

Irrigable Areas (Control) Regulations, 2021

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IT is hereby notified that the Minister of Lands, Agriculture, Water and Rural Resettlement has, in terms of section 64 as read with section 50 of the Agricultural Finance Act [*Chapter 18:02*], made the following regulations:—

PART I

PRELIMINARY

Title

- 1. These regulations may be cited as the Irrigable Areas (Control) Regulations, 2020.

Interpretation of terms

2. In these regulations—

“building” includes a hut, shed, shelter, stall, kraal, pen, sty, chicken house, telephone poles, power line pylons and other electrical installations;

“commonage” means that part of irrigable area which does not constitute a lot;

“district irrigation engineer” means the district irrigation engineer of the district within which an irrigable area is situated;

“irrigable area or land” means any piece of arable or potentially arable land in proximity to prolific water bodies and aquifers proclaimed by the Minister as irrigable area or land, for purposes of achieving strategic food security and economic stability;

“irrigation agency” means an irrigation agency for each district or each province;

“irrigation lot” means a piece of land within an irrigable area allocated or set aside for allocation to a person for cultivation under irrigation or used by a person for such cultivation;

“irrigation works” include—

(a) any works, structure or thing designed, intended or used for—

(i) pumping, conveying, storing, clarifying, desilting, purifying, measuring, diverting, dividing, delivering or disposing of or preventing the wastage of water for irrigation; or

(ii) diverting or disposing of flood waters or other waters likely to cause harm or damage to;

(b) all roadways, bridges and culverts within or adjoining the irrigation lots in all irrigable areas and all fences, grids and gates within and surrounding such lots.

“irrigation lot” means any piece of land within an irrigable area—

(a) allocated to or set aside for allocation to a person for cultivation under irrigation; or

- (b) used by a person for cultivation under irrigation.
- “Irrigation Development Fund” means a fund established in terms section 8;
- “occupier” in relation to a particular irrigable area, means a person who has been permitted to occupy or use land in the irrigable area by the district land officer and include any other person permitted to live with the occupier in terms of section 18(3);
- “prohibited area” means an area within which the grazing of stock has been prohibited by an order issued in terms of section 41;
- “provincial irrigation engineer” means the provincial irrigation engineer of the province within which an irrigable area is situated;
- “soil conservation works” includes grass strips, contour ridges, diversion banks, drains, drainage strips and any fencing erected for the protection thereof and the grids and gates in such fences;
- “stock” includes domestic birds, cattle, sheep, goats, horses, mules, donkeys or pigs;
- “District Irrigation Development Agency” means the district irrigation development agency within whose area an irrigable area is situated and includes a group of persons or committee appointed by the Rural District Council.
- “Provincial Irrigation Development Agency” means the provincial irrigation development agency within whose area an irrigable area is situated and includes a group of persons or committee appointed by the Provincial Council.

PART II

GENERAL ADMINISTRATION

Occupation of irrigable areas

3. (1) No person shall claim the right to occupy or use land in an irrigable area to which no person was hitherto settled without obtaining written permission to occupy or use land from the district lands officer.

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(2) Whenever the district lands officer permits a person to occupy or use land in an irrigable area—

- (a) that person shall be advised of the general nature and content of—
 - (i) these regulations; and
 - (ii) every general order and notice issued in terms of these regulations and having force and effect within the irrigable area; and
- (b) the district lands officer may—
 - (i) allocate and point out a particular piece of land which that person may occupy or use; and
 - (ii) attach such terms and conditions to the permission as he or she deems fit.

(3) It shall be lawful for the spouse and minor children of an occupier to occupy and use land which the spouse or their father as the case may be, is permitted to occupy or use in terms of this section.

(4) A district lands officer shall give a written permission to a person to occupy or use an irrigable area on approval by the provincial agricultural officer.

(5) An occupier shall at all times conduct his or her agricultural activities in a productive and sustainable manner which ensures that he or she—

- (a) makes efficient use of the advantages of the irrigable area; and
- (b) does not prejudice the agricultural activities of other occupiers; and
- (c) does his or her agricultural activities observing good environmental practices;
and
- (d) takes reasonable steps to acquaint himself or herself with the provisions of these regulations and any general order or notice issued in terms of these regulations.

(6) These regulations shall apply to legal settlers on A1 and A2 farms and all those who are resettled on agricultural state land that is designated as irrigable area.

General responsibilities of district engineer

4. (1) The district irrigation engineer shall be responsible for planning, designing, and overseeing the construction and maintenance of irrigation projects for transporting and distributing water to agricultural lands on every irrigable area situated within the district under his or her administration and, subject to the provisions of these regulations, shall ensure good order and administration for the efficient, coordinated and disciplined and productive use of the land and water available for irrigation.

(2) The district engineer shall advise farmers on all planning, designing, and overseeing the construction and maintenance of irrigation projects and exercise general control over—

- (a) the general administration of an irrigable area;
- (b) the planning and orderly development of an irrigable area;
- (c) the terms and conditions upon which and the manner in which persons may occupy and use the land in an irrigable area;
- (d) the manner in which farming operations shall be conducted and the supply and use of water in an irrigable area;
- (e) the types and numbers of animals that may be kept in an irrigable area and the control and de-pasturing of animals.

(3) The district irrigation engineer shall be assisted by irrigation managers, to perform or to assist with the day-to-day administration of the irrigable area as well as the implementation of the matters set out in subsection (2).

Consultation with district irrigation agencies

5. (1) In the exercise of his or her functions provided for in section 4, the district irrigation engineer shall consult the District Irrigation Development Authorities.

(2) The rural district council shall appoint a group of persons or a committee to be known as the district irrigation development

agency to assist the district irrigation engineer in the discharge of his or her duties under these regulations.

General orders and notices

6. (1) In the exercise of their powers and the discharge of their duties in terms of these regulations, the district irrigation engineer may issue—

- (a) general orders; or
- (b) general notices;

applying to all persons within the irrigable area or any specified class of such persons.

(2) Any permission required in terms of these regulations may be—

- (a) given by general notice; or
- (b) made subject to such terms and conditions as are stated therein.

(3) A general order or general notice shall—

- (a) be made in writing and signed and dated by its author; and
- (b) indicate the date upon which it shall come into operation; and
- (c) be read out and explained at a public meeting of district authorities or occupiers of the irrigable area before it comes into operation; and
- (d) be lodged in the office of the district irrigation engineer where it shall be available for inspection during normal office hours by any occupier; and
- (e) be displayed on a notice board situated at a focal point within the irrigable area.

(4) A general order shall not come into operation earlier than the eighth day after it is read out and explained at a public meeting of the district authorities or occupiers of the irrigable area, the day upon which it is so read out being reckoned as the first of the eight days, and the district irrigation engineer shall take such steps as he or she thinks necessary for bringing the order to the notice of all occupiers of the irrigable area:

Provided that in cases of urgency a general order may be brought into operation before the eighth day after it is so read out, if at the meeting—

- (a) the reasons for the urgency are explained; and
- (b) special attention is drawn to the date upon which it is to come into operation.

(5) A general order which fails give effect to the provisions of subsection (4) shall be invalid only to the extent to which it conflicts with the provisions of that subsection.

(6) The district irrigation engineer shall provide a copy of a general order or general notice to an occupier who makes a reasonable request for such a copy.

(7) Notwithstanding the provisions of subsections (3)(e) and (6), the fact that—

- (a) an order or notice has become detached or has been removed from the board, or has been rendered or has become illegible in any respect; or
 - (b) the district irrigation engineer is temporarily unable to provide a copy of an order or notice upon request;
- shall not render the order invalid.

(8) No person shall remove, destroy or deface an order or notice made available for inspection or displayed on a notice board in terms of this section.

Specific orders

7. (1) In the exercise of their powers and the discharge of their duties in terms of these regulations, the district irrigation engineer may issue specific orders directed at particular persons.

(2) A specific order may be—

- (a) addressed to a person verbally; or
- (b) issued in writing and served to the person in question.

(3) Subject to the terms of an order, a specific order shall have immediate effect.

(4) A specific order may vary or countermand the terms of—

- (a) a general order; or
- (b) any permission given in terms of these regulations; or
- (c) an earlier specific order.

PART III

IRRIGATION FUND AND IRRIGATION DEVELOPMENT AGENCIES

Establishment, vesting and objects of Irrigation Development Fund

8. (1) There is hereby established a fund, to be known as the Irrigation Development Fund.

(2) The Irrigation Development Fund shall be vested in the Corporation's Board of Directors as trustee.

(3) For the purposes of the fund, the Corporation's Board of Directors shall be deemed to be the settlor for the fund acting however in accordance with the instructions the Secretary may give it.

(4) Subject to this Part, the objects of the Irrigation Development Fund shall be to provide a stable, adequate, secure and sustainable source of funding for the development and maintenance of irrigation works in Zimbabwe and to ensure the equitable allocation of its moneys between provincial irrigation agencies for the purpose of development and maintenance of irrigation works.

(5) For the purposes of the allocation of the fund, at provincial level, the Provincial Irrigation Engineer shall be deemed to be the settlor for the fund acting however in accordance with the advice of the Provincial Irrigation Development Agency.

Composition of Irrigation Development Fund

9. The Irrigation Development Fund shall consist of—

- (a) annual rents paid by occupiers; and
- (b) any moneys that may be payable to the Irrigation Development Fund from moneys appropriated for the purpose by Act of Parliament; and
- (c) any moneys that the Irrigation Development Fund may obtain, with the approval of the Minister and the Minister responsible for finance, by way of grants or donations; and

- (d) any moneys that may vest in or accrue to the Irrigation Development Fund, whether in terms of this Act or otherwise.

Establishment of Irrigation Agencies

10. (1) There is hereby established in each province and each district an irrigation development agency whose function shall be the planning and implementation of irrigation activities within its province and district as the case may be.

(2) The Provincial Irrigation Development Agency shall be comprised of—

- (a) the Provincial Irrigation Engineer, who shall be the chairperson for the agency;
- (b) the Provincial Lands Officer; and
- (c) three representatives of farmers in irrigable areas within the province.

(3) The district irrigation development agency shall be comprised of—

- (a) the District Irrigation Engineer, who shall be the chairperson for the agency;
- (b) the Provincial Lands Officer; and
- (c) three representatives of farmers in irrigable areas within the district.

Application of Irrigation Fund

11. Subject to this Act, the Irrigation Development Fund shall be applied to—

- (a) the payment of grants to District Irrigation development agencies for the purpose of meeting the whole or any part of the expenses of the planned district irrigation development and implementation programmes as approved by the Provincial Irrigation Development Authorities.
- (b) the payment of grants to District Irrigation development agencies for the purpose of meeting the whole or any part of the expenses of implementing such emergency works as may become necessary;

- (c) such other activities as the Provincial Irrigation Development Agency may, with the consent of the Minister, authorise.

Annual programmes and budgets of district irrigation development agencies

12. (1) Prior to the beginning of every financial year every District Irrigation Development Agency shall prepare and submit to the Provincial Irrigation Development Agency—

- (a) an irrigation development works programme and an irrigation maintenance works programme for implementation during that financial year; and
- (b) a budget showing the expenditure which the District Irrigation development agency proposes to incur in the implementation of its programmes during that financial year;

for approval:

Provided that the District Irrigation Development Agency may not make provision for development works before all maintenance works have been adequately provided for.

(2) On or before such date prior to the beginning of the financial year as the Provincial Irrigation Development Agency may direct, every District Irrigation Development Agency shall prepare and submit to the Provincial Irrigation Development Agency—

- (a) an irrigation maintenance works programme and an irrigation development works programme for implementation by the local during that financial year; and
- (b) a budget showing the expenditure which the local District Irrigation development agency proposes to incur in the implementation of its programmes during that financial year:

Provided that no irrigation agency shall make provision for development works before all maintenance works have been adequately provided for.

(3) The Provincial Irrigation Development Agency shall review individually each programme and budget submitted to it by

the District Irrigation Development Agencies and shall consolidate the maintenance works programmes of the District Irrigation Development Agencies into a single provincial irrigation maintenance works programme.

(4) After the Board has approved the national irrigation maintenance works programme, it shall cause the programme to be published in the *Gazette* and in such newspapers and other media as it considers appropriate to adequately inform the public of the national irrigation maintenance works programme.

(5) During any financial year, any District Irrigation Development Agency may prepare and submit for the approval of the Board a supplementary budget relating to expenditure on irrigation works which—

- (a) was not, for good reason, provided for in the annual budget of the irrigation agency concerned and prepared and submitted in terms of subsection (1) or (2); or
- (b) was inadequately provided for in the annual budget prepared and submitted in terms of subsection (1) or (2) due to unforeseen circumstances.

(6) A supplementary budget approved by the Board shall be deemed to form part of the annual budget of the irrigation agency concerned for the financial year to which it relates.

(7) A District Irrigation Development Agency shall furnish the Provincial Irrigation Development Agency with such additional information in regard to any budget submitted under subsection (5) as the Provincial Irrigation Development Agency may require.

(8) With the approval of the Provincial Irrigation Development Agency, a District Irrigation Development Agency may vary a budget approved under this section:

Provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

General criteria for the allocation of grants from Irrigation Fund

13. (1) The Corporation's Board of Directors shall prescribe criteria for the allocation of grants from the Irrigation Fund for

maintenance, rehabilitation or emergency works, and such criteria may be based on any one or more of the following—

- (a) a basic percentage split of the total money available among irrigable areas of different classes, which may be prescribed in guidelines;
- (b) a formulation which takes into account the class of the irrigable areas, its area, type and the production levels;
- (c) identified needs based on the condition of the irrigable area; and
- (d) any other relevant considerations.

(2) The Board shall allocate grants in such manner as will ensure an equitable distribution of the available funds between the provinces, districts and irrigable areas.

(3) In allocating grants from the Irrigation Fund, the Board may—

- (a) allocate them wholly according to the needs of irrigation agencies identified in their programmes submitted in terms of section 12 or partly according to such needs and partly in accordance with paragraph (b) or (c);
- (b) specify the amounts allocated for the maintenance of each class of irrigation scheme;
- (c) identify according to priority irrigation schemes requiring maintenance and rehabilitation, taking into account the social and economic needs of the country or of any part of the country where the works are required.

(5) The Board shall make provision in every financial year for meeting the expenses of such emergency works as may become necessary during that financial year.

Disbursement of grants from Irrigation Fund

14. (1) The Board shall, in accordance with the national irrigation maintenance works programme approved by it in terms of subsection (4) of section 12, pay to every irrigation agency out of the Irrigation Fund—

- (a) in the case of routine maintenance works, a grant for routine maintenance disbursed in advance of the

performance of the works in each quarter of the financial year on such conditions as the Board may determine;

- (b) in any other case, on the basis of completed works certified by an independent irrigation engineer or other person with such qualifications as are recognised by the Board.

(2) The Board may carry out or cause to be carried out, at random, technical, environmental and financial audits of irrigation works carried out by an irrigation agency from grants disbursed out of the Irrigation Fund.

Application of moneys received from Irrigation Fund

15. (1) All money received by an irrigation agency from the Irrigation Fund shall be accounted for separately by the irrigation agency and shall be applied exclusively to projects specified in the annual irrigation programmes referred to in section 12.

(2) The books of accounts in respect of moneys received from the Irrigation Fund shall be maintained in such form as the Board, on approval by the Minister, may prescribe.

General powers of Board

16. (1) The Board shall have power to—

- (a) direct every irrigation agency to prepare its irrigation works programmes and supporting budgets in accordance with standard procedures established by the Board;
- (b) give to any irrigation agency such directions as it sees fit to ensure compliance by the irrigation agency with the prescribed standards;
- (d) give to any irrigation agency such directions as it sees fit, in the interests of the better utilisation of the funds from the Irrigation Fund, relating to the planning or implementation, or execution of any irrigation maintenance works;
- (e) disqualify any irrigation agency from receiving any allocation under the Irrigation Fund for such period as the Board may determine, for reasons of failure to—

- (i) account satisfactorily or in accordance with the rules made by the Board, for any funds disbursed to it in terms of these regulations;
 - (ii) adopt cost-effective ways of implementing its irrigation maintenance works;
 - (iii) meet the prescribed technical standards in the maintenance of its irrigation systems;
 - (iv) generally, comply with any rules prescribed by the Board to a degree which the Board considers will defeat the objects of the Irrigation Fund or undermine the efficient administration of the Irrigation Fund;
- (f) make rules on—
- (i) the standard procedures to be adopted by irrigation authorities in preparing their irrigation works programmes and supporting budgets;
 - (ii) the form and manner in which and the periods within which applications for funds shall be made;
 - (iii) the form and manner in which and the periods within which any returns required by the Board shall be made;
 - (iv) the information and documents to be furnished to the Board in connection with applications for funds;
 - (v) the conditions as to the cost of replacement or depreciation of any capital plant and equipment for maintenance works from the funds provided in terms of these regulations;
 - (vi) generally on all matters which are required by these regulations to be prescribed by the Board;
- (g) give directions to and prescribe the duties of irrigation authorities in connection with the supervision to be exercised over the execution of maintenance works;
- (h) where any irrigation user charges are collected on behalf of the Board by an irrigation agency or person not employed by the Irrigation Fund, to fix such

administrative fee as it may determine shall be payable to, or deductible from the irrigation user charges collected by, such irrigation agency or person;

- (i) visit premises and inspect financial statements books and other documents in order to ensure compliance with any conditions subject to which any money was disbursed in terms of these regulations.

(2) The Board may, for public information, cause the rules referred to in subsection 1(f) to be published in the *Gazette*.

Disputes between irrigation agencies and Board

17. (1) Any irrigation agency or other person aggrieved by any decision, direction, order or action of the Board in terms of these regulations may appeal against such decision, direction, order or action to the Administrative Court.

(2) A notice of appeal in terms of this section shall be lodged with the Registrar of the Administrative Court.

(3) On an appeal in terms of this section, the Administrative Court may confirm, vary or set aside the decision, direction, order or action appealed against or give such other decision as in its opinion the Board ought to have given and make such order as to costs as it sees fit.

(4) The Board shall comply with any decision of the Administrative Court made in terms of this section.

GENERAL OCCUPATION AND USE OF LAND

Admission to irrigable areas

18. (1) No person may occupy or use land in an irrigable area without the written permission of the district lands officer in consultation with the district irrigation engineer.

(2) Whenever the district lands officer permits a person to occupy or use land in an irrigable area—

- (a) that person shall be advised of the general nature and content of—
 - (i) these regulations; and

- (ii) every general order and notice issued in terms of these regulations and having force and effect within the irrigable area; and
 - (b) the district lands officer may allocate and point out a particular piece of land which that person may occupy or use; and
 - (c) the district lands officer may attach such terms and conditions to the permission as he or she deems fit.
- (3) It shall be lawful for the spouse and minor children of an occupier to occupy and use land which spouse or their father as the case may be, is permitted to occupy or use in terms of subsection (2).

Reallocation and alteration of lots

19. (1) The district lands officer may, at any time between the reaping of a principal summer or winter crop and planting of succeeding winter or summer crop respectively and after consultation with the district irrigation engineer, reallocate the lots which an occupier may occupy or use.

(2) The district lands officer may, after consultation with the district irrigation engineer, alter the size or shape of a lot: provided that the size of a lot shall not be reduced unless—

- (a) the occupier does not make efficient use of the land allocated to him or her, or
- (b) such reduction is necessary in order to accommodate more persons within the irrigable area.

Right of entry

20. Notwithstanding the allocation of a lot to any person, the district irrigation engineer, or the district lands officer, or their appointed representatives may enter such lot at all reasonable times for the purpose of—

- (a) administering these regulations; or
- (b) ascertaining whether the provisions of these regulations or any order or permission issued or given in terms thereof are being observed; or
- (c) advising on any agricultural matter:

Provided that no person may enter a dwelling house without the permission of the occupier other than in circumstances in which there are reasonable grounds to suspect that a criminal offence has been, is being or is about to be committed by the occupier or in the dwelling house in question.

Imposition of irrigation levy

21. (1) The Minister may, in accordance with such recommendation of the Board as he or she may approve, and with the concurrence of the Minister responsible for finance, by statutory instrument, impose an irrigation levy for the purposes of these regulations.

(2) In imposing an irrigation levy in terms of subsection (1), the Minister shall prescribe, in accordance with such recommendations of the Board as he may approve—

- (a) the persons responsible for the payment, collection and remittal of the levy; and
- (b) the manner in which and the times at which the levy shall be paid, collected and remitted;
and
- (c) the basis upon which the levy shall be calculated; and
- (d) the date from which the levy shall be collected:

Provided that such date shall not be earlier than the date of publication of the statutory instrument in the *Gazette*;

- (f) the surcharge or interest, if any, to be paid by the persons referred to in paragraph (a) for failure to pay, collect or remit the levy timeously.

(3) The Minister shall, within the next fourteen days on which Parliament sits after he makes a statutory instrument in terms of subsection (1), lay it before Parliament, where it shall be subject to annulment in pursuance of a resolution of Parliament made within 30 days after the date on which it was laid before it:

Provided that the annulment of the statutory instrument shall not affect the validity of anything done under it in the interval between the date when it came into operation and the date of its annulment.

(3) All amounts remitted or collected by way of the irrigation levy shall be paid into the Irrigation Fund.

Withdrawal, suspension or increase of irrigation levy

22. Without derogation from section 21 of the Interpretation Act [Chapter 1:01], the Minister, in consultation with the Minister responsible for finance and on the advice of the Board, may by statutory instrument—

- (a) withdraw any irrigation levy; or
- (b) suspend any irrigation levy in whole or in part; or
- (c) increase the rate or incidence of any irrigation levy.

Recovery of unpaid irrigation levies

23. A levy and any interest or surcharge connected therewith shall be a debt due to the Irrigation Fund, and any amount of such levy, interest or surcharge that is not paid, collected or remitted may be recovered by the Board from any person required to pay the levy or to collect or remit the levy by proceedings in a court of competent jurisdiction.

Beacons

24. (1) The occupier of every lot shall—

- (a) within six weeks of assuming occupation; and after consultation with the irrigation engineer, either—
 - (i) erect beacons defining the limits of his or her lot; or
 - (ii) ensure that such beacons have been erected and are properly maintained as provided in section (4).

(2) The district irrigation engineer may, by order, specify—

- (a) different types of beacon to be used to indicate residential lots, commercial lots, irrigation lots and lots set aside for other purposes; and
- (b) the form of marking to be made on different beacons; and if such an order is issued all beacons erected or maintained in terms of these regulations shall comply with the specifications so ordered.

(3) No person shall remove, displace, alter, damage or destroy any beacon erected in terms of this section without the permission of the irrigation manager.

(4) The occupier of every lot shall maintain the beacon defining the limits of his or her lot and any distinguishing mark upon such beacons in a condition which renders them readily visible and identifiable.

(5) Any person who removes, displaces, alters, damages or destroys any beacon erected in terms of this section shall be guilty of any offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

Personal use and beneficial occupation

25. (1) An occupier shall himself or herself occupy any residential lot and beneficially and conscientiously use any irrigation or commercial lot allocated to him or her, unless he or she obtains the permission of the district irrigation engineer to live elsewhere or to have his or her lot managed by some other person.

(2) If due, to physical or mental infirmity, injury, illness or any other cause, an occupier becomes incapable of complying with the provisions of subsection (1) the district land officer may—

- (a) exercise his or her powers in terms of section 41; or
- (b) appoint on such terms and conditions as he or she may fix after consultation with the occupier, some other person to cultivate the irrigation lot of the occupier.
 - (i) for a specified period; or
 - (ii) until the occupier regains his or her ability to comply with the provision of subsection (1).
- (c) assign the rights of the occupier to some other person on such terms and conditions as he or she may fix after consultation with the occupier.

Building, fences, wells and other structures

26. (1) The irrigation engineer may, by order regulate and control the—

- (a) erecting, altering, enlarging or demolishing, in whole or in part, of any building; and
- (b) sinking or digging of wells, weirs, solar, pits and boreholes; and

(c) erecting, constructing or removing of any fence, dividing wall or embankment, either in whole or in part; within an irrigable area.

(2) The irrigation engineer may order the renovation, repair or removal of any building in an irrigable area which—

- (a) is a hazard to health; or
- (b) interferes with the optimum arrangements for the distribution of water or siting of roads; or
- (c) has become dilapidated, unsightly or a nuisance.

(3) The irrigation engineer may order that any well, weir, solar, borehole, pit or hole which is a hazard to health or a nuisance in any irrigable area shall be filled in.

(4) Any building erected on or improvement effected to any lot shall be at the cost of the occupier and no compensation shall be claimable by the occupier in respect thereof from the owner of the land.

Health and sanitation

27. (1) The irrigation engineer may issue such orders as are necessary or expedient to protect the health of the inhabitants of an irrigable area.

(2) Without derogation from the generality of the powers contained in subsection (1) the irrigation engineer may issue orders concerning—

- (a) the use, situation, construction and maintenance of latrines; and
- (b) the disposal of refuse;
- (c) the clearing, cleanliness and maintenance of residential and commercial lots; and
- (d) the provision of pure sources of water for drinking and washing; and
- (e) the hygienic storage, preparation, handling, conveyance and disposal of waste chemicals.

Nuisances

28. The irrigation engineer may, by order, prevent, control and prohibit public nuisances in an irrigable area.

Burials

29. (1) The irrigation engineer may, by order, establish areas within the commonage within which the dead may be buried.

(2) If the irrigation engineer has established a burial area as stated in subsection (1), no person may bury a corpse within the irrigable area outside such burial area.

Bricks, sand, soil and stone

30. The irrigation engineer may, by order, define places or areas within an irrigable area at which a person may make bricks, or gather quarry sand, soil and stone and such orders may specify the terms and conditions on which bricks, sand, soil, or stone may be, gathered or quarried.

Fire-wood and timber

31. (1) No person shall—

- (a) cut growing timber; or
- (b) sell or otherwise dispose of any fire-wood or timber; or
- (c) permit any person to remove, sell or dispose of timber; in or from an irrigable area without the permission of an irrigation manager:

Provided that, subject to the provisions of subsection (3), an occupier may cut growing timber in an irrigable area to obtain material to erect a building within that area.

(2) No person shall use as fire-wood any timber from an irrigable area other than wood—

- (a) occurring naturally as dead wood in the veld; or
- (b) made available by the clearing of land for lots; or
- (c) of any type or from any source approved for the purposes of this section by the district irrigation engineer.

(3) The district irrigation engineer may, by order, define the areas—

- (a) within an irrigable area from which fire-wood and timber may be gathered or cut.

Fires

32. Where there is an outbreak of fire within an irrigable area, all persons present in the irrigable area shall take reasonable steps to extinguish it.

PART V

FARMING OPERATIONS

Layout of fields, roads and irrigation works

33. (1) The district irrigation engineer shall determine the planning, siting and layout of all fields, irrigation works, roads, bridges, drains, and soil conservation works within an irrigable area.

(2) No person shall alter or interfere with the layout of the irrigation scheme as provided in subsection (1).

(3) No person shall develop any land for irrigation or construct any irrigation works without the permission of the district irrigation engineer.

Control of efficient and disciplined farming

34. (1) The district irrigation engineer may, in consultation with the district land officer, issue any order that they deem necessary or expedient to ensure that the land and water available for cultivation are used in the most orderly and efficient manner and in so doing they shall pay particular regard to the need to enforce disciplined adherence to farming programmes in the interest of the occupiers of an irrigable area as a whole.

(2) Without derogation from the generality of the powers contained in subsection (1), the district irrigation engineer may, in consultation with the district land officer, issue orders concerning—

- (a) the making of compost and the utilization of kraal manure, grass, trash or other vegetable matter suitable for fertilizing the soil;

- (b) the preparation of irrigation lots for crops including the nature and extent of tillage and fertilization;
- (c) the type and timing of rotation of crops;
- (d) the types of crops that may or may not be grown at all, at any particular time, or on any particular irrigation lot or part of such a lot;
- (e) the programme according to which the times by which irrigation lots shall be ploughed, fertilized, planted, cultivated, sprayed, watered, harvested, cleared and ploughed again;
- (f) the supply of water to the irrigation lots including the route by which the water shall be supplied, the number and situation of diversion points and control points, and the times and periods of diversion;
- (g) the application of water to the irrigation lots or any part of such a lot including—
 - (i) the quantity of water that shall or may be applied; and
 - (ii) the manner in which the water may be applied; and
 - (iii) the places at which the water shall, may or may not be applied; and
 - (iv) the places at which and from which water may or may not be applied; and
 - (v) the avoidance of wastage of water;
- (h) the efficient drainage of the irrigation lots and the removal of surplus water;
- (i) the control and eradication of weeds, birds, mice and other pests in the irrigation lots, in area adjacent thereto or at sites from which the crops may be attacked or affected by such weeds and pests;
- (j) the control and elimination of insect pests and all plant diseases including the nature and quantities of pesticides, fungicides and other chemicals that are to be applied to the irrigation lots and the timing and manner of such applications;

- (k) the types of trees and shrubs which shall, may or may not be planted on irrigation lots and along irrigation furrows, the places at which trees and shrubs may be planted and the trimming and control of such plants;
- (l) to conservation and general care of soil;
- (m) the right of an occupier—
 - (i) to cultivate land other than that constituting his or her irrigation lot; or
 - (ii) to carry on any business;

while he or she uses an irrigation lot.

Preservation of manure and vegetable matter

35. No person shall burn on or remove from the irrigable area any kraal manure, grass, trash or other vegetable matter which is suitable for the production of compost without the permission of the district land officer.

Withholding of water

36. (1) The irrigation engineer may withhold the supply of water from an occupier or, by order, forbid him or her to use water for irrigation purposes upon all or any part of his or her irrigation lot if—

- (a) on reasonable grounds, he considers such use of water would be unnecessary, harmful to the crops or wasteful; or
- (b) the occupier has not paid the levy stipulated in terms of section 21; or
- (c) for as long as he or she fails to comply with any order made in terms of section 8; or
- (d) on reasonable grounds, the district irrigation engineer certifies in writing that the general conduct of the occupier is prejudicing the farming activities of other occupiers of the irrigation scheme.

(2) If the district irrigation engineer withholds the supply of water or forbids the use of water on the grounds specified in paragraph (d) of subsection (1), the occupier may appeal to the provincial irrigation engineer:

Provided that no such appeal shall suspend the operation of the order of the irrigation engineer.

Irrigation works and water-supplies

37. (1) The district irrigation engineer shall determine the siting, construction, form, size, extend and nature of any irrigation works, and no person shall alter, limit or extend any such irrigation works without the authority of the district irrigation engineer.

(2) No person shall deliberately or negligently damage any irrigation works or impair the efficient functioning thereof or cause or allow stock normally under his or her control so to do.

(3) No person shall foul or allow stock to foul any water in any irrigation works or natural watercourse carrying water within an irrigable area.

(4) The irrigation engineer may, by order, control the places at which stock may be watered within an irrigable area.

(5) No person shall interfere with the flow of water or through any irrigation works or natural watercourse carrying water within an irrigable area whether by operating the regular controlling devices or by any irregular means otherwise than—

- (a) in accordance with any irrigation programme instituted or approved by the district irrigation engineer; or
- (b) upon the instruction or with the permission of the district irrigation engineer; or
- (c) in cases of emergency or in unusual circumstances where the action is taken *bona fide* in the interests of other occupiers of the irrigable area.

(6) Any person who contravenes subsections (2), (3) or (5) shall be guilty of an offence and liable to a fine not exceeding level 8 or imprisonment for a period not exceeding twelve months or both such fine and such imprisonment.

PART VI

STOCK AND ANIMALS

Keeping of animals

38. (1) No person shall keep any stock within an irrigable area—

- (a) without permission of the district irrigation engineer; or
- (b) in contravention of any terms or conditions of the permission given in terms of paragraph (a).

(2) The irrigation engineer may, by order, prohibit or control the keeping of dogs, poultry, pigeons, bees and other animals within an irrigable area.

Control of stock

39. (1) A person who keeps stock within an irrigable area shall ensure that such stock is confined to a kraal, pen or sty from which it cannot escape during the hours of darkness.

(2) No person shall cause or allow stock normally under his or her control to wander at large within fifty yards of any growing or unharvested crops which are not protected by a sound fence, wide furrow or other effective barrier against incursion by such animals without the permission of the irrigation engineer.

(3) No person shall cause or allow any stock normally under his or her control to enter an irrigable area of which he or she is not an occupier without the permission of the irrigation engineer.

(4) The irrigation engineer may issue orders for the purpose of integrating the keeping of stock into the general agricultural scheme for an irrigation area.

Control of grazing

40. (1) The district irrigation engineer may from time to time, by order—

- (a) declare areas within an irrigable area within which the grazing of stock is prohibited; and

- (b) direct that different classes of stock normally kept within an irrigable area be grazed in specific areas at specified times according to type, age and sex; and
- (c) direct that any stock normally kept within an irrigable area be stall fed.

(2) Any order made in terms of subsection (1) shall indicate clearly the boundaries of any prohibited or specified area.

(3) No person shall cause or allow any stock normally under his or her control to graze within a prohibited area.

(4) No person shall cause any stock or allow any stock normally under his or her control to graze on any field supporting growing or unharvested crops, without the permission of the irrigation manager.

PART VII

TERMINATION OF OCCUPATION OF IRRIGABLE AREA

Exclusion from irrigable areas

41. (1) If in the opinion of the provincial irrigation engineer the presence of any person within an irrigable area is prejudicial to good order and government within that area, the provincial irrigation engineer may, by written order served by him or her, prohibit that person from entering the irrigable area without the written permission of the district irrigation engineer.

(2) If the district irrigation engineer permits a person to enter an irrigable area following an order made in terms of subsection (1), that person shall comply with such terms and conditions as the district irrigation engineer may attach to the permit.

Expulsion of occupiers

42. (1) The provincial land officer may, on the recommendation of the provincial irrigation development agency, direct an occupier, by written order, to leave an irrigable area forthwith or within such period as is specified in the order if he or she considers, after giving that person a hearing, that—

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- (a) the presence of the occupier within an irrigable area is prejudicial to good order and governance within the area; or
- (b) the occupier conducts his or her agricultural activities in a manner which is detrimental to other occupiers.

(2) If—

- (a) any occupier has failed to comply with—
 - (i) any provisions of these regulations; or
 - (ii) any term or condition reasonably attached to any permission given in terms of these regulations; or
 - (iii) a written order of the provincial land officer, made in terms of these regulations; or
- (b) the provincial land officer considers that an occupier—
 - (i) cannot or does not make efficient use of the agricultural facilities available in the irrigable area; or
 - (ii) conduct his or her agricultural activities in a manner which is detrimental to other occupiers;

the provincial land officer may direct the occupier, by written order, to leave the irrigable area within such period of the order being served towards him or her as may be specified in the order:

Provided that—

- (i) the period within which the occupier is ordered to leave the area shall not be less than seven days from the service of the order;
- (ii) if an order is made in terms of this section at a time when the occupier has planted but not yet harvested one of his or her principal seasonal crops, the provincial land officer shall not order the occupier to leave the irrigable area before the occupier will have a reasonable opportunity of harvesting that crop.

(3) An order issued in terms of this section shall specify—

(a) the period within which the occupier shall leave the irrigable area after service of the order; and

(b) the reasons for which the order is issued.

(4) No person who has left the irrigable area in pursuance of an order issued by the provincial land officer in terms of this section shall re-enter the area without the written permission of the provincial land officer.

(5) If the provincial land officer permits a person to re-enter an irrigable area following an order issued by him or her in terms of subsection (2), that person shall comply with such terms and conditions as the provincial land officer may attach to the permit.

(6) In the case of expulsion or exclusion of farmers allocated land under the land reform programme, the Provincial Irrigation Development Agency shall make such recommendations of exclusion or expulsion to the Minister for approval.

Consequences of expulsion orders

43. (1) If an occupier fails to comply with an order issued in terms of section 42 within the period specified in the notice, the provincial land officer may authorise the summary eviction of the occupier from the irrigable area.

(2) Any person who is ordered to leave an irrigable area in terms of section 42 shall be entitled to remove from his or her residential or commercial lot any improvements or materials that he or she has erected or supplied or for which he or she paid compensation to an earlier occupier on assuming occupation:

Provided that the provisions of this subsection shall not entitle a person, who has been ordered to leave an irrigable area to remain in occupation until he or she has exercised his or her rights under this subsection.

(3) If the provincial irrigation engineer orders an occupier to leave an irrigable area before he or she is able to harvest a crop which is growing at the time that the order is served upon him or her, the district irrigation engineer shall assume control of the irrigation lot of the occupier and may—

(a) destroy or remove the crop; or

- (b) continue to tend the crop, harvest it and sell it.
 - (4) The district irrigation engineer—
 - (a) shall recompense the expelled occupier from the profits of a crop that the district irrigation engineer has sold in terms of subsection (4), in respect of moneys reasonably expended by the occupier on that crop; and
 - (b) may make such further *ex gratia* payment to the expelled occupier as the district irrigation engineer considers equitable in the circumstances; and
 - (c) after making any payments as in paragraphs (a) and (b) provided, shall pay the balance of the profits from that crop to the Irrigation Development Fund.

Abandonment of crops

44. (1) If an irrigation lot is abandoned for more than ten days at a time when it is supporting a growing or unharvested crop, the district irrigation engineer shall assume control of the lot and may—

- (a) destroy or remove the crop where necessary; or
 - (b) continue to tend the crop, harvest it and sell it.
- (2) Subject to subsection (3), the district irrigation engineer—
- (a) may make an *ex-gratia* payment to the occupier of the lot from the profits of the abandoned crop in respect of moneys expended by the occupier on that crop; and
 - (b) after making any payment as in paragraph (a) provided, shall pay the profits from that crop to the Irrigation Development Fund.

(3) The occupier of a lot control of which has been assumed by the district irrigation engineer in terms of subsection (1) may, with permission of the district irrigation engineer, resume control of his or her lot.

(4) If the occupier of a lot resumes control in terms of subsection (3), he or she shall recompense the district irrigation engineer for any expenses incurred while the crop was under the control of the district irrigation engineer and any such payment shall be paid to the Irrigation Development Fund.

Removal of crops, trees and improvements

45. (1) No person shall, upon being ordered to leave an irrigable area, remove or destroy any crops, trees or plants of an agricultural value or in any way render them unfit or less fit for the purposes for which they were planted:

Provided that the district irrigation engineer, may permit or order such removal or destruction.

Appeals

46. (1) A person who is prohibited from entering or ordered to leave an irrigable area by the provincial lands officer in terms of section 42 or section 43 may, within 14 days of the notice being served, appeal to the Minister.

(2) An appeal to the Minister in terms of subsection (1) shall be by notice in writing and shall set out the grounds of the appeal and any representations the appellant wishes to make.

(3) In considering an appeal in terms of this section the Minister—

(a) shall have regard to—

(i) the appellant's notice of appeal; and

(ii) the terms of the order and any report submitted to him or her by the provincial irrigation engineer:

Provided that the appellant shall be notified of the substance of any allegations made against him or her in the report of the provincial irrigation engineer and shall be given an opportunity to reply;

(b) may confirm, set aside or modify the order of the provincial irrigation engineer and may attach such terms and conditions thereto as he or she deems fit.

(4) In considering an appeal in terms of this section the Minister may—

(a) have regard to any report submitted to him or her by the provincial irrigation engineer:

Provided that the appellant shall be notified of the substance of any allegations made against him or her in the report of the provincial lands officer and shall be given an opportunity to reply;

- (b) confirm, set aside or modify the order of the provincial irrigation engineer and may attach such terms and conditions thereto as he or she may deem fit.

(7) If the Minister sets aside or modifies an order issued in terms of section 43—

- (a) the provincial irrigation engineer shall give effect to the order of the Minister or provincial irrigation engineer; and
- (b) the Minister or provincial irrigation engineer as the case may be, shall make such order of compensation in favour of the occupier as he or she deems equitable in the circumstances.

(8) The noting of an appeal in terms of this section shall not suspend the operation of an order not to enter an irrigable area or to leave such an area and the occupier shall leave the irrigable area within the period specified in any order issued in terms of section 42.

PART VIII

MISCELLANEOUS

Offences

47. (1) Any person who fails to comply with—

- (a) any provision of these regulations; or
- (b) any term or condition reasonably attached to any permission given in terms of these regulations; or
- (c) any lawful order issued in terms of these regulations;

shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(2) Any person who obstructs or hinders or fails to render reasonable assistance to the district irrigation engineer or any person acting on their instructions in their execution of their powers or duties under these regulations shall be guilty of an offence and liable to a fine not exceeding level 8 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Evidence

48. (1) In any prosecution under these regulations arising from an alleged failure to comply with a general order or the terms and conditions of permission given by the general notice, a copy of the order or notice which is certified by the district irrigation engineer as—

- (a) being a true and correct copy; and
- (b) having been duly promulgated as in terms of these regulations;

shall be admissible upon its mere production and shall constitute *prima facie* proof of—

- (i) the contents of such order or notice; and
- (ii) the due promulgation of the order or notice.

(2) In any prosecution under these regulations arising from the alleged failure to comply with a specific written order or with the terms and conditions of permission given in writing, a copy of the order or the document containing the permission which bears a certification—

- (a) by the person who gave the order or permission that it is a true and correct copy of the order or document containing the permission; and
- (b) by the person who served the notice indicating—
 - (i) the manner of service; and
 - (ii) the place of service; and
 - (iii) the date of service;

shall be admissible upon its mere production and shall constitute *prima facie* proof of—

- A. the contents of the order or document containing the permission; and
- B. the service of the order or document on the accused in terms of the certification:

Provided that a copy of the order or document which bears certification in terms of paragraph (a) only shall be admissible upon

its mere production and shall constitute *prima facie* proof of the contents of the document.

Savings

49. Any person who was lawfully occupying or using land in an irrigable area immediately prior to the fixed date shall be deemed—

- (a) to be an occupier; and
- (b) to have obtained the permission of the district lands officer to occupy the irrigable area in terms of section 18; and
- (c) to have been allocated in terms of section 18 any lot that he or she is occupying or using on the fixed date.