OCCUPY A HOLDING IN A PUBLIC SCHEME (r.34(4)(a))



REPUBLIC OF KENYA

NATIONAL IRRIGATION AUTHORITY / COUNTY IRRIGATION DEVELOPMENT UNIT

PERMIT TO OCCUPY HOLDING

Permit No. son of of the Sub-county of the County, is hereby authorized to occupy holding No. of the National Irrigation Scheme for the period from the day of , 20 to the day of , 20 and from year to year thereafter unless sooner terminated in accordance with the provisions of the above Regulations, and to keep thereon not more than the following number of stock—

..... bovines, goats, sheep, mules, donkeys, (other stock),

subject to the conditions prescribed by the above Regulations. In accordance with Section 6 of the Irrigation (General) Regulations 2020, I have caused the Regulations to be read and explained to the above-named permit holder in the language, which he understands.

Dated this day of , 20

.....
Manager

FORM 4F: ACKNOWLEDGEMENT FOR RECEIPT OF IRRIGATION (GENERAL)
REGULATIONS, 2021 (r.35 (1)(c))



REPUBLIC OF KENYA
NATIONAL IRRIGATION AUTHORITY
ACKNOWLEDGEMENT FOR RECEIPT OF IRRIGATION (GENERAL)
REGULATIONS, 2021

I son of
..... of the
..... Sub-county of the.....
County, hereby acknowledge receipt of a copy of the Irrigation (General) Regulations,
2020, I have had these Regulations explained to me and I fully understand them and I
undertake to observe them and to pay all sums of money payable by me.

.....
Signature or thumb-print of Permit Holder Witness

Date

FORM 4G: APPLICATION FOR ENLISTING IN THE REGISTER OF IRRIGATION
WATER USERS' ASSOCIATIONS (r.66(4))



REPUBLIC OF KENYA
APPLICATION FOR ENLISTING IN THE REGISTER OF IRRIGATION WATER
USERS' ASSOCIATIONS

We, being the members of the Irrigation Water Users' Association Management
Committee of the registered Irrigation Water Users
Association hereby apply to be enlisted pursuant to the Irrigation (General) Regulations,
2020.

Association Data	
Name of the Association	
Address (Postal)	
Physical location Ward..... Sub- County
 County

Telephone Contact (If any)	
Size of Service area	
No of Members of the Association	
Date of Application	

Chairperson	
Name	
Date of birth	
Gender	
Address (Postal)	P.O. Box
Mobile phone (If any)	+254
Signature	
Date	

Secretary	
Name	
Date of birth	
Gender	
Address (Postal)	
Mobile phone (If any)	
Signature	
Date	

Member of Management Committee	
Name	
Date of birth	
Gender	
Address (Postal)	P.O. Box
Mobile phone (If any)	+254
Signature	
Date	

Member of Management Committee	
Name	
Date of birth	
Gender	
Address (Postal)	P.O. Box
Mobile phone (If any)	+254
Signature	
Date	

We attach the following documents:

- Minutes of the Inaugural General Assembly Meeting of the Association (1 copy)
- The by-laws of the association (1 copy)
- The Budget and work plan for the first year of operation (1 copy)
- The Establishment Petition (1 copy)
- Inventory of the irrigation system
- Registration certificate of legalising agency.

Please tick to confirm that the following documents are enclosed.

IRRIGATION WATER USERS' ASSOCIATION ESTABLISHMENT PETITION

We the undersigned hereby apply for the establishment of the proposed Irrigation Water Users' Association to operate the..... [Name]
Irrigation Scheme located at

[Names of Ward, Sub-county and County].

No	Name	Size of land Holding (Ha)	Date	Signature
1				
2				
3				

Add additional sheets for this petition as necessary.

FORM 4H: CERTIFICATE OF USER RIGHTS

r.74(3))



REPUBLIC OF KENYA
THE IRRIGATION (GENERAL) REGULATIONS, 2021
CERTIFICATE OF USER RIGHTS NO.

This is to certify that

M/S has
been granted user rights in respect of Public Scheme
in accordance with the Irrigation (General) Regulations 2020, under Irrigation
Management Transfer.

Dated at this day of, 20.....

.....
Authorized Person/Supervising Entity

FORM 4I: CERTIFICATE OF RECOGNITION

(r.98(5))



REPUBLIC OF KENYA
THE IRRIGATION REGULATIONS, 2021
CERTIFICATE OF RECOGNITION NO.

This is to certify that has
been registered as an Irrigation Professional/Irrigation Contactor under the Irrigation
(General) Regulations, 2020.

Dated at this day of, 20.....

.....
Cabinet Secretary/Authorized Person

FIFTH SCHEDULE

MONITORING, EVALUATION AND PERFORMANCE AUDIT TOOLS

PART A: INVENTORY OF IRRIGATION SERVICE PROVIDERS (r. 15(2))

(a) Irrigation professional

<i>Serial No.</i>	<i>Name of individual or entity</i>	<i>Contacts</i>	<i>Area of specialisation</i>	<i>Remarks</i>

(b) Irrigation Contractors

<i>Serial No.</i>	<i>Name of individual or entity</i>	<i>Contacts</i>	<i>Area of specialisation</i>	<i>Remarks</i>

PART B: FORMAT AND DETAILS OF INFORMATION IN THE IRRIGATION AND DRAINAGE INFORMATION MANAGEMENT SYSTEM

FORMAT AND DETAILS OF AREAS IDENTIFIED, MAPPED, DELINEATED AND DESIGNATED SUITABLE FOR IRRIGATION (r. 110(4)(a))

Name of Scheme	
Category of Scheme	
Grid Reference for Scheme (UTM, based on ARC1960 Datum, Zone 36/37)	
Easting	
Northing	
Altitude (m above sea level)	
Map Sheet	
Details of Site Datum	
Grid Reference for Datum (UTM, based on ARC1960 Datum, Zone 36/37)	
Easting	
Northing	
Altitude (m above sea level)	
Map Sheet	
Description of Datum	
Irrigation Area (km ²)	
Irrigation Design	

FORMAT AND DETAILS OF WATER HARVESTING AND STORAGE STRUCTURES (r. 110(4)(b))

Storage Dams	
Name of dam	
Class of Dam (A, B or C)	
Grid Reference for Dam (UTM, based on ARC1960 Datum, Zone 36/37)	
Easting	
Northing	
Altitude (m above sea level)	
Map Sheet	
Details of Site Datum	
Grid Reference for Datum (UTM, based on ARC1960 Datum, Zone 36/37)	
Easting	
Northing	
Altitude (m above sea level)	
Map Sheet	
Description of Datum	
Spillway	
Catchment Area (km ²)	
Design Flood (m ³ /s)	
Return Period for Spillway Design (1 in ... years)	
Material of outflow channel	
Dimensions at control	
Width (m)	
Length (m)	
Height (m)	
Embankment	
Material (earth, concrete, masonry, others)	
Dimensions	
Width at Crest (m)	
Length at Crest (m)	
Upstream slope (1 to ...)	
Downstream slope (1 to ...)	
Maximum Depth of Water (Measured from bed to normal water level) (m)	

Maximum Height of Embankment (m)	
Gross Freeboard (m)	
Net Freeboard (m)	
Impoundment	
Estimated Area at Normal Water Level (m ²)	
Estimated Impounded Volume (m ³)	
Other Details	
Maximum Draw off Capacity (m ³ /day)	
Maximum Compensation Flow capacity (m ³ /day)	

FORMAT AND DETAILS OF LICENSED IRRIGATION SCHEMES (r. 110(4)(c))

Name of Scheme	
Scheme Identification number	
Category of Scheme	
Location or County	
Registered Owner	
Date of registration or licensing	
Ownership (public or private)	
Grid Reference for Scheme (UTM, based on ARC1960 Datum, Zone 36/37)	
Easting	
Northing	
Altitude (m above sea level)	
Map Sheet	
Details of Site Datum	
Grid Reference for Datum (UTM, based on ARC1960 Datum, Zone 36/37)	
Easting	
Northing	
Altitude (m above sea level)	
Map Sheet	
Description of Datum	
Irrigation Area (Hectares)	
Irrigation Design	
Type of Irrigation (Surface, sprinkler or drip)	
Major enterprises	

FORMAT AND DETAILS OF REGISTERED ASSOCIATIONS, UMBRELLAS AND ASSOCIATIONS OF IRRIGATION FARMERS (r. 110(4)(d))

Name of Irrigation Water Users' Association, Umbrella or Federation	
Registration number (irrigation)	
Registration number (society or cooperative)	
Name of scheme served or service area	
Number of members	
Category of Scheme	
Location or County	
Contacts (contact person(s), address, Telephone Number and email)	
Date of registration or licensing (irrigation)	
Date of registration or licensing (society or cooperative)	
Grid Reference for Scheme (UTM, based on ARC1960 Datum, Zone 36/37)	
Easting	
Northing	
Altitude (m above sea level)	
Map Sheet	
Details of Site Datum	
Grid Reference for Datum (UTM, based on ARC1960 Datum, Zone 36/37)	
Easting	
Northing	
Altitude (m above sea level)	
Map Sheet	
Description of Datum	
Irrigation Area (Hectares)	
Type of irrigation (Surface, sprinkler or drip)	
Irrigation Design	
Major enterprises	

FORMAT AND DETAILS OF PERFORMANCE STATUS OF THE LICENSED
IRRIGATION SCHEMES, REGISTERED IRRIGATION WATER USER
ASSOCIATIONS AND UMBRELLA ASSOCIATIONS (r. 110(4)(f))



Republic of Kenya

*CRITERIA FOR IRRIGATION WATER USER ASSOCIATION PERFORMANCE
ASSESSMENT*

Name of scheme		
Name of Irrigation Water User Association		
Assessment Period	Start	End
	DD/MM/YYYY	DD/MM/YY
Location of project		
County	Sub-County	Ward
Type of scheme (National Public/County Public/National Strategic/Other)		
Supervising entity		
Date Assessment carried out		
Officer Responsible- Name & Signature		

CRITERIA	SCORE				REMARKS
	Max sub-criterion points	Max sub-criterion points	Actual Points	Actual Score	
1. IRRIGATION & IWUA MANAGEMENT INDICATORS					
A. OPERATION & MAINTENANCE PERFORMANCE (40 Points)					
1. Planning	15				Plans should be written in proper format. However, there are some plans that are written in memory though not written
a. Cropping calendar		4			
- With plans			4		
- Without plans			2		
b. Water delivery and distribution		4			

- With plans			4		and which are long practiced by farmers. Such plans which are agreed upon but not put in proper plans can also be considered as unwritten
- Without plans			2		
c. Maintenance & repairs		4			
- With plans			4		
- Without plans			2		
d. Waters users fee collection		3			
- With plans			3		
- Without plans			1.5		
Sub-total					
2. Implementation	15				
a. Cropping calendar		4			If delays in implementing the cropping calendar and water delivery are due to natural forces, then the planned dates can be adjusted to reflect the new dates
- At least 90% of the farmers followed			4		
- 50 - 89% of farmers followed			3		
- Less than 50% followed			1		
b. Water delivery and distribution		4			
- At least 90% of the farmers followed			4		
- 50 - 89% of farmers followed			3		
- Less than 50% followed			1		
c. System maintenance		4			This is the percentage of scheduled maintenance and repair works done by the IWUA based on plan
- At least 90% of the works were done			4		
- 50 - 89% of the works were done			3		
- Less than 50% works were done			1		
d. Waters users fee collection		3			
- At least 90% of the farmers paid			3		
- 50 - 89% of farmers paid			2		
- Less than 50% of farmers paid			1		
Sub-total					
3. Operation & Maintenance performance	10				

a. Percentage of the scheme that is under irrigation		3			This is the area that is currently supplied with water for irrigation
- 80 – 100%			3		
- 60 – 79%			2.5		
- 50 – 59%			2		
- Below 50%			1		
b. Status of irrigation facilities & structures		3			Excellent maintenance means that the facilities and structures are well kept, grasses are cut to specified height, embankment are free cuts and holes, canals are free of debris etc.
- Scale 5 (Excellently maintained)			3		
- Scale 4 (Satisfactorily maintained)			2.5		
- Scale 3 (Good)			1.5		
- Scale 2 (Fairly maintained)			1		
- Scale 1 (Poorly maintained)			0		
c. Current Production compared with expected yields		2			If the production has been affected by natural causes beyond IWUA control then the point given should be 0.75
- 80 – 100%			2		
- 60 – 79%			1.5		
- 50 – 59%			1		
- Below 50%			0.5		
d. Water User's fee collection efficiency		2			For schemes that are being rehabilitated, the higher the percentage of efficiency the easier the O&M becomes
- 80 – 100%			2		
- 60 – 79%			1.5		
- 50 – 59%			1		
- Below 50%			0.5		
Sub-total					
B. ORGANIZATIONAL PERFORMANCE (30 POINTS)					
1. IWUA legal status		3			This is an indication of the legal recognition
- Registration as a Society/SACCO			3		

- Registration as a self-help group		2		of IWUA and its legal powers and mandate to transact businesses as a recognized institution
- Not registered		1		
2. IWUA Membership		3		
- 100% membership		3		Proof of membership should be signatures, ID numbers, Telephone numbers and receipts numbers of membership payments against their names
- 80 – 99%		2		
- 60 – 79%		1		
- 50 – 59%		0.5		
- Below 50%		0		
3. Block/lateral group meeting		3		
- Monthly or more often		3		Proof is the record of attendance and minutes of meetings
- Once every 2 months		2		
- Once every quarter		1		
- Once per season or less		0.5		
4. Committee meetings		3		
- Monthly or more often		3		Proof is the record of attendance and minutes of meetings
- Once every 2 months		2		
- Once every quarter		1		
- Once per season or less		0.5		
5. General Assembly Meetings		3		
- Monthly or more often		3		Proof is the record of attendance and minutes of meetings
- Once every 2 months		2		
- Once every quarter		1		
- Once per season or less		0.5		
6. Records & files				
a. Other O&M records, master list of farmers/irrigation fee payment record		1		Proper record keeping should be centralized. This means that they are easily accessible to members.
- With records		1		
- Without records		0		
b. Minutes of meetings		1		A file for minutes should be available
- With records		1		

- Without records		0		
c. Financial records		1		Cash book, income and expenses, bank statements, stocks of items e.g. pipes etc.
- With records		1		
- Without records		0		
d. By laws and O&M policies		1		Existing means that they By-laws are comprehensive and all important clauses for an IWUA are included
- Existing		1		
- Non-existing		0		
e. Filing system and quality of files		2		Proper record keeping should be centralized. This means that they are easily accessible to members.
- Excellent		2		
- Good		1		
- Fair		0.5		
- Poor		0		
7. Holding of Regular Elections		3		A clear period of tenure should be in place. 2years is an optimum period
- Conducted according to by-laws		3		
- Conducted but not as per the by-laws		2		
- Not conducted at all		0		
8. Conflict resolution		4		Best conflict resolution is when IWUA is able to solve all its conflicts
- No conflict occurred/all conflicts resolved by IWUA without assistance		4		
- All conflicts are resolved with the aid of local officials		3		
- All conflicts are resolved by other persons/organizations		2		
- Some conflicts are not resolved		1		
9. Attendance in BOD meetings		3		Records of attendees and minutes are proof
- 95 – 100% attendance		3		
- 75 – 94% attendance		2		
- 50 – 74% attendance		1		
- Below 50% attendance		0		

10. Attendance in General Assembly meetings		3			
- 95 – 100% attendance			3		Records of attendees and minutes are proof
- 75 – 94% attendance			2		
- 50 – 74% attendance			1		
- Below 50% attendance			0		
11. Attendance in Block/lateral meetings		3			
- 95 – 100% attendance			3		Records of attendees and minutes are proof
- 75 – 94% attendance			2		
- 50 – 74% attendance			1		
- Below 50% attendance			0		
12. Attendance in community group works		3			
- 95 – 100% attendance			3		Records of attendees and work done are proof
- 75 – 94% attendance			2		
- 50 – 74% attendance			1		
- Below 50% attendance			0		
Sub-total					
C. FINANCIAL PERFORMANCE (20 POINTS)					
1. Financial plan for the year		3			
- With plan			3		Financial budget is proof
- Without plan			1		
2. Bank Account		1			Bank statement is proof
- Existing			1		
- Not existing			0		
3. Bank Account Balances		2			The higher bank balance is proof of members compliance to water fees and other dues
- Above Kes. 500,000			2		
- 250,000 – 499,999			1.5		
- 100,000 – 249,999			1		
- Below Kes. 100,000			0.5		
Sub-total					
Financial accomplishment					
a. Income collected from Water users fee, IWUA dues and penalties		3			The higher the achievement of the targeted income the better the IWUA is
- 80 – 100% of target income attained			3		

- 60 – 79% of target income attained		2.5		performing
- 50 – 59% of target income attained		2		
- Below 50% of target income		1		
b. Income from other sources	2			Other sources may be from donors, membership dues, penalties imposed on violation of by-laws etc.
- 80 – 100% of target income attained		2		
- 60 – 79% of target income attained		1.5		
- 50 – 59% of target income attained		1		
- Below 50% of target income attained		0		
c. Fund utilization for O&M	3			Expenses record will show how the funds are utilized. Most expenditure is expected to go to O&M
- 80 – 100% of expenses are for O&M		3		
- 60 – 79% of expenses are for O&M		2.5		
- 50 – 59% of expenses are for O&M		2		
- Below 50% of expenses are for O&M		1		
e. Financial control	3			An engagement letter to the auditor and an audit report are proof
- IWUA conducts audit at least 2 times a year		3		
- IWUA conducts audit at least once a year		2.5		
- IWUA audit has no definite schedule		2		
- No audit at all		1		
f. Viability Index (Income divided by Expenses)	3			A better rating for an IWUA whose income exceeds expenses
- Income is more than expenses by 50%		3		
- Income is more than expenses by 25%		2.5		
- Income is more than expenses by small margin		2		
- Income is less than expenses		1		
Sub-total				

TOTAL FOR IRRIGATION AND IWUA MANAGEMENT RELATED INDICATORS				
II. ADDITIONAL INDICATORS (10 POINTS)				
The Irrigation Water User Association has the following ventures				
a. Credit assistance to members for agricultural production e.g. fertilizers, seeds, agrochemicals etc.			1	The cropping calendar can aid IWUA planning on purchase of inputs collectively and giving the members on credit for better produce
b. Marketing assistance to members			1	This reduces exploitation by middlemen
c. Agricultural machineries/equipment for use by members e.g. Knapsack sprayers			1	IWUA owns the farm implements and hires to members on "need" basis
d. Livelihood programs (handicraft production, animal production, seed production etc.)			1	
1. The IWUA has an office			1	An office and personnel signifies organization and growth
2. The IWUA has tie-ups with NGOs & other organized groups			1	Ability to network and collaborate with other important stakeholders
3. The IWUA involvement of women groups and youth groups in their activities			1	Appreciation of gender issues including women and youth involvement in the IWUA activities
4. The IWUA officers/leaders are rendering services for free			1	Leaders acknowledge their part ownership in the IWUA and so do not require to be paid for offering leadership services
5. The IWUA have done physical improvement			1	Level of independence or

of their system using their own resources e.g. extension of the scheme					ability of IWUA to operate without the direction, intervention or assistance from an outside agency
6. The IWUA is providing aids to its members (credit for purposes other than agriculture, education scholarships, hospitalizations, mortuary etc.)			1		Personal loans to members signify financial stability
TOTAL ADDITIONAL INDICATORS			10		
TOTAL FUNCTIONALITY SCORE (I + II)					
ADJECTIVE RATING					

Based on the Total Functionality Score, the equivalent Adjective rating are as follows:

Total Functionality Score	Adjective rating
95 points and above	Outstanding
85 to 94 points	Very satisfactory
75 – 84 points	Satisfactory
65 – 74 points	Fair
Below 65 points	Poor

FORMAT AND DETAILS OF COMPLAINTS ON REGISTERED IRRIGATION SERVICE PROVIDERS AND CONTRACTORS (r. 110(4)(g))

Item	Description	Remarks
Serial Number		
Date received		
Nature of complaint		
Name of scheme or area affected		
Name of service provider or contractor concern		
Action taken and date		
Responsible officer		
Signature of responsible officer and official stamp		

FORMAT AND DETAILS OF DATA ON IRRIGATION SECTOR INVESTMENTS

(r. 110(4)(h))

Name of investor	Category of investment	Nature of investment	Value in Kshs	Beneficiary Irrigation area Licensing ID No

Category denotes: Private, Public, Public- Private and Foreign Direct Investment

Nature of investment denotes: Infrastructure, Capacity building and Research and technology

FORMAT AND DETAILS OF IRRIGATION SCHEMES ANNUAL REPORTS

(r. 110(4)(i))



REPUBLIC OF KENYA

IRRIGATION SCHEME ANNUAL REPORT

Name of Scheme		
Name of IWUA		
Reporting Period	Start	End
	DD/MM/YYYY	DD/MM/YYYY
Location of project		
County	Sub-County	Ward
Type of scheme(National Public/ County Public/National Strategic/ Other)		
Supervising entity		
Date of Submission		
Officer Responsible- Name & Signature		
Scheme Identification Number		GPS Location

No	Aspect	Status	Remarks
1.	Was the scheme operational in the reporting Period? (Yes/No)		
2.	What acreage was under irrigation (ha)		

No	Aspect	Status	Remarks
3.	How many seasons did you have in the reporting period (1/2/3)		
4.	What crops were grown?		
5.	Give % acreage if more than one		
6.	Rate the yield achieved in terms of percentage (optimum)Expected		
7.	Does the scheme have a valid water permit (Yes/No)		
	If No state the reasons		
8.	Was the Water resource adequate? (Yes/No)		
	If No state the reasons		
9.	Does the scheme have water storage facilities? (Yes/No)		
10.	State the various components of the irrigation infrastructure and their condition		
	Abstraction-		
	Distribution-		
	Application-		
11.	Was maintenance carried out in the reporting period? (yes/no)		
	If No what are the reasons?		
12.	Was the IWUA registration valid for the period? (Yes/No)		
	If No give reasons		
13.	Did the IWUA have an AGM during this period (Yes/No) if yes give date?		
	If No state the reason		
14.	Were IWUA elections scheduled during the reporting period ? (Yes/No)		
15.	IF Yes, Were IWUA elections held?		
	If No give reasons		
16.	Did the IWUA management present Audited accounts to the members? (Yes/No)		
	If No state the reasons		
17.	Did the IWUA meet its financial obligations during the period?		
	Operations (Yes/No)		
	Maintenance (Yes/No)		
	Water charges (Yes/No)		
	Employees (Yes/No)		
18.	Does the IWUA have Employees? (Yes/No) if Yes, state Number		

No	Aspect	Status	Remarks
19.	Did the IWUA engage a service provider during the Period? (Yes/No)		
	If Yes, state the name of provider and nature of service(s) provided		
20	Any Other information		

N/B: Attach IWUA Audited accounts for the period.

SIXTH SCHEDULE
APPLICATION FEES FOR IRRIGATION SCHEME LICENCES

(r. 20(1)(a))

Category of scheme	Description	Fees Payable (Kshs.)
Small scale irrigation scheme	Irrigation schemes covering less than 100 acres	1,000
Medium scale irrigation scheme	Irrigation schemes covering between 100 and 3000 acres	3000
Large scale irrigation schemes	Irrigation schemes exceeding 3000 acres	5,000

SEVENTH SCHEDULE

FORMATION OF ASSOCIATIONS AND CODE OF CONDUCT

PART A: PROCEDURE FOR FORMATION OF IRRIGATION WATER USERS' ASSOCIATION (r. 48(3))

1. Objectives for the formation of an Irrigation Water Users' Association

The objects of an association are—

- a) to manage an irrigation scheme wholly or partly in its service area and provide irrigation services equitably and timely to members of the association;
- b) to maintain, renovate and improve the irrigation scheme within its service area and to undertake construction and reconstruction works which may be delegated to the association by the Authority or County government in the case of national, public and strategic schemes;
- c) to take appropriate measures to combat erosion, salinity, siltation, pollution encroachment;
- d) to make internal rules for the use of irrigation water and collect fees from its members for the services provided; and
- e) to procure, maintain and operate irrigation equipment.

2. Guiding principles of an Association

Each association shall:

- a) act fairly and equitably in making decisions and allocating resources including irrigation water
- b) prevent wastage and pollution of water, combat erosion and salinity of soil, and protect an irrigation and drainage system within the operation area so as to promote the protection of the environment
- c) avoid discrimination on the basis of ethnicity, gender, religion, political opinion or any other similar grounds in its dealing with members in the utilization of water
- d) apply a transparent and participatory approach in decision making processes.

3. Procedure for the formation of an association

(1) Persons who use irrigation water and are not less than fifteen in number may form an association after those persons have set up an interim team to identify the service area of the proposed association and an interim committee which may not exceed twelve potential members of the association.

(2) The interim committee shall be composed of persons representing different units of the proposed service area so as to ensure fair representation of potential members of the proposed association.

(3) The interim committee shall elect a chairperson, treasurer and secretary and adopt its own rules of procedure to carry out activities preceding the formation of the association.

(4) The interim committee for the service area in consultation with the supervising entity, shall, in respect of the proposed association, prepare:

- a) rules and by-laws;
- b) a plan of the proposed service area that shows the size and location of the units, if any;
- c) application forms for the potential members, which shall include the name, address and signature of each potential member, a description of the landholding of each potential member and the land registration number; and
- d) a draft budget and work plan.

(5) The interim committee shall:

- a) distribute the application forms to potential members to fill and execute;
- b) supervise the filling and signing of the application forms by the potential members of the association; and
- c) give the potential members an opportunity to comment on the documents listed in part (4) above.

(6) The interim committee shall, when at least half of the potential members in the service area for the proposed association have filled and signed the application forms, convene an inaugural general assembly meeting to:

- a) approve the by-laws, budget and work plan of the proposed association taking into consideration the comments made on these documents by prospective members; and
- b) elect interim Irrigation Water Users' Association management committee and other officers of the association.

(7) The quorum for the inaugural general assembly meeting is half of the potential members of the proposed association.

(8) Matters that require decision at a meeting shall be decided by the majority vote of the members present and voting at the meeting.

(9) The interim Irrigation Water Users' Association management committee shall submit to the supervising entity, an application for registration of the association together with:

- a) the minutes of the inaugural general assembly meetings;
- b) three copies of the regulations and by-laws of the association;
- c) the plan of the proposed service area and the location of the units, if any;
- d) the applications of potential members of the association; and
- e) the draft budget and work-plan.

(10) The supervising entity shall submit the application to the Cabinet Secretary within fourteen days with recommendations

(11) The Cabinet Secretary shall, within thirty days after the submission of the application, if satisfied with the application and the required documents, register the association in the Register of Irrigation Water Users' Associations and issue a certificate of registration to the association.

(12) If the application for the registration of an association is rejected, the Cabinet Secretary shall give a written explanation to the interim Irrigation Water Users Association management committee within thirty days after the decision to reject the application is made.

PART B: CODE OF CONDUCT FOR IRRIGATION WATER USERS'S
ASSOCIATION OFFICIALS AND MEMBERS

(r.56(5))

WHEREAS, under the constitution of Kenya, a public office is a public trust, and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, loyalty and efficiency, act with patriotism and justice and should have modest lives;

WHEREAS, in addition to the foregoing constitutional and legal principals and consistent with the policy of the government to foster a transparent and effective governance, there is a need to adopt norms of conduct that are specific to personnel of irrigation water users' associations.

NOW, THEREFORE, the code of conduct for officials and members of Irrigation water user's associations it is hereby promulgated as follows:

RULE I - APPLICATION OF CODE

SECTION 1. This code of Conduct for officials and members of associations shall be applicable to all officials and members of irrigation water users' associations irrespective of the office they hold.

RULE II - FIDELITY TO DUTY

SECTION 1. Association's officials and employees shall not use their official positions to secure unwarranted benefits, privileged or exemptions for themselves or for others.

SECTION 2. Association's officials and employees shall not discriminate by dispensing special favours to anyone. They shall not allow kinship, tribalism, clanism, rank, position, creed or religion or favours from any party to influence their official acts, duties and functions.

SECTION 3. Association's official and employees shall not accept any fee or remuneration other than what they receive or are entitled to in their official capacity, unless otherwise authorised by the association's by-laws.

SECTION 4. Associations officials and employees shall use resources, property and funds of the respective associations in their custody in an official matter and in a judicious manner and solely in accordance with the associations constitution and by- laws and regulatory guidelines or procedures.

RULE III- CONFLICT OF INTEREST

SECTION 1. Association's officials and employees shall avoid conflict of interest in performing their official duties. Every personnel is required to exercise utmost diligence in being aware of conflicts of interest, disclosing conflicts of interest to the designated authority, and terminating them as they arise.

SECTION 2: A conflict of interest arises when;

- (a) The ability or independence of judgement in performing official duties is impaired or may reasonably appear to be impaired o; or
- (b) Financial gain by the association official or employee, their immediate family, their common-law relations of their businesses or other financial interest would be derived because of the personnel's official act.

SECTION 3. Association's officials and their employees shall not:

- (a) Enter into any contract with the Association for services, lease or sale of property apart from employment contract relating to the personnel's position

nor use that position to assist any member of the personnel's immediate family in securing a contract with the association.

- (b) Receive tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings in any office within the Association
- (c) Knowingly employ or recommend for employment any member of his/her immediate family in the association. The term immediate family shall include the following, whether related by blood or adoption
 - (i) spouse;
 - (ii) children;
 - (iii) brother;
 - (iv) sister;
 - (v) parent;
 - (vi) grandparent;
 - (vii) grandchildren;
- (d) Solicit or accept any gift, loan, gratuity, discount, favour, hospitality, service or benefit under any circumstances from any person who has transaction with the association or any person acting for and on behalf of any entity transacting business with the association.

SECTION 3. Nothing in section 2 above shall prohibit any associations official or employee from (a) accepting invitations to or attending social functions in relation to the personnel's official duties (b) accepting a public award presented in recognition of public services; (c) receiving a commercially reasonable loan made as part of the ordinary transaction of the lenders business; (d) donating to the association for the benefit of the group, provided that the award, loan or donation is from a person or entity other than that mentioned in section 2 (e) above.

SECTION 4. To ensure compliance with the provision of this rule on conflict of interest, associations officials who have authority to enter into or approve contracts on behalf of the Association shall file a financial disclosure statement with the supervising entity (Cabinet Secretary, National Irrigation Authority or County Irrigation Development Unit) at the beginning and upon termination of engagement or employment in such position., and annually while so engaged or employed. The disclosure shall follow the guidelines established by the designated authority, and shall include all sources of personal and business income, including investments in personal or real property as well as all income received by their spouses or dependent children.

RULE IV- PERFORMANCE OF DUTIES

SECTION 1. All association employees' shall at all times perform official duties properly and with diligence.

SECTION 2. Association's official and employees shall carry out their responsibilities as public officials in a courteous manner.

SECTION 3. Associations official and employees shall not alter falsify, destroy or mutilate any association record in their control.

SECTION 4. In performing official duties, association's officials and employees shall not discriminate nor manifest, by word or conduct, bias or prejudice based on race, religion, national or ethnic origin, perceived status, gender or political affiliation.

SECTION 5. Association's officials and employees shall expeditiously enforce rules and implement lawful orders of the constituted authorities within the limits of their authority.

SECTION 6. Association's official and employees shall act on and dispose of a request, whether verbal or written, immediately and in no case beyond fourteen days from receipt of the request, petition or motion

RULE V - INCORPORATION OF OTHER RULES

SECTION 1. All provisions of law and administrative issuances governing the conduct of business of irrigation water users' associations are deemed incorporated into this code. In case of conflict between this code and the existing provision of law and administrative issuances governing the conduct of associations and their personnel, the latter shall prevail and this code shall be applied in supplementary character.

RULE VI - FILING OF COMPLAINT

SECTION 1. Any complaint against any association's official or employee regarding any violation of this code shall be subject to disciplinary action pursuant to the association's constitution and by-laws

EIGHTH SCHEDULE

PART A: IRRIGATION MANAGEMENT TRANSFER AGREEMENT

(r. 73(5)(c))

REPUBLIC OF KENYA



Agreement for Irrigation Management Transfer

This agreement dated _____ [day/month/year] is between:
 _____ 'the Transferor' [Supervising entity] the
 address of which is _____;
 and

_____ Irrigation Water User Association ('the
 Transferee') the address of which is _____.

WHEREAS

- (a) The Transferee is an Irrigation Water User Association established pursuant to Irrigation regulations 2020;
 - (b) The Transferee wishes to take responsibility for the operation and maintenance of the Irrigation System within its Service Area;
 - (c) The Transferor is a Supervising entity within the meaning of the Irrigation regulations pursuant to the Irrigation regulations;
- the Transferor is required to transfer Management to the Irrigation Water Users Association the Irrigation System serving the Service Area of the Association.

THE PARTIES AGREE AS FOLLOWS:

1. Terms of Agreement

This Agreement shall enter into effect on the above written date and shall continue in force for a period of [.....] years, ending on [day/month/year].....

2. Transfer of the Irrigation Infrastructure

- (1) The Transferor transfers to the Transferee the use, operation and maintenance of the Irrigation Infrastructure (hereafter the 'Irrigation Infrastructure') that is more particularly described in Schedule 1, in accordance with the provisions of this Agreement.
- (2) The Irrigation Infrastructure includes the land immediately beneath and adjacent to the
- (3) irrigation infrastructure.

- (4) In consideration of the transfer described in sub-paragraph 2 (a) the Transferee shall operate and maintain the Irrigation Infrastructure in accordance with the provisions of this Agreement.

3. Condition of the Irrigation Infrastructure

(1) The Irrigation Infrastructure is transferred in the condition jointly identified and agreed by the Parties, which is described in Schedule 2 of this Agreement.

(2) The transferor must ensure the condition of the irrigation infrastructure will allow the transferee to fulfil its obligations mentioned in articles 5, 6 and 9 and if necessary undertake the relevant rehabilitation or modernization work.

4. Use of the Irrigation Infrastructure by Transferee

The Transferee shall use the Irrigation Infrastructure only for the purpose of supplying irrigation water to its members.

5. General operating rules for the Irrigation Infrastructure

The Transferee shall:

- (a) Operate the Irrigation Infrastructure in a safe and responsible manner so as to prevent or minimise the risk of over-watering land, causing damage to the component parts of the Irrigation Infrastructure or harm to property or human life;
- (b) Operate the Irrigation Infrastructure in a fair and equitable manner so as to ensure that each of its members receives a fair and timely supply of water;
- (c) Obtain and comply with any licences or permits necessary to operate and maintain the
- (d) Irrigation Infrastructure or any component element, including the abstraction of water in
- (e) accordance with the applicable legislation.

6. Specific operating rules for the Irrigation Infrastructure

In addition to the general operating rules for the Irrigation Infrastructure described in Article 7 of this Agreement, the Transferee shall comply with the specific operating rules that are contained in Schedule 4 of this Agreement.

7. Measurement obligations of the Transferee

(1) The Transferee shall measure the quantities of water abstracted, impounded or pumped and/or used at the points specified in Schedule 5 of this Agreement and in accordance with the technical means specified.

(2) The Transferee shall maintain a written record of the measurements referred to in paragraph 7a) for a period of 10 years and shall promptly make such records available to the Transferor for inspection at the written request of the latter.

8. Irrigation Infrastructure maintenance and investment plans

(1) The Transferee shall each year prepare an annual Maintenance and Investment Plan that

(2) indicates the physical maintenance and investment works that it proposes to undertake to the Irrigation Infrastructure during the following year.

(3) Works of the type described in paragraph 8a) shall include activities intended to enable the Transferee to comply with its obligations to maintain the Irrigation Infrastructure as well as to improve its functionality and effectiveness.

(4) The Transferee shall submit the draft Maintenance and Investment Plan to the Transferor by[day/month] each year for its approval or such other date as is agreed by the parties, together with a copy of its most recent financial statements.

9. The substantive obligations of the Transferee regarding the maintenance of the Irrigation Infrastructure

(1) The Transferee shall maintain the Irrigation Infrastructure with the general objective of ensuring that the Irrigation Infrastructure is in a sound and usable condition such that it will enable the Transferee to provide water in a fair and equitable manner to its members in a sustainable manner.

(2) To comply with the objective described in paragraph (a) the Transferee shall:

- (a) Preserve the carrying-capacity and water-tightness of water conveyances (canals, drains and pipelines) by cleaning sediment deposits and vegetation, maintaining embankments, repairing cracks and joints and replacing damaged and leaking sections of canal lining or pipe-work;
- (b) Preserve the operational capacity and water-tightness of water control structures and valves by greasing, protecting from corrosion, repairing and replacing seals and control mechanisms as necessary and repairing structural elements;
- (c) Maintain adequate vehicular access routes to all infrastructure elements for routine operation as well as for attendance at emergencies;
- (d) Undertake routine maintenance, as specified by the manufacturer, of electrical-mechanical equipment (including pump stations), and shall repair or replace worn and damaged components as necessary to ensure effective continued operation;
- (e) Maintain buildings and other structures in a sound weather proof and functional condition and shall paint exposed woodwork at no less than five yearly intervals as well as maintaining fences and boundary walls relating to the Irrigation Infrastructure;
- (f) Maintain and provide measures to secure the safety of operators and users of all
- (g) components of the Irrigation Infrastructure, with particular attention to the health and safety aspects of electro-mechanical equipment and electrical wiring.

(3) The Transferee shall, in addition, undertake the Irrigation Infrastructure specific maintenance tasks specified in Schedule 6 of this Agreement.

(4) In undertaking maintenance works the Transferee shall comply with all applicable legislation including environmental protection legislation.

(5) The Transferee shall maintain a full record of maintenance undertaken in respect of the irrigation Infrastructure and shall provide information concerning to

the maintenance of the Irrigation Infrastructure to the Transferor at the written request of the latter.

10. Prevention of encroachment

The Transferee shall take all reasonable measures to prevent unauthorised encroachment on the irrigation infrastructure including any adjacent land, as described in Schedule 5.

11. Costs of operating and maintaining the Irrigation Infrastructure

The Transferee is entirely responsible for paying the costs of operating and maintaining the irrigation infrastructure.

12. Inspection of the Irrigation Infrastructure

(1) The Transferor through its duly authorized officers may inspect the Irrigation Infrastructure Periodically to ensure that it is correctly operated and maintained.

(2) The Transferor acting through a duly authorized officer may order the Transferee to undertake specific works where this is necessary, including -

- (a) ensure the proper maintenance of the irrigation infrastructure;
- (b) prevent damage or harm to the irrigation infrastructure; and
- (c) prevent damage to state property or the property of third persons;
- (d) all in the public interest.

(3) The Transferee shall promptly comply with a notice under the previous clause 12 (a).

13. Modification of the Irrigation Infrastructure

The Transferee shall not modify, reconstruct or improve the irrigation

infrastructure without the written agreement of the Transferor, such agreement not to be unreasonably withheld.

14. Improvements to the Irrigation Infrastructure

The Transferor will as far as practicable assist the Transferee in rehabilitating or improving the irrigation infrastructure, either through the direct provision of funding and technical support or by facilitating the provision of such funding and support by non-governmental, national or international organisations and/or other supporting agencies or bodies.

15. Notices

Any notices required to be given under this Agreement shall be in writing and shall be sent by mail or delivered by hand to the address of the relevant Party set out at the head of this Agreement.

16. Amendment of the Agreement

This Agreement may only be amended in writing signed by the duly authorised representatives of the Parties.

17. Termination of the Agreement

This Agreement may only be terminated on the basis of a decision of the Supervising entity on the grounds that:

- (a) The Transferee has consistently breached the provisions of this Agreement thereby causing a risk of serious harm to the Irrigation Infrastructure, property and/or human life;
- (b) The Transferee has been placed in liquidation; or
- (c) On other grounds provided by law.

18. Dispute resolution

Disputes between the Transferor and Transferee, including those that relate to amendment and termination of the Agreement shall be resolved by the mutual agreement of the Parties. In case mutual agreement cannot be achieved, disputes shall be resolved by the courts in accordance with the procedure provided for by law.

19. Renewal of the Agreement

Not less than twelve months before the expiry of this Agreement the Transferee may request the Transferor to enter into a new Agreement which shall be in substantially the same terms as this Agreement.

20. The status of the Schedules

The Schedules to this Agreement form an integral part of this Agreement.

Agreed by the Parties through their authorised signatories

For and on behalf of the Transferor

For and on behalf of the Transferee

Name of Representative

Name of Representative

Signature

Signature

(Seal)

(Seal)

Attachments:

Schedule 1: Full description of the irrigation infrastructure and plan

Schedule 2: Inventory of condition

Schedule 3: Irrigation Infrastructure Specific Operating Rules (operational and maintenance Manual) (if any)

Schedule 4: Irrigation Infrastructure Specific Maintenance Rules (if any)

PART B: PROCESS FOR IRRIGATION MANAGEMENT TRANSFER (r. 73(7))

PROCESS FOR IRRIGATION MANAGEMENT TRANSFER

1. Participatory approaches to irrigation management and irrigation management transfer (IMT) Programmes are significant elements in improving irrigation performance.
2. An irrigation management transfer programme aims at appropriate, successful and sustainable devolution of roles from the irrigation agency (National Irrigation Authority) in the case of public, national and strategic schemes to Irrigation water users' associations to fosters equitable development.
3. The supervising entity shall be responsible for implementing the Irrigation management transfer process
4. The following is the envisaged procedure under these regulations;

Step 1 – Mobilisation of Public Support through Preparation and Adoption of a Transfer Policy

- (a) A transfer policy statement shall be prepared and should include the following elements:
 - objectives and justification for the IMT;
 - brief description of what kinds of irrigation systems or sub-systems will be transferred;
 - brief description of what management functions will be transferred;
 - brief description of what new entities (If any) will take over management;
 - brief description of what changes will be made in public agencies relative to IMT;
 - identification of the organization to direct implementation if its is not the supervising entity as the case may be for regional development Authorities;
- (b) This transfer policy shall be subject to public participation, involving the key stakeholders. Upon consensus with the stakeholders then step 2 may be undertaken

STEP 2- Preparation of a Strategic Plan

The supervising entity or implementation agency shall prepare a strategic plan for the transfer process and it should contain the following elements:

- Objectives and justification for IMT;
- proposed organizational structure for the transfer(change) process;
- expected stakeholder participation;
- expected key issues for policy and programme formulation; and
- Time-frame and financing plan.

STEP 3: Resolution of Key Policy Issues

- (a) The strategic plan shall be presented to the stakeholders to resolve the following issues and prepare for implementation
 - Resolving what service elements should be transferred

8. Irrigation Infrastructure maintenance and investment plans

- (a) The Service provider shall each year prepare an annual Maintenance and Investment Plan that indicates the physical maintenance and investment works that it proposes to undertake to the Irrigation Infrastructure during the following year.
- (b) Works of the type described in paragraph 8(a) shall include activities intended to enable the Service provider to comply with its obligations to maintain the Irrigation Infrastructure as well as to improve its functionality and effectiveness.
- (c) The Service provider shall submit the draft Maintenance and Investment Plan to the client by[day/month] each year for its approval or such other date as is agreed by the parties, together with a copy of its most recent financial statements.

9. The substantive obligations of the Service provider regarding the maintenance of the Irrigation Infrastructure

- (a) The Service provider shall maintain the Irrigation Infrastructure with the general objective of ensuring that the Irrigation Infrastructure is in a sound and usable condition such that it will enable the Service provider to provide water in a fair and equitable manner to its members in a sustainable manner.
- (b) To comply with the objective described in paragraph 9(a) the Service provider shall:
 - (i) Preserve the carrying-capacity and water-tightness of water conveyances (canals, drains and pipelines) by cleaning sediment deposits and vegetation, maintaining embankments, repairing cracks and joints and replacing damaged and leaking sections of canal lining or pipe-work;
 - (ii) Preserve the operational capacity and water-tightness of water control structures and valves by greasing, protecting from corrosion, repairing and replacing seals and control mechanisms as necessary and repairing structural elements;
 - (iii) Maintain adequate vehicular access routes to all infrastructure elements for routine operation as well as for attendance at emergencies;
 - (iv) Undertake routine maintenance, as specified by the manufacturer, of electrical-mechanical equipment (including pump stations), and shall repair or replace worn and damaged components as necessary to ensure effective continued operation;
 - (v) Maintain buildings and other structures in a sound weather proof and functional condition and shall paint exposed woodwork at no less than five yearly intervals as well as maintaining fences and boundary walls relating to the Irrigation Infrastructure;
 - (vi) Maintain and provide measures to secure the safety of operators and users of all components of the Irrigation Infrastructure under its operation, with particular attention to the health and safety aspects of electro-mechanical equipment and electrical wiring.
- (c) In undertaking maintenance works the Service provider shall comply with all applicable legislation including environmental protection legislation.

- (d) The Service provider shall maintain a full record of maintenance undertaken in respect of the Irrigation Infrastructure and shall provide information concerning the maintenance of the Irrigation Infrastructure to the Client at the written request of the latter.

10. Prevention of encroachment

The Service provider shall take all reasonable measures to prevent unauthorised encroachment on the Irrigation Infrastructure including any adjacent land, as described in Schedule 1.

11. Costs of operating and maintaining the irrigation infrastructure

The Service provider is entirely responsible for paying the costs of operating and maintaining the Irrigation infrastructure but the client shall reimburse the service provider the full cost of operating and maintaining the Irrigation infrastructure as described in the schedules 4.

12. Costs Determination

The costs reimbursed to the service provider shall be set out in schedule 4 of this agreement arrived at by a tripartite agreement between the association, the Service provider and the supervising entity.

13. Costs payment

The Client shall promptly pay the Service provider the costs of operating the infrastructure within Thirty (30) days of submission of invoice

14. Suspension of Services

The service provider shall not suspend the supply of water or any other service under this agreement to the client except where the Client delays payment of any outstanding charges for more than ninety days

15. Liability of Service provider

- (a) If the service provider fails to supply water to the client in the agreed quantities and in accordance with the time schedule stipulated in this agreement, then the service provider is liable to pay the client compensation equitable to the damage suffered by the client.
- (b) For purposes of sub rule (a) above the supervising entity is responsible for assessing the damage or loss suffered by the Client.
- (c) The service provider shall not pay compensation in case of *force majeure*.

16. Inspection of the Irrigation Infrastructure

- (a) The Client through its duly authorized officers may inspect the Irrigation Infrastructure Periodically to ensure that it is correctly operated and maintained.
- (b) The Client acting through a duly authorized officer may order the Service provider to undertake specific works where this is necessary, including:
 - (i) ensure the proper maintenance of the irrigation infrastructure;
 - (ii) prevent damage or harm to the irrigation infrastructure; and
 - (iii) prevent damage to state property or the property of third persons, all in the public interest.

- (c) The Service provider shall promptly comply with a notice under the previous clause 12a).

17. Modification of the Irrigation Infrastructure

The Service provider shall not modify, reconstruct or improve the Irrigation Infrastructure without the written agreement of the Client, such agreement not to be unreasonably withheld.

18. Maintenance of Infrastructure under management of the Client

- (a) The Client shall take all necessary measures to ensure that the Irrigation Infrastructure under its management is properly maintained and is capable of receiving water supplied by the Service provider
- (b) The client shall ensure the irrigation infrastructure employs efficient utilisation of water, reduces water wastage, pollution and salinity and complies with the relevant prevailing legislation.

19. Notices

Any notices required to be given under this Agreement shall be in writing and shall be sent by mail or delivered by hand to the address of the relevant Party set out at the head of this Agreement.

20. Amendment of the Agreement

This Agreement may only be amended with the consent of both the Client and Service provider and in writing signed by the duly authorised representatives of the Parties.

21. Termination of the Agreement

This Agreement may only be terminated on the basis of a decision of the Supervising entity on the grounds that:

- (a) The Service provider fails to supply water to the client in the agreed quantity or schedule stipulated in this agreement
- (b) The Service provider has consistently breached the provisions of this Agreement thereby causing a risk of serious harm to the Irrigation Infrastructure, property and/or human life;
- (c) The Service Provider has been placed in liquidation;
- (d) On dissolution of the association; or
- (e) On other grounds provided by law.

22. Dispute resolution

Disputes between the Client and Service Provider, including those that relate to amendment and termination of the Agreement shall be resolved by the mutual agreement of the Parties. In case mutual agreement cannot be achieved, disputes shall be resolved by the courts in accordance with the procedure provided for by law.

23. Renewal of the Agreement

Not less than twelve months before the expiry of this Agreement the Service provider may request the Client to enter into a new Agreement which shall be in substantially the same terms as this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives there unto duly authorized, have caused this Agreement to be signed in the respective names, as of the date first above written.

The Schedules to this Agreement form an integral part of this Agreement.

Duly authorized for and on behalf of Service Provider M/s.....

.....

SIGNED BY:

Address ----- Title

Name -----Signature -----

Duly authorized for and on

Behalf of the irrigation water users' association

Address -----

SIGNED BY IRRIGATION WATER USERS' ASSOCIATION OFFICIALS:

The Chairman

1. Name ----- Signature-----

Secretary ()

2. Name ----- Signature -----

Treasurer ()

3. Name ----- Signature -----

Rep. of Members ()

4. Name ----- Signature -----

Witnessed by:

(1) Supervising entity [Authority/County Irrigation Development Unit]

Address ----- Title.....

Name----- Signature -----

(2) Ward Representative:

Address -----

Name -----

Signature -----

Countersigned by the County Director

For Irrigation/Agriculture ----- Address -----

Name ----- Signature -----

ATTACHMENTS:

Schedule 1a: Full description of the Irrigation Infrastructure and Layout Map

- Schedule 1b: Description of Specific infrastructure Components transferred to Service provider for Operation and Maintenance.
- Schedule 2: The Cropping calendar
- Schedule 3: The Water Distribution schedule (including water supply points)
- Schedule 4: Costs reimbursement and Payment schedule
- Schedule 5: Irrigation Infrastructure Specific Operating Rules (operation and maintenance Manual) (if any)

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

SCHEDULE

[Section 8]

EXPLANATORY MEMORANDUM

TO

THE IRRIGATION (GENERAL) REGULATIONS, 2021

PART I

Name of the Statutory Instrument:	Irrigation (General) Regulations, 2021
Name of the Parent Act:	Irrigation Act, No. 4 of 2019
Enacted Pursuant to:	Section 34(1) of Irrigation Act (No. 4 of 2019)
Name of the Ministry:	Ministry of Water, Sanitation and Irrigation
Gazetted on:	22 nd September, 2021
Tabled on:	

PART II

1. Purpose of the Statutory Instrument

The primary objective of the Regulations is to facilitate better carrying out of the purposes and provisions of the Irrigation Act 2019, which was enacted in August 2019. The Irrigation Act was enacted to promote and regulate the development and management of irrigation in Kenya.

The purpose of the Regulations is to ensure: -

- i. Sustainable development, management, financing, provision of support services and effective regulation of the entire irrigation sector in Kenya; and
- ii. Compliance to the Constitution and laws of Kenya, international laws and treaties, agreements and other ratified instruments

2. Legislative Context

The Constitution of Kenya 2010 did not expressly classify irrigation as a devolved function under the 4th schedule. This position was clarified by the Irrigation Act, 2019 which divides the function of irrigation between the National Government and the County Government as a shared function.

This is with aim to ensure development, management and regulation of irrigation, to support sustainable food security and socio economic development in Kenya.

The Constitution, 2010 provides for the management and control of the natural resource base including water used for irrigation. Chapter Five of the Constitution on Land and Environment covers issues of land use and water resources. The Fourth Schedule, Part 1 Clause 2 on the management of international waters and water resources is key to the development of irrigation and other water uses. Clause 22 of the Fourth Schedule deals with the protection of the environment and natural resources necessary for establishment of durable and sustainable development. Subsection (c) thereof defines the national Government role as *‘water protection, securing sufficient residual water, hydraulic engineering and safety of dams’* (MWI, 2016).

Responsibilities for the irrigation sector in Kenya are shared among (i) Ministry of Agriculture, Livestock, Fisheries and Cooperatives, responsible for production activities under irrigation, (ii) the Ministry of Water, Sanitation and Irrigation in charge of managing the irrigation schemes and of water delivering services, and (iii) East African Community and Regional Development under the State department for Regional Development and which have been responsible for construction and management for the majority of multi-purpose dams in the country. This configuration has been in place since 2005 following reforms in the Water Act (2002).

The Irrigation Act, 2019 has expanded mandate of the Cabinet Secretary in consultation with responsible County Governments to necessitate the need for the effective regulatory framework to regulate the irrigation sector and particular areas for licensing, harmonization of registration and charging of fees among others in the irrigation sector.

3. Policy Background

In the past, irrigation development strategies and approaches were articulated in a number of government policy papers including: the Sessional Paper No.4 of 1981 on National Food Policy; Sessional Paper No. 1 on Economic Management for Renewed Growth; Sessional Paper No.2 of 1994 on National Food Policy; the Economic Recovery Strategy (2003 - 2007); the Strategy for Revitalizing Agriculture (2004-2014); the Agriculture Sector Development Strategy (ASDS 2010-2020) and the Kenya Vision 2030 and more recently in the Agriculture Sector Growth and Transformation Strategy (2018-2030). All these policies and strategies have not comprehensively

explored ways and means on how the irrigation potential could be better harnessed since they aimed at providing employment and settlement of the landless basically through development of national irrigation schemes, as well as broadly dealing with aspects of irrigation (MoWI,2016).

The National Water Master Plan 2030 (NWMP 2030), Kenya's water resources development and management blue print provides estimates of the country's water resources and its planning for the period 2010–2030. The NWMP 2030 was formulated based on NWP 1999 and Water Act 2002 and adopts the Dublin principles whose thrust is that water should be managed on a catchment basis and treated as an economic good in order to attain sustainability in water resources management and development (WRMA, 2013).

Reforms in the Water Act of 2002 (CAP 372), which was repealed by the Water Act of 2016, separated 'water resources management and development' from 'water delivery services' through the creation and institutionalization of parastatals. With the devolution initiated in 2013, the water services mandate has been divided between national and county governments. Water remains a national resource and the service delivery is now a county responsibility; whenever water crosses county boundaries, the national-level institutions are called upon to intervene to regulate water service provision (Boulanger, *et al.*, 2018).

The Constitution of Kenya, 2010 however does not directly or explicitly refer to irrigation as a devolved function. However, the irrigation function is residual in nature and its vesting at the national level under Article 186(3) of the Constitution. The Irrigation Act, 2019 comprehensively shares the functions of irrigation to both the national and county government.

The fourth schedule of the Constitution has assigned specified functions on agriculture to the national government and the county governments and it stipulates that the two levels of government shall conduct their mutual relations on the basis of consultation and cooperation (Article 6,Article 189 (1) (b) (c)). The provisions related to irrigation at the national government include: the use of international waters and water resources; national public works; protection of the environment and natural resources (water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and agricultural policy and capacity building and technical assistance to the counties and public investment). The Executive Order No 1/2016 of May 2016 established the Ministry of Water, Sanitation & and Irrigation and a State Department of Irrigation (SDI) (National Irrigation policy, 2017).

The Kenya National Water Master Plan 2030 included aspects of Kenya Vision 2030, aims to present a framework for water resources development and management consistent with the country's social and economic development activities. One of the objectives of the plan is to increase the area under irrigation to 1.2 million hectares (from around 160,000 in 2013). The main purpose of Water Act 2016 is to adapt national water management to the decentralized structure in place since the approval of the Constitution of Kenya 2010 (Boulanger, *et al.*, 2018).

The Irrigation Act Cap 347 of 1966 Revised 2012 [1986] (now repealed) established the NIB with a mandate to identify, design, develop, administer and manage public irrigation schemes. The public schemes are Mwea, Hola, Perkerra, Bura, West Kano, Ahero and Bunyala, and more recently the Galana Kulalu irrigation scheme. Over time the NIB activities have expanded to include development of smallholder irrigation schemes.

This Act did not take into account community-based smallholder and private irrigation schemes. Moreover, there are other public irrigation schemes managed by Regional Development Authorities (RDAs) which are statutory Boards and parastatals. These include TARDA Act Cap 443, CDA Act Cap 449, ENNDA Act Cap 448, KVDA Act Cap 441, LBDA Act, and ENSDA Act etc. There are also other institutions and semi-autonomous agencies involved in irrigation development and management and other state agencies responsible for infrastructure development, environmental conservation and management, public health, research and training institutions including universities which are not covered under the Act.

The irrigation Act No. 14 of 2019 addresses gaps in the old law while cognizant of the new governance structure created by the Constitution and provides for the development, management and regulation of irrigation, to support sustainable food security and socioeconomic development in Kenya, and for connected purposes.

The institutions that regulate the irrigation sector include the Ministry of Water, Sanitation and Irrigation, Water Resources Authority (WRA) and the National Environmental Management Authority (NEMA) and other related institutions.

4.0 Challenges being addressed

The irrigation sector has faced many challenges including operating without an established and specific irrigation policy which has recently been developed, low rate of irrigation infrastructure development, inadequate funding for development and investment by the public and private sector, poorly developed marketing channels and lack of diversification of irrigated commodity value chains. Further, the legal and regulatory frameworks have not been reviewed to reflect the emerging operational and socio-economic realities.

A well organized, coordinated and regulated irrigation sector in the country will facilitate accelerated development. This will enable and encourage accelerated irrigation infrastructural development, increased productivity per unit volume of water, increased water harvesting and storage, improved scheme management, enhanced stakeholder participation and improved business opportunities in the sector.

In order to attain the envisaged economic growth and sustained food production, the country needs to reduce reliance on rain-fed agriculture and increase irrigation-based systems that allow production throughout the year and increased agricultural productivity.

Irrigation accounts for 1.7 percent of total land area under agriculture, contributes 3% to the GDP and provides 18% of the value of all agricultural produce, demonstrating the potential of irrigation in increasing agricultural production and productivity. With irrigation, agricultural production can be increased by up to 400%, and jobs created at the rate of up to 15 persons per hectare directly and indirectly. A robust irrigation sub sector will guarantee raw materials for agro-industries, create employment opportunities especially for youth and women, improve security and stem the tide of rural urban migration in search of employment opportunities (MoWI, 2017).

Kenya has not fully developed her irrigation potential estimated at 1.342 million Ha. The irrigation potential is based on surface and underground water including water harvesting and storage. By the end of 2015, approximately 180,503 ha of irrigation had been developed. This is about 13.5% of the potential leaving more than 80% of Kenya's irrigation potential untapped.

The irrigation development plan in the National Water Master Plan 2030 (NWMP 2030) was formulated assuming that water saving irrigation is introduced to maximize the new irrigation development area. If the water saving irrigation is not introduced, the possible new irrigation

development area in 2030 will decrease from 623,700 ha to 530,800 ha (a decrease of about 15%) because the overall irrigation efficiency is lowered. The irrigation development plan is expected to actively introduce the water saving irrigation to be close to the target of the Kenya Vision 2030 to the maximum (MENR, WRMA, 2013).

5. Consultation outcome

The Ministry undertook mapping of various stakeholders from different levels as is the spirit of the Statutory Instruments Act, 2012. The Ministry organized four workshops to provide an opportunity for the public to participate in the process. The workshops were distributed throughout the country in which the Ministry chose a central region for the participants. The workshops took place in KALRO Dairy Research Institute Naivasha for counties in Central and Rift Valley Regions, Tom Mboya Labour College Kisumu for counties in Western, Nyanza and neighbouring Rift Valley Counties, Embu Agricultural Training College in Embu for counties in Eastern and North Eastern regions and Bandari Maritime Academy Mombasa for the counties in Coastal region and other neighbouring regions.

The workshops were attended by representatives from all the forty seven counties, two farmers from each county, representatives from the Council of Governors, Representatives from educational institutions and representatives from Water Resource Authority among other professionals. The Ministry also made a presentation to the Joint Agricultural Sector Consultation and Cooperation Mechanism Working Group on Policies, Standards and Regulations and received useful comments on the draft Regulations.

The national validation workshop held at the Kenya School of Monetary Studies (KSMS) in Nairobi on 23rd January, 2020 was attended by a large representation of the stakeholders likely to be affected by the Regulations, CECs from various counties who are likely to be affected by the Regulations and most importantly farmers from different schemes across the country.

The Ministry presented the draft Regulations to the attendees explaining each and every clause as well as engaging the participants on their possible views on the Regulations. The Ministry explained the importance of the Regulations in realigning the irrigation industry and reforming the agricultural sector.

The records from the public forums show extensive deliberations on a myriad of issues that arose from the proposed Regulations. The participants were further given opportunity to read and analyse the Regulations and share their views through email to the Ministry. It was also apparent that the Ministry collated, reviewed and incorporated into the proposed Regulations the issues raised and comments received from the workshops.

The public consultations outcomes were as follows:

NO.	PROPOSALS	OPINION BY (STAKEHOLDERS)	RESPONSE BY MINISTRY	ACTION TAKEN
1.	Proper definition of various terms under the regulations including; irrigation services, good agricultural practices, small holder and small scale, federation, designated area and designated scheme, among others	To define terms including; irrigation services, good agricultural practices, small holder and small scale, federation, designated area and designated scheme, in the regulations	The Ministry will provide definitions to the terms used in the regulations	Amendment of regulation 2 to include proper definition of terms under the regulations
2.	Delineation of the minimum acreage forming an irrigation area	To define the specific minimum acreage that is deemed by the regulations to for a service area/irrigation area	The Ministry will look at this provision in consultation of various stakeholders in the industry and thereafter will be able to define the acreage for the service area. Members of the public may also submit their proposal to the	Definition of minimum acreage in the service area under regulation 2 was provided.

			Ministry for consideration.	
3.	Conflicting roles of the agencies under the regulations.	To harmonize the roles of National Irrigation Authority, the National government and the County government with the provisions of the Irrigation Act, 2019	This is admitted as necessary and the Ministry will harmonize the provisions of the regulations with the parent Act.	The regulations should be amended taking into account the conflicting roles of the National Irrigation Authority, the National Government, the County Government and other agencies under the regulations
4.	Registration of professionals in the irrigation industry.	To harmonize the registration of professionals in the irrigation industry with the existing regimes in Kenya.	It was clarified that the Ministry seeks to create a database of all the professionals in the industry	Amendment of part V and the fifth schedule of the regulations to create an integrated information system for professionals in the sector in line with the existing regime.
5.	Capacity building and awareness creation among farmers	To create awareness amongst farmers on the importance of irrigation	The Ministry agreed to conduct awareness of the regulations.	To be provided for
6.	The regulation lack provisions on climate change resilience, integration of ecosystem and economic sustainability.	To ensure that the environmental standards are met within the existing legislations	The Ministry Agreed to take into account the recommendation	Amendment of regulation 5 to take into account climate resilience, integration of the ecosystem and economic sustainability.
7.	Gender sensitivity	To be in line with the two third gender rule requirement in the Constitution	To be included	Amended in regulation 5

6. Guidance

There is need to conduct stakeholder sensitization for the various players in the irrigation industry. This should be done both at the National and County Government Levels of government. Further consultations will also be held at the County level of Government to provide insights on the implementation of the Regulations.

The stakeholder engagement and sensitization was adequately done by the Ministry and all the stakeholders both at the National, Private sector and the County Government were involved and consulted.

7.0 Impact

7.1 Impact on Fundamental Rights and Freedoms

It is envisioned that the Regulations shall have a positive impact on the on the fundamental rights and freedoms through promotion of economic and social rights of the citizenry as contemplated under Article 43 of the Constitution and ensuring accessibility of employment opportunities and other opportunities for social and economic advancement.

The Regulations shall also enhance the right to access information to industry players as provided in article 35 of the Constitution.

The Regulations also create alternative dispute resolution mechanisms which will enhance the right to fair administrative action as provided in article 47 of the Constitution that require administrative action to be expeditious, efficient, lawful, reasonable and procedurally fair.

7.2 Impact on the Public Sector

The Regulations shall have a positive impact by enhancing coherence and streamlining of the management and supportive strategies towards the improvement of the irrigation industry.

7.3 Impact on the Private Sector

It is expected that all the key players including farmers, financial institutions, academic and research institutions, stakeholders and irrigation service providers will stand to benefit from a better regulated irrigation sector and conducive operating environment for their different businesses and will protected from often negative interferences from Governments and

Government agencies; and other political interferences. This will improve productivity in the agricultural sector.

8. Monitoring and Review

The Ministry working together with the National Irrigation Authority and the National Government and County Governments will thus work hand in hand to promote research, reviewing, monitoring and evaluating the effectiveness of the draft Regulations towards promoting the growth and development of the irrigation sector. The review, monitoring and evaluation will be a subject of great interest to all parties particularly because of its potential to make it easier for the Ministry to regulate the irrigation sector. It is projected that the aim will be to cause a reduction in incidences of non-compliances with the Act thus ensuring food security for Kenya.

9. Contact

The Cabinet Secretary,
Ministry of Water, Sanitation and Irrigation,
Maji House, Ngong Road,
P.O Box 49720 – 00100,
Nairobi.

Or by e-mail: secretaryirrigation82@gmail.com



STATUTORY INSTRUMENTS ACT, NO. 23 of 2013
CERTIFICATE OF COMPLIANCE
UNDER THE IRRIGATION ACT, 2019
THE IRRIGATION (GENERAL) REGULATIONS, 2021

Whereas the Cabinet Secretary for Water, Sanitation and Irrigation has published the Draft Irrigation (General) Regulations, 2021 pursuant to the powers conferred by section 34(1) of the Irrigation Act, 2019, IT IS HEREBY CERTIFIED that the aforesaid Irrigation (General) Regulations, 2021:

- a) Meet the requirements relating to Regulatory Impact Statement in the Statutory Instruments Act No. 23 of 2013 and the guidelines have been complied with; and
- b) In my opinion, the Regulatory Impact Statement adequately assesses the likely impact of the Irrigation (General) Regulations, 2021.

Dated this 26TH Day of OCTOBER 2021.

Signature of Cabinet Secretary

SICILY KANINI KARIUKI, (MRS) EGH,
CABINET SECRETARY
MINISTRY OF WATER, SANITATION AND IRRIGATION

MY GOV - THE STANDARD 4TH AUGUST 2020

SYMPTOMS

AUGUST 4, 2020

12 | ADVERTS



"The virus does not move, people move it. We stop moving, the virus dies"

EVIL



COUGH




SPIT



SAFE




NATIONAL MUSEUMS OF KENYA
WHERE HERITAGE LIVES ON

TENDER FOR PROPOSED REMOVAL AND SAFE DISPOSAL OF ASBESTOS AND RE-ROOFING OF THE NATURAL SCIENCE BLOCK AT NATIONAL MUSEUMS OF KENYA HEADQUARTERS, NAIROBI (REF: NMK/T/ACMS/20/21).

The National Museums of Kenya (NMK) with funding from the Sports, Arts and Social Development Fund is seeking tenders for proposed removal and safe disposal of asbestos and re-roofing of the Natural Science Block at National Museums of Kenya headquarters, Nairobi.

Interested eligible candidates may obtain further information and inspect tender documents at the Procurement Office, National Museums of Kenya, Museum Hill road, Nairobi during normal working hours.

A complete set of tender documents may be obtained by interested candidates upon payment of a non-refundable fee of one thousand (KES. 1,000) Kenya shillings only or a bankers cheque, payable to the National Museums of Kenya, Cash Office located at the first floor of Heritage Centre building. Bidders who downloaded the tender documents from the NMK website (www.museums.or.ke) will not be required to pay.

Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for 120 days from the closing date of the tender.


Completed tender documents are to be enclosed in plain sealed envelopes marked with tender name and reference number and deposited in the tender box at the entrance of Earth Science building and be addressed to:


**The Director General
National Museums of Kenya
P.O. BOX 40630 - 00103
Nairobi.**

So as to reach NMK as at before **18th August, 2020 at 12:00PM**

Tenders will be opened immediately thereafter in the presence of the candidates or their representatives who choose to attend at the NMK Old Boardroom.

**Director General
National Museums of Kenya.**


THE KENYA NATIONAL EXAMINATIONS COUNCIL
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QUERY MANAGEMENT INFORMATION SYSTEM (QMIS) ADVERTISEMENT

The Query Management Information System (QMIS) is an electronic platform used by customers for online submission and processing of queries related to examination results such as Certification of Examination Results for candidates who have lost their certificates, Confirmation of Examination Results and Equivalency of Foreign Qualifications.

Others queries handled by the system include:-


- Bio data amendments (name, photo, gender, year of birth, birth certificate number, citizenship, entry code).
- Direct Recoveries for KCPE/KCSE result slips, certificates and result printout.
- Results (marks) queries i.e. absenteeism, missing marks and payment queries.

The following are QMIS steps to follow to lodge a query and track service(s):-

1. A client needs a computer/mobile phone with internet access;
2. Use the web address <https://qmis.knec.ac.ke> to access the QMIS system;
3. A new user is prompted to register while a registered user logs in using their credentials;
4. The user manual guide is uploaded in the website. All requirements for individual queries are displayed by the system for a client to scan and attach the required document;
5. One pays only when prompted to pay via an SMS which indicates the amount and how to pay using MPESA;
6. Upon successful processing using the system, KNEC notifies a client to collect their processed documents through their email and Short Messaging Services (SMS);
7. A client is required to avail original copies of their attached documentations before collecting a processed document that one had applied for.

NB: The username and password are confidential. Do not disclose to a third party. You MUST key in your valid email address and valid mobile number to receive feedback.

**Dr. Mercy G. Karago, MBS
Ag. CHIEF EXECUTIVE OFFICER**


MINISTRY OF WATER, SANITATION AND IRRIGATION
THE IRRIGATION ACT
(No. 4 of 2019)
THE DRAFT IRRIGATION (GENERAL) REGULATIONS, 2020

REQUEST FOR COMMENTS ON THE DRAFT REGULATORY IMPACT STATEMENT AND THE DRAFT IRRIGATION (GENERAL) REGULATIONS, 2020

The Cabinet Secretary, Ministry of Water, Sanitation and Irrigation is in the process of promulgating the Irrigation (General) Regulations, 2020 as provided under section 34(1) of the Irrigation Act, 2019.

In compliance with the provisions of the Irrigation Act, 2019 and the Statutory Instruments Act (No. 23 of 2013), the Ministry announces to the public the availability of the draft Irrigation (General) Regulations, 2020 and draft Regulatory Impact Statement.

The main objective of the draft Irrigation (General) Regulations, 2020 is to ensure sustainable development, management, financing, provision of support services and effective regulation of the irrigation sector in the country. The Regulatory Impact Statement contains detailed information on the Irrigation (General) Regulations, 2020.

The Constitution of Kenya, 2010 and the Statutory Instruments Act, 2013 require the public to participate in the decision making process through submission of comments to the Ministry. It is in this spirit that the Ministry requests the public to participate by submitting their comments through the provided address.

All interested persons should submit written comments on the Irrigation (General) Regulations, 2020 and the draft Regulatory Impact Statement using the prescribed public comments form, to reach the undersigned not later than fourteen (14) days from the date of publication of this notice.

The draft Irrigation (General) Regulations, 2020 and the draft Regulatory Impact Statement as well as public comments form can be accessed through the following website: www.water.go.ke. The draft Irrigation (General) Regulations, 2020 and draft Regulatory Impact Statement are also available on request at the Ministry of Water, Sanitation and Irrigation offices, Maji Mwaia, Ngong Road, Nairobi during normal working hours.

Due to the prevailing COVID-19 pandemic, there shall be a public virtual forum on 18th August, 2020 starting at 10:00am to discuss the draft Irrigation Regulations and comments received, hosted at Maji Mwaia.

Send your written comments to:

**The Cabinet Secretary,
Ministry of Water, Sanitation and Irrigation,
Maji Mwaia, Ngong Road,
P.O. Box 40720 - 00100,
Nairobi.**

Or by e-mail: secretary@irrigation2@gmail.com

**SICILY K. KARISHI (MRS), E.G.H.
CABINET SECRETARY,
MINISTRY OF WATER, SANITATION AND IRRIGATION**


KENYA LAW REFORM COMMISSION
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5B/2020	Planning Officer II	ELRC 8	1
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Applications should be submitted to the undersigned on or before **18th August 2020** through:

1. Hand copies should be delivered at the Kenya Law Reform Commission offices on 3rd floor Room 321 or
2. Online application to be submitted through info@klrc.go.ke

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GAZETTE NOTICE NO. 5467

THE STATE CORPORATIONS ACT

(Cap. 446)

THE KENYA FERRY SERVICES LIMITED

(Cap. 496)

APPOINTMENT

IN EXERCISE of the powers conferred by section 6 (1) (c) of the State Corporations Act, and the Memorandum and Articles of Association of the Kenya Ferry Services Limited, the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development appoints—

Genesis Njagi Mugo,
Mohamed Amin Sheikh,
Sheikh Nanjeha Mukali,
Nuh Nassir Abdi (Dr.),

to be members of the Board of the Kenya Ferry Services Limited, for a period of three (3) years, with effect from the 7th August, 2020.

Dated the 7th August, 2020.

JAMES MACHARIA,

Cabinet Secretary, Transport, Infrastructure, Housing,
Urban Development and Public Works.

GAZETTE NOTICE NO. 5468

THE WATER ACT

(No. 43 of 2016)

APPOINTMENT

IN EXERCISE of the powers conferred by section 66 (1) (a) of the Water Act, 2016, the Cabinet Secretary for Water, Sanitation and Irrigation appoints—

JULIUS DAKASA WASIKE

to be the Chairperson of the Lake Victoria North Water Works Development Agency, for a period of three (3) years, with effect from the 7th August, 2020.

Dated the 7th August, 2020.

SICILY KARIUKI,

Cabinet Secretary for Water, Sanitation and Irrigation.

GAZETTE NOTICE No. 5469

THE WATER ACT

(No. 43 of 2016)

APPOINTMENT

IN EXERCISE of the powers conferred by section 66 (1) (a) of the Water Act, 2016, the Cabinet Secretary for Water, Sanitation and Irrigation appoints—

BERYL OKUMU

to be the Chairperson of the Athi Water Works Development Agency, for a period of three (3) years, with effect from the 7th August, 2020.

Dated the 7th August, 2020.

SICILY KARIUKI,

Cabinet Secretary for Water, Sanitation and Irrigation.

GAZETTE NOTICE NO. 5470

THE KENYA WATER INSTITUTE ACT

(No. 11 of 2001)

REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by section 3 (1) (a) of the Kenya Water Institute Act, 2001, as read together with section 21 of the Interpretations and General Provisions Act, the Cabinet Secretary for Water and Sanitation revokes the appointment* of—

BERYL OKUMU

as Chairperson of the Governing Council of Kenya Water Institute.

Dated the 7th August, 2020.

SICILY KARIUKI,

Cabinet Secretary for Water, Sanitation and Irrigation.

GAZETTE NOTICE No. 5471

THE IRRIGATION ACT

(No. 4 of 2019)

THE DRAFT IRRIGATION (GENERAL) REGULATIONS, 2020

REQUEST FOR COMMENTS ON THE DRAFT REGULATORY IMPACT STATEMENT AND THE DRAFT IRRIGATION (GENERAL) REGULATIONS, 2020

The Cabinet Secretary, Ministry of Water, Sanitation and Irrigation is in the process of promulgating the Irrigation (General) Regulations, 2020 as provided under section 34 (1) of the Irrigation Act, 2019.

In compliance with the provisions of the Irrigation Act, 2019 and the Statutory Instruments Act (No. 23 of 2013), the Ministry announces to the public the availability of the draft Irrigation (General) Regulations, 2020 and draft Regulatory Impact Statement.

The main objective of the draft Irrigation (General) Regulations, 2020 is to ensure sustainable development, management, financing, provision of support services and effective regulation of the irrigation sector in the country. The Regulatory Impact Statement contains detailed information on the Irrigation (General) Regulations, 2020.

The Constitution of Kenya, 2010 and the Statutory Instruments Act, 2013 require the public to participate in the decision making process through submission of comments to the Ministry. It is in this spirit that the Ministry request the public to participate by submitting their comments through the provided address.

All interested persons should submit written comments on the Irrigation (General) Regulations, 2020 and the draft Regulatory Impact Statement using the prescribed public comments form, to reach the undersigned not later than fourteen (14) days from the date of publication of this notice.

The draft Irrigation (General) Regulations, 2020 and the draft Regulatory Impact Statement as well as public comments form can be accessed through the following website: www.water.go.ke. The draft Irrigation (General) Regulations, 2020 and draft Regulatory Impact Statement are also available on request at the Ministry of Water, Sanitation and Irrigation offices, Maji House, Ngong Road, Nairobi during normal working hours.

Due to the prevailing COVID-19 pandemic, there shall be a virtual forum on 18th August, 2020 starting at 10:00 a.m. to discuss the draft Irrigation Regulations and comments received, hosted at Maji House.

Send your written comments to:

The Cabinet Secretary,
Ministry of Water, Sanitation and Irrigation,
Maji House, Ngong Road,
P.O. Box 49720 - 00100,
Nairobi.

Or by e-mail: secretary@irrigation326@gmail.com

Dated the 4th August, 2020.

SICILY KARIUKI,

Cabinet Secretary for Water, Sanitation and Irrigation.



MINISTRY OF WATER, SANITATION AND IRRIGATION

REGULATORY IMPACT STATEMENT (RIS)

THE IRRIGATION (GENERAL) REGULATIONS, 2021

Introduction

The Regulatory Impact Statement for the proposed Irrigation (General) Regulations, 2021 was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instruments Act, 2013. Section 6 of the Statutory Instruments Act, 2013 requires the Regulation Making Authority to prepare a Regulatory Impact Statement (RIS) for the proposed regulations indicating the costs and benefits of the proposed regulations on the public and stakeholders. Section 7(1) and (2) of the Act set out the contents of a Regulatory Impact Statement for the proposed regulations as follows:

1.0 A Statement of the Objectives and Reasons for the Proposed Regulations

The primary objective of the Regulations is to facilitate better carrying out of the purposes and provisions of the Irrigation Act 2019, which was enacted in August 2019. The main object of this Act of Parliament is to promote and regulate the development, management, financing and irrigation support services in Kenya.

The purpose of the Regulations is to ensure:

- i. Operationalization of the Irrigation Act, 2019 in the spirit of the Irrigation Policy, 2017;
- ii. Sustainable development, management, financing, provision of support services and effective regulation of the entire irrigation sector in Kenya; and
- iii. Compliance with the Constitution and laws of Kenya, international laws, treaties and agreements and other ratified instruments.

2.0 Statement on the Effect of the Proposed Regulations

2.1 Effects on the Public Sector

The proposed Regulations will affect the public sector in the following ways:

- i. The Government will establish a coherent and regulated environment for streamlined oversight and improved management and development of the irrigation sub-sector;
- ii. County governments will have a well-organized irrigation policy and supportive strategies implementation structure at the local level through the County Irrigation Development Units for the regulation and better coordination of the irrigation sector and promoting irrigation developments in the counties and thus increase agricultural production and incomes for farmers;

- iii. Conservation and protection of all current and potential irrigation areas in the country for sustainable irrigation development and better control of environmental hazards such as floods;
- iv. The National Irrigation Authority will have improved sector structures, systems and implementation framework for more effective irrigation sector regulation, planning and development;
- v. The broader agricultural sector and national economy will benefit from the increased volumes of production and exports from irrigation schemes and thus increased foreign exchange earnings;
- vi. The Regulations will provide opportunities for public and private sector partnership for irrigation investments, building synergies in the development and management of the irrigation sector; and
- vii. Increased cooperation and collaboration in irrigation research, science and technology, and information sharing with all stakeholders including regional and international partners.

2.2 Effects on the Private Sector

The proposed Regulations will affect the private sector in the following ways:

- i. Irrigation sector players including private companies, water users associations and umbrella associations, producers' associations/organizations, farm inputs and equipment suppliers, irrigation equipment and machinery suppliers, irrigation articles manufacturers and suppliers, irrigation firms, irrigation professionals, irrigation service providers will stand to benefit from a better regulated irrigation sub-sector and conducive operating environment for their different businesses. They will also be protected from often negative interferences from Governments and government agencies; and other political interferences;
- ii. These private sector actors will also have an opportunity to partner with the Governments and government agencies for synergy in the development and management of the irrigation sector;
- iii. Sustainable viable businesses will be established and can thrive in the irrigation sector. This may attract new local and foreign investors to invest in the sector in the country;
- iv. Irrigation farmers and entities will access irrigation services only from qualified and registered professionals and firms which will ensure quality, effective and efficient services for the users;

- v. Quality and safety of produce from the farms, human and environmental health will be enhanced through good on-farm water management and agricultural practices;
- vi. Irrigation users and even those in irrigation water users associations will select their irrigation services providers based on quality, cost of services, efficiency and effectiveness. This will promote competition amongst the service providers for the benefit of the users e.g. resulting in better costing and services;
- vii. Irrigation developments will increase agricultural production, create employment and improving livelihoods of farmers and rural populations through increased earnings;
- viii. Production and supply consistence of raw materials for agro-processing will be improved; and
- ix. Academia and research organizations will also be winners in this regard because the Regulations create a demand for their services.

2.3 Effects on fundamental rights and freedoms

Article 43 of the Constitution provides for the economic and social rights. It affirms the rights of individuals and communities to an adequate standard of life including right to accessible and adequate housing, right to adequate food of acceptable quality and right to clean and safe water in adequate quantities. The State has an obligation to allocate and provide resources for the progressive realization of these rights.

Article 55 of the Constitution requires the State to take measures to ensure the youth can access employment and other opportunities for social and economic advancement. Thus the State has a constitutional obligation to promote investment, income and wealth creation in the agricultural sectors and other sectors of the economy. In addition, the government has an international obligation to promote the right to work in the country.

The proposed Regulations shall have the following positive impacts on rights and freedoms of individuals. They will provide better returns on their produce and investment to existing and new irrigation farmers. The Regulations will also create wealth and employment for more Kenyans in the rural areas while producing raw materials for agro-processing. This would contribute to improved household incomes and enhances capacities to afford an adequate standard of living envisaged in article 43 of the Constitution.

Further, the proposed Regulations seek to advance the government policy of transforming Kenya's agricultural sector aimed at achieving the national goals set out in the Kenya Vision 2030, the Government's Big 4 Agenda, the National Irrigation Policy, the National Agriculture

Policy and the Agriculture Sector Transformation and Growth Strategy (ASTGS) and individual County Integrated Development Plans (CIDPs) whereby the agricultural sector shall be a key driver of economic growth and value addition. The Regulations will not only enhance public participation of the players in the sector and enable public-private partnership in the development and management of irrigation in the country but also ensure consumers of irrigated products have quality and safe products to consume as required in article 46 of the Constitution as well as preserve the environment as required in article 42 of the Constitution on the right to a clean and healthy environment.

Regulations 76 and 112 of proposed Regulations shall enhance the right to access information to industry players as provided in article 35 of the Constitution. Regulation 76 provides for sharing of information relating to maintenance and condition of a transferred irrigation system while Regulation 112 provides for the establishment and maintenance of an irrigation and drainage management information system.

Regulation 83 - 87 of proposed Regulations enhance the right to fair administrative action as provided in article 47 of the Constitution that require administrative action to be expeditious, efficient, lawful, reasonable and procedurally fair. They establish a Dispute Resolution Committee to resolve disputes among members of associations. They also provides for the dispute resolution procedures and appeal process to enhance fairness in dispute resolution in the sector.

Whereas Regulation 49 of the proposed Regulations recognizes the important roles being played by irrigation water users' association in development and management of community-based irrigation schemes, it may violate the provisions of article 36 of the constitution on freedom of association. This is because it compels individuals to form irrigation water users association. Article 36 allows individuals the freedom to form or join or participate in activities of an association. Article 36(2) of the Constitution disallows compelling an individual to join an association. Regulation 49(4) provides that where residents are unable or fail to form an association within twelve months of coming into force of the Regulations, the supervising entity "*may compel such persons to form an association*". This may be held to be unconstitutional. However, the violation is justifiable and reasonable and the circumstances of the schemes and the limitation of the right can be argued to be proper.

3.0 Statement on Regulatory & Non-Regulatory Options

3.1 Option 1: Maintaining the Status Quo

Before considering new interventions, it is important to consider whether the problem could be resolved by making changes to practices within the existing regulatory framework, thus maintaining the status quo. Examples of this are:

- i. Making use of existing laws, regulations and/or guidelines e.g. the Irrigation (National Irrigation Schemes) Regulations, 1977;
- ii. Simplifying or clarifying existing regulation;
- iii. Improving enforcement of existing regulation; or
- iv. Making legal remedies more accessible or cheaper.

3.2 Option 2: Passing the Regulations

Government can achieve its policy objectives by using taxpayer's money or through a range of non-spending interventions, including regulations. The purpose of these Regulations is to ensure: (a) sustainable development, management, financing, provision of support services and effective regulation of the entire irrigation sector in Kenya; and (b) compliance with the Constitution and the Laws of Kenya, international laws, treaties and agreements and other ratified instruments. These Regulations aim to set rules to protect and benefit people, businesses and the environment, stabilizing markets and addressing market failures to support economic growth. Regulations can also create costs for businesses, and the public sectors. It can, if overused, poorly designed or implemented, stifle competitiveness and growth.

Adoption and operationalization of the proposed Regulations will:

- i. Facilitate the implementation of the National Irrigation Policy, 2017 to address all aspects of the irrigation sector and to align it to the Constitution of Kenya, 2010 in order for the two levels of government to work together harmoniously for the full exploitation of the irrigation potential in the country;
- ii. Facilitate the implementation of the Irrigation Act, 2019 for the development, management, financing, provision of support services and regulation of the entire irrigation sector in Kenya;
- iii. Support increased participation of the private sector and promote public-private partnerships in the irrigation sector thus allowing for an expanded and more efficient

irrigation sector that will support the country's agricultural development agenda as envisaged in the Kenya Vision 2030, the Big 4 agenda, National Irrigation Policy, the national agriculture policy including the Agriculture Sector Transformation and Growth Strategy (ASTGS) and individual Counties Integrated Development Plans (CIDPs) to make the agricultural sector be a key driver of economic growth and value addition;

- iv. Improve quality of irrigation services offered in the country by allowing only qualified and registered professionals and firms to provide such services which will ensure quality, effective and efficient services for the irrigation farmers, agencies and other entities;
- v. Streamline and coordinate irrigation sector for a coherent, coordinated and regulated environment for oversight and improved management and development of the irrigation sector, and remove hurdles that have negatively impacted on the sector;
- vi. Develop and maintain a realistic data base on the sector inclusive of registers of irrigation schemes, irrigation water users' associations and umbrella associations, irrigation permit holders, land and water utilization, all sector players including private irrigation companies, producers' associations and organizations, farm inputs and equipment suppliers, irrigation equipment and machinery suppliers, irrigation articles manufacturers, irrigation firms, irrigation professionals, irrigation service providers in Kenya for better coordination, control and planning in the sector;
- vii. Increased irrigation information access to stakeholders, especially smallholder farmers and prospective investors for informed on-farm and investment decisions;
- viii. Enhance quality and safety of produce from the farms to better promote human and environmental health;
- ix. Protect all current and potential irrigation areas in the country by designating and gazettelement as irrigation areas;
- x. Promote adoption of water harvesting, storage and wastewater recycling technologies thus contribute to increasing available water for increased irrigation and effective irrigation water management; and
- xi. Enhance safety standards in the irrigation infrastructure designing, construction and operations to avert human lives and property losses from irrigation structure failures.

The Regulations are thus important for the development, management, financing, streamlining and organizing the irrigation sub-sector.

3.3 Option 3: Other Practical Options

Alternatives to regulation include information and education, market-based structures, self-regulation and co-regulation. In addition, existing policies can be improved, without further regulation, using techniques such as behavioral insight or changing enforcement practices to improve compliance. Such approaches may be better or worse for business and the economy than an equivalent regulatory measure.

1. **Alternatives to regulation include:**

- i. **No new intervention/do nothing:** This may include making use of existing laws and regulation; simplifying or clarifying existing laws and regulations- the Irrigation (National Irrigation Schemes) Regulations, 1977; improving enforcement of existing laws and regulations; or making legal remedies more accessible or cheaper and as discussed in the section above status quo in the sector is likely to remain.
- ii. **Information and education:** Information and education can be used to empower irrigation industry players to make their own decisions, improving choice for mutual benefit of all. For instance, there are potential risks associated with this. Information and education can take time to make an impact. Access to information and the ability to use it can vary within a community and so may not reach all equally. It may also not be straightforward to assess how people will react or change their behaviour in response to the information provided. It will also increase costs for government and businesses that will be providing the information and education required.
- iii. **Incentive/market-based structures:** The government can use economic instruments, such as taxes, subsidies, quotas and permits, vouchers etc. as initiatives to realize the desired objectives. These initiatives however are only practically possible in well-developed and efficiently functioning sectors which have well defined structures unlike the irrigation sector. Further, often these sorts of systems need their own regulation to establish the framework and may have additional costs to the government and are unlikely to be effective in the irrigation sector.

2. **Alternatives models of regulation:**

i. **Self-regulation;**

An industry or a profession can self-regulate, for example through the use of codes of conduct, customer charters, standards or accreditation. In many cases rules and codes of conduct will be formulated by the industry representatives or organizations under their own initiative. In the absence of well-developed sector organizations, self-regulation is not possible

ii. **Co-regulation.**

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with government to develop a code of practice whose enforcement would be by the industry or a professional organization and accredited by government. In the absence of well-developed sector organizations, co-regulation is not possible.

4.0 Costs-Benefit Analysis (CBA)

4.1 Economic, Environmental and Social Impacts

The economic impacts of the regulations

Economic benefits of proposed Regulations are:-

- i. Increase the area under irrigation from the current approximate 201,962 hectares to the country's potential of 1.342 million hectares by 2030 by increasing the area under irrigation by 40,000 hectares per year in line with the National Irrigation Policy. Vision 2030 envisioned 404,800 hectares under irrigation especially in the Arid and semi-arid area by putting 30,000 hectares of land under irrigation each year. This plan will ensure Kenya hit the one million irrigation acre threshold (405,000 hectares) in 12.5 years;
- ii. Increase irrigation contribution to country's GDP by 400% to the projected potential from the current estimated 3% contribution through increased agricultural production and productivity;
- iii. Increase irrigation contribution to the total value of all agricultural produce by 400% to the projected potential from the current estimated 18% contribution through increased agricultural production according to the National irrigation policy, 2017; and
- iv. Create many jobs opportunities at the rate of up to 15 persons per hectare directly and indirectly through professional services.

Other economic benefits but which are difficult to quantify with the available data and information in this assignment are:

- i. Guarantee raw materials for agro-industries;
- ii. Increased agricultural production under irrigation;
- iii. Increased exports of products/produce from irrigation schemes;

- iv. Increased value addition and product diversification;
- v. Increased foreign exchange earnings from irrigation products exports;
- vi. Increased savings and investment by irrigation farm families;
- vii. Foreign direct investment through new investments in production, value addition and marketing in Kenya's irrigation sector;
- viii. Improved terms of trade - substitution of imported agricultural produce with locally produced produce;
- ix. Aquaculture can be introduced and incorporated in the irrigation schemes as a complimentary activity to diversify production and income streams for farmers;
- x. Increased cess and taxes from increased agricultural produce;
- xi. Reduced health costs due to improved nutrition; and
- xii. Low and affordable cost of food items for households.

Economic costs of the proposed regulation

The economic costs of the proposed Regulations are:

- i. The Regulations require the users to acquire and renew the licence and permit at a fee;
- ii. The Regulations require different types of studies and surveys including irrigation schemes feasibility studies, water quality analysis, hydrological surveys etc. and which are mandatory and will be a costly process for irrigators;
- iii. The Regulations require that only qualified and registered professionals and firms will provide irrigation services in the country. These will be more expensive to engage (for good reason) and they may not be readily available in some parts of the country and may thus result to delays to planning, implementation, management or provision of services in the irrigation schemes;
- iv. Effective implementation of the Regulations will require increased investment in capacity building of irrigation stakeholders on among others good on-farm water management and agricultural practices, development and maintenance of the sector register, schemes audits, monitoring and evaluation etc; and

- v. The Regulations may also introduce additional transactional costs from bureaucracy due to the many processes envisaged in the Regulations resulting in time delays.

The social impacts of the regulations

The social benefits of proposed Regulations are:

- i. Decreased poverty level among the farm families and the community in general;
- ii. Improved income distribution among the farm families and the community in general and thus reduced inequalities;
- iii. Improved access to water and sanitation among the farm families due to increased incomes;
- iv. Improved health status of the farm families and the community resulting to reduced child and maternal mortality and reduced disease incidences due to improved nutrition and improved food safety;
- v. Improved education levels and reduced illiteracy;
- vi. Reduced tide of rural urban migration in search of employment opportunities; and
- vii. Improved security amongst rural populations in irrigation areas.

Social costs of the proposed regulation

The social costs of the proposed Regulations are:

- i. Whereas land within public national and county public irrigation schemes is allocated at no cost and permits are perpetual with succession embedded within the dependant, some of the provisions of the Regulations especially on tenure and obligations may be viewed as infringing on individuals rights especially in the public irrigation schemes and there may be difficulties in their acceptance as they may be interpreted as extending insecure land tenure system that has always characterized public irrigation schemes in Kenya;
- ii. Increased gender disparities for youth and women in certain areas;
- iii. Loss of cultures, habits and social value systems held for long time; and
- iv. More conflicts between neighbors for water as schemes become bigger.

The environmental impacts of the regulations

The environmental benefits of proposed Regulations are:

- i. Improved utilization and access to suitable and affordable water for irrigation;
- ii. Better control of environmental hazards like floods and reduced risks from irrigation infrastructure failures;
- iii. Increased afforestation and reduced deforestation;
- iv. Reduced carbon emissions;
- v. Improved land conservation, utilization and management in all irrigation areas; and
- vi. Reduced soil degradation due to improved run-off water and irrigation scheme discharge management, improved plant cover.

The possible negative impacts of the Regulations may include:

- i. Reduced rivers flow and disturbed aquatic ecosystems;
- ii. Increased groundwater recharge, waterlogging and soil salinity;
- iii. Reduced downstream river water quality;
- iv. Reduce water access for downstream water users;
- v. Lost land use opportunities;
- vi. Groundwater depletion mining with wells, land subsidence; and
- vii. Expansion of irrigation schemes may result to an increase in water borne diseases and insect pests breeding areas negatively affecting health of the population and increased insects nuisance to the public where schemes management fail to fully comply with the approved Environmental Management Plans.

However, with good irrigation design, development and management, these negative environmental impacts can be significantly mitigated and impacts reduced.

4.2 Administration and Compliance Cost

RIS notes that resources would be required for operationalization of the Regulations which will include human resource and operation costs for enforcement as well as for awareness creation of the Regulations to different stakeholders in the irrigation sector. It is assumed that more resources will go to the implementation of the wider national agriculture policies which support extension services (now a devolved function) for strengthening knowledge transfer and technology distribution among the farmers and in the implementation of the National Irrigation Policy, agriculture sector transformation and growth strategy and the Big 4 agenda.

The government will also incur costs in the identification, mapping, assessment, protection gazettement, status review, and monitoring of all and potential irrigation areas across the country as protected irrigation areas.

4.3 Assessment of Return on Investment (Benefit)

Passing and operationalization of the Regulations will be critical in facilitating development of the irrigation sector. It will streamline Kenya's unstructured irrigation sector to allow coordinated control of the sector, create a level playing field for all sector players and promote professionalism and fair trade practices to support Kenya's agricultural development and manufacturing pillars as envisioned in the Kenya Vision 2030, the Big 4 agenda, ASTGS and individual counties' CIDPs. An effective, efficient and well developed irrigation sector will optimize land utilization in irrigation areas and support increased production and productivity of quality agricultural products that meet international market standards, and ensure consistent provision of quality raw material for agro-industries to sustainably guarantee improved incomes for the farmer and thus improved livelihoods and social welfare for communities, while guaranteeing other businesses within the sector good returns and higher export earnings for the country.

In broad terms, the RIA notes that following broad benefits and returns on investment will be achieved:

- i. The Regulations will streamline the unstructured irrigation sector for better functioning while allowing for fair competition and this will result to enhanced efficiency and development of the industry;
- ii. Improved access to reliable irrigation information and irrigation services from the professionals, firms, contractors and other service providers- will support the farmers and other stakeholders to improve the productivity and quality of their service delivery;

- iii. Enabling policy operating environment will be attractive to new investors expanding irrigation in the country, thus contributing towards reaching the national target irrigation area;
- iv. A reliable comprehensive data base on the sub-sector inclusive of a register of irrigation schemes, irrigation water users' associations and association of irrigation farmers, irrigation permits holders, land and water utilization, all sector players including private irrigation companies, producers' associations and organizations, farm inputs and equipment suppliers, irrigation equipment and machinery suppliers, irrigation articles manufacturers, irrigation firms, irrigation professionals, irrigation service providers in Kenya for better coordination, control and planning in the sector;
- v. More efficient and effective irrigation water use planning, management and utilization for sustainable water resources management and development;
- vi. Adoption of appropriate water harvesting, conservation, saving, utilization and wastewater recycling technologies;
- vii. Establish clear structured mechanisms for discharge of water from irrigation schemes, thus reduce environmental contamination;
- viii. Increased agricultural national production and value addition will translate into increased agricultural exports and thus increased foreign exchange earnings;
- ix. Increased agricultural production which translates to increased job creation through farm labour, agro-processing and products manufacturing, value addition, marketing and auxiliary services;
- x. Research in the irrigation sub-sector will be focused to address identified issues and support further development of all spheres of the sector;
- xi. Increased and effective public and stakeholders' participation in irrigation development processes including direct private sector and public-private partnerships; and
- xii. Adoption of good agricultural and on-farm water management practices for increased returns and thus a motivation for increased investment in irrigation.

4.4 Quantification of the Benefit

In 2019, the country experienced a mixed weather phenomenon. This was characterized by drought during the first half of the year, followed by high rainfall in the second half of the year.

This culminated in reduced production of selected crops and pasture for livestock. Consequently, the agriculture sector performance decelerated from 6.1 per cent in 2018 to 3.6 per cent in 2019. Maize production reduced from 44.6 million bags in 2018 to 39.8 million bags in 2019. Tea production decreased by 6.9 per cent to 458.5 thousand tonnes in 2019, while sugar cane production decreased by 12.5 per cent to 4.6 million tonnes over the same period. However, total quantity of coffee produced increased by 8.7 per cent from 41.4 thousand tonnes in 2017/18 to 45.0 thousand tonnes in 2018/19. The export quantities of fresh horticultural quantities increased slightly by 1.8 per cent from 322.6 thousand tonnes in 2018 to 328.3 thousand tonnes in 2019. The quantity of formally marketed milk increased by 5.3 per cent from 634.3 million litres in 2018 to 668.2 million litres in 2019. Total paddy rice production rose by 42.6 per cent from 112.6 thousand tonnes in 2018 to 160.6 thousand tonnes in 2019.

The value of marketed production at current prices for the first time in the last five years decreased by 6.5 per cent from KSh 498.3 billion in 2018 to KSh 465.7 billion in 2019. Earnings from sugarcane decreased by 16.6 per cent from KSh 21.0 billion in 2018 to KSh 17.6 billion in 2019, while pyrethrum earnings increased by 49.2 per cent from KSh 26.2 million in 2018 to KSh 39.1 million in 2019. During the year under review, coffee earnings decreased by 31.5 per cent from KSh 14.8 billion in 2018 to KSh 10.2 billion in 2019. This was mainly attributable to excess production of coffee globally, especially, in Brazil, which led to reduced average prices.

It is estimated that irrigation provides 18% of the value of all agricultural produce demonstrating the potential of irrigation in increasing agricultural production and productivity (MWI, 2016).

By 2015 only an estimated 180,503 hectares of irrigation land had been developed which is equivalent to 13.5% of the total estimated 1,341,900 hectares potential that could be irrigated and was contributing an estimated 3% to the GDP. According to the National Irrigation Policy, agricultural production can be increased by up to 400 percent, and over 1 million jobs created at the rate of up to 15 persons per hectare directly and indirectly in the sub-sector. This can be interpreted that the current contribution of irrigation to the national GDP, in Agriculture Value Added and value of marketed agricultural production can be increased by 400% with the right interventions in irrigation development and management whilst creating millions of jobs in the sector.

In addition to expanded irrigation schemes, irrigation sector contribution to the economy can further be increased by enhancing efficiency in existing schemes. Many of the existing community-based smallholder irrigation schemes in the country have a long history of management failures, inefficiencies and a myriad of other problems that stem from the inability to self-governance including those that were government managed through the NIB and have been operating well below their capacity. The government managed schemes worked under a relatively closed management by the NIB and traditionally grows rice with little or no rotation.

Studies have shown that irrigation can increase yields of the top Kenya's five crops of maize, pulses, fruits, tea and roots and tubers by one to seven times compared Kenya's predominantly rain-fed yields today. While investment in irrigation technology repays faster for cash or high value crops, there is a business case for all Kenya's important crops.

5.0 Reasons why other Regulatory Options are not Appropriate

5.1 Option 1: Maintaining the Status Quo

Maintaining the status-quo will only sustain the challenges in the irrigation sub-sector, curtailing new developments in the sub-sector and even allow further decline in this sub-sector, including the following:

- i. The irrigation sector will continue to remain unstructured and not effectively regulated allowing continued operation of unqualified, unscrupulous, quick-for-profit players who do not necessarily comply with set irrigation standards resulting to the installation of unsafe irrigation and failed infrastructures which are harmful to lives, health and to the environment, inefficient and unsustainable exploitation of water resources, reduced agricultural productivity and production in the irrigation schemes, reduced produce quality and food safety and the sub-sector will remain unattractive to new private sector investments;
- ii. Irrigation information and services will remain inaccessible by many users and potential investors to inform on-farm and investment decisions;
- iii. Quality of irrigation services offered in the country will continue to be low and expensive;
- iv. Exploitation of Kenya's irrigation potential of 1.342 million hectares which is currently estimated at 15.05% will remain low;
- v. Limited private sector participation in irrigation development, leaving the sector as a monopoly for less business efficient public agencies;
- vi. Underutilization of irrigation schemes by farmers in underperforming and/or collapsed schemes and especially by smallholders in public irrigation schemes who do not realize optimal benefits of irrigation;
- vii. Continued mismanagement of irrigation schemes and especially public schemes resulting to their under-performance or even total collapse and thus loss of public investments;

- viii. Agricultural productivity and quality of Kenya's agricultural products will decline further, reducing export volumes and acceptability in some markets, thus, reduced foreign exchange earnings;
- ix. Farmers' earnings will also reduce as a result of reduced productivity and product quality, thus impacting on the farms families' ability to access social services and amities including housing, health, education etc.;
- x. Reduced earnings for farmers will also translate to loss of employment opportunities in agricultural production in the rural areas, increasing the rate of unemployment in the country and insecurity;
- xi. The environmental hazards resulting from low adoption of good agricultural practices and poor on-farm water management practices continue destroying Kenya's environment and biodiversity which are important for sustainable agricultural and economic development;
- xii. Farmers' cost of production under irrigation will remain high due to uncompetitive irrigation services costs, low adoption of good agricultural practices, poor on-farm water management practices, and inefficiencies of the irrigation schemes;
- xiii. There will be no clear involvement of county governments in regulation of the irrigation sub-sector thus contravening the provisions of fourth schedule of the constitution, and relevant provisions of County Governments Act on devolution and sharing of responsibilities;
- xiv. Destruction and poor utilization of all existing and potential irrigation areas in the country will continue leading to their partial or total destruction;
- xv. Adoption of water harvesting, storage and waste water recycling technologies thus contribute to increasing available water for increased irrigation and effective irrigation water management will remain low;
- xvi. Incidences of human lives and property losses from irrigation structure failures due to non-compliance of standards in the irrigation infrastructure designing, construction and operations will continue;
- xvii. Quality and safety standards of produce from the irrigation schemes will continue to be low, negatively affecting human and environmental health; and

- xviii. Regulation, coordination, control and planning in the sector will continue to be ad hoc and not to be evidence-based in absence of the proposed all-inclusive data base on the sector.

The situation is not sustainable, and the RIA recommends that the proposed Regulations be put in place to promote the development of the irrigation sector to effectively contribute to the realization of the objectives of the Kenya Vision 2030, the National Irrigation Policy, the Agricultural Sector Transformation and Growth Strategy, the National Agriculture Sector Development Strategy, the Government's Big 4 Agenda and the individual Counties' CIDPs.

5.2. Other Practical Options

Alternatives to regulation include:

i. No new intervention/do nothing

This may include making use of existing irrigation Regulations (1977) and other sectoral Regulations by NEMA and WRA; simplifying or clarifying existing regulation; improving enforcement of existing regulation; or making legal remedies more accessible or cheaper to regulate the irrigation sub-sector. The challenge with this approach is that the status quo in the irrigation sector is likely to remain to the detriment of all the sector stakeholders and the country.

ii. Information and education

Information and education can be used to empower stakeholders to make their own decisions, improving choice for mutual benefit of all. However, information and education can take time to make an impact and still may not be acceptable. This approach may increase costs for government and businesses that will be providing the information and education required. The desired objectives are unlikely to be realized within reasonable time for the common good of all.

iii. Incentive/market-based structures.

The government can use economic instruments, such as taxes, subsidies, initiatives to realize the desired objectives. These initiatives however are only practically possible in well-developed and efficiently functioning sectors which have well defined structures and often these sorts of systems need their own regulation to establish the framework and may have additional costs to the government and are unlikely to be effective in the irrigation sector.

5.3. Alternatives models of regulation include:

i. Self-regulation

The irrigation sector currently has no well-developed industry representative(s) to formulate and implement codes of conduct, customer charters, standards or accreditation system for self-regulation thus it is not possible in the sector.

(ii) Co-regulation

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where industry may work with government to develop a code of practice whose enforcement would be by the industry or a professional organization and accredited by government. The irrigation sector currently has no such organization(s) at the moment and thus co-regulation is practically not possible.

6.0 Conclusion

The proposed Regulations if effectively implemented will provide a favorable environment to promote development, management, financing and provision of support for the irrigation sector and make it attractive to potential farmers, other irrigation sub-sector players and to investors, thus providing the sub-sector with an opportunity to realize its full potential and contribute fully to the national development goals of food security, wealth and employment creation.

7.0 Recommendation

The Regulatory Impact Assessment recommends the passing and operationalization of the proposed Regulations.



THE IRRIGATION (GENERAL) REGULATIONS, 2021

UNDER
IRRIGATION ACT 2019

MINISTRY OF WATER, SANITATION AND IRRIGATION

OBJECTIVE

**To operationalize
the Irrigation Act
2019**

An Act of Parliament to provide for the development, management and regulation of Irrigation, to support sustainable food security and socio-economic development in Kenya.



Irrigation Act: Key tenets

- **Scope:** the provisions apply to matters relating to development, management, financing, provision of support services and regulation of the entire irrigation sector in Kenya.
- The function of **Policy, Coordination, Guidelines and Regulation** is the domain of the Cabinet Secretary responsible for irrigation matters.
- Implementation function is given to the **National Irrigation Authority** (formerly NIB) and **County Irrigation Development Units (CIDU)**.

Provisions on delegated powers

- **Section 34(1)** of the Act provides that the Cabinet Secretary may, in consultation with County Governments, **make Regulations** for the better carrying out of the purposes and provisions of the Act
- **34(3)** Regulations made under this section may provide for the following:
 - (a) the management of national, public, and other irrigation schemes;
 - (b) the **standards of good** on-farm water management;

34(3) Regulations made under this section may provide for:

- (c) the requirements, procedures, and forms for **licensing** of irrigation schemes;
- (d) the **establishment, operations and governance** of IWUAs, Scheme Management Committees and Dispute Resolution committees;
- (e) **prescribe fees payable** by irrigation water users based on costs of operation and maintenance of the scheme;

34(3) Regulations made under this section may provide for:

- (f) monitoring and **evaluation and audits** required under the Act;
- (g) adherence to **environmental and public health** matters; and
- (h) any **other section(s)** of the Act that require regulations in order to **effect-** for instance section (17) and (18) on water storage for irrigation and irrigation research, innovation and training respectively.

IRRIGATION STANDARDS AND QUALITY CONTROL

the quality of irrigation
ent for safety as well as
ity

standards for irrigation
management
standards for irrigation
structure

standards for professionals
in the irrigation sub sector.
mechanisms for
ment



- Water quality standards
- Irrigation infrastructure standards
- Safety and maintenance of infrastructure
- Water harvesting and storage for irrigation
- Standards for irrigation firms and professionals
- Enlisting of service providers
- Standards for on-farm water management
- Capacity building

IRRIGATION RESEARCH, INNOVATION AND TRAINING

le mechanisms for coordination of
ion research, innovation and

ig
le for inventorization of irrigation
ologies in mass use in Kenya.

le mechanisms for dissemination of
ch findings through centres of
nce amongst others.

le guidance for training as part of
ty building for sustainability

PART VII: FINANCING IRRIGATION DEVELOPMENT

Rationale

- a) Provide modalities for funding of irrigation development.
- b) Provide for cost sharing and cost recovery in irrigation development
- c) Provide for affirmative action for social equity in irrigation development
- d) Provide for safeguards for irrigation farmers on irrigation development under loan arrangements



- Financing irrigation development using public funds
- Cost sharing in irrigation development
- Irrigation development through loans

PART VIII: MONITORING, PERFORMANCE AUDIT AND REPORTING

Rationale

To provide for information management and monitoring and evaluation of the sector

- a) Provide diagnostic mechanisms for ensuring irrigation scheme sustainability
- b) Irrigation scheme performance assurance
- c) Provide data for national investment decision making
- d) Provide mechanisms for reporting to both Houses of Parliament



- Irrigation and drainage management information system
- Monitoring, evaluation and performance audits
- Reporting

PART IX: MISCELLANEOUS PROVISIONS



Rationale

Ensure adherence to stipulations in the Act and Regulations.

- a) Offence definitions
- b) Penalty definitions

- Recovery or compensation for damage to irrigation infrastructure
- Prohibited activities and practices
- Penalties
- Provision for revocation of the existing Regulations

SCHEDULES

Rationale

To provide details to the specific regulations

- a) Details on technical issues such as standards
- b) Necessary forms for applications
- c) Formats for reports
- d) Templates for agreements
- e) Guidelines for formation of irrigation water users associations (IWUAs)
- f) Criteria for performance assessments

REGULATORY IMPACT ASSESSMENT

Under the Statutory Instruments Act 2013, a Regulatory Impact Assessment was carried out

The objective is to ensure better policy making processes based on information and empirical analysis about the potential consequences of proposed Regulations .

- It is a broad, systematic and critical analysis tool.
- Makes critical assessment and reporting of effects of Regulations.
- Enables assessment of trade-offs.

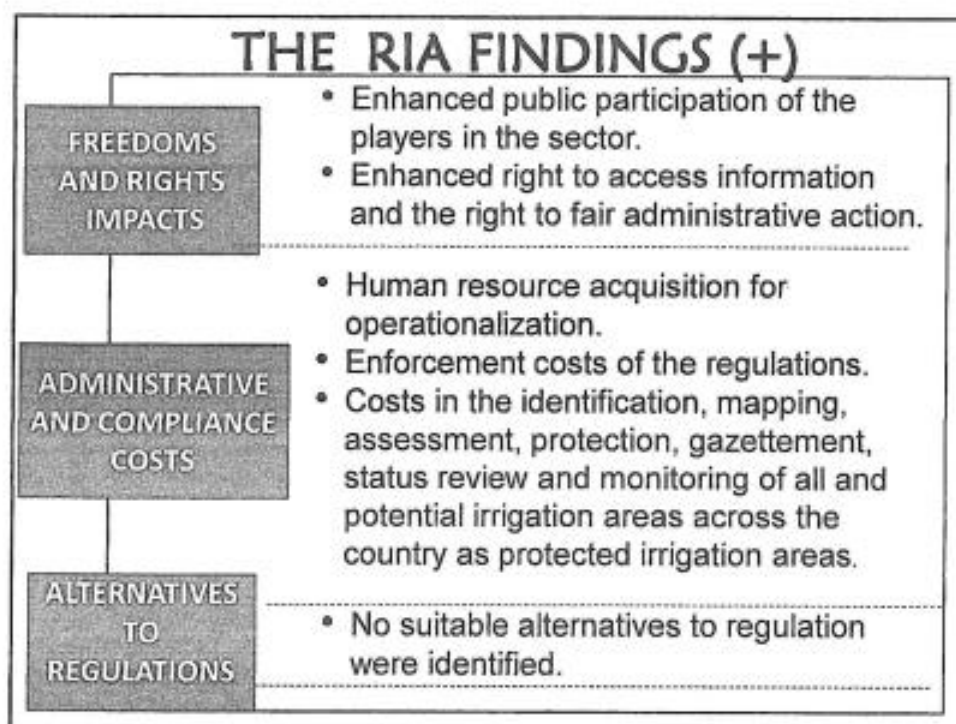
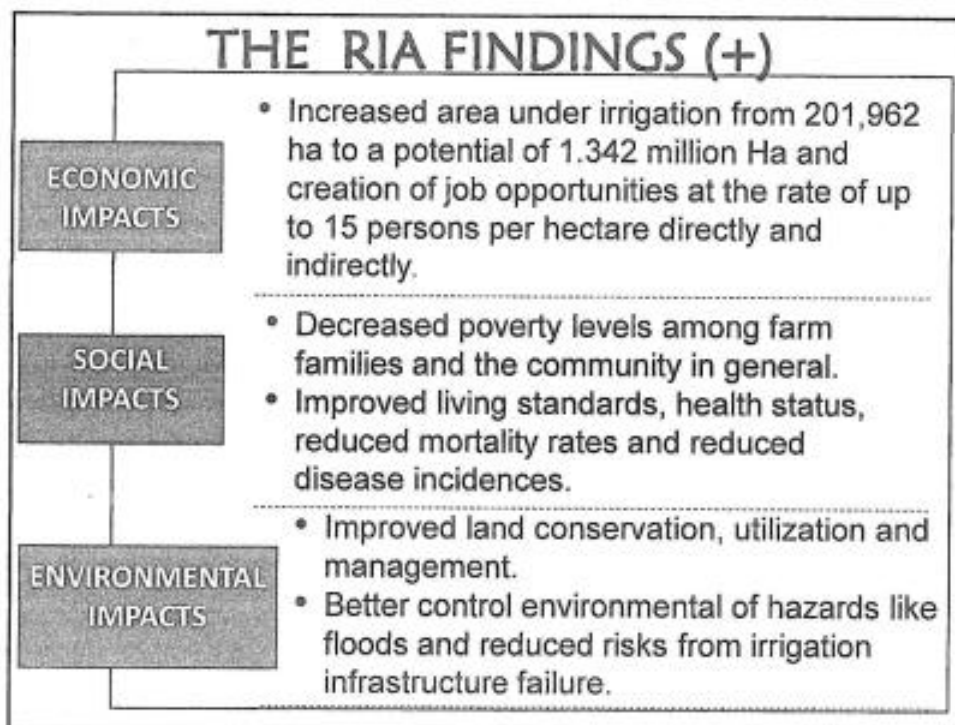
THE REGULATORY IMPACT ASSESSMENT (RIA)

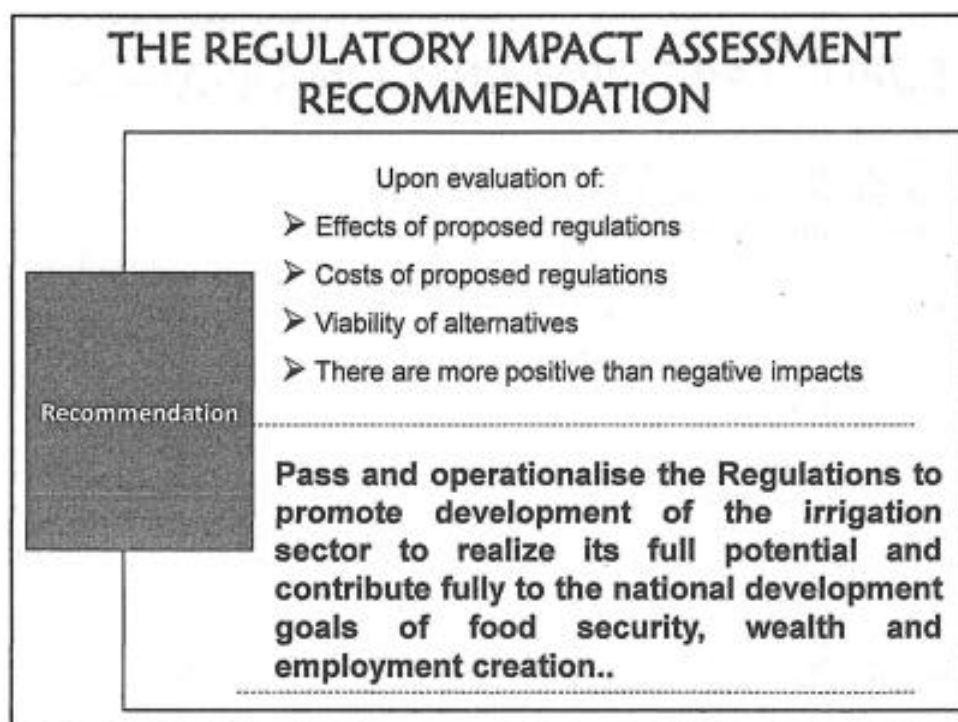
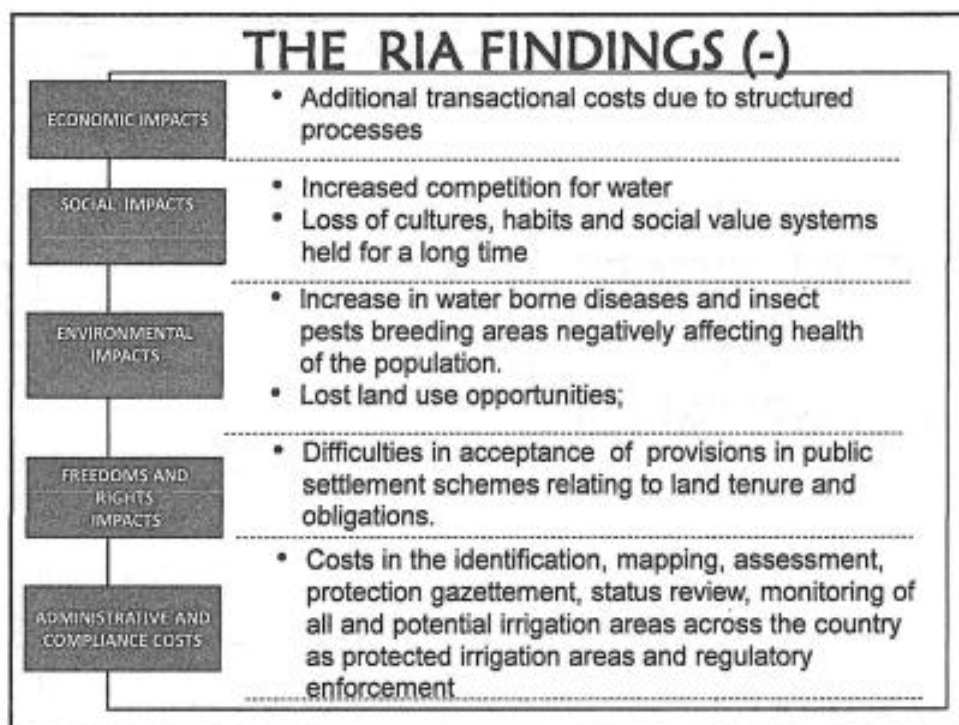
OBJECTIVES

- Enables consideration of alternatives.
- Identification of most suitable alternatives.
- Improvement in quality and planning of regulations.
- Information to stakeholders.
- Avoidance of regulatory redundancy.
- Statutory requirement

SCOPE

- Public participation
- Economic impacts
- Social impacts
- Environmental impacts
- Impacts on freedoms and rights
- Administrative and compliance costs.
- Alternatives to regulation





CERTIFICATE OF COMPLIANCE


STATUTORY INSTRUMENTS ACT, NO. 24 OF 2011
LEGISLATION OF COMPLIANCE
IN THE BUREAU OF STANDARDS ACT, 2011
THE IRRIGATION GENERAL REGULATION, 2011

Whereas the Cabinet Secretary for Water, Sanitation and Irrigation is a person who holds legislative powers and functions, and it is expedient that the said person should exercise those powers and functions in relation to the said Regulation, 2011:

It is hereby certified that the said Regulation, 2011, is in conformity with the provisions of the said Act, 2011, and the said person has exercised those powers and functions in relation to the said Regulation, 2011.

Dated this 26th day of OCTOBER, 2021.

Signature of Cabinet Secretary


CECILIA KUSINI KARURI, MRS. B.Sc.
CABINET SECRETARY
MINISTRY OF WATER, SANITATION AND IRRIGATION

PUBLIC PARTICIPATION CONSULTATIONS

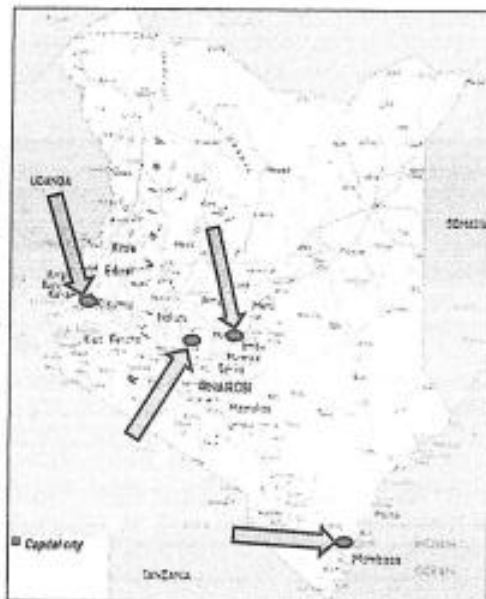
Regional consultative meetings were held across the country

Naivasha: Baringo, Narok, Nakuru, Nairobi

Embu: Embu, Taraka Nithi, Kitui, Machakos, Kirinyaga

Kisumu: Kisii, Homa Bay, Migori, Nyamira, Kisumu, Vihiga, Busia, Kericho, Bomet, Siaya, Kakamega, Bungoma, Trans Nzoia, West Pokot, Nandi, Turkana, Nyandarua, Elgeyo Marakwet, Uasin Gishu

Mombasa: Makueni, Garissa, Kilifi, Tana River, Taita Taveta, Isiolo, Kwale, Mombasa



**CONSULTATIONS WITH THE NATIONAL ASSEMBLY
COMMITTEE ON DELEGATED LEGISLATION**

A pre publication consultative meeting was held with the National assembly Committee on Delegated Legislation on 17th December, 2020.

The Committee raised some issues that were addressed in the gazetted version of the Regulations.

National Assembly Consultations - Issues

NO.	ISSUE RAISED	HOW ADDRESSED	PROVISION OF THE REGULATIONS
1.	The Ministry to ensure that there is clear delineation of responsibilities between National and County governments	There is clear delineation of responsibilities between National and County governments in the Regulations	<p>Regulation 6:</p> <p>(1) All irrigation schemes shall have a supervising entity...</p> <p>(2) The irrigation schemes shall be supervised as follows-</p> <p>(a) Small scale, county public and county initiated irrigation schemes shall be supervised by the County Irrigation Development Unit;</p> <p>(b) Medium and large scale irrigation schemes including small scale schemes which traverse or straddle more than one county, shall be supervised by the Authority.</p> <p>(3) Where the Authority is the implementing agency, the Cabinet Secretary shall take up the supervisory roles.</p>



National Assembly Consultations - Issues

NO.	ISSUE RAISED	HOW ADDRESSED	PROVISION OF THE REGULATIONS
2.	(a)	The Ministry to ensure that the Regulations provide an enabling regulatory environment to the sector especially small scale farmers and private sector to attract more investment in the sector	<p>This is addressed in the Regulations under several provisions:</p> <p>Part II the Regulations provide for a structured irrigation development process to ensure prudent use of resources and sustainable development</p> <p>Regulation 7 and Regulation 19</p> <p>The Regulations exempt small scale irrigation schemes from the requirement of designation to accelerate their development.</p> <p>Regulation 7.(1)</p> <p><i>Pursuant to section 16(1) of the Act, an area that is deemed suitable for medium and large scale irrigation schemes may be designated as an irrigation area for purposes of the Act.</i></p> <p>Regulation 19.(3)</p> <p><i>The designation of an area as an irrigation area as provided under regulation 7 shall be a prerequisite for issuance of an irrigation licence in case of medium and large scale irrigation scheme.</i></p> <p>The Regulations also provide for the provision of quality irrigation services to ensure requisite standards are maintained.</p> <p>Regulation 15 and Regulation 16</p>

National Assembly Consultations - Issues

NO.	ISSUE RAISED	HOW ADDRESSED	PROVISION OF THE REGULATIONS
2. (b)	The Ministry to ensure that the Regulations provide an enabling regulatory environment to the sector especially small scale farmers and private sector to attract more investment in the sector	The Regulations provide an enabling regulatory environment to the irrigation sector	<p>This is addressed in the Regulations under several provisions:</p> <p>The Regulations make provisions for ensuring standards are adhered to. Part V on Irrigation standards and quality. Regulation 88</p> <p><i>Any person who intends to undertake irrigation development shall adhere to the quality standards for water, infrastructure, on farm water management and discharge of water from schemes as set out in these regulations.</i></p> <p>The Regulations provide for proper governance of irrigation schemes. Part IV Management of Irrigation schemes Regulation 26 to 87:</p> <p>The Regulations provide for funding of irrigation development Regulation 110</p> <p><i>(1) The Cabinet Secretary may, with concurrence of the National Treasury, enter into financing agreements to support development of smallholder irrigation schemes through the Authority, county governments and other stakeholders.</i></p> <p><i>(4) The Cabinet Secretary or County Executive Committee Member may waive the minimum cost-sharing contribution for schemes developed on social equity basis for resource poor communities.</i></p>

National Assembly Consultations - Issues

NO	ISSUE RAISED	HOW ADDRESSED	PROVISION OF THE REGULATIONS
3.	<p>The Ministry to consider that licensing of small scale irrigation schemes is undertaken at County level.</p>	<p>The Irrigation Act, 2019 is explicit that licensing of irrigation schemes is the function of the Cabinet Secretary. However, the Act provides for the Cabinet Secretary to delegate this function to an authorized person. The licensing of small scale irrigation schemes will be undertaken at the Counties through delegation under the framework of Intergovernmental Relations Act, 2012.</p> <p>Administratively, the Cabinet Secretary has developed a guiding Framework for Establishment of County Irrigation Development Units, therein providing for licensing small scale schemes at the county level.</p>	<p>Part III of the Regulations</p> <p>Regulation 20(1) <i>Pursuant to section 6(2) (f) of the Act, an application for an irrigation licence shall be made to the Cabinet Secretary or such other authorised person in form 4C....</i></p> <p>Regulation 21(1) <i>The Cabinet Secretary or such other authorised person shall put in place the necessary administrative measures to establish and maintain a licensing unit to -</i></p> <p>(a) <i>To receive and determine applications for licence; and</i></p> <p>(b) <i>Monitor and verify compliance to licence conditions; and</i></p> <p>(c) <i>Enforce conditions attached to the licence for all irrigation schemes.</i></p>
4.	<p>The Ministry to ensure that adequate public participation is conducted and evidence of the same adduced.</p>	<p>Adequate public participation was done during the process of developing the Regulations and the evidence of the same documented.</p>	

Thank You

