

COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021

*Kenya Gazette Supplement No xxx*

*(Legislative Supplement No xxx )*

LEGAL NOTICE NO.

<b>THE WATER ACT</b> (No. 43 of 2016)	
<b>THE WATER (COMPENSATION FOR THE DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS) REGULATIONS, 2020</b>	
ARRANGEMENT OF REGULATIONS	
<b>PART I- PRELIMINARY</b>	
<b>1.</b>	Citation.
<b>2.</b>	Interpretation.
<b>3.</b>	Application of Rules
<b>PART II- DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS</b>	
<b>4.</b>	Power to enter or carry out national public water works on private or community land.
<b>5.</b>	Permission to enter or survey lands for development of works.
<b>6.</b>	Power of entry to inspect land.
<b>7.</b>	Procedure for development of works.
<b>8.</b>	Consent to proposal for development of works.
<b>9.</b>	Objection by owner or occupier.
<b>10.</b>	Power to enter land to inspect or repair works.
<b>11.</b>	Power to lop trees and hedges.
<b>PART III – MODALITIES FOR COMPENSATION</b>	
<b>12.</b>	Payment of Compensation.
<b>13.</b>	Determination of Compensation Payable.
<b>PART IV – GENERAL PROVISIONS</b>	
<b>14.</b>	Works and other apparatus are not fixtures.
<b>15.</b>	Orders.
<b>16.</b>	Penalty for obstructing or interfering with works.
<b>17.</b>	Other Offences.
<b>18.</b>	Transitional Arrangements.

**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

**SCHEDULES**

First Schedule: Penalties for Specified Offences



COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021

Kenya Gazette Supplement No.

(Legislative Supplement No. )

LEGAL NOTICE No.

THE WATER ACT  
(No. 43 of 2016)

**THE WATER (COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC  
WORKS) REGULATIONS, 2021**

IN EXERCISE of the powers conferred by Section 8(7) of the Water Act 2016, the Cabinet Secretary for Water, Sanitation and Irrigation makes the following Regulations—

**THE WATER (COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC  
WATER WORKS) REGULATIONS, 2021**

<b>PART I - PRELIMINARY</b>	
<b>Citation.</b>	1. These Regulations may be cited as the Water (Compensation for Development of National Public Water Works) Regulations 2021.
<b>Interpretation</b>	2. In these Regulations, unless the context otherwise requires—  “Act” means the Water Act 2016, No 43 of 2016 or as may be amended by Parliament from time to time;  “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to water resources;  “Community Land” means –  (a) Land declared as such under Article 63(2) of the Constitution;  (b) Land converted into community land under any law;  “Environmental Impact Assessment” means environmental assessment undertaken pursuant to the Environmental Coordination and Management Act, 2015 and the regulations made thereunder;  “Maintenance” means all actions necessary for retaining water works as near as possible to its original condition, excluding rehabilitation or renewal;  “Ministry” means the Ministry of Water, Sanitation and Irrigation;

**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	<p>“Person” means natural or legal person and includes a corporate;</p> <p>“Private land” has the meaning assigned to it under Article 64 of the Constitution;</p> <p>“National Public Water Works” has the meaning assigned to it under Section 8 of the Act;</p> <p>“Water Tribunal” means an entity established under Section 119 of the Act;</p> <p>“Works” for purposes of these Regulations means any man made structure, apparatus, contrivance, device or thing for storing, impounding, or diverting water permanently or temporarily, regulating the flow of water or containing or managing and controlling flooding and includes a dam, reservoir, water pan, dyke, levee and such like structures and devices;</p> <p>“Water Works Development Agency” means an entity of the national government established under Section 65 of the Act.</p>
<b>Application of the Rules</b>	<p>3. (1) These Regulations shall apply to and govern the powers and functions of the Water Works Development Agency in the execution of its respective mandate under the Act.</p> <p>(2) These Regulations shall apply to water works constructed and maintained on private or community land as are considered necessary for the purposes of any national public water works by the Water Works Development Agency in their geographical area of jurisdiction.</p> <p>(3) These Regulations also apply to works constructed and maintained on private or community land for the purposes of any national public waterworks before the commencement of the Act.</p>
<b>PART II - DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS</b>	
<b>Power to enter or carry out national public water works on private or community land.</b>	<p>4. (1) A Water Works Development Agency may develop water works necessary for the purposes of any national public water works upon, through, over or under any land subject to the provisions of the Act, these Regulations and any other relevant written law.</p> <p>(2) Any person authorized by or in the service of the Water Works Development Agency including any Qualified Water Sector Professional or Qualified Contractor executing works for the Water Works Development Agency, together with his her agents and servants, may at any time enter upon any land for the purpose of surveying, setting out and marking out the intended water works, or for any other purpose under the Act or under these Regulations.</p>



**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	<p>(3) The Water Works Development Agency shall endeavor to prevent, remove, compensate for or minimize, as appropriate, the adverse effects of the activities listed in subsection (1) and (2) on the land and surrounding environment in accordance with the relevant environment and land laws.</p>
<b>Permission to enter or survey lands for development of works.</b>	<p>5. (1) Where the Water Works Development Agency wishes to enter upon any land to carry out a survey of the land for the purposes of carrying out construction or development of water works necessary for any national public water works it shall seek the prior consent of the owner of such land.</p> <p>Provided that where the owner cannot be traced, the Water Works Development Agency shall give fourteen (14) days' notice in the <i>Gazette</i> or through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation and an announcement in a radio station of local coverage for a period of two weeks.</p> <p>(2) The notice shall describe the nature of the intended water works and shall name a place where the plan of the intended water works is open for inspection during working hours.</p> <p>(3) A copy of the notice shall either be served on every person resident in Kenya whose place of residence is known and who is known or believed to be the owner of the land through, over or under which it is intended that any water works necessary for the purposes of national public water works shall be carried out or constructed, and shall be posted in a conspicuous position on that land.</p>
<b>Power of entry to inspect land</b>	<p>6. The relevant person or government entity responsible for management of the subject land may authorize in writing, any person to enter upon any land specified in Regulation 5(1) to inspect the land and to do all things reasonably necessary to ascertain whether the land is suitable for the intended purpose.</p> <p>Provided that if there is damage resulting from such entry, the applicant shall pay in full, just compensation as is payable under the relevant written law.</p>
<b>Procedure for development of works</b>	<p>7. The Water Works Development Agency will undertake the following preliminary activities prior to obtaining the necessary consent for proposal for development of water works from the owner of the land –</p> <p>(a) procure cadastral drawings showing -</p> <p>(i) how the infrastructure cuts out each land parcel;</p> <p>(ii) a list of parcel numbers indicating the plot reference number;</p>

**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	<p>(iii) total area of land parcels and acreage affected by the intended works for each parcel.</p> <p>(b) the name of the registered owner of the land or the legal representative thereof;</p> <p>(c) official searches of affected land parcels;</p> <p>(d) the environmental impact assessment report and appropriate approvals or certification for the project;</p> <p>(e) ensure availability of funds to allow for prompt, full, just compensation as provided for under the Constitution, the Act, these Regulations and any other written law.</p>
<p><b>Consent to proposal for development of works</b></p>	<p>8. (1) An owner of land, after receipt of a request for consent under Regulation 5 (1), may consent in writing to the carrying out of construction or development of the intended water works, upon agreement being reached with the Water Works Development Agency as to the amount of compensation payable, if any, and any consent so given shall be binding on all parties having an interest in the land subject to the following provisions –</p> <p>(a) that any compensation payable by the Water Works Development Agency giving notice to the owner, in cases where the owner is under incapacity or has no power to consent to the request for consent under these Regulations, shall be paid to the legal representative of the owner; and</p> <p>(b) that an occupier or person other than the owner interested in the land shall be entitled to compensation for any loss or damage sustained by the carrying out of construction or development of the intended water works so long as the claim is made within three (3) months after the development.</p> <p>(2) No consent expressed in writing in accordance with subsection (1) shall be void by reason only of non-compliance with any statutory requirements as to registration.</p> <p>(3) Notwithstanding subsection (2), the consent of any land owner granted over land where the intended water works necessary for any national public water works are to be carried out or constructed or developed, shall be registered as an encumbrance on that land with the appropriate land registry or in the relevant community land register.</p> <p>(4) Where the land owner cannot be traced, the Water Works Development Agency shall give thirty (30) days’ notice prior to the development of the intended water works on the land through appropriate mechanisms including public advertisement in at least two</p>



**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	<p>newspapers of nationwide circulation and an announcement in a radio station of local coverage for a period of two weeks.</p> <p>Provided that no construction or development shall commence unless the amount of compensation payable, if any as determined by the Waterworks Development Agency, has been deposited into a special compensation fund held by the concerned Waterworks Development Agency.</p>
<p><b>Objection by owner or occupier.</b></p>	<p>9. (1) If any owner, an occupier or person other than the owner interested in the land through, over or under which it is intended that any works necessary for any national public water works shall be carried out objects to the intended water works and serves notice in writing of this objection at the appropriate office of the relevant Water Works Development Agency at any time within that month, the intended works, in so far as it affects the land of the person serving the notice of objection shall not be commenced without the permission of the Water Works Development Agency.</p> <p>(2) The Water Works Development Agency may appoint such person or persons as it may think fit to conduct an inquiry into the propriety of the intended work and into the objections thereto, and require such person or persons to report to the Water Works Development Agency on matters with respect to which the inquiry was directed.</p> <p>(3) On receiving the report of such person or persons, the Waterworks Development Agency may make an Order disallowing or allowing, with such modifications (if any) as he she may deem necessary, the intended work.</p> <p>(4) If the owner, an occupier or person other than the owner interested in the land is dissatisfied with any Order made in accordance with subsection (3), the owner, occupier or person other than the owner interested in the land may have recourse under Section 121 (1) of the Act and may submit the matter to the Water Tribunal for determination.</p>
<p><b>Power to enter land to inspect or repair works.</b></p>	<p>10. (1) After such intended water works necessary for national public water works have been laid in accordance with these Regulations, any person authorized by the Water Works Development Agency may, from time to time as it becomes necessary, enter the land on which the works is laid with such assistance as may be necessary for the purpose of inspecting, repairing or re-laying the works, or removing such works in case where the works are no longer required.</p> <p>(2) Where the works developed on such land is removed, the surface of the land shall forthwith be restored to its former condition as far as possible by the Water Works Development Agency and in default thereof, restoration may be carried out by the owner of the land, and</p>



**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	<p>the costs thereof shall be recoverable from the Water Works Development Agency.</p>
<b>Power to remove interferences</b>	<p>11. (1) Where there is an obstruction or interference with the works of a Water Works Development Agency it shall give seven (7) days' notice to the owner or occupier of the land requiring him to remove the obstruction or interference and the Water Works Development Agency shall pay the expenses reasonably incurred by the owner or occupier of the land in complying with the notice:</p> <p>Provided that in any case where such a notice is served upon an occupier who is not the owner of the land concerned, a copy of the notice shall also be served upon the owner thereof, if his address is known.</p> <p>(2) If within fourteen (14) days from the date of the notice in subsection (1) the owner or occupier of the land gives a counter-notice objecting the requirements of the notice, the matter shall, unless the counter-notice is withdrawn following consultations between the Water Works Development Agency and the owner or occupier, be referred to the Water Tribunal for determination.</p> <p>(3) The Water Tribunal may, after giving the parties an opportunity to be heard, make such orders as it thinks just and any such order may empower the Water Works Development Agency, after giving a seven (7) day prior notice to any such person by whom the counter-notice was given of the commencement of the work as the Order may direct, to remove the obstruction or interference, and may determine any question as to what compensation, if any, and expenses are to be paid:</p> <p>Provided that any party aggrieved by any decision of the Water Tribunal with regard to compensation may within thirty (30) days after being notified of such decision appeal to the Environment and Land Court whose decision shall be final and binding.</p> <p>(4) Any compensation or expenses payable to the owner or occupier by the Water Works Development Agency under this section shall be a civil debt recoverable summarily.</p>
<b>PART III - MODALITIES FOR COMPENSATION</b>	
<b>Payment of Compensation</b>	<p>12. (1) The Water Works Development Agency shall make good all damage resulting from such entry upon any land for the purpose of surveying, setting out and marking of the intended works, or for the purpose of inspecting, repairing, re-laying or removing, any national public water works and shall pay full, just compensation to the owner, occupier or person other than the owner interested in the land.</p> <p>(2) The provisions of these Regulations shall not relieve the Water</p>



**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	<p>Works Development Agency of the obligation to make compensation to the owner or occupier of any land or the agents, workmen or servants of the owner or occupier of any land which is the subject of the provisions of the Act or these Regulations, for damage or loss caused by the exercise or use of any power or authority conferred by the Act or by any irregularity, trespass or other wrongful proceeding in the execution of the Act or these Regulations or by the loss or damage or breaking of any works or by reason of any defect in such works.</p>
<b>Determination of compensation payable</b>	<p>13. (1) In determining the amount of compensation payable, the relevant Waterworks Development Agency shall consider and take into account the following-</p> <ul style="list-style-type: none"><li>(a) the market value of the land and improvements thereon;</li><li>(b) any benefit accruing to the land by the construction of the works;</li><li>(c) any adverse effect or damage sustained or likely to be sustained on the land caused by the works;</li><li>(d) expenses incurred by the owner, occupier or other person not the owner of land with an interest due to change of residence or business; and</li><li>(e) expenses incurred by an owner, occupier or other person not the owner of land with an interest due to decrease or loss of business.</li></ul> <p>(2) In the event of disagreement as to the amount of the compensation to be paid or as to the person entitled to receive compensation, any party aggrieved by any decision of the Waterworks Development Agency with regard to compensation may within thirty (30) days apply to the Water Tribunal, who shall award to the person entitled to receive compensation, such compensation as the Tribunal thinks reasonable.</p> <p>(3) Where the party is aggrieved by the determination of the Tribunal on the issue of compensation payable or as to the person entitled to receive compensation, the aggrieved party within thirty (30) days of the date of the notification of such decision, may appeal to the Environment and Land Court to render a decision which will be final and binding.</p> <p>(4) If the Tribunal does not render a determination as to the amount of the compensation to be paid or as to the person entitled to receive compensation within three (3) months of the matter being lodged with the Tribunal, or such longer period as the Tribunal may reasonably</p>

---

**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	direct, the aggrieved party may appeal to the Environment and Land Court for a determination which decision shall be final and binding.
<b>PART IV - GENERAL PROVISIONS</b>	
<b>Works and other apparatus are not fixtures.</b>	<p>14. (1) Any works belonging to the Water Works Development Agency and lawfully placed or installed in or upon any premises not belonging to the Water Works Development Agency, whether or not fixed to any part of such premises shall –</p> <ul style="list-style-type: none"><li>(a) remain the property of and may be removed by the Water Works Development Agency;</li><li>(b) not be subject to the landlord’s distress for rent in such premises; and</li><li>(c) not be liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises:</li></ul> <p style="padding-left: 40px;">Provided that adequate indication is given on such premises that such Water Works Development Agency is the actual owner of such works.</p> <p>(2) For the purposes of this section, any structure, apparatus, contrivance, device or thing for storing, recharging, treating, carrying, conducting, providing or utilizing water or liquid waste let, rented, or disposed of by the Water Works Development Agency on terms of payment by instalments shall, until such instalments have been paid, be deemed to belong to the Water Works Development Agency.</p>
<b>Orders</b>	<p>15. (1) A Water Works Development Agency may issue an Order to any owner, occupier or person not the owner of the land with an interest, to desist from any activity detrimental to works developed necessary for any national public water works on any such land.</p> <p>(2) The Order in subsection (1) will specify what measures are required to be undertaken, the period of time for compliance with the Order, and any other conditions pertaining to the compliance of the Order.</p> <p>(3) A person who has been served with an Order by the Water Works Development Agency and fails to comply within the stated time period will be considered in breach of these Regulations and will be guilty of an offence punishable under these Regulations.</p> <p>(4) Any person who objects to any part of an Order in subsection (1) served on him by the Water Works Development Agency, shall respond in writing to the Waterworks Development Agency within fourteen (14) days, giving justification for the basis of his or her objection.</p>

---

**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	<p>(5) In the event of an objection to such Order in subsection (1), the Waterworks Development Agency shall, within seven (7) days of receiving the objection, notify the person served with the Order of changes to the conditions of the Order, if any.</p> <p>(6) In the event that an Order is not complied with within the time stipulated in the Order, the Waterworks Development Agency may take any appropriate measures to prevent the activity mentioned in the Order including the confiscation of equipment, plant or works, and that any costs incurred by the Waterworks Development Agency in effecting these measures is a cost recoverable from the recipient of the Order.</p> <p>(7) If the recipient of the Order is dissatisfied by the decision of Waterworks Development Agency, he or she may, in accordance with Section 121 (1), appeal the decision to the Water Tribunal.</p>
<p><b>Penalty for obstructing or interfering with works</b></p>	<p>16. Any person who, without the consent of the Waterworks Development Agency (which consent shall not be unreasonably withheld), causes any building or structure to be newly erected which interferes with or obstructs or hinders the functionality and/or utility of any national public water works located on such land shall be guilty of an offence and liable to the fines and penalties prescribed in these Regulations.</p>
<p><b>Other Offences</b></p>	<p>17. (1) No person may –</p> <p>Use any works otherwise than as permitted under the Act and/or under these Regulations and for the avoidance of doubt –</p> <ul style="list-style-type: none"> <li>(a) Fail to comply with an order or directive issued under the Act and these Regulations and unlawfully and intentionally or negligently tamper or interfere with any works or any seal or measuring device attached to a water works for the purposes of national public water works;</li> <li>(b) Hinder, obstruct or interfere with any person in the exercise of any power or performance of any of that person’s duties in terms of the Act and these Regulations;</li> <li>(c) Unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to effect a waterworks.</li> </ul> <p>(2) Any person who contravenes any provision of subsection (1) of this Regulation is guilty of an offence and liable on conviction, to the penalties prescribed under Section 147 of the Act.</p>
<p><b>Transitional Arrangements.</b></p>	<p>18. Works falling under the mandate of the Water Works Development Agency constructed prior to the commencement of these Regulations or construction work in progress on that date shall within a period of</p>



**COMPENSATION FOR DEVELOPMENT OF NATIONAL PUBLIC WATER WORKS REGULATIONS 2021 –  
MARCH 08 2021**

	twelve months following the commencement of the Regulations or such longer period as the Water Works Development Agency may take measures to bring the water works into compliance with these Regulations.
<p><b>Dated the ..... 2021</b></p> <p align="right"><b>SICILY KARIUKI</b></p> <p align="right"><b>Cabinet Secretary</b></p> <p align="right"><b>Ministry of Water, Sanitation and Irrigation</b></p>	

**FIRST SCHEDULE  
Rules 16 and 17**

**PENALTIES FOR SPECIFIED OFFENCES**

<b>Relevant Rules</b>	<b>Offence</b>	<b>Minimum Penalty</b>	<b>Maximum Penalty</b>
<b>16</b>	<b>Damage to Works by newly erected buildings or structures</b>	Kshs. 2 0,000/- or 6 months imprisonment and repair damage at his or her cost	Penalty prescribed in section 147 of the Act and repair damage at his or her cost
<b>17 (a)</b>	<b>Failure to comply with an Order</b>	Kshs. 2 0,000/- or 6 months imprisonment and compliance with the order at his or her cost	Penalty prescribed in section 147 of the Act.
<b>17 (b)</b>	<b>Obstructing a Qualified Water Sector Professional or Qualified Contractor</b>	Kshs. 20,000/- or 6 months' imprisonment	Penalty prescribed in section 147 of the Act.
<b>17 (c)</b>	<b>Undertaking unlawfully and intentionally or negligently any act or omission which detrimentally affects or is likely to effect a waterworks</b>	Kshs. 20,000/- or 6 Months' imprisonment	Penalty prescribed in section 147 of the Act.

