

SAINT LUCIA

No. 14 of 2005

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SCHEDULE

I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

4th May, 2005.

SAINT LUCIA

No. 14 of 2005

AN ACT to provide for the management of water resources and to regulate the delivery of water supply services and sewerage services throughout Saint Lucia and for related matters.

[ON ORDER]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PART I
PRELIMINARY

Short title and commencement

1.— (1) This Act may be cited as the Water and Sewerage Act 2004.

(2) This Act shall come into force on a date to be fixed by the Minister responsible for public utilities by Order published in the *Gazette*.

Interpretation

2. In this Act —

“abstraction licence” means an abstraction licence granted pursuant to Division 4 of Part II;

“abstraction licence fee” means an abstraction licence fee payable pursuant to section 18;

“abstraction licensee” means a person who holds a valid abstraction licence pursuant to this Act;

“application fee” means an application fee to be submitted with an application made pursuant to this Act;

“Agency” means the Water Resource Management Agency established pursuant to section 3;

“annual tariff review” means the annual tariff review pursuant to section 80;

“Appeals Tribunal” means the Appeals Tribunal appointed pursuant to section 96;

“application” means an application made pursuant to this Act;

“applicant” means a person making an application pursuant to this Act;

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

“auditor” means a person who is a member of the Institute of Chartered Accountants in Saint Lucia or any other person who is a member of another professional accounting association and who is approved as an auditor by the Minister responsible for finance;

“Board” means the Board of the National Water and Sewerage Commission appointed pursuant to section 36;

“bore” means any bore, hole, well, excavation or other opening in the ground naturally or artificially constructed or improved for the purpose of intercepting, collecting, obtaining or using

groundwater or disposing of any water or waste below the surface of the ground, or which extends to an aquifer;

“Bureau of Standards” means the Bureau of Standards established pursuant to the Standards Act 1990, No. 14 of 1990;

“business risk” means the risk derived from a service licensee’s own decisions regarding its operations, investments and costs;

“Chairperson” means the Chairperson of the Board appointed pursuant to section 36;

“Commission” means the National Water and Sewerage Commission established pursuant to section 36;

“consumer” means a person using a service;

“continuity” means the condition by which potable water supply service or sewerage services are provided continuously, avoiding interruptions;

“cross subsidy” means differentiating tariffs for certain categories of customers so that the contribution by a group of customers pays for part of the cost of services supplied to other customers or group of customers;

“customer” means a person who subscribes for a service;

“Deputy Director” means the Deputy Director of the Water Resource Management Agency appointed pursuant to section 3;

“Director” means the Director of the Water Resource Management Agency appointed pursuant to section 3;

“direct subsidy” means the granting of revenue by the Government —

- (a) to certain customers to pay part of the cost of their access to a service; or
- (b) to the provider of a service to help pay part of the cost of service connection, service or construction of the works necessary for the maintenance, refurbishment, and expansion of facilities;

“dispose” includes transfer, destroy, sell, abandon, dismantle;

“economic equilibrium” means that the revenues from a service rendered allow for the full recovery of all efficiently incurred

costs and reasonable compensation for the cost of capital in the provision of that service;

“Executive Director” means the Executive Director of the Commission appointed pursuant to section 36(3);

“environment” means all aspects of a person’s surroundings, including the physical, biological, economic, cultural and social aspects of such surroundings;

“extraordinary tariff review” means the extraordinary tariff review pursuant to section 82;

“facilities” means the premises and apparatus required to provide services;

“Fund” means the Water and Sewerage Fund established pursuant to section 53;

“gathering ground” means an area of land declared to be a gathering ground pursuant to section 8;

“Government” means the Government of Saint Lucia;

“groundwater” means all water occurring or obtained from below the surface of the ground other than water contained in works, not being a bore, for the distribution, storage or treatment of water or waste, and includes water occurring in or obtained from any bore or aquifer;

“levy” means the water and sewerage service levy established pursuant to section 85;

“licence” means a licence granted pursuant to this Act;

“licensee” means a person who holds a valid licence pursuant to this Act;

“low-income household” means a household with an annual income of less than the amount set as the personal allowance pursuant to the Income Tax Act 1989, No. 1 of 1989;

“member” means a member of the Board appointed pursuant to section 36;

“meter” means any appliance used to measure, ascertain or regulate the amount of water taken or used from waterworks by means of any service, as well as any appliance used in estimating the flow of water in or from any part of waterworks;

“Minister —

- (a) when referred to in Part II means the Minister responsible for agriculture;
- (b) when referred to in Part III means the Minister responsible for public utilities;

“owner” in relation to any building or land, means a person, other than a mortgagee not in possession, who for the time being –

- (a) is entitled to dispose of the right of ownership of the building or land whether in possession or reversion; or
- (b) holds or is entitled to the rights and profits of the building or land under a lease or agreement, the unexpired term whereof exceeds three years; or
- (c) where the person referred to in paragraph (a) or (b) is absent or under any disability, his or her agent or if there is no such agent, the occupier of the building or land;

“permit fee” means the permit fee pursuant to section 31;

“permit holder” means a person who holds a valid permit pursuant to this Act;

“person” includes a body corporate or an unincorporated body;

“pollution” means the man-made or man-induced alteration of the physical, biological, chemical, and radiological integrity of water and other media;

“potable water” means water which meets quality standards set pursuant to this Act and to any other law in force in Saint Lucia;

“potable water supply service” includes the —

- (a) treating of water to make it potable water;
- (b) storing, bottling, transporting, or distribution of potable water; and the sale or offer for sale of that water as potable water;

“prescribed” means prescribed in the Regulations;

“raw water” means water which does not meet the quality standards for potable water set pursuant to this Act and any other law in force in Saint Lucia;

“raw water supply service” includes the, storing, transporting and distribution of raw water and the offer for sale or the sale of raw water;

- “Regulations” means Regulations made pursuant to section 97;
- “repealed Act” means the Water and Sewerage Act 1999, No. 13 of 1999;
- “Reserve Fund” means the Reserve Fund established pursuant to section 53(3);
- “rooftop catchment” means any installation or device suitable for the collection of rainwater on the roof of a building or dwelling house;
- “service” includes a water supply service, a sewerage service and the construction, operation, maintenance, rehabilitation, expansion, management and exploitation of works necessary for a water supply service or a sewerage service pursuant to a service licence;
- “service connection” means a connection for receipt of a service;
- “service licence” means a service licence granted pursuant to Division 2 of Part III;
- “service licensee” means a person who holds a valid service licence pursuant to this Act;
- “service licensee fee” means a service licence fee payable pursuant to section 61;
- “sewage” includes residential, industrial and commercial waste and such other matter or substance as may be prescribed;
- “sewerage service” includes the removal of sewage by pipe from the exterior of any domestic, commercial, governmental, industrial or other building and the collection, transportation, treatment and disposal of the such sewage;
- “sewerage works” means any works for the collection, transmission, treatment and disposal of sewage or any part of such works;
- “subsistence garden” means a garden, used in connection with a dwelling or group of dwellings for the subsistence of the residents of the dwelling, the produce of which is predominantly consumed by the residents;
- “street” includes any highway, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not;
- “tariff” means the rate charged to the customer by the service licensee for a service, calculated according to the tariff scheme;
- “tariff scheme” means a tariff scheme established pursuant to section 78;

“tariff review” means an annual tariff review, an extraordinary tariff review or a triennial tariff review;

“triennial period” means the period of three years between each triennial tariff review;

“triennial tariff review” means a triennial tariff review pursuant to section 81;

“universal service” means service which allows all persons access within one kilometer of their dwelling;

“waste” includes any solid, liquid or gaseous material including but not limited to logs, bottles, tins, sawdust, derelict vehicles, cartons, plastic, paper, glass, food, animal remains, garbage, refuse, debris, gravel stone, sand dirt or sewage or other material which may cause pollution;

“waste control area” means an area declared to be a waste control area pursuant to section 24;

“water” includes —

- (a) water flowing or situated upon the surface of any land;
- (b) water flowing or contained in any natural course for water or any lake or spring whether or not it has been altered or artificially improved;
- (c) estuarine or coastal water;
- (d) groundwater; and
- (e) water contained by works acquired, constructed, improved or operated by or on behalf of a service licensee;

“water control area” means an area declared to be a water control area pursuant to section 23;

“watercourse” includes all rivers, streams, ditches, gullies, culverts, dykes and passages through which water flows, whether on the surface or underground, except water mains and sewers;

“water resource” includes —

- (a) any surface of any land upon which water is situated or is flowing; and
- (b) any watercourse;

“water supply service” includes potable water supply service and raw water supply service;

“waterworks” includes all existing reservoirs, intakes, catchments, dams, tanks, cisterns, deep wells or boreholes, tunnels, pillar beds, conduits, aqueducts, pipes, fountains, sluices, valves, hydrants, pumps and all other structures or appliances which –

- (a) are used or intended to be used or constructed for the supply, storage, purification, conveyance, support, measurement or regulation of water by or on behalf of a service licensee, or
- (b) may be used or constructed for the purposes referred to in paragraph (a) by a service licensee, and which belong to or are managed by or leased to the service licensee;

“works” includes the facilities and works of expansion, replacement and network improvement for the provision of a service.

PART II

WATER RESOURCE MANAGEMENT

Division 1

Water Resource Management Agency

Establishment of Agency

3.— (1) There is hereby established the Water Resources Management Agency for the purpose of managing water resources.

(2) The Agency shall be under the portfolio of the Minister responsible for agriculture and shall be administered by a Director assisted by a Deputy Director and other necessary administrative and technical personnel appointed by the Public Service Commission .

(3) The Director shall report to the Minister.

(4) The Minister may appoint such persons as the need arises on an *ad hoc* basis to give technical advice to the Agency.

Functions and powers of the Agency

4.— (1) The functions and powers of the Agency include the following —

- (a) receiving and considering applications for abstraction licences, and permits for use of water in water control areas and permits for discharge of waste in waste control areas and making recommendation to the Minister for the approval of such applications;

- (b) establishing and maintaining a database of information necessary and relating to water resource management;
- (c) promoting the sustainability of water resources;
- (d) advising on the conservation and use of water resources;
- (e) promoting public awareness concerning the use and management of water resources;
- (f) undertaking water resources assessment and planning, including surveying, monitoring, research and development;
- (g) developing watershed management plans and facilitating regulation accordingly;
- (h) undertaking the preparation of water master plans and allocation schemes;
- (i) advising the Government on the administration of enactments that relate to or in any way affect the conservation or use of water resources;
- (j) providing technical advice to the Commission in support of the Commission's regulatory functions;
- (k) advising the Minister in relation to abstraction licences pursuant to Division 4;
- (l) advising the Minister in relation to water control areas and waste control areas pursuant to Divisions 5;
- (m) advising the Minister in relation to water related emergencies pursuant to Division 3;
- (n) advising the Minister in relation to gathering grounds pursuant to Division 2.

(2) Where the Agency reasonably suspects that a permit holder is in breach of this Act, the Regulations or a permit held by the permit holder or where an allegation of breach is made to the Agency against a permit holder, the Agency may conduct any investigation it considers necessary in relation to the permit holder and may perform any of the following in the course of such investigation –

- (a) compel the production of documents and records in the custody or control of the permit holder;
- (b) compel the appearance of an employee or officer of a permit holder, or any other person for the purpose of ascertaining compliance with this Act, the Regulations or the permit;

- (c) inspect, examine or make copies of any document or record in the possession of the permit holder relevant to the permit held by the permit holder;
- (d) require verification of income and all other matters pertinent to the permit;
- (e) enter or inspect any premises for the purpose of ascertaining compliance with this Act, the Regulations, or the permit; and
- (f) seize, remove or impound any document or records relating to the permit for the purpose of examination and inspection.

(3) In carrying out the provisions of sub-section (2), the Agency may consult any Department of Government or statutory body likely to be affected, and shall send to the Department of Government or statutory body likely to be affected, a copy of any report prepared by the Agency in consequence of any investigation made pursuant to sub-section (2).

Revenue of Agency

5.— (1) All sums received by the Agency in respect of application fees, licence fees and permit fees and other charges imposed by the Agency pursuant to this Act shall be paid into the Consolidated Fund.

(2) For the proper discharge of its functions the Agency shall receive its revenue from sums allocated to the Agency by Parliament.

Division 2

Crown Rights in Water, Protection of Water and Gathering Grounds

Crown rights in water

6.— (1) The right to water is hereby vested in the Crown and may be exercised on its behalf by the Minister in accordance with this Act.

(2) The Crown shall, in exercising its right to water pursuant to Sub-Section (1) —

- (a) investigate, use, control, conserve, protect, manage and administer water in Saint Lucia for domestic purposes;
- (b) engage in industrial, commercial, hydro-electrical, geothermal, navigation, fishing and agricultural activities in so far as such activities relate to water;
- (c) preservation of flora and fauna in gathering grounds; and
- (d) prevent and mitigate the effects of erosion, drainage, pollution and flooding.

Protection of water

7. Where upon recommendation by the Agency, the Minister is satisfied that the quantity or quality of any water is threatened, the Minister shall —

- (a) cause to be carried out, such operations as he or she considers appropriate to prevent any matter from entering the water, or to remove or dispose of any matter and to remedy or mitigate any pollution caused by the presence of any matter in the water; and
- (b) immediately request the Minister responsible for health and any other Minister to take appropriate action in accordance with the law in force in Saint Lucia.

Gathering grounds

8.— (1) All areas of land on which water is collected for the purposes of water works which are declared to be gathering grounds pursuant to the repealed Act or declared to be a protected forest or protected reserve pursuant to the Forest Soil and Water Conservation Ordinance, CAP. 25 are hereby declared to be gathering grounds pursuant to this Act.

(2) The Minister shall as soon as is practicable after the commencement of this Act publish a list specifying the boundaries of all areas of land declared to be gathering grounds in accordance with sub-section (1).

(3) Where, on the advice of the Agency, the Minister is satisfied that an additional gathering ground is required for the purposes of extending or augmenting the water supply, the Minister shall cause the limits or areas thereof to be marked out and the Minister shall, subject to sub-section (5), by Order published in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia, specify the boundaries of the area and declare the area to be a gathering ground.

(4) Where an Order is published pursuant to sub-section (3), the land declared to be a gathering ground shall be acquired by the Government and compensation shall be payable to the owner of the land in accordance with the Land Acquisition Ordinance CAP. 109.

(5) No area of land within the limits of a gathering ground shall be granted, devised or otherwise disposed of except in keeping with such conditions as may be laid down by the Minister.

Protection of defined area around gathering grounds

9.— (1) On the advice of the Agency and for the purpose of protecting the quantity or quality of water in any gathering ground the Minister may, by Order published in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia —

- (a) define an area of land around a gathering ground which is in need of protection;
- (b) prohibit or regulate the doing within that area of land of any act specified in the Order; and
- (c) construct mechanisms to restrict access to that area of land.

(2) Where an Order is published in the *Gazette* pursuant to sub-section (1), the Government shall pay adequate compensation to the owner of the land for the loss of the use prohibited or regulated.

(3) Notwithstanding sub-section (1)(b), the acts prohibited or regulated by the Order made by the Minister pursuant to this section shall include —

- (a) the placing, deposit or discharge within the area of material of any kind that is likely to impair the quality or significantly reduce the quantity of the water or the storage capacity of the gathering ground;
- (b) such other acts or omissions as may be considered likely to impair the quality or significantly reduce the quantity of the water or the storage capacity of the gathering ground.

(4) A person who contravenes an Order made pursuant to this section commits an offence and upon summary conviction is liable to a fine of not less than three thousand dollars or to imprisonment for a term of not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

Division 3
*Emergencies***Water-related emergencies**

10.— (1) Where on the advice of the Agency the Minister is satisfied that by reason of an exceptional shortage of rain, or contamination of water, a serious deficiency of supplies of water exists or is threatened, the Minister shall forthwith, by Order published in the *Gazette*, in at

least two newspapers in general weekly circulation in Saint Lucia and by any other media declare a water-related emergency and may —

- (a) permit the taking of water from any source specified in the Order;
- (b) prohibit or limit the use of water for any purpose specified in the Order;
- (c) prohibit or limit the taking by any person of water from a source specified in the Order if the Minister is satisfied that the taking of water from that source depletes or otherwise affects the supplies available to the public;
- (d) prohibit any activity which may cause the contamination of the water; and
- (e) cater for any other matter as appears to the Minister to be expedient to meet the water-related emergency.

(2) An Order made under sub-section (1) shall be revoked by the Minister by Order published in the *Gazette*, in at least two newspapers in general weekly circulation in Saint Lucia and by any other media, as soon as practicable after the deficiency or threatened deficiency has been made good or removed.

(3) A person who contravenes a provision of an Order made pursuant to sub-section (1)(b), (c) or (d) commits an offence and upon summary conviction is liable to a fine of not less than three thousand dollars or to imprisonment for a term of not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the breach continues.

Division 4

Abstraction of Water

Private use of water

11.— (1) Subject to sections 10 and 25, the occupier of any land, his or her family and employees ordinarily resident on that land are entitled to abstract and use any water within the boundary of that land for the domestic necessities of his or her household, including the watering of livestock and the irrigation of a subsistence garden provided that such abstraction or use does not compromise the quality or the quantity of the water supply.

(2) The rights under sub-section (1) shall not extend to the intentional blocking of access to water by any person.

Requirement for abstraction licence

12.— (1) A person shall not abstract water for any use other than a use specified in section 11 unless that person is a holder of a valid abstraction licence.

(2) A person who contravenes sub-section (1) commits an offence and upon summary conviction is liable to a fine of not less than three thousand dollars or to imprisonment for a term not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

(3) An abstraction licence granted pursuant to this Division shall not have the effect of dispensing with the necessity of obtaining any other permission where such permission is required under any law in force in Saint Lucia.

Abstraction licence as of right

13. A person who has been abstracting water for a continuous period of twenty four months prior to the date of commencement of this Act is, subject to section 18, entitled on application to the Agency made within six months of commencement of this Act in accordance with section 14, to the grant of an abstraction licence for a period which expires one year after the date of commencement of this Act.

Application for abstraction licence

14.— (1) Subject to sub-section (2), a person may in the prescribed form apply to the Minister for an abstraction licence to abstract water for use other than the use to which section 11 applies.

(2) A person shall submit the application made pursuant to sub-section (1) to the Agency together with the prescribed application fee.

Recommendation by Agency

15.— (1) Subject to sub-sections (2), (3) and (4) and to section 13, where an application is submitted to the Agency pursuant to section 14, the Agency shall, having regard to the factors referred to in sub-section (6), make a recommendation to the Minister for the grant or refusal of an abstraction licence to the applicant and shall give written reasons for a recommendation of refusal.

(2) The Agency may within fourteen days of the receipt of an application, request additional information from the applicant for the purpose of considering an application.

(3) Where the Agency makes a request for information pursuant to sub-section (2), the applicant shall submit that information within fourteen days of the request or within a further period of time granted and specified in writing by the Agency.

(4) The Agency shall not unreasonably refuse to give a further time period pursuant to sub-section (3).

(5) The Agency shall submit a recommendation pursuant to sub-section (1) to the Minister, within twenty eight days of the application being made or information requested pursuant to sub-section (3) being submitted as the case may be.

(6) The factors referred to in sub-section (1) are as follows —

- (a) the ecology, hydrology and hydrogeology of the area;
- (b) the established and projected water demands in the area; and
- (c) the current and projected availability of water in the area.

Grant or refusal of abstraction licence

16.— (1) In accordance with a recommendation made pursuant to section 15, the Minister shall grant or refuse an abstraction licence and shall within fourteen days of the receipt of the recommendation notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.

(2) A person aggrieved by the decision of the Minister pursuant to sub-section (1) shall have the right of appeal in accordance with section 96.

No recommendation or notice

17.— (1) If no recommendation is made by the Agency within the period specified in section 15(5) or if no notification is given by the Minister to the applicant within the fourteen day period specified in section 16(1), the applicant shall have the right to make a case before the Agency and the Agency shall hear the case following an application to the Agency by the applicant.

(2) The application for a hearing before the Agency shall be in the prescribed form.

(3) Where, after a hearing pursuant to sub-section (2) —

- (a) the application is refused, or
- (b) the Agency fails to make a recommendation or the Minister fails to give a notice within fourteen days of the hearing;

the applicant shall have the right to appeal pursuant to section 96.

Issuance and form of abstraction licence

18. An abstraction licence granted pursuant to this Division shall be issued on payment of the prescribed abstraction licence fee to the Agency and be in the prescribed form and —

- (a) shall clearly establish the scope of the abstraction licence; and
- (b) shall include the terms and conditions, in addition to those provided for in this Act or the Regulations, under which the abstraction licence is granted, based on the situation regarding the relevant natural resources.

Validity of abstraction licence

19. Subject to sections 13 and 21, an abstraction licence shall be valid for the period specified therein.

Breaches by abstraction licensee

20. Where an allegation of breach of the terms of an abstraction licence is made by an aggrieved person to the Agency or where the Agency reasonably suspects an abstraction licensee of being in breach of its abstraction licence, the Agency, shall conduct an investigation in accordance with section 4(2) and if it finds that —

- (a) the person's allegations or its suspicions are substantiated, it shall so notify the abstraction licensee of its findings and where appropriate issue directions to the abstraction licensee —
 - (i) requesting the abstraction licensee to stop the breach and take remedial action and stipulating a time period within which such remedial action is to be completed; and
 - (ii) requesting the abstraction licensee to compensate the Government or any person aggrieved for any foreseeable

damages caused by the breach within a specific time period;

- (b) the person's claim is frivolous or vexatious or that its suspicions are incorrect, it shall stop its investigations and the person bringing the action shall be liable for the cost incurred.

Suspension or revocation of abstraction licence

21. Where an abstraction licensee fails to comply with any direction given by the Agency pursuant to section 20, the Agency shall advise the Minister who may suspend or revoke the abstraction licence of the abstraction licensee in accordance with the terms of the abstraction licence.

Offence of not complying with direction of Agency for abstraction licence

22. An abstraction licensee who fails to comply with a direction of the Agency given pursuant to section 20 commits an offence and upon summary conviction is liable to a fine of not less than three thousand dollars or to imprisonment for a term of not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

Division 5

Water and Waste Control Areas and Permits

Water control area

23.— (1) Where on the advice of the Agency the Minister is satisfied that the regulating of water use or classes of use of water in any area is necessary in the public interest, the Minister shall by Order published in the *Gazette* and at least two newspapers in general and at least weekly circulation in Saint Lucia, declare the area as a water control area.

(2) In exercising his or her authority under sub-section (1), the Minister shall have regard to the following factors —

- (a) the ecology, hydrology and hydrogeology of the area;
- (b) the established and projected water demands in the area; and
- (c) the current and projected availability of water in the area.

(3) An Order pursuant to sub-section (1) shall specify the boundaries of the water control area, the abstraction, use or classes of use required to be regulated.

Waste control area

24.— (1) Where on the advice of the Agency, the Minister is satisfied that the regulating of the discharging of wastes or classes of wastes into or on —

- (a) any land;
- (b) any sewer or drain,
- (c) any bore; or
- (d) any water;

is necessary to protect the water resources from pollution or reduction in water quality, the Minister shall by Order published in the *Gazette* declare the area to be a waste control area.

(2) In exercising his or her authority under sub-section (1), the Minister shall have regard to the factors listed in section 23 (2), and to the necessity of protecting the health of the public and the requirements of established and intended uses of water resources, including protection of the fauna and flora of watercourses and he or she shall also have regard to the desirability of protecting and enhancing the environment.

(3) An Order pursuant to sub-section (1) shall specify the boundaries of the waste control area and the waste or classes of waste required to be regulated.

Requirement for permit

25.— (1) A person shall not use water in a water control area or discharge waste or a class of waste in a waste control area, except in accordance with a permit for the purpose granted to that person by the Minister under this Division.

(2) A person who contravenes sub-section (1) commits an offence and upon summary conviction is liable to a fine of not less than three thousand dollars or to imprisonment for a term of not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

(3) A permit granted under this Division shall not have the effect of dispensing with the necessity of obtaining any other permission where such permission is required under any law in force in Saint Lucia.

Permit as of right

26. A person who has been using water in a water control area for a continuous period at least of twenty four months immediately prior to the date of commencement of this Act is, subject to section 31, entitled on application made in accordance with section 27, to the Agency made within six months of commencement of this Act, to the grant of a permit for a period which expires one year after the date of commencement of this Act.

Application for permit

27.— (1) Subject to sub-section (2), a person may in the prescribed form apply to the Minister for a permit to —

- (a) abstract or use water in a water control area; or
- (b) discharge waste or a class of waste in a waste control area.

(2) A person shall submit the application made pursuant to sub-section (1) to the Agency together with the prescribed application fee.

Recommendation by Agency for permit

28.— (1) Subject to subsections (2), (3) and (4) and to section 26, where an application is submitted to the Agency pursuant to section 27, the Agency shall, having regard to the factors mentioned in sub-section (6), make a recommendation to the Minister for the grant or refusal of a permit to that applicant and shall give reasons for a recommendation of refusal.

(2) The Agency may, within fourteen days of the receipt of an application, request additional information from the applicant for the purpose of considering an application.

(3) Where the Agency makes a request for information pursuant to sub-section (2), the applicant shall submit that information within fourteen days of the request or within a further period of time granted and specified in writing by the Agency.

(4) The Agency shall not refuse to grant a further time period pursuant to sub-section (3) unless it is reasonable to do so.

(5) The Agency shall submit a recommendation made pursuant to sub-section (1) to the Minister within twenty eight days of the application being made or information requested pursuant to sub-section (3) being submitted as the case may be.

- (6) The factors referred to in sub-section (1) are as follows —
- (a) the ecology, hydrology and hydrogeology of the area;
 - (b) the established and projected water demands in the area; and
 - (c) the current and projected availability of water in the area.

Grant or refusal of permit

29.— (1) In accordance with a recommendation made pursuant to section 28, the Minister shall grant or refuse a permit and shall within fourteen days of the receipt of the recommendation notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.

(2) A person aggrieved by the decision of the Minister pursuant to sub-section (1) shall have the right of appeal in accordance with section 96.

No recommendation or notice for permit

30.— (1) If no recommendation is made by the Agency within the period specified in section 28(5) or if no notification is given by the Minister to the applicant within the fourteen day period specified in section 29(1), the applicant shall have the right to make a case before the Agency and the Agency shall hear the case following an application by the applicant.

(2) The application for a hearing before the Agency shall be in the prescribed form.

- (3) Where, after a hearing pursuant to sub-section (1) —
- (a) the application is refused, or the Agency fails to make a recommendation; or
 - (b) the Minister fails to give a notice within fourteen days of the hearing;

the applicant shall have the right to appeal pursuant to section 96.

Issuance and form of permit

31. A permit granted pursuant to this Division shall be issued on payment of the prescribed permit fee to the Agency and be in the prescribed form and shall —

- (a) clearly establish the scope of the permit;

- (b) include the terms and conditions, in addition to those provided for in this Act or the Regulations, under which the permit is granted, based on the situation regarding the relevant natural resources.

Validity of permit

32. Subject to sections 26 and 34, a permit shall be valid for the period specified therein.

Breaches by permit holder

33. Where an allegation of breach of the terms of a permit is made to the Agency by an aggrieved person or where the Agency reasonably suspects that a permit holder is in breach of the permit holder's permit, the Agency, shall conduct an investigation in accordance with section 4(2) and if it finds that —

- (a) the person's allegations or its suspicions are substantiated, it shall so notify the permit holder of its findings and where appropriate issue directions to the permit holder including a direction to stop the breach;
- (b) the person's allegations are frivolous or vexatious or its suspicions are incorrect, it shall stop its investigations and the person bringing the action shall be liable for the cost incurred.

Suspension or revocation of permit

34. Where a permit holder fails to comply with a direction given by the Agency pursuant to section 33, the Agency shall advise the Minister who may suspend or revoke the permit of the permit holder in accordance with the terms of the permit.

Offence of not complying with direction of Agency for permit

35. A permit holder who fails to comply with a direction given by the Agency pursuant to section 33 commits an offence and upon summary conviction is liable to a fine of not less than three thousand dollars or to imprisonment for a term of not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

PART III
WATER SUPPLY AND SEWERAGE SERVICES

DIVISION 1
Commission

Establishment of Commission

36.— (1) There is hereby established a Commission to be known as the National Water and Sewerage Commission for the purpose of regulating the delivery of water supply services and sewerage services throughout Saint Lucia.

(2) The Commission is a body corporate to which section 19 of the Interpretation Act 1968, No.18 of 1968 applies.

(3) The Commission shall be administered by a Board which, subject to sub-section (4), comprises a Chairperson and four other members, including the Executive Director, appointed by the Cabinet from among persons of high repute and integrity and who have experience of, and proven capacity in, matters relating to regulation of public services, public health, water resource management, industry, finance, economics, engineering, accountancy, commerce, consumer affairs or law.

(4) A person shall be disqualified from being a member of the Board if that person —

- (a) holds or is beneficially interested in any stock, share, bond, debenture or other security of, or other interest in, any service licensee or any other company which is in competition with, or provides similar services to those provided by the service licensee;
- (b) is adjudged by a court to be a bankrupt;
- (c) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
- (d) has been convicted of an offence involving dishonesty;
- (e) is the holder of any paid office with the Government of Saint Lucia.

(5) Cabinet shall by Order publish the names of the members of the Commission in the *Gazette*.

Functions and powers and exemption from liability of Commission

37.— (1) The functions and powers of the Commission include the following —

- (a) receiving and considering applications for the —
 - (i) provision of a water supply service;
 - (ii) provision of a sewerage service;
- (b) making recommendations to the Minister for the approval of applications made pursuant to paragraph (a);
- (c) establishing and approving tariff schemes in accordance with Division 5 of this Part;
- (d) promoting economy and efficiency in the delivery of any services;
- (e) subject to this Part, ensuring the economic regulation of any service;
- (f) determining the validity of a claim by a customer against a service licensee in accordance with the terms of the service licence in the event that the customer and the service licensee have not been able to resolve the claim and determining the consequences that result from such a determination;
- (g) advising the Minister in the financing and carrying out of the water works;
- (h) advising the Minister on the standards to be set in the Regulations relating to —
 - (i) the provision of a service;
 - (ii) environmental performance;
- (i) advising the Minister with regard to the enacting of Regulations;
- (j) administering the provisions of this Act and the Regulations.
- (k) publishing information to be specified in the Regulations;
- (l) determining principles and issuing instructions to each service licensee regarding the accounting and information systems required as the basis for the service licensee's tariff calculations;
- (m) providing information to be prescribed in the Regulations regarding a service licensee's activities and performance;

- (n) establishing and maintaining a database of information relating to water supply, water demands and water pricing;
- (o) identifying research and development resources;
- (p) considering the operation of any enactments related to or in any way affecting the supply of water or sewage disposal, and making to the Minister such representations with respect to matters of general concern arising in connection with the operation of those enactments, and making such recommendations for their extension or modification as the Commission thinks fit.

(2) Where the Commission reasonably suspects that a service licensee is in breach of this Act, the Regulations or a licence held by the service licensee as the case may be, or where an allegation of breach is made to the Commission against a service licensee, the Commission may conduct any investigation it considers necessary in relation to the service licensee and may perform any of the following in the course of such investigation –

- (a) compel the production of documents and records in the custody or control of the service licensee;
- (b) compel the appearance of an employee or officer of a service licensee, or any other person for the purpose of ascertaining compliance with this Act, the Regulations or the relevant service licence;
- (c) inspect, examine or make copies of any document or record in the possession of the service licensee relevant to the service licence held by the service licensee;
- (d) require verification of income and all other matters pertinent to the service licence or service;
- (e) enter or inspect any premises for the purpose of ascertaining compliance with this Act, the Regulations, and the licence; and
- (f) seize, remove or impound any document or records relating to the service licence or service for the purpose of examination and inspection.

(3) In carrying out the provisions of sub-section (2), the Commission may consult any Department of Government or statutory body likely to be affected, and shall send to the Department of Government or statutory body likely to be affected, a copy of any report prepared by the Commission in consequence of any investigation made pursuant to sub-section (2).

(4) In ensuring economic regulation of the services pursuant to sub-section (1)(e), the Commission shall have regard to the principles listed in the Schedule.

(5) The Commission shall not be liable for the acts of a service licensee.

Commission to regulate own procedure

38. Subject to this Act and to the Regulations, the Commission shall regulate its own procedure.

Seal

39.— (1) The Commission shall have an Official Seal.

(2) The affixing of the Official Seal of the Commission shall be in the presence, and witnessed by the signature, of the Chairperson.

(3) All documents, other than those required by law to be under seal, which are executed by, and all decisions of, the Board shall be signed by the Chairperson or any other member duly authorized in writing by the Chairperson to act on behalf of the Chairperson.

Executive Director

40.— (1) The affairs of the Commission shall be managed by the Executive Director, appointed by Cabinet, who shall be the *ex officio* Secretary to the Commission and who shall attend meetings of the Board.

(2) The Cabinet may, during the absence of the Executive Director, appoint a person to act as Executive Director upon such terms and conditions as the Board may determine.

Meetings of Board

41.— (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times as the Chairperson shall determine.

(2) The Chairperson of the Board may at any time call a special meeting of the Board and shall call a special meeting to be held within seven days of a written request for that purpose addressed to the Chairperson by any other member of the Board.

(3) The Chairperson and any other member of the Board shall be deemed to be present at a meeting of the Board if that Chairperson or the member participates by telephone and all members participating in the meeting are able to hear and to speak to each other.

Quorum

42. A meeting of the Board is duly constituted for all purposes if at the commencement of the meeting there is a quorum of not less than three members of the Board, including the Executive Director, participating in the meeting.

Voting

43.— (1) Decisions of the Board shall be taken by a majority of votes.

(2) The Chairperson shall have the right to vote and in cases of equal division the Chairperson shall have the casting vote.

Confidentiality

44. Every member, officer or employee of the Commission shall —

(1) At all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her duties.

(2) Except for the performance of his or her duties or under legal obligation, no member, officer or employee of the Commission shall communicate any confidential matter to any person or, unless under legal obligation, grant access to any person to any records in the possession, custody or control of the Commission.

Declaration of interest and abstention from voting

45.— (1) A member of the Board who is in any way, either directly or indirectly, interested in a matter before the Commission shall declare the nature of his or her interest at the first meeting of the Board at which it is practicable to do so and shall leave the meeting upon the matter coming up for discussion.

(2) A declaration and the departure of a member of the Board from the meeting in accordance with sub-section (1) shall be noted in the minutes of the meeting.

(3) A member of the Board shall not —

(a) vote in respect of a matter before the Board in which he or she is in any way interested, whether directly or indirectly; or

(b) seek to influence the vote of any other member of the Board in relation to the matter.

(4) A member of the Board who fails to comply with sub-clause (3) shall be promptly removed from the Board.

Terms of appointment

46.— (1) The appointment of a member of the Board shall, subject to sub-section (2), be for a period of not less than three years and no more than seven years and the person so appointed shall be eligible for re-appointment.

(2) The appointments of the members of the Board shall be staggered in accordance with the Regulations.

Revocation

47. Cabinet may at any time, in writing, revoke the appointment of any member of the Board if, upon evidence, Cabinet is satisfied that the member is disqualified from being a member of the Board pursuant to section 36(4), or is guilty of neglect of duty, misconduct or malfeasance.

Resignation

48.— (1) A member of the Board shall, by letter to the Cabinet Secretary resign from the membership of the Board immediately if that member becomes disqualified by virtue of section 36(4).

(2) A member of the Board may, for any reason other than disqualification pursuant to section 36(4), resign from the membership of the Board by giving at least three months notice in writing to Cabinet of his or her resignation.

Vacation

49. The office of a member of the Board is vacated —

- (a) upon the death of the member;
- (b) if the member becomes disqualified pursuant to section 36(4);
- (c) if the member resigns from membership pursuant to section 48;
- (d) if Cabinet revokes the appointment of that member pursuant to section 45 or 47; or

- (e) if the member fails to attend three consecutive meetings of the Board without presenting a medical certificate or without being excused by Cabinet in writing.

Decisions not invalidated

50.— (1) A vacancy in the membership of the Board shall not invalidate a decision of the Board made at a meeting with the quorum required pursuant to section 42.

(2) Where a disqualified member sits at a meeting of the Board, the Board may review and amend its decision within two months of that decision being made.

Staff

51.— (1) The Commission may, in accordance with the Regulations, appoint such staff as it may require for the proper carrying out of its functions pursuant to this Act.

(2) A person appointed pursuant to sub-section (1) shall perform the duties assigned to him or her by the Executive Director.

Remuneration

52. The members of the Board shall be remunerated per meeting attended in accordance with the Regulations.

Fund for use by Commission

53.— (1) There is hereby established a fund to be known as the Water and Sewerage Fund to be used by the Commission as revenue for the execution of its functions and the discharge of its obligations pursuant to this Act.

(2) The Fund shall consist of —

- (a) sums received by the Commission in respect of application fees and service licence fees and other charges imposed by the Commission pursuant to this Act;
- (b) the levy collected by any service licensee pursuant to section 85;
- (c) sums allocated to the Commission by Parliament;
- (d) revenue raised by the Commission in the form of loans, grants, investments or other means; and

(e) all other sums that may become payable to or vested in the Commission in respect of matters incidental to its powers and duties.

(3) The Commission may establish a Reserve Fund into which may be paid any surplus funds of the Commission.

(4) The Commission may withdraw any funds from the Reserve Fund in cases of a shortfall for purpose of exercising its functions or discharging its duties pursuant to this Act.

(5) Subject to any general or specific direction of Cabinet, the funds in the Reserve Fund may be invested in securities by the Commission on such terms and conditions determined by the Commission except that the Commission shall not invest its funds in securities offered by any person under its supervision.

Financial year of Commission

54. The financial year of the Commission shall begin on 1st January and shall end on 31st December in each year.

Budget and plan of action of Commission

55. The Board shall not later than October 31st in each year cause to be prepared and shall adopt and submit to Cabinet —

- (a) a budget with the estimates of its income and expenditure; and
- (b) a plan of action;

for the Commission in respect of the next financial year.

Accounts of Commission

56. The Commission shall keep proper records of accounts in accordance with generally accepted international standards and principles and shall prepare and retain financial statements in respect of each financial year.

Audit of Commission

57.— (1) The Commission shall as soon as is practicable after each financial year have its accounts audited annually by an independent auditor appointed by the Board, who shall conduct the audit in accordance with generally accepted international auditing standards and principles.

(2) The Board, the Executive Director and staff of the Commission shall grant to the auditor appointed pursuant to sub-section (1) access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor may deem necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.

(3) A person required to appear, make a signed statement or to provide information under sub-section (2) and who fails to comply commits an offence and upon summary conviction is liable to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding six months or to both and to revocation of his or her appointment as a member of the Board, the Executive Director or a staff member of the Commission in accordance with this Act.

Auditor's report of Commission

58. An independent auditor appointed pursuant to section 57 shall as soon as practicable and not later than two months after the end of each financial year submit copies of the audited financial statement of the Commission and a report on the financial statement to the Board.

Annual report of Commission

59.— (1) Subject to sub-section (2) and not later than the three months after the end of each financial year, the Commission shall submit to Cabinet an annual report on the work and activities of the Commission for that financial year and Cabinet shall not later than one month later lay the same in Parliament.

(2) An annual report pursuant to sub-section (1) shall be in the form prescribed and shall be accompanied by the auditor's report pursuant to section 58 and the annual reports of all service licensees submitted to the Board pursuant to section 74.

(3) A summary of an annual report pursuant to sub-section (1) shall be published in the *Gazette* and at least two newspapers in general and at least weekly circulation in Saint Lucia and the entire annual report shall be available to the public on payment of the prescribed fee to the Commission.

DIVISION 2
Service licence

Requirement for service licence

60.— (1) A person shall not carry on a water supply service, or a sewerage service unless that person is the holder of a valid service licence granted pursuant to this Act.

(2) A person who contravenes sub-section (1) commits an offence and upon conviction, on indictment, is liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding fifteen years or to both and to a further fine not exceeding five hundred dollars for each day during which the offence continues.

(3) A service licence granted pursuant to this Division shall not have the effect of dispensing with the necessity of obtaining any other permission where such permission is required under any law in force in Saint Lucia.

Application for service licence

61.— (1) The Minister may by notice published in the *Gazette* and in at least two newspapers in weekly and general circulation in Saint Lucia and by any other media invite persons to tender applications for the provision of a service together with a closing date for tendering of applications.

(2) Subject to sub-section (3), a person wishing to carry on a service shall, whether or not a notice is published pursuant to sub-section(1), submit an application to the Commission for a service licence to provide a water supply service or a sewerage service to the public or to a part of the public.

(3) An application pursuant to sub-section (2) shall be in the prescribed form and shall be accompanied by the prescribed service licence fee.

Recommendation by Commission for service licence

62.— (1) Subject to subsections (2), (3) and (4), where applications are submitted to the Commission pursuant to section 61, the Commission shall evaluate the applicants in accordance with the Regulations made pursuant to section 97(2) and —

- (a) if satisfied that an applicant has the requisite technical and managerial capacity and experience in the management of similar service and the financial ability for the execution of the service and is the best applicant for the grant of a service licence, make a recommendation to the Minister for the grant of a service licence to that applicant; or
- (b) if not satisfied that the applicant has met the requirements referred to in paragraph (a), make a recommendation to the Minister, with reasons, for the refusal to grant a service licence to that applicant.

(2) The Commission may within fourteen days of the an application being made or within fourteen days of the closing date for applications, whichever is later request additional information from an applicant for the purpose of considering the application.

(3) Where the Commission makes a request for information pursuant to sub-section (2), the applicant shall submit that information within fourteen days of the request or within a further period of time granted and specified in writing by the Commission.

(4) The Commission shall not refuse to grant a further time period pursuant to sub-section (3) unless it is reasonable to so refuse.

(5) The Commission shall submit a recommendation made pursuant to sub-section (1) to the Minister within twenty eight days of the application being made or information requested pursuant to sub-section (3) being submitted as the case may be.

Grant or refusal of service licence

63.— (1) In accordance with a recommendation made pursuant to section 62, the Minister shall grant or refuse a service licence and shall within fourteen days of the receipt of the recommendation notify the applicant of the grant or the refusal and shall give the reasons in writing for a refusal.

(2) A person aggrieved by the decision of the Minister shall have the right of appeal pursuant to section 96.

No recommendation or notice for service licence

64.— (1) If no recommendation is made by the Commission within the period specified in section 62(5) or if no notification is given by the

Minister to the applicant within the fourteen day period specified in section 63(1), the applicant shall have the right to make a case before the Commission and the Commission shall hear the case following an application by the applicant.

(2) The application for a hearing before the Commission shall be in the prescribed form.

(3) Where, after a hearing pursuant to sub-section (2) —

(a) the application is refused; or

(b) the Commission fails to make a recommendation or the Minister fails to give a notice within fourteen days of the hearing;

the applicant shall have the right to appeal pursuant to section 96.

Issuance and form of service licence

65. A service licence granted pursuant to section 63 shall be issued on payment of the prescribed service licence fee, and —

(a) shall clearly establish the scope of the service, including the activities for maintenance and repair of the existing works and the construction of facilities for the expansion and improvement of the service;

(b) shall include the terms and conditions, in addition to those provided for in this Act or the Regulations, under which the service is to be provided by the service licensee;

(c) shall outline the principles and shall provide instructions regarding the accounting and information systems required to form the basis on which tariffs are to be calculated;

(d) shall specify the financial reporting obligations of the service licensee;

(e) may require a service licensee to provide guarantees for securing the performance of obligations; and

(f) may specify special conditions for providing the service, based on the situation regarding the relevant natural resources, and the applicable technical and economic conditions.

Validity of service licence

66. Subject to section 88, a service licence shall be valid for the period specified therein and shall be renewable in accordance with the terms of the service licence.

Division 3
Service licensee

Obligations of service licensee

67. Notwithstanding the obligations established in its service licence, a service licensee shall —

- (a) provide the services defined in its service licence in accordance with the law in force in Saint Lucia;
- (b) provide to the Commission such complete and regular information as the Commission requires in order to prove compliance with the tariff, tariff scheme, plan of action, claim proceedings and appeals; and
- (c) facilitate, in accordance with the Regulations, the access and interconnection of other service licensees who provide services.

Rights and powers of service licensee

68. A service licensee shall have all the rights and powers of a service licensee specified in this Act and in its service licence.

Sub-contracting

69.— (1) A service licensee may, with the approval of the Commission, sub-contract certain of its activities to one or more third parties.

(2) Where a service licensee has sub-contracted an activity pursuant to sub-section (1), the service licensee's obligation to perform that activity remains in every respect, and the service licensee shall continue to be responsible for the performance and discharge of the activity.

Budget and plan of action of service licensee

70.— (1) A service licensee shall not later than three months prior to the end of its financial year cause to be prepared and submit to the Commission —

- (a) a budget with the estimates of its income and expenditure; and
- (b) a plan of action;

for the service licensee in respect of the next financial year.

Accounts of service licensee

71. The service licensee shall keep proper records of accounts in accordance with generally accepted international standards and principles and shall prepare and retain financial statements in respect of each financial year.

Audit of service licensee

72.— (1) The service licensee shall as soon as is practicable after each financial year have its accounts audited annually by an independent auditor appointed by the service licensee, who shall conduct the audit in accordance with generally accepted international accounting standards and principles.

(2) The service licensee, its directors and employees shall grant to the auditor appointed pursuant to sub-section (1), access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor may deem necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.

(3) A person required to appear, make a signed statement or to provide information under sub-section (2) and who fails to comply commits an offence and upon summary conviction is liable to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding six months or to both.

Auditor's report of service licensee

73. An independent auditor appointed pursuant to section 72 shall as soon as practicable and not later than two months after the end of each financial year submit copies of the audited financial statement of the service licensee and a report on the financial statement to the service licensee.

Annual report of service licensee

74.— (1) Subject to sub-section (2) and not later than three months after the end of each financial year the service licensee shall submit to the Commission an annual report on the work and activities of the service licensee for that financial year.

(2) An annual report pursuant to sub-section (1) shall be in the form prescribed and shall be accompanied by the auditor's report pursuant to section 73.

(3) A summary of an annual report pursuant to sub-section (1) shall be published in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia and the entire annual report shall be available to the public on payment of the prescribed fee to the service licensee.

Standards

75.— (1) Subject to sub-section (2), a service licensee shall comply with —

- (a) the minimum standards for the quality of potable water set by the Ministry responsible for health and the Bureau of Standards pursuant to the Public Health Act 1975, No. 8 of 1975, and the Standards Act 1990, No. 14 of 1990; and
- (b) the minimum standards set pursuant to the Regulations made pursuant to section 97(2)(o).

(2) In accordance with the Public Health Act 1975, No. 8 of 1975, after consultation with the Commission and the Bureau of Standards, the Minister responsible for health may —

- (a) set different standards for the quality of potable water based on the particular characteristics of the various localities, regions or sectors where the services are to be or are being provided; and
- (b) establish the terms for the achievement of those standards;

and the service licensee shall, by complying with those standards, be exempt from the provisions of sub-section (1).

Division 4 *Customer*

Rights of customer

76. In addition to any other right contained in the contract between customer and the customer's service licensee, the customer shall have the right to —

- (a) be informed by the service licensee of the rights and obligations of the service licensee under the service licence; and
- (b) receive a service which complies with the minimum standards of quality of water, provision of service and environmental performance, provided for pursuant to this Act;
- (c) access the contents of a service licence and receive a copy of a service licence or part of a service licence on payment of the prescribed fee to the Commission;
- (d) make a claim to the Commission against his or her service licensee in accordance with the terms of the service licence in the event that the customer and the service licensee are not able to resolve the claim.

Obligations of customer

77.— (1) In addition to any other obligation contained in the contract between the customer and the customer's service licensee, the customer shall —

- (a) pay for the services provided or made available in accordance with the applicable tariff;
- (b) pay the levy;
- (c) comply with the technical regulations issued by the service licensee related to service connections and the maintenance of internal facilities;
- (d) allow the service licensee to install a meter on the property where service is to be made available to the customer in a location fixed by the service licensee;
- (e) shall keep the meter located on his or her property in the same condition as existed when installed, fair wear and tear excepted;
- (f) report a damaged meter to the service licensee as soon as the damage occurs or becomes known to the customer;
- (e) permit the service licensee or its agents and employees to read the meter in accordance with the terms established in the service licence.

(2) Where a customer fails, after giving the prescribed notice, to comply with sub-section (1), the service licensee may suspend the service

to that customer except where the customer is an essential service within the meaning of the Essential Services Act 1975, No. 3 of 1975.

(3) Nothing in sub-section (2) shall interfere with the right of the licensee to sue its customer for payment of the amount owed to the service licensee.

Division 5

Tariff Scheme, Tariff, Tariff Review, Subsidies and Levy

Tariff scheme and tariff

78.— (1) A tariff scheme for the services of a service licensee shall be based on the following general principles —

- (a) tariffs must recover —
 - (i) the efficiently incurred costs of the service; and
 - (ii) a reasonable return on capital;
 thereby permitting the service licensee to attain the objective of economic equilibrium;
- (b) a tariff scheme must be explicit and elaborated in a manner so as to be easily understood, and must be made available to customers;
- (c) subject to paragraph (d) a tariff must not be unduly discriminating, in the sense that all customers in the same category will be treated equally;
- (d) when demand so permits, different tariffs may be established for differing localities, seasons, categories of customers, volumes of water provided and volumes of sewage discharged, if costs of the services so justify;
- (e) subject to paragraph (d), a tariff scheme must not penalize the service licensee for —
 - (i) past benefits or benefits obtained from operating the services;
 - (ii) efficiency increases different from those considered in the tariff reviews; and
- (f) a tariff scheme may permit the granting of a direct subsidy in accordance with section 83 or a cross subsidy in accordance with section 84.

(2) The Commission shall by Order published in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia —

- (a) establish a tariff scheme for the services of a service licence;
- (b) modify an existing tariff scheme in accordance with the modifications approved by the Commission for the services of a service licensee in accordance with sections 80, 81 or 82.

Types of reviews

79. There shall be three types of tariff reviews carried out in relation to the service of a service licensee as follows —

- (a) annual tariff review;
- (b) triennial tariff review; and
- (c) extraordinary tariff review;

which will be considered by the Commission in approving a tariff or a tariff scheme or a modification of a tariff scheme in accordance with sections 80, 81 or 82.

Annual tariff review

80.— (1) An annual tariff review shall be carried out annually by a service licensee within a triennial period between the ninth and the eleventh month in each twelve month period following the date of commencement of the service licence of that service licensee.

(2) In carrying out the annual tariff review the service licensee shall ensure that the value of the tariff is maintained in real terms, regardless of the evolution of the service licensee's own costs and using an index stipulated in the service licence.

(3) The service licensee shall submit to the Commission the new tariffs if any which it requires to be applied in accordance with the tariff scheme together with supporting information for approval and publication in accordance with sub-section (4).

(4) In accordance with the existing tariff scheme for the services of a service licensee and within twenty-eight days of a tariff proposal being submitted to the Commission by the service licensee, the Commission shall approve the tariff of the service licensee and publish it in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia.

Triennial tariff review

81.— (1) The Commission shall carry out and complete a triennial tariff review in accordance with subsections (2), (3), (4) and (5) for a triennial period of at least sixty days before the end of that triennial period.

(2) In carrying out a triennial tariff review, the Commission shall review the tariff structure and level of tariffs in the service licensee's tariff scheme, taking into consideration the new quality and expansion goals set by the Commission and the investment plan of the service licensee for the ensuing triennial period.

(3) The Commission shall prepare a draft report of the triennial tariff review stipulating the new tariff scheme or the modification of the service licensee's tariff scheme including the tariff structure and the level of tariffs which is required to be applied to generate the required revenues for the service licensee to enable it to fulfill its obligations during the subsequent three years or remaining term of its licence whichever is shorter, and shall publish the draft report in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia and shall invite comments from the public within at least two weeks from the date of publication.

(4) The Commission shall consider the comments made by the public pursuant to sub-section (3) and shall make the changes to the report as it sees fit.

(5) The Commission shall not later than sixty days prior to the end of the triennial period, publish the report stipulating the new or modified tariff scheme in the *Gazette* and in at least two newspapers in general weekly circulation in Saint Lucia.

(6) The new or modified tariff scheme referred to in sub-section (5) shall be applied during the triennial period next ensuing the one in which the triennial review was carried out.

Extraordinary tariff review

82.— (1) An extraordinary tariff review shall be carried out by the Commission where due to one or more circumstances listed in sub-section (2), a service licensee experiences what in its view constitutes a significant variation in its cost structure in relation to what was approved in the previous annual tariff review or triennial tariff review as the case may be.

(2) For purposes of sub-section (1), a circumstance constitutes —

- (a) a substantial and unforeseen modification made to the water or sewerage quality standards or to the Regulations imposing a substantial change in the conditions under which the services are provided and which entail a cost to the service licensee;
- (b) the creation, substitution or modification of taxes affecting the service licensee or the provision of the services; or
- (c) a substantial and unforeseen change in the conditions under which the services are provided, including a situation of *force majeure*;

provided that in any event, the impact triggering an extraordinary review, will be defined in the service licence.

(3) In carrying out an extraordinary tariff review the Commission shall define the marginal effect of each applicable circumstance listed in sub-section (2) on the economic equilibrium of the service licensee.

(4) The Commission shall prepare a draft report of the extraordinary tariff review stipulating the new tariff scheme or the modification of the service licensee's tariff scheme including the tariff structure and the level of tariffs which are required to be applied to generate the required revenues for the service licensee to enable it to fulfill its obligations during the remaining term of the triennial period or its service licence whichever is shorter, and shall publish the draft report in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia and shall invite comments from the public within at least two weeks from the date of publication.

(5) The Commission shall consider the comments made by the public pursuant to sub-section (4) and shall make the changes as it sees fit to the report.

(6) The Commission shall as soon as is reasonably practicable publish the report stipulating the new or modified tariff scheme in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia.

(7) The new or modified tariff scheme referred to in sub-section (6) shall be applied during the remaining term of the triennial period in which the extraordinary review was carried out or the remaining term of the service licence whichever is shorter.

Direct subsidy

83.— (1) Cabinet may, by Order published in the *Gazette*, grant a direct subsidy for the provisions of a service in order to ensure that low-income households obtain access to the service.

(2) An Order pursuant to sub-section (1) shall specify the beneficiaries of the direct subsidy and the precise extent of the subsidy.

(3) The Commission shall advise Cabinet on the determination of all aspects of any direct subsidy including the conditions under which it is to apply as well as on the applicable conditions.

(4) The operation of any direct subsidy shall be reviewed not less than annually by the Commission which shall thereupon, as a result, make such recommendations to Cabinet as it deems appropriate regarding the termination or continuation of, or any amendment to, the direct subsidy.

(5) Subject to sub-section (1), Cabinet may by Order in the *Gazette* terminate, continue or amend any existing direct subsidy.

Cross subsidy

84.— (1) Cabinet may by Order published in the *Gazette* provide a cross subsidy for the provision of a service in order to ensure that low-income households obtain access to the service.

(2) An Order pursuant to sub-section (1) shall specify the beneficiaries to the cross subsidy and the precise extent of the cross subsidy.

(3) The Commission shall advise Cabinet on the determination of all aspects of the cross subsidy including the conditions under which it is to apply.

(4) The operation of any cross subsidy shall be reviewed not less than annually by the Commission which shall, as a result, make such recommendations to Cabinet as it deems, appropriate regarding the termination or continuation of, or any amendment to, the cross subsidy.

(5) Subject to sub-section (1), Cabinet may by Order in the *Gazette* terminate, continue or amend any existing cross subsidy.

Levy

85.— (1) There is hereby established a levy to be known as the water and sewerage service levy which shall be charged to every customer for the provision of a potable water supply service or sewerage service.

(2) The amount of the levy in relation to a service licensee and the rate of any interest payable by a service licensee pursuant to sub-section (5) shall be determined by Cabinet by Order published in the *Gazette* and at least two newspapers in general weekly circulation in Saint Lucia.

(3) The levy shall be charged by each service licensee to every one of its customers in the customer's monthly invoice and the levy shall be collected by the service licensee.

(4) The service licensee shall submit the levy to the Commission within twenty eight days of collection and the levy shall form part of the revenue of the Fund in accordance with section 53.

(5) Where a service licensee fails to comply with sub-section (4), the service licensee shall be liable for the payment of the levy together with interest at the rate determined by Cabinet pursuant to sub-section (2).

Division 6*Breaches, offences and penalties***Breach relating to minimum standards of potable water**

86. In the event that the quality of water provided as potable water to a customer falls below the minimum standards set pursuant to this Act or to any other law in force in Saint Lucia, the service licensee providing the water shall immediately on becoming aware of the fall in standard inform —

- (a) the Commission in writing; and
- (b) its customers, directly wherever possible and through television, radio, the print media, and any other reasonable means of communication;

indicating the preventive measures to be taken and describing the problem that caused the lowering of the water quality, the reason the problem

arose, the measures being, and to be, taken by the service licensee to restore the stipulated minimum water quality level and the estimated time and expense needed for these restorative purposes, and the Commission shall direct the service licensee accordingly and the service licensee shall comply with the directions of the Commission.

Breaches by the service licensee

87.— (1) A service licensee shall be in breach of its service licence if it —

- (a) unjustifiably interrupts the provision of its service;
- (b) provides potable water which fails to meet the minimum standards required pursuant to this Act and to any other law in force in Saint Lucia;
- (c) breaches the minimum standards set pursuant to the Regulations made pursuant to section 97(2)(o) for —
 - (i) the-provision of service;
 - (ii) environmental performance;
- (d) does not comply with the tariff scheme;
- (e) applies an incorrect invoice to a customer; or
- (f) fails to comply with any provisions of this Act, the Regulations or its service licence.

(2) When an allegation of breach mentioned in sub-section (1) has been made to the Commission by a person aggrieved, or where the Commission reasonably suspects that a service licensee is in breach of its service licence, the Commission shall conduct an investigation into the allegation in accordance with sections 37(2) and section 38 and if it finds that —

- (a) the person's allegations or its suspicions are substantiated, it shall so notify the service licensee of its findings and where it deems appropriate issue directions to the service licensee-
 - (i) requesting the service licensee to take remedial action and stipulating a time period within which such remedial action is to be completed; and
 - (ii) requesting the service licensee to compensate one or more of its customers for any foreseeable damages caused to

such customer or customers by the breach within a specific time period;

- (b) the person's claim is frivolous or vexatious, it shall stop its investigations and the person bringing the claim shall be liable for the cost incurred.

Remedial action, suspension or revocation of service licence

88. Where a service licensee fails to comply with any direction given by the Commission pursuant to section 87, the Commission shall advise the Minister who may —

- (a) utilize the security or part of the security held by way of guarantee pursuant to section 65(e), for the execution of the remedial action or payment of compensation for foreseeable damages caused by the breach; or
- (b) suspend or revoke the service licence of the service licensee in accordance with the terms of the service licence.

Offence of not complying with direction of Commission

89. A service licensee who fails to comply with a direction given by the Commission pursuant to section 87 commits an offence and upon conviction, on indictment is liable to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding fifteen years or to both and to a further fine not exceeding five hundred dollars for each day during which the offence continues.

Offences in respect of water supply and sewerage service

90.— (1) A person shall not willfully —

- (a) cause any pipe, valve, cock, cistern, bath, sink, pan, water closet or other apparatus belonging to, or connected with, the waterworks, to be out of repair, or to be so used or contrived in such a way that the water supplied to such person is or is likely to be wasted, misused, unduly consumed or contaminated;
- (b) cause any pipe belonging to or connected to a pipe of the waterworks to be used or manipulated in such a way as to occasion or allow the return of foul, noxious or impure matter therein;
- (c) remove or tamper with any gauge, meter, measuring instrument, level, mark, or any other appliance forming part of the waterworks;

- (d) damage any part of the waterworks or sewerage works;
- (e) commit any act which by itself or with other acts, impedes or interrupts, or is calculated to interrupt the flow of water belonging to the waterworks;
- (f) obstruct the lawful execution or implementation of any provision of this Act or the Regulations;
- (g) discharge any substance the composition of which damages the quality of any source of water used for water supply service; or
- (h) use any water supply or water system for any purpose that may jeopardize the public health or alter the chemical or bacteriological balance of the water in the water supply system.

(2) A person who contravenes sub-section (1) commits an offence and is liable on summary conviction for each offence to a fine not of less than three thousand dollars or to imprisonment for a period of not less than six months or both and to a further fine of not less than fifty dollars for each day during which the offence continues.

(3) In the event any damage results to waterworks or sewerage works from the commission of any of the offences mentioned in this section, the Court may, in addition to the punishment imposed pursuant to subsection (2), order the person convicted pursuant to that subsection to pay compensation to the service licensee.

Offences of obstructing service licence

91.— (1) A person shall not obstruct or attempt to obstruct the members, officers and staff of the Commission or any service licensee in the performance of any powers or functions conferred by this Act.

(2) A person who contravenes sub-section (1) commits an offence and upon summary conviction is liable to a fine of not less than three thousand dollars or to imprisonment for a term of not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

Criminal liability for damage and wrongful service connection

92.— (1) A person shall not —

- (a) willfully damage the facilities or alter a meter belonging to a service licensee or otherwise prevent any such meter from

correctly registering the quantity of water supplied by the service licensee; or

- (b) connect to any pipe or meter any device capable of wrongfully abstracting, diverting, consuming or using water or of preventing any meter from correctly registering any quantity of water supplied by a service licensee.

(2) A person who contravenes sub-section (1) commits an offence and upon summary conviction is liable to a fine of not less than three thousand dollars or to imprisonment for a term of not less than six months or to both and to a further fine of not less than fifty dollars for each day during which the offence continues.

(3) Where there exists upon any premises or land any device capable of wrongful abstracting, diverting, consuming or using water or of preventing any meter from correctly registering any quantity of water supplied by a service licensee the burden of proof lies on the person charged to prove that the person has not unlawfully abstracted or diverted water or has not unlawfully prevented a meter from duly registering any quantity of water supplied by the service licensee.

(4) Without prejudice to sub-section (2) —

- (a) the court may order that the service licensee recover the amount of any damage sustained by the service licensee from a person convicted pursuant to that sub-section; and
- (b) the service licensee may discontinue service to that person.

PART IV MISCELLANEOUS

Matters excluded from arbitration

93. Sections 94 and 95 of this Act shall not apply to any issue, cause or matter arising in relation to the economic regulation of a service or to a tariff scheme.

Matters to be submitted to arbitration

94. When a dispute relating to any matter concerning anything under this Act arises between a licensee or a permit holder, and either the Commission, the Agency or the Government such dispute shall be resolved by arbitration.

Arbitrator and applicable law

95.— (1) When a dispute is required to be determined by arbitration pursuant to section 99, unless the parties to the dispute concur in the appointment of a single arbitrator, the dispute shall be referred to a panel of three arbitrators appointed as follows —

- (a) each party on the request of the other party shall nominate and appoint one arbitrator; and
- (b) the Commission shall appoint one arbitrator.

(2) Where a matter is to be determined by arbitration, the Arbitration Ordinance CAP. 14 shall apply.

Appeal

96.— (1) There is hereby established an appeals tribunal for the purpose of hearing appeals against decisions of the Agency, the Commission, the Minister responsible for agriculture or the Minister responsible for public utilities.

(2) The constitution and procedure of the Appeals Tribunal shall be as prescribed in the Regulations made pursuant to section 97(2)(q).

(3) An appeal from a decision of the Agency, the Commission, the Minister responsible for agriculture or the Minister responsible for public utilities to this Act lies to the Appeals Tribunal.

(4) A person may, within twenty-eight days of a decision of the Agency, the Commission, the Minister responsible for agriculture or the Minister responsible for public utilities, apply in writing to the Appeals Tribunal against that decision.

Regulations

97.— (1) The relevant Minister, after consultation with the Agency or the Commission, as the case may be, may make Regulations for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to sub-section (1), the relevant Minister, after consultation with the Agency or the Commission, as the case may be, may make Regulations particularly —

- (a) for the protection of customers and of the public generally against personal injury or damage to property arising from the operations of a service licensee;

- (b) to provide for enquiries in connection with any accident which is or may be attributed to an escape of water or sewerage or to the state of operation of any part of the undertaking;
- (c) relating to a tariff scheme;
- (d) relating to the publication of information regarding the service provided by a service licensee;
- (e) to prescribe the form of applications and service licences and permits and Orders pursuant to this Act;
- (f) prescribing the criteria for evaluating applicants for service licences;
- (g) prescribing the form of annual reports;
- (h) to prescribe fees payable pursuant to this Act;
- (i) to prescribe application for hearing pursuant to section 17(2) and 64(2); and
- (j) to provide for the staggering of the terms of appointments of the members Board pursuant to section 46(2);
- (k) to prescribe the allowance for a member of the review panel;
- (l) prescribing the size, nature, efficiency, materials, strength and workmanship, and the mode of arrangement, service connection, disconnection of service, alteration and repair of the water fittings to be used;
- (m) prescribing the circumstances in which, and the methods by which, water is to be stored and treated on any premises;
- (n) governing installation, operation and maintenance of water supply system within a private development;
- (o) to set standards relating to-
 - (i) the provisions of a service;
 - (ii) to environmental performance;
- (p) prescribing the manner of facilitation of access and inter connection of the other service licensees who provide services;
- (q) prescribing the constitution and procedure of the Appeals Tribunal.

(3) For the purposes of this section —

“relevant Minister” —

- (a) in the case of matters relating to water resource management means the Minister responsible for agriculture;
- (b) in the case of matters relating to water supply service and sewerage service means the Minister responsible for public utilities.

Act binds the Crown

98. This Act binds the Crown.

Repeal and savings

99.— (1) The Water and Sewerage Act 1999, No. 13 of 1999, is repealed.

(2) Any action, proceeding and any like matter commenced or pending under the Water and Sewerage Act 1999, No. 13 of 1999, shall continue under this Act as if it had been commenced under this Act.

SCHEDULE

(Section 37(1)(e))

ECONOMIC REGULATION

The economic regulation of the services shall be based on the following principles —

1. discriminatory practices in the provision of services will be limited as much as possible;
2. fair competition practices will be promoted to the extent possible in the provision of services;
3. there will be no reuse of past benefits to —
 - (a) compensate deficits incurred as a consequence of business risk;
 - (b) revalidate inefficiencies in the provision of the services; and
 - (c) allow a service licensee to appropriate profits obtained from restrictive practices towards its competition or from the abuse of its dominant position.
4. there will be a rational and efficient use of the resources involved and the services supplied;
5. there will be consistent balance between service supply and demand;
6. there will be universal service; and
7. that there will be constant improvements in productivity and efficiency, without affecting the continuity and quality of service delivery.

Passed in the House of Assembly this 1st day of February, 2005.

J. BADEN ALLAIN,
Speaker of the House of Assembly.

Passed in the Senate this 24th day of March, 2005.

HILFORD DETERVILLE,
President of the Senate.