

STATE OF SABAH

SABAH WATER RESOURCES ENACTMENT 1998 (Sabah No. 6 of 1998)

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

Section

1. Short title and commencement.
2. Interpretation.

PART II ADMINISTRATION

3. Decisions and actions.
4. Establishment of Water Resources Council.
5. Council membership.
6. Resignation and revocation.
7. Disqualification from membership.
8. Vacation of office.
9. Casual vacancies and temporary membership.
10. Remuneration or allowance.
11. Council procedure.
12. Director of Water Resources and other officers.
13. Delegation by Director,
14. Co-operation with Council and Director.

PART III
THE RIGHT TO WATER

- 15. Control of the use and flow of water.
- 16. Private rights to water.

PART IV
AUTHORISATION OF WATER ACTIVITIES

- 17. Authorisation of water activities.
- 18. Application for water activity licence.
- 19. Objections to applications.
- 20. Approval of water activities and imposition of conditions.
- 21. Determination of licence.
- 22. Duration of licence.
- 23. Form of licence.
- 24. Appeal to Council.

PART V
PROCEDURAL

- 25. Imposition of conditions after grant of licence.
- 26. Alteration of licence at holder's request.
- 27. Suspension and cancellation of licence.
- 28. Directions on exercise of private water right.
- 29. Protected waters order.
- 30. Direction to carry out works.
- 31. Carrying out of works by the Director.
- 32. Impounding orders.
- 33. Measuring devices.

PART VI
CATCHMENT PLANNING AND PROTECTION

- 34. Catchment management plans.
- 35. Procedure for development of catchment management plans.
- 36. Water protection areas.
- 37. Control of activity in water protection areas.
- 38. Water conservation areas.
- 39. Floodplain management areas.
- 40. River and shore reserves.
- 41. Power of Director in river and shore reserves.
- 42. Director to carry out work.
- 43. Identification of declared areas.
- 44. Approval of plans.
- 45. Consultation with Director of Town and Regional Planning.
- 46. Offences.

PART VII
ACTIVITIES IN AND ON WATER BODIES

- 47. Navigation.
- 48. Recreation.

PART VIII
GENERAL

- 49. Enactment binds the Government.
- 50. Service of documents.
- 51. Compensation.
- 52. Fees, charges and royalties.
- 53. Water resources data.
- 54. Protection against legal proceedings.
- 55. Public servants.
- 56. Evidence in proceedings for offences.

57. False or misleading information.
58. Offences committed by body corporate.
59. Penalty for interference with notice.
60. Offences where no penalty specified.
61. Compounding of offences.
62. Jurisdiction of courts.
63. Power of entry.
64. Conduct of prosecution.
65. Taking of water outside the State.
66. Declared channels.
67. Rules.

An Enactment to provide for the sustainable management of the water resources of the State of Sabah, so as to promote the orderly, equitable and efficient use of water and to maximise its economic, social and environmental benefits for the future, and for other matters connected therewith and incidental thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PART I
PRELIMINARY

Short title and commencement.

1. This Enactment may be cited as the Sabah Water Resources Enactment 1998 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint. [01-06-2000]

Interpretation.

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

“authorised person” means a person designated in writing by the Director to be an authorised person;

“aquatic environment” means those physical and biological features, including land, water, the atmosphere, animals and plants, which are within, under, over, in contact with, or sustained by the water in water bodies;

“aquatic vegetation” means vegetation which lives on or in water for all or most of its life cycle, and includes mangroves;

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

“bank” in relation to a water body, means any bank, whether naturally or artificially formed;

“bed” in relation to a water body, means the land under the water body bounded by the banks closest to the water body and in relation to a water body subject to tidal influence, means the land under the water body extending to the high-water mark of ordinary spring tides;

“catchment management plan” means a plan prepared under section 34;

“clearing of vegetation” means—

- (a) cutting, felling, poisoning, or otherwise destroying; or
- (b) topping, lopping, partially removing or otherwise damaging trees, saplings, shrubs, and aquatic or marine vegetation;

“coastal waters” means the coastal waters of the State of Sabah and such part of the sea adjacent to the coast of the State as is deemed by law to constitute the territorial waters of the State;

“construct” includes to install, alter, extend, raise, enlarge, sink, or deepen a structure or work;

“Council” means the Water Resources Council established in section 4;

“declared channel” means a channel, canal, drain, or artificial watercourse, which has been declared to be a declared channel in section 66 of this Enactment;

“Director” means the Director of Water Resources constituted under section 12(1);

“drainage work” means a work (such as a drain, pipe or cutting) which discharges water directly or indirectly into a water body and includes a collection pit, tank, reservoir, storage or other structure to which such works are connected;

“environment” has the same meaning as assigned to it in the Environmental Quality Act 1974 [Act 127.];

“flood control work” includes an earthwork, embankment, levee, flood mitigation dam, channel or retarding basin;

“floodplain” means the area of a river valley which is covered with water when the river overflows during floods;

“groundwater” means water occurring under the surface of the ground in any geological formation including alluvial layers, or in land which has been reclaimed or artificially filled;

“material” includes sand, soil, gravel, stones, vegetation whether alive or dead, roots and other matter;

“member” means a member of the Council including the Chairman;

“Minister” means the Minister responsible for water resources;

“occupier” means any person in actual occupation of land, and in the case of Native Reserves under the Land Ordinance [Cap. 68.] includes the head of the community;

“owner” means the person in whose name the title to any land is registered and includes any person, other than the Government, who receives or is entitled to receive the rent or profits of any land on that person’s own account or on behalf of that person and others or as an agent;

“private water right” means a right to take and use water conferred under section 16;

“public authority” includes—

- (a) the Government of Malaysia;
- (b) the Government of a State;
- (c) any local authority and any other statutory authority; or
- (d) any society, union, organisation or body as the Minister may prescribe from time to time by order published in the *Gazette*;

“return water” means to drain or discharge water to a water body, whether directly or indirectly, by means of constructed or artificial works, including a ditch, drain, whether rural or urban, channel, canal, pipe, culvert or penstock;

“river” means a continually or intermittently flowing body of water, and includes a stream or modified watercourse but does not include any artificial watercourse unless it is a declared channel;

“river reserve or shore reserve” means a reserve established in section 40;

“shore” in relation to a water body means the natural or artificially formed shore of the water body or, where there is no shore, means the boundary between the typical aquatic vegetation and the typical non-aquatic vegetation;

“statutory authority” means an authority, whether consisting of a single person or a body of persons, established by Federal or State law and exercising powers, discharging duties or performing functions conferred upon the authority by any Federal or State law;

“storage work” means a work which impounds or stores water, whether intentionally or unintentionally, in a water body and includes a dam, weir and embankment;

“subsistence agriculture” means agricultural activity capable of sustaining no more than a family group, including commercial transactions necessary for subsistence, but does not include commercial agricultural enterprise;

“sustainable management” in relation to water resources means managing the use, development and protection of water resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health, while safeguarding the life-supporting capacity of water and those elements of the environment sustained by water bodies both in the present and the future;

“taking water” means to remove, divert or extract water from a water body, whether the water is on or under the surface of the ground, by whatever means,

including any structure or measure for impounding or storing water, or any pump, canal, channel, penstock, drain, pipe, culvert, bore, well or other structure;

“vegetation” means all species of plants and trees, whether terrestrial or aquatic, and any other vegetable product of the soil or water;

“water” means water flowing over the ground in significant quantities, water in a water body and water returned by artificial means to a water body, including drainage water, stormwater, wastewater, effluent and sewage generated by urban, industrial and agricultural activities;

“water activity” means any of the activities specified in subsection (1) of section 17;

“water body” means—

- (a) a river, estuary, lake, lagoon, swamp, marsh or other wetland;
- (b) an aquifer;
- (c) coastal waters; and
- (d) a declared channel;

“water body alteration activity” means an activity which involves or is likely to have the effect of—

- (a) excavating material from the bed, bank or shore of a water body, or from a river or shore reserve;
- (b) obstructing, diverting or detrimentally affecting the flow or movement of water in a water body;
- (c) changing the course of a water body;
- (d) reducing the capacity of a water body to contain water by filling or other means; or

(e) reclaiming land within a water body,

and includes the construction and use of any work or measure for such purposes:

For the purpose of paragraph (b) of this definition, an activity or work may (without affecting the generality of the paragraph) consist of the construction of jetties, groynes, breakwaters, embankments, walkways, boat ramps, boat moorings, fish and oyster racks, fish cages, aquaculture ponds, artificial reefs and navigation markers on, in or above a water body;

“well” means an excavation, bore, spear-point, collection system or other work that is connected to a source of groundwater, whether the water flows naturally at all times or is raised at any time by pumping or other artificial means.

(2) The Director may declare that any water body, vegetation, material, declared channel, or work for taking and using water including storing water, for returning water or for flood control, whether of a specified class or type, or in a particular location, or has or does not have a specified effect is excluded from the respective definitions.

PART II ADMINISTRATION

Decisions and actions.

3. (1) Any decision made, or action taken, under this Enactment shall be consistent with achieving the sustainable management of the water resources of Sabah.

(2) A person making a decision or taking an action under this Enactment shall consider, where relevant, the effects of the decision or action upon—

- (a) the quantity, flow and quality of water in water bodies;
- (b) the exercise of private rights to water;
- (c) authorised water activities;
- (d) the requirements of any plan made under Part VI of this Enactment;

- (e) State and regional economic development;
- (f) the stability, continuation and well-being of communities affected; and
- (g) the aquatic environment.

Establishment of Water Resources Council.

4. (1) There shall be established a Water Resources Council, whose functions shall be to—

- (a) advise the Minister on the management and use of water resources;
- (b) report to the Minister on the condition of water resources;
- (c) make recommendations on the improvement of the quantity and quality of water for the benefits of human use, the aquatic flora and fauna and the aquatic environment, including wetlands and floodplains;
- (d) determine those water activity licence applications which have State or regional significance or are of particular significance in a local area;
- (e) adopt and review plans for the orderly and effective development of water resources;
- (f) set priorities for, ensure the development of, recommend for approval and review catchment management plans developed under Part VI and other plans for the improvement of the management of water resources;
- (g) develop and issue, with the approval of the Minister, State policies and guidelines for the management and protection of water resources; and
- (h) require public authorities to—
 - (i) take action to implement the recommendations of an approved catchment management plan including taking enforcement action where relevant; and

- (ii) act to minimize or prevent harm to water resources.

Council membership.

5. (1) The Council shall consist of the following members—

- (a) a Chairman;
- (b) the Permanent Secretary of the Ministry of Culture, Environment and Tourism or his authorised representative;
- (c) the Secretary for Natural Resources or his authorised representative who shall be the secretary of the Council;
- (d) the Director of the Department of Lands and Surveys or his authorised representative;
- (e) the Director of the Forestry Department or his authorised representative;
- (f) the Director of the Department of Agriculture or his authorised representative;
- (g) the Director of Water Resources or his authorised representative;
- (h) the Director of the State Economic Planning Unit or his authorised representative;
- (i) the Director of the Department of Town and Regional Planning or his authorised representative;
- (j) the Director of the Department of Irrigation and Drainage or his authorised representative;
- (k) the Director of the Fisheries Department or his authorised representative;
- (l) the Director of the Water Department or his authorised representative;
- (m) the Director of the Department of Ports and Harbours or his authorised representative;

- (n) the Director of the Federal Department of Environment (Sabah Region) or his authorised representative;
- (o) the Director of the Department of Geological Surveys or his authorised representative; and
- (p) two other members with appropriate technical or academic expertise in matters related to water resources.

(2) The members of the Council under paragraphs (a) and (p) of subsection (1) shall be appointed by the Yang di-Pertua Negeri.

(3) Subject to such conditions as may be specified in his instrument of appointment, a member of the Council appointed by the Yang di-Pertua Negeri shall, unless he sooner resigns or his appointment is revoked, hold office for a term not exceeding three years and shall on ceasing to be a member, be eligible for reappointment.

Resignation and revocation.

6. (1) A member appointed by the Yang di-Pertua Negeri may resign his office at any time by letter addressed to the Yang di-Pertua Negeri.

(2) The Yang di-Pertua Negeri may revoke the appointment of a member appointed by him at any time without assigning any reason therefor.

Disqualification from membership.

7. The following persons are disqualified from being appointed or, if appointed, remaining as members of the Council—

- (a) a person who is of unsound mind or is otherwise incapable of performing his duties or managing his affairs;
- (b) a person who has been convicted of any offence involving fraud, dishonesty or moral turpitude; and
- (c) a bankrupt.

Vacation of office.

8. The office of a member of the Council appointed by the Yang di-Pertua Negeri shall become vacant—

- (a) if he dies;
- (b) in the case of the Chairman, if he absents himself from three consecutive meetings of the Council without leave of the Minister;
- (c) in the case of a member, if he absents himself from three consecutive meetings of the Council without leave of the Chairman;
- (d) if he becomes disqualified for membership under section 7;
- (e) if his resignation is accepted by the Yang di-Pertua Negeri; or
- (f) if his appointment is revoked by the Yang di-Pertua Negeri.

Casual vacancies and temporary membership.

9. (1) If the office of a member appointed by the Yang di-Pertua Negeri becomes vacant, the Yang di-Pertua Negeri may appoint another suitably qualified person to fill such vacancy for so long only as the member in whose place he is appointed would have held office.

(2) Where a member appointed by the Yang di-Pertua Negeri is prevented by illness, absence from the State or other like cause from performing his duties as a member, the Yang di-Pertua Negeri may appoint any suitably qualified person to act as deputy for such member during such period as he is so prevented from performing his duties.

Remuneration or allowance.

10. There may be paid to the members of the Council such remuneration or allowances as the Minister may determine.

Council procedure.

11. (1) The Council shall meet as often as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times as the Chairman may determine, provided that the Chairman shall not allow more than four months to elapse between such meetings.

(2) Nine members of the Council shall form a quorum at any meeting of the Council.

(3) The Council shall determine any matter by a majority of the votes of members present at a meeting, except that if there is an equality of votes, the Chairman or, if the Chairman is absent, the presiding member shall have a casting vote in addition to a deliberative vote.

(4) Subject to this Enactment, the Council shall determine its own procedure.

(5) The Council shall cause minutes of all meetings of the Council to be maintained and kept in a proper form and copies thereof submitted to the Minister.

(6) The Chairman of the Council shall preside at all meetings of the Council, except that, if the Chairman is unable to preside, owing to absence or inability to act, the members present shall elect one of their number to preside at that meeting and no business may be transacted at any meeting until a member has been elected to preside over that meeting.

(7) The Council may establish committees to assist it in the carrying out of its functions and the procedure of such committees shall be determined by the Council.

Director of Water Resources and other officers.

12. (1) For the purpose of this Enactment, there shall be a Director of Water Resources who shall be appointed by the Minister from amongst members of the State public service.

(2) The functions of the Director shall be to—

(a) manage the State's water resources;

(b) take action to protect the quantity and quality of water resources and the aquatic environment;

- (c) identify opportunities for water use and promote and facilitate the beneficial use of water;
- (d) decide on licence applications for water activities other than those determined by the Council under paragraph (d) of subsection (1) of section 4;
- (e) plan for the orderly development and use of water resources and take measures to resolve conflict between water uses;
- (f) protect river and shore reserves;
- (g) develop, implement and monitor catchment management plans and other plans for water management, including floodplain management plans, surface water management plans and groundwater management plans;
- (h) collect and maintain data on water resources and report to the Council and the Minister on the condition of water resources;
- (i) manage water protection areas to maintain the quality and quantity of water and the aquatic environment;
- (j) promote the value of water resources through education and information programs;
- (k) develop guidelines, objectives and policies to assist public authorities to manage water resources within their control; and
- (l) co-ordinate administrative action for water resources management.

(3) There shall be such number of other officers as may be necessary and expedient for the due administration of this Enactment who shall be appointed by the Minister from amongst members of the State public service.

(4) The Minister may give the Director directions of a general character not inconsistent with this Enactment as to the exercise of the powers, duties and functions of the Director under this Enactment and the Director shall give effect to any directions so given.

Delegation by Director.

13. (1) The Director may, by notification in the *Gazette*, delegate any of the powers vested in him under this Enactment, except for this power of delegation, to—

- (a) an officer of a public authority; or
- (b) in respect of powers relating to a water protection area declared for the protection of the water supply for a village or local community, to a committee established by the Director,

but no such delegation shall prevent the exercise by the Director of any power so delegated.

(2) A delegation made under subsection (1) may refer to the exercise of a function or a class of functions, either throughout the State or in a specified geographical area, and shall specify the conditions under which the delegation may be exercised.

(3) A delegation made by the Director may include a requirement to report to the Council or the Director on the performance of the function.

Co-operation with Council and Director.

14. (1) Every Government department, statutory body and local authority shall, in regard to matters relevant to water resources—

- (a) have regard to the provisions of section 3 of this Enactment;
- (b) generally co-operate with and assist the Council and Director in carrying out their functions;
- (c) provide any information on water resources to the Council or Director as is required for them to undertake their functions;
- (d) investigate and report on matters which are identified by the Council as relevant to the sustainable management of water resources;
- (e) contribute as necessary to the development of catchment management

plans; and

(f) follow policies and guidelines issued by the Council.

(2) Without limiting the generality of subsection (1) of this section, all public authorities shall co-operate with and assist the Director in formulating and implementing plans made under this Enactment and in this regard—

- (a) develop or modify any proposals for future development, policies, plans and strategies to ensure their consistency with plans made under this Enactment;
- (b) take into account such plans when undertaking their functions; and
- (c) take such other action within their administration as may be necessary to implement the plans.

PART III THE RIGHT TO WATER

Control of the use and flow of water.

15. (1) The Government has the right to the use and flow and to the control of the water—

- (a) in water bodies;
- (b) occurring naturally on the surface of the ground; and
- (c) conserved by any works,

except to the extent that is otherwise provided by this Enactment or to the extent that the right is divested by the exercise of a function of the Council or the Director.

(2) The right conferred by subsection (1) prevails over any right conferred by or under another Enactment.

(3) In the exercise of the right conferred by subsection (1) or of any other function,

the Council or the Director may take such measures as the Council or the Director thinks fit for—

- (a) the orderly development and beneficial use of water;
- (b) ensuring equitable access to water;
- (c) improving the quality of water and protecting the quality of water from degradation;
- (d) preventing interference with the flow or availability of water or the making of changes to the course of a water body, without authorisation;
- (e) preventing the unauthorised installation and use of measures or works which require authorisation under this Enactment;
- (f) the mitigation and control of floodwaters; or
- (g) protection of the aquatic environment.

Private rights to water.

16. (1) The owner or occupier of land or premises may, free of charge and without requiring a licence under this Enactment, exercise a private right to take, use and control, sufficient for household and subsistence agricultural purposes—

- (a) groundwater under the land or premises; or
- (b) where the land or premises has frontage to a water body, water directly from that water body.

(2) The right conferred in subsection (1) may be exercised provided that any work for taking and using the water does not—

- (a) cause a significant obstruction to or diversion of the flow of water in a water body;
- (b) store more than one megalitre of water or, if the Director declares a different capacity, the different capacity; or

- (c) take water from the water body at a rate of flow exceeding 20 litres per second or, if the Director declares a different rate, the different rate.

(3) The Director may require the right conferred by this section to be registered if the Director considers that—

- (a) the exercise of such a right poses a threat to the availability or quality of water or the aquatic environment, whether such a threat is posed at all times or under particular conditions only; or
- (b) an approved catchment management plan or water management plan identifies the need for information on or control of rights conferred by this section.

(4) The Director may, from time to time, direct a person exercising a right conferred by this section to install or operate, in association with a work for the purpose of exercising that right—

- (a) facilities for passing the flow of water; or
- (b) a device to regulate or monitor the flow of water.

PART IV AUTHORISATION OF WATER ACTIVITIES

Authorisation of water activities.

17. (1) No person shall, unless authorised by a licence for a water activity or otherwise authorised in accordance with this Enactment, engage in a water activity, meaning to—

- (a) take or use water from a water body;
- (b) return water to a water body directly or indirectly by artificial means;
- (c) control, divert or mitigate flood waters outside a floodplain management area referred to in Part VI of this Enactment; or

- (d) carry out a water body alteration activity,

including the installation, introduction and use of any measure or work for the purpose of undertaking or facilitating the activity.

(2) Any person who contravenes or fails to comply with subsection (1) or fails to comply with a condition specified in a licence for a water activity, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both, and in the case of a continuing offence, to a further fine of five hundred ringgit for every day during which the offence continues.

(3) A licence for a water body alteration activity may be expressed to expire on the completion of the alteration activity to the satisfaction of the Director, and no further licence is required unless a further proposed activity constitutes a further water body alteration activity.

(4) The Minister may, after consultation with the Council, by order published in the *Gazette* exempt any public authority from the requirement to obtain a licence for all water activities or the water activities specified in the order.

Application for water activity licence.

18. (1) Any person may apply for a licence for a water activity referred to in section 17.

(2) An application may cover more than one water activity, unless the Director requires separate applications to be made, and shall—

- (a) indicate the nature of the water activity and all the works and measures necessary to undertake the activity; and
- (b) be accompanied by any information or data which the Director may stipulate for the purpose of assessing the merits and effects of the application.

(3) The Director may, at any time after an application is lodged, require the applicant to provide further information of the type referred to in subsection (2).

(4) The Director shall refuse to accept an application or reject an application, if an applicant fails to comply with subsections (2) and (3), and shall notify the applicant in writing

of the refusal or rejection.

Objections to applications.

19. (1) The Director shall, unless the activity is not required to be advertised in accordance with a declaration by the Director, publish a notice, in a local newspaper circulating in the area and in the office of the Assistant Collector of Land Revenue of the District, containing particulars of the application and the deadline for lodging objections.

(2) Any person may make an objection regarding an application for a licence which has been published by the Director.

(3) The objection shall—

- (a) be in writing;
- (b) state the grounds on which the objection is made; and
- (c) be lodged with the Director within the time required by the advertisement.

(4) The Director shall inform the applicant for a licence of the grounds of any objection and shall allow the applicant a reasonable time within which to make a written response to the Director in relation to the objections.

Approval of water activities and imposition of conditions.

20. (1) The Director shall, upon the expiration of the time referred to in subsection (3) of section 19, as the case may require, and taking into account matters referred to in section 3—

- (a) refuse or approve the application; or
- (b) report to the Council in accordance with subsection (6).

(2) The Director shall not, except with the approval of the Council, issue a licence for a water activity which, in the opinion of the Council, has or is likely to have—

- (a) State or regional significance for water resources;

- (b) particular significance for water resources in a local area; or
- (c) significant interest to a public authority.

(3) For the purpose of ascertaining whether the Council wishes to consider an application for a licence after the Director has carried out the action set out in section 19, the Director shall refer sufficient particulars of all licence applications to the Council for its decision as to whether the water activity is of a type referred to in subsection (2).

(4) When such particulars are referred to the Council, it may delegate the power to decide whether an application should be determined by the Council, to a committee composed of members of the Council or to a specified member of the Council.

(5) The Council may issue directions regarding the types of water activity application which the Director is not required to refer for its decision.

(6) Where the Council notifies the Director that it wishes to determine an application, the Director shall, when he has carried out the action set out in section 19—

- (a) report to the Council on the application and any objections received under section 19;
- (b) recommend to the Council whether, in the Director's opinion, the application should be refused or granted and the conditions which should be applied if the application is to be granted; and
- (c) provide any further information or conduct any further investigations requested by the Council.

(7) When the Council makes a decision regarding an application for a licence referred to it, the Council shall notify the Director, who shall give effect to the decision by issuing the licence with the inclusion of any conditions set by the Council, or by notifying the applicant of the refusal of the application.

(8) The Director or the Council shall take into account the following when determining any condition to be applied to a licence—

- (a) where the activity pre-exists this Enactment, the historical practice and benefits obtained from the water activity and associated works;
- (b) the impact of any major change imposed by the conditions of the licence on the viability of the pre-existing enterprise; and
- (c) any objection made in respect of the application.

Determination of licence.

21. (1) A licence shall specify the activity authorised and the works or measures, if any, permitted for the purpose of enabling or facilitating the activity.

(2) The Director shall not issue a licence unless satisfied that the applicant can lawfully undertake the activity on the land on which the activity is proposed to take place.

(3) The Director shall notify the applicant in writing of his decision or the Council's decision, including, where the application is approved, the conditions.

Duration of licence.

22. (1) A licence may be issued for a term not exceeding 20 years.

(2) When determining the term of a licence, the Council or the Director shall consider—

- (a) the nature, scale and duration: and
- (b) the likely impacts on any water resources or water body,

of the proposed activity.

(3) Where a licence has been issued for a term and the holder of the licence wishes to continue the activity for a longer period of time, an application for a further licence shall be made no later than six months before the expiry of the existing licence or at a date specified by the Director, whichever is the later date.

(4) A person who fails to comply with subsection (3) shall, if called upon by the

Director or an authorised person to do so, pay a penalty of a maximum of three times the normal prescribed licence fee, as the Director or authorised person may determine.

Form of licence.

23. (1) A licence is to be in the form prescribed by the Minister.

(2) The licence shall include a statement to the effect that, subject to this Enactment, the holder of a licence is authorised to undertake the water activity on the land described in the licence and construct any works and implement any measures in accordance with the conditions of the licence.

(3) Unless the Director specifies on the licence to the contrary, a licence is taken to be held by, and for the benefit of, each successive occupier for the time being of the land specified in the licence as the land on which the authorised water activity is authorised to be carried out.

(4) Each successive occupier shall notify the Director of the change of occupation in the form approved by the Director within thirty days of the change of occupation.

(5) Any person who contravenes or fails to comply with subsection (4) shall be guilty of an offence.

(6) The Director shall keep a register of water licences issued under this Part.

Appeal to Council.

24. (1) An appeal shall lie to the Council from any decision of the Director under section 20.

(2) No appeal shall be accepted—

(a) until all prescribed fees have been paid; or

(b) later than thirty days after the date of the Director's notification to the applicant of the decision under section 20 which is appealed against.

(3) An appeal shall be lodged on the prescribed form and shall contain particulars of

the part of the decision appealed against and the reasons for the appeal.

(4) The Council may appoint a committee from among its members to hear and determine an appeal.

(5) The procedures for the hearing of appeals shall be prescribed by the Minister.

PART V PROCEDURAL

Imposition of conditions after grant of licence.

25. (1) Where there has been a change of circumstances or other sufficient cause, the Director may serve on the holder of a licence a written notice to the effect that the Director proposes to alter the licence or a condition of the licence, or impose a specified condition on the licence, for the reasons set out in the notice.

(2) The holder of a licence may, within the period of time specified in the notice, make objections to the Director in writing or in person, or to the nominee of the Director specified in the notice.

(3) After considering any objections made, the Director may by a further written notice served on the holder of a licence—

- (a) proceed with the action referred to in subsection (1), as originally proposed or varied in accordance with the objections; or
- (b) not proceed with the action.

Alteration of licence at holder's request.

26. (1) The holder of a licence may request the Director to alter the licence, amend its conditions or impose a specified condition.

(2) The Director may, subject to the requirements of this Enactment, at his discretion agree to the request and serve a notice on the holder of the licence setting out the alteration, amendment or condition imposed.

Suspension and cancellation of licence.

27. (1) Where any condition of a licence has been contravened or not complied with, the Director may serve on the holder of the licence a written notice that the licence is suspended or cancelled.

(2) The Director may serve on the holder of a licence a written notice to the effect that the Director proposes to suspend or cancel the licence for the reasons set out in the notice, where—

- (a) any work or measure authorised by a licence has been used or undertaken in a manner that, in the opinion of the Director, has been harmful to water resources or a water body or has caused water to be wasted;
- (b) any fee or charge payable in relation to the licence, or any instalment of any such fee or charge, has not been paid;
- (c) the holder of a licence has been convicted of an offence against this Enactment; or
- (d) in the opinion of the Director there is other sufficient cause.

(3) The holder of the licence may, within the period of time specified in the notice make objections to the Director in writing or in person, or to the nominee of the Director specified in the notice.

(4) After considering any objections made, the Director may by a further written notice served on the holder of a licence—

- (a) proceed with the action referred to in subsection (1), as originally proposed or varied in accordance with the objections; or
- (b) not proceed with the action.

Directions on exercise of private water right.

28. (1) The Director may, by direction in writing, require a person entitled to exercise a private right to take and use water to—

- (a) fit a work with a device for measuring the water taken;
- (b) limit the capacity of a work to impound, extract or divert water;
- (c) operate a work in accordance with times and procedures specified by the Director; or
- (d) take such other action as the Director may consider necessary to prevent water being used improperly, or to prevent pollution or harm to the aquatic environment.

(2) Any person who contravenes or fails to comply with a direction given under subsection (1) shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding thirty thousand ringgit or to imprisonment not exceeding three years or to both and, in the case of a continuing offence, to a further fine of three hundred ringgit for every day during which the offence continues.

Protected waters order.

29. (1) A protected waters order is an order made by the Director for the purpose of preserving or maintaining the flow, volume or quality of water in a water body.

(2) The Director may make a protected waters order if satisfied that, in respect of the water in a water body in a particular locality—

- (a) all lawful requirements for taking and using water and the requirements of the aquatic environment cannot for the time being be met by the quantity of water actually in or likely to be available in or from the water body; or
- (b) there is, in respect of water resources—
 - (i) a significant and immediate threat to the quality of water;

- (ii) a serious threat to health, caused by or contributed to by activities which are subject to the Enactment;
- (iii) a significant threat to the aquatic environment; or
- (iv) other sufficient reason to impose measures for the immediate protection of the water.

(3) An order issued under subsection (1) shall identify—

- (a) the persons to which it applies, whether holders of licences, persons entitled to exercise a private water right or other persons;
- (b) the water bodies to which it applies;
- (c) the purpose of the order;
- (d) the actions or measures to be taken; and
- (e) the activities which must be suspended or be modified.

(4) Following consultation with other Government authorities directly affected by the order and with the public, the order shall be published in the *Gazette* and otherwise made known to the public in such manner as the Director considers appropriate, unless the Director is satisfied that publication may be dispensed with on the grounds of urgency.

(5) The Director shall immediately notify the Council of the terms of any order made under subsection (1).

(6) An order made under paragraph (a) of subsection (2) of this section may continue as long as the requirements for water cannot be met from the available water.

(7) An order made under paragraph (b) of subsection (2) of this section may continue while the situation referred to in that paragraph continues, or for thirty days, whichever is the sooner, and then expires.

(8) An order made under this section may be renewed with the approval of the Council, with or without modifications.

(9) Any person who contravenes or fails to comply with an order given under subsection (1) shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both and, in the case of a continuing offence, to a further fine of five hundred ringgit for every day during which the offence continues.

Direction to carry out works.

30. (1) This section applies to a person—

- (a) engaging in a water activity, including the construction, installation and use of any work or measure to facilitate or undertake the activity—
 - (i) who has not obtained a licence as required by this Enactment;
 - (ii) whose licence has been suspended; or
 - (iii) who has breached a condition of a licence;
- (b) who is entitled to exercise a private water right in respect of which there has been a breach of a direction made by the Director under this section;
- (c) who has acted contrary to the requirements of a protected waters order referred to in section 29; or
- (d) who has otherwise failed to comply with a requirement of this Part.

(2) The Director may, by order in writing served on any person referred to in subsection (1), direct the person, in relation to a work or measure constructed or used for undertaking a water activity to—

- (a) remove the whole or any specified part of the work;
- (b) render the work ineffective;
- (c) permit the flow of water through or past the work;
- (d) prevent the use of the work;

- (e) cease carrying out an activity or implementing a measure;
- (f) carry out remedial or regeneration work; or
- (g) carry out any combination of actions referred to in paragraphs (a) to (f).

(3) Any person who contravenes or fails to comply with an order under this section within the time specified in the order shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both and, in the case of a continuing offence, to a further fine of five hundred ringgit for every day during which the offence continues.

Carrying out of works by the Director.

31. (1) Where a direction made under this Part has not been complied with, the Director or a person authorised by the Director may, for the purposes of effecting the order—

- (a) enter the site of a work, and to the extent necessary to gain access to the work, enter adjoining land;
- (b) carry out the actions or works specified in the order; and
- (c) take any other action in relation to a facility or measure that the Director or authorised person considers to be necessary or expedient.

(2) Costs and expenses incurred by the Director as a result of action taken under this section are recoverable as a debt owed to the Director by the person on whom the order was served and shall be a charge on that person's land.

Impounding orders.

32. (1) This section applies to land forming the bed and banks of a water body and to river and shore reserves.

(2) If the Director is satisfied that a person has removed material from land to which this section applies or has, in contravention of this Enactment, deposited material on such land, the Director may issue an impounding order by written notice to the person concerned in respect of either or both of the following—

- (a) the whole or a specified part of the material removed or deposited; and
 - (b) any specified plant or equipment used in the removal or depositing.
- (3) The order takes effect immediately or from a later time specified in the order and is subject to such conditions as the Director may specify in the order.
- (4) Any person issued with an order shall not cause, permit, suffer or allow any material, plant or equipment that is the subject of the order to be used, moved, sold, disposed of or otherwise dealt with, except as permitted by the order.
- (5) Any person who contravenes or fails to comply with an order given under subsection (2) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand ringgit or to imprisonment not exceeding three years or to both and, in the case of a continuing offence, to a further fine of three hundred ringgit for every day during which the offence continues.
- (6) The Director may vary or revoke an impounding order or the conditions of an impounding order by written notice given to the person concerned.
- (7) An impounding order remains in force until either—
 - (a) the order is revoked by the Director; or
 - (b) a period of 12 months elapses after the order is first issued without proceedings having been commenced within that period for an offence under section 12 in respect of the removal or deposition of the material concerned.
- (8) If a person issued with an impounding order is convicted of an offence under this section, the court before which the person is convicted may, on the application of the Director, make an order that either or both of the following be forfeited to the State—
 - (a) any material with which the proceedings are concerned, and which is the subject of the impounding order; and
 - (b) any plant or equipment used in the removal or deposition of that material,

and which is the subject of the impounding order.

(9) Any material, plant or equipment ordered to be forfeited to the State under this section may be disposed of by the Director and any proceeds of disposal shall be applied towards the costs incurred by the Director in carrying out remedial work in respect of the land from which the material concerned was removed.

Measuring devices.

33. (1) This section applies where the Director has directed a person to install a measuring or recording device in connection with a work authorised under this Enactment for taking and using water.

(2) A person shall be guilty of an offence if that person wilfully or negligently—

- (a) damages a device to which this section applies;
- (b) prevents such a device from recording properly; or
- (c) without the written approval of the Director, otherwise interferes with such a device.

PART VI

CATCHMENT PLANNING AND PROTECTION

Catchment management plans.

34. (1) The Council shall ensure the development of catchment management plans for the whole of the State.

(2) The Director, in co-ordination with the relevant public authorities, shall prepare catchment management plans for the State according to the priorities, geographical areas and timetable determined by the Council.

(3) A catchment management plan shall be accompanied by—

- (a) a description of—

- (i) the water resources of the catchment; and
 - (ii) the condition of the catchment and its contribution to the quantity and quality of water resources and the aquatic environment;
 - (b) an analysis of the sources and causes of the degradation of water resources, whether resulting from natural causes or human activity;
 - (c) a summary of existing and proposed legislative and administrative controls and measures for protecting, using and developing land in the catchment; and
 - (d) the strategies, actions and measures which are recommended for—
 - (i) the orderly and planned development and use of the water resources;
 - (ii) maintaining or improving the quantity and quality of water; and
 - (iii) maintaining or improving the condition of the catchment and the aquatic environment.
- (4) The recommendations in a catchment management plan may include but are not restricted to—
- (a) the declaration of—
 - (i) water protection areas referred to in section 36;
 - (ii) water conservation areas referred to in section 38;
 - (iii) floodplain management areas referred to in section 39; and
 - (iv) variation or introduction of river reserves or shore reserves referred to in section 40;
 - (b) the development of plans for the management of surface water and groundwater;

- (c) options for the future development of water resources;
- (d) programs of measures for catchment improvement; and
- (e) educational programs promoting the value of water and ways to improve the catchment.

(5) A declaration referred to in paragraph (a) of subsection (4) may be made where no catchment management plan exists, provided that the Council has agreed that the declaration should be made.

Procedure for development of catchment management plans.

35. (1) A draft catchment management plan shall be submitted by the Director to the Council for the Council's approval and, without limiting the generality of the Council's discretion, the Council may, before approving the plan—

- (a) require the Director to consult with any public authority, industry group or other party potentially affected by the proposed plan;
- (b) identify matters for further consideration by the Director; and
- (c) require the draft plan to be modified.

(2) The Yang di-Pertua Negeri may, on the recommendation of the Council, by order published in the *Gazette*, approve a catchment management plan.

(3) A public authority shall take action to implement those recommendations of a catchment management plan approved under subsection (2) which require action by that authority.

(4) The Council may establish catchment management committees to provide advice on and to assist in the development and implementation of catchment management plans, and the Council or the Director may require a catchment management committee to report on the condition of its catchment area and on progress in implementing the relevant catchment management plan.

(5) The Director shall report to the Council within two years of the date of approval

of a catchment management plan, and five-yearly thereafter, on the implementation and effectiveness of a catchment management plan.

(6) Where the Council identifies a lack of progress in the implementation of a catchment management plan, it may require a public authority to take the action necessary to implement the plan.

Water protection areas.

36. (1) This section applies where, on the advice of the Council, the Yang di-Pertua Negeri is satisfied that an area of State land, which may include State land which is a forest reserve established under the Forest Enactment 1968 [*En. No. 2 of 1968.*] requires specific protection to ensure a source of water, or water resources in a particular water body or locality, is adequately protected from reduction in flow, or from pollution or degradation.

(2) Where this section applies, the Yang di-Pertua Negeri may, by order published in the *Gazette*, declare an intention to establish an area of State land to be a water protection area and the notification shall specify the location of such land and the date for the intended declaration of the area as a water protection area.

(3) Within an area which has been the subject of notification under this section, unless the notification otherwise provides—

- (a) no land shall thereafter be alienated under the provisions of the Land Ordinance [*Cap. 68.*]; and
- (b) no person shall thereafter be authorised to erect a new structure, establish a new plantation or clear land.

(4) Following a declaration under subsection (2), the District Officer or the Assistant Collector of Land Revenue of the District in which the land concerned is located shall—

- (a) advertise the intention to establish the water protection area;
- (b) inquire into representations and claims made in response to the notification and the appropriateness of maintaining any right or privilege in or over the land;

- (c) consider and report on the merits of such representations and claims; and
- (d) take such other action as is required under the Land Ordinance [Cap. 68.] for the reservation of any land for a public purpose.

(5) The Yang di-Pertua Negeri shall, after considering the report of the District Officer or the Assistant Collector of Land Revenue made under subsection (4) of this section and after such other enquiry considered necessary, make an order—

- (a) conceding, modifying or disallowing the exercise of any right or privilege, wholly or in part and specifying the quantity and nature of such right or privilege;
- (b) declaring the land referred to in the order to be a water protection area; and
- (c) setting out the proposed method of management of the area.

(6) Every right or privilege continued in an order made under subsection (5) shall be exercised subject to the control of the Director.

(7) If the Yang di-Pertua Negeri considers it expedient to include in any water protection area land leased, granted to or lawfully occupied by any person, he may cause such land to be acquired as for a public purpose under the provisions of the Land Acquisition Ordinance [Cap. 69.] and may thereafter include such land within the limits of the water protection area.

(8) Land within a water protection area is subject to the control of the Director, except that any land within a forest reserve which is included in a water protection area, shall be subject to the control of the Director of the Forestry Department.

(9) A water protection area shall be managed in accordance with the method of management set out in the order establishing the area and the provisions of this Enactment.

Control of activity in water protection areas.

37. (1) Any person who—

- (a) enters a water protection area without the authorisation of the Director or person delegated the control of the area;
- (b) enters land in a forest reserve which is also a water protection area without the authorisation of the Director and the Director of the Forestry Department; or
- (c) fails to comply with the terms of such an authorisation,

shall be guilty of an offence.

(2) Where a person, authorised to take and use water, receives a benefit from the protection afforded by a water protection area in maintaining the quantity or quality of water, the Director may, in accordance with rules made by the Minister, impose a charge on that person for the cost of activities undertaken by the Director in controlling and managing the water protection area.

Water conservation areas.

38. (1) This section applies where, on the recommendation of the Council, the Yang di-Pertua Negeri is satisfied that it is necessary to control, limit or modify activities within an area of land, to prevent the pollution or degradation of surface water or groundwater, or the loss of its availability, or to protect a water body or an aquifer for which a catchment management plan or other investigation has identified that protection is required.

(2) Where this section applies, the Yang di-Pertua Negeri may, by order published in the *Gazette*, declare the area of land to be a water conservation area.

- (3) The declaration of a water conservation area shall be accompanied by—
- (a) a statement of the purpose of the declaration of the area;
 - (b) the modifications, conditions or specifications that apply to activities, measures or development;
 - (c) the classes or types of activity, measures or development which—

- (i) may not be undertaken within the area; or
- (ii) may be undertaken but only in specified locations or at specified distances from waterbodies; and
- (d) any measures or works to be undertaken and the types or classes of activity or development to which such measures or works apply.

(4) The Director may, in writing and consistent with an order made under subsection (3), notify the owner or occupier of land within a water conservation area that specified types of activities or development are—

- (a) to be undertaken in a specified manner or in specified locations or at specified distances from water bodies; or
- (b) prohibited.

(5) Without limiting the generality of subsection (4), the Director may direct the owner or occupier of land within a water conservation area to—

- (a) take measures or construct works to slow, reduce or prevent water from running off land into a water body;
- (b) plant specified types of vegetation;
- (c) relocate structures;
- (d) undertake an activity, including an agricultural activity, in a specified way;
or
- (e) take other measures to prevent degradation of water resources.

(6) The Director shall take into account the likely economic and social impacts on the owner or occupier of land to whom a direction is given under this section.

(7) Any person who contravenes or fails to comply with a notification of the Director under subsection (4) or a direction of the Director under subsection (5) shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both and, in the case of a continuing offence, to a further fine of five hundred

ringgit for every day during which the offence continues.

Floodplain management areas.

39. (1) This section applies where, on the advice of the Council, the Yang di-Pertua Negeri is satisfied that it is necessary to control, limit or modify activities in an area of land where the identified flood characteristics warrant the planned development and location of structures, buildings and flood protection works to minimise damage and water degradation caused by flooding.

(2) Where this section applies, the Yang di-Pertua Negeri may, by order published in the *Gazette*, declare an area of land to be a floodplain management area.

(3) The declaration of a floodplain management area shall be accompanied by a plan which includes—

- (a) a description of the flood characteristics of the area and a summary of technical investigations of flood behaviour;
- (b) an evaluation of the economic, social and environmental consequences of flooding; and
- (c) measures for minimising the impact of flooding, which may include—
 - (i) the relocation or physical alteration of existing structures and buildings;
 - (ii) guidelines for the future placement of structures to minimise the impeding of flood waters;
 - (iii) construction of works to divert or mitigate the impact of flooding; or
 - (iv) development of or amendment of a scheme or plan made under the Town and Country Planning Ordinance [*Cap. 141*].

(4) In a floodplain management area the Director may, for the purpose of implementing any plan made under subsection (3), direct the owner or occupier of land in writing that—

- (a) the alteration or removal of any building or structure is required; and
- (b) specified types of activities or developments are—
 - (i) to be undertaken in a specified manner or in specified locations or at specified distances from water bodies; or
 - (ii) prohibited.

(5) The Director shall take into account the likely economic and social impacts on the owner or occupier of land to whom a direction is given under subsection (4).

(6) Any person who contravenes or fails to comply with a direction of the Director made under subsection (4) shall be liable on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both and, in the case of a continuing offence, to a further fine of five hundred ringgit for every day during which the offence continues.

River and shore reserves.

40. (1) From the date of the commencement of this Enactment, river reserves and shore reserves are established on land which is—

- (a) in the case of river reserves, within twenty metres of the top of the bank of every river, including its estuary, where the river channel is not less than three metres in width; and
- (b) in the case of shore reserves, within twenty metres of the bed of all coastal waters.

(2) Subsection (1) does not apply to an artificial watercourse, whether or not the watercourse is the subject of a declaration by the Director under section 66 of this Enactment.

(3) River and shore reserves are established for the purpose of protecting the volume or flow of water in water bodies and preventing the degradation of the quality of water resources and damage to the aquatic environment in water bodies.

(4) On the recommendation of the Council, the Yang di-Pertua Negeri may, by order published in the *Gazette*, declare that—

- (a) a river reserve of a specified width is established adjacent to a river whose channel is less than three meters wide;
- (b) a river or shore reserve of a specified width is established adjacent to a water body which is not included in subsection (1); or
- (c) the width of an existing river reserve or shore reserve is increased or decreased.

(5) Action may not be taken to alienate State land within a river reserve or shore reserve without the prior written consent of the Council.

Power of Director in river and shore reserves.

41. (1) Within a river reserve or shore reserve or on, in or above a water body it is an offence to undertake, without the approval in writing of the Director, any activity which involves—

- (a) the removal of natural vegetation or the removal or deposition of material;
- (b) the erection of a structure or building; or
- (c) the carrying out of a commercial or agricultural activity,

unless the activity is of a type which the Director has declared in writing does not require approval.

(2) If, in the Director's opinion, an activity or a structure or building, within a river reserve or shore reserve, or a water body adjacent to that land, is causing a reduction in the volume or flow of water or the degradation of the quality of water or the aquatic environment, the Director may direct the person undertaking the activity or the owner or occupier of the structure or building, in writing—

- (a) to modify or cease the activity; or

- (b) to modify, relocate or remove the structure or building.

Director to carry out work.

42. (1) Where a direction in writing by the Director under this Part has not been complied with, the Director or a person authorised by the Director may, for the purposes of effecting the order—

- (a) enter the site of an activity, structure or building and, to the extent necessary to gain access to such site, enter adjoining land;
- (b) carry out the actions or work specified in the order; and
- (c) take any other action in relation to the activity, structure or building that the Director or authorised person considers to be necessary or expedient for the purposes of this Enactment.

(2) Costs and expenses incurred by the Director as a result of action taken under this section are recoverable as a debt owed to the Director by the person on whom the order was served and shall be a charge on that person's land.

Identification of declared areas.

43. The Director shall arrange for a map to be available for public inspection, free of charge, during ordinary office hours, at the office of the Director, showing the land described in any declaration of land or order in force establishing—

- (a) a water protection area;
- (b) a water conservation area;
- (c) a floodplain management area; or
- (d) the establishment of or variation to a river or shore reserve made under section 40.

Approval of plans.

44. The Minister shall not submit a proposed order referred to in this Part to the Yang di-Pertua Negeri for approval unless the order and the documents accompanying or referred to in the proposed order have been agreed to by the Council.

Consultation with Director of Town and Regional Planning.

45. Where any land which will be affected by a proposed order referred to in this Part is also subject to an approved scheme under the Town and Country Planning Ordinance [Cap. 141.] or to a draft scheme or draft plan under that Ordinance, the Director shall, prior to submitting the proposed order to the Council, consult with and take into account the views of the Director of the Department of Town and Regional Planning regarding the effect of the order on any draft or approved scheme or plan and the need for amendment to such schemes or plans.

Offences.

46. Any person who contravenes or fails to comply with a direction of the Director under subsection (5) of section 38, subsection (4) of section 39 and subsection (2) of section 41 or is otherwise guilty of an offence under this Part shall be liable on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both and, in the case of a continuing offence, to a further fine of five hundred ringgit for every day during which the offence continues.

PART VII

ACTIVITIES IN AND ON WATER BODIES

Navigation.

47. (1) This section applies to navigation on inland waters, being waters not covered by Federal law.

(2) The Director may by order determine, having regard to the effect on the quality of water and the stability of the beds, banks and shores of water bodies and the aquatic environment—

- (a) the types or classes of vessel;
- (b) the maximum speed; and
- (c) the maximum draught of a vessel,

that are appropriate for navigation on a specified river or stretch of river or other water body.

(3) The Minister may, on the advice of the Council, make rules governing the matters referred to in subsection (2).

(4) A person shall not, except with the approval in writing of the Director, dispose of waste from a vessel or cause any substance to spill or escape from a vessel in a manner which pollutes or is likely to pollute water in a water body or cause damage to the aquatic environment.

(5) The Director may require a vessel to be fitted with facilities for the storage and safe discharge or disposal of waste, and facilities for the same purposes to be installed on land.

(6) A person who fails to comply with a provision of this section shall be guilty of an offence.

Recreation.

48. (1) The Director may require an activity on or in a water body, including a recreational or leisure activity specified in the rules, to be registered, if satisfied that such an activity is causing or may cause—

- (a) damage to the bed, bank or shore of the water body;
- (b) pollution or degradation of the water in the water body;
- (c) harm or threat to the aquatic environment;
- (d) harm or threat to licensed water activities;
- (e) obstruction to navigation; or

(f) danger or nuisance.

(2) The Director may issue, to a person undertaking or organising an activity registered under subsection (1), directions regarding the manner, location and timing according to which the activity may be undertaken, for the purpose of protecting—

- (a) the bed, banks or shores of a water body;
- (b) the quantity and quality of water in a water body;
- (c) the aquatic environment;
- (d) authorised water activities; or
- (e) safety,

and any such person shall comply with such directions.

(3) Any person who contravenes or fails to comply with subsection (2), shall be guilty of an offence and shall be liable, on conviction to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both, and in the case of a continuing offence, to a further fine of five hundred ringgit for every day during which the offence continues.

PART VIII GENERAL

Enactment binds the Government.

49. This Enactment shall bind the State Government.

Service of documents.

50. (1) A document may be served on an owner or occupier of land—

- (a) personally;
- (b) by leaving it at, or by sending it by post to, his residential address, postal

box or premises, or in the case of a corporation its registered address; or

- (c) if it is impracticable for the document to be served in the manner referred to in paragraph (a) or (b), by affixing the document in a conspicuous position to the land or premises.

(2) In the case of land that is owned or occupied by more than one person, or of a licence that is held by more than one person, service of a document on the owners or occupiers of the land or on the holders of the licence is taken to be effected if the document is served on any one of them or on any person duly appointed by them for the purpose of accepting service of documents.

Compensation.

51. (1) Where the Director acquires land for the purposes of this Enactment, the amount of compensation payable shall be determined in accordance with the provisions of the Land Acquisition Ordinance [Cap. 69].

(2) Where a person is required to—

- (a) relocate any lawfully installed structure in accordance with paragraph (c) of subsection (5) of section 38; or
- (b) relocate or remove a lawfully installed structure or building in accordance with paragraph (b) of subsection (2) of section 41,

compensation shall be payable, and unless the amount of compensation is agreed upon between the parties, shall be determined in accordance with the provisions of the Land Acquisition Ordinance [Cap. 69].

(3) Compensation payable under subsection (2) of this section shall be limited to the direct costs of complying with the directions of the Director.

Fees, charges and royalties.

52. (1) An applicant for a licence under Part IV shall pay to the Director a fee for the cost of administration and investigation of the application determined in accordance with the

rules.

(2) The Director may levy, in accordance with the rules, water management fees, and charges representing the cost of management activity undertaken by the Director or a person authorised by the Director, on a person—

- (a) holding a licence issued under Part IV;
- (b) who owns or occupies land within a declared floodplain area;
- (c) who is benefitted by a water protection area; and
- (d) where the Minister has authorised such charges, a person who owns or occupies land within a water conservation area.

(3) Fees and charges imposed by the Director in accordance with subsection (2) are recoverable as a debt owed to the Director by the person on whom the order was served and, where appropriate, shall be a charge on that person's land.

Water resources data.

53. (1) The Director shall establish and maintain a water resources data base for the State and shall report to the Council on the availability, quality and condition of water resources.

(2) Any public authority, when requested by the Director, shall provide such data on water resources as is reasonably requested.

Protection against legal proceedings.

54. No action, suit, prosecution or other proceedings shall be brought or instituted against any member of the Council, the Director, or against any officer or servant under the Director's control, in respect of any act done or statement made *bona fide* in pursuance or execution of this Enactment.

Public servants.

55. Every member and agent of the Council and every agent of the Director, every authorised person, and every assistant or workman accompanying or assisting an authorised person in the performance of his functions under this Enactment shall be deemed to be public servants for the purposes of the Penal Code [Act 574.].

Evidence in proceedings for offences.

56. In proceedings for an offence against this Enactment or the rules made thereunder—

- (a) evidence that a specified licensed activity or work was carried out at any time is evidence that the activity or work was carried out by the holder of the licence at the time;
- (b) evidence that water was taken and used at any time on specified land—
 - (i) by means of a work authorised by a licence; or
 - (ii) in the exercise of a private water right,is evidence that the water was taken and used by the occupier of the land at the time;
- (c) evidence that a specified work was constructed at any time on specified land is evidence that the work was constructed by the occupier of the land at the time; and
- (d) evidence that water was taken and used at any time on specified land is evidence that the water was taken and used by the occupier of the land at the time.

False or misleading information.

57. Any person who in, or in connection with, any application under this Enactment, makes a statement that the person knows to be false or misleading in a material particular shall be guilty of an offence.

Offences committed by body corporate.

58. Where a person charged with an offence under this Enactment is a body corporate, every person who, at the time of the commission of such offence, is a managing director, manager or other similar officer of such body corporate, may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such managing director, manager or officer shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission.

Penalty for interference with notice.

59. Any person who, without the authorisation of the Director, wilfully destroys, damages, defaces, moves, or otherwise interferes with any notice, record or mark placed or set up for the purpose of identification or indicating any level or direction necessary for the carrying out of any of the purposes of this Enactment commits an offence and on conviction—

- (a) shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both; and
- (b) may, in addition to or in place of that penalty, be ordered to pay to the Director a sum, recoverable as a fine, not exceeding three times the cost of repairing or replacing the notice, record or mark and of making any survey rendered necessary by the act in respect of which the person is convicted.

Offences where no penalty specified.

60. Any person who contravenes or fails to comply with any provision of the Enactment where no penalty is provided in relation thereto, shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding ten thousand ringgit or to imprisonment not exceeding one year or to both and in the case of a continuing offence to a further fine of one hundred ringgit for every day during which the offence continues.

Compounding of offences.

61. (1) The Director or any authorised person may in his discretion compound any

offence against this Enactment or against any rule made thereunder, by collecting from the person reasonably suspected of having committed the same a sum not exceeding the maximum fine, as the Director or authorised person may determine.

(2) The Director or authorised person making an offer of composition of any offence may require the payment of the sum so determined to be made forthwith or specify a period within which the payment is to be made as he may think reasonable and on such payment being made shall give a receipt to the person making such payment.

(3) The payment forthwith, or within such period as the Director or authorised person may specify, of the sum so determined shall operate as a bar to any or any further penal proceedings in respect of such offence, in respect of which such composition was offered against the person making such payment.

(4) No offence against this Enactment or against any rule or regulation made thereunder in respect of which a prosecution is actually pending shall be compounded under this section otherwise than with the consent of the Court before which such prosecution is pending.

Jurisdiction of courts.

62. Notwithstanding the provisions of section 87 of the Subordinate Courts Act 1948 [Act 192.], a Magistrate of the First Class shall have jurisdiction to try any offence under this Enactment or the rules made thereunder and to award the full punishment authorised thereby.

Power of entry.

63. (1) An authorised person may, with or without assistants or workers, enter upon or into any land, building or vessel for the purpose of—

- (a) making any inquiry, investigation, inspection, gauge reading, measurement or survey;
- (b) installing, operating and maintaining river gauging equipment and monitoring bores;

- (c) digging or boring into the subsoil;
 - (d) taking water samples;
 - (e) ascertaining whether any activity has been commenced, undertaken or carried out in contravention of this Enactment or the rules made thereunder; and
 - (f) doing any other acts necessary for the efficient administration of this Enactment.
- (2) No entry shall be made under subsection (1)—
- (a) into a building used solely as a dwelling-house or upon any enclosed part or garden attached to the building, unless the prior consent of the occupier has been obtained or a notice in writing of the intention to enter has been given to the occupier at least twenty-four hours before the intended entry; or
 - (b) without due regard, such as is compatible with the exigency of the purpose for which the entry is made, to the social and religious practices of the occupants of the land or building.

(3) An authorised person making an entry under subsection (1) shall carry on his person an authority card in the prescribed form; and it shall not be unlawful for any person to refuse entry to an authorised person or to any of his assistants or workers if the authorised person fails, when demanded, to produce the authority card.

Conduct of prosecution.

64. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code [*F.M.S. Cap. 6.*] may conduct prosecutions for offences under this Enactment or the rules made thereunder.

Taking of water outside the State.

65. The Minister may authorise the taking of water from Sabah for use outside the territory

of the State, on the advice of the Council, if he is satisfied that—

- (a) the proposed taking of the water will not prejudice the requirements of the State and its water users;
- (b) the terms for taking the water are included in an agreement with the proposed water user; and
- (c) an appropriate royalty applies.

Declared channels.

66. The Director, with the approval of the Council, may declare in writing that a channel, canal, drain or artificial watercourse is a declared channel.

Rules.

67. (1) The Minister may make rules to carry out the purpose of this Enactment.

(2) In particular, and without prejudice to the generality of subsection (1), rules made under subsection (1) may provide for—

- (a) the prescribed fees, charges and royalties payable under this Enactment;
- (b) the registration of applications and the form of, and particulars to be contained in the licensing register, including each licence type, change of owner or occupier;
- (c) the keeping of a register of declared areas;
- (d) the keeping of a register of notices issued to owners and occupiers in declared areas;
- (e) the procedures for deciding appeals from the Director to the Council;
- (f) the procedures for publication of proposals for protected water areas and the procedures required after such publication;
- (g) the control of water protection areas;

- (h) the enforcement of orders made under Part VI;
- (i) the types of meters for pumps where the Director requires such installation;
- (j) the scheme for registration of non-licensable works of public authorities;
- (k) the issue of directions regarding wastage of water;
- (l) the making of declarations that no further applications may be made for licences for water activities in specified areas; and
- (m) prescribing anything that may be, or is required to be, prescribed under this Enactment.