

CHAPTER 335

THE ADOPTION OF CHILDREN ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY PROVISIONS

1. Short title.
2. Interpretation.

PART II

MAKING OF ADOPTION ORDERS

3. Power to make adoption orders.
4. Restrictions on making adoption orders.
5. Consent to adoption.

6. Evidence of consent of parent or guardian.
7. Functions of Court as to adoption orders.
8. Interim orders.
9. Adoption order in respect of a child previously adopted.
10. Appeal.
11. Power to make rules and procedure.

PART III

EFFECTS OF ADOPTION ORDERS

12. Rights and duties of parents and capacity to marry.
13. Affiliation orders, etc.
14. Intestacies, wills and settlements.
15. Provisions supplementary to section 14.

PART IV

REGISTRATION OF ADOPTION ORDERS

16. Adopted Children Register.
17. Registration of adoptions.
18. Amendment orders and rectification of Registers.

PART V

ADOPTION OF SOCIETIES

19. Restriction on making arrangements for adoption.
20. Registration of adoption societies.

PART VI

GENERAL PROVISIONS

21. Prohibition of certain payments.
22. Restriction upon advertisements.
23. Power to make regulations.
24. Exemption.
25. [Repeal of R.L. Cap. 14.]

SCHEDULES

CHAPTER 335

THE ADOPTION OF CHILDREN ACT

An Act to provide for the adoption of children and for related matters.

[1st January, 1955]

Ord. No. 42 of 1953

[R.L. Cap. 335]

Acts Nos.

29 of 1967

4 of 1968

G.N. No. 48 of 1962

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh335s1]1. Short title

This Act may be cited as the Adoption of Children Act.

[PCh335s2]2. Interpretation

(1) In this Act, unless the context requires otherwise—

"adoption order" has the meaning assigned to it by section 3 of this Act;

"child" means a person under twenty-one years of age, but does not include a person who is or has been married;

"Court" means the High Court;

"East Africa" means the United Republic, Kenya and Uganda;

"father" in relation to a child born out of wedlock, means the natural father;

"guardian", in relation to a child, means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the child;

"interim order" means an order under section 8 of this Act;

"Minister" means Minister responsible for legal affairs;

"prescribed" in Part II of this Act, means prescribed by rules made by the Court under section 11, and elsewhere than in Part II of this Act, means prescribed by regulations made by the Minister under section 23 of this Act;

"registered adoption society" means a body of persons registered as an adoption society in accordance with the provisions of Part V of this Act;

"Registrar-General" means the Registrar-General of Births and Deaths appointed under section 3 of the Births and Deaths Registration Act * ;

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half-blood or by affinity, and includes—

(a) where an adoption order has been made in respect of the child or any other person under this Act or any other law relating to adoption for the time being in force in East Africa or the United Kingdom, any person who would be a relative of the child within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock;

(b) where the child is illegitimate, the father of the child and any person who would be a relative of the child within the meaning of this definition if the child were the legitimate child of his mother and father;

"United Kingdom" means Great Britain and Northern Ireland.

(2) For the purposes of this Act a person shall be deemed to make arrangements for the adoption of a child if, not being a parent or guardian of a child, he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the child by any other person, whether the adoption is effected, or is intended to be effected, in pursuance of an adoption order or otherwise, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of an agreement or the making of any agreement therefor, or if causes another to do so.

PART II

MAKING OF ADOPTION ORDERS (ss 3-11)

[PCh335s3]3. Power to make adoption orders

(1) Subject to the provisions of this make Act, the Court may, upon an application made in the prescribed manner, make an order, in this Act referred to as an adoption order, authorising the applicant to adopt a child.

(2) An adoption order may be made on the application of two spouses authorising them jointly to adopt a child.

(3) An adoption order may be made authorising the adoption of a child by the mother or father of the child, either alone or jointly with her or his spouse.

[PCh335s4]4. Restrictions on making adoption orders

(1) An adoption order shall not be made in respect of a child unless the applicant or, in the case of a joint application, one of the applicants—

(a) has attained the age of twenty-five and is at least twenty-one years older than the child; or

(b) has attained the age of twenty-one and is a relative of the child; or

(c) is the mother or father of the child.

(2) An adoption order shall not be made in respect of a child who is a female in favour of a sole applicant who is a male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) Except as provided by subsection (2) of section 3 of this Act, an adoption order shall not be made authorising more than one person to adopt a child.

(4) Subject to the provisions of section 5 of this Act, an adoption order shall not be made—

(a) in any case, except with the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;

(b) on the application of one of two spouses, except with the consent of the other spouse.

(5) An adoption order shall not be made in favour of any applicant who is not resident in Tanzania or in respect of any child who is not resident within East Africa.

(6) An adoption order shall not be made in respect of any child unless the child has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order.

[PCh335s5]5. Consent to adoption

(1) The Court may dispense with any consent required by paragraph (a) of subsection (4) of section 4 of this Act if it is satisfied—

(a) in the case of a parent or guardian of the child, that he has abandoned, neglected or persistently ill-treated the child;

(b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that he has persistently neglected or refused so to contribute;

(c) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent, or that his consent is unreasonably withheld.

(2) The Court may dispense with the consent of the spouse of an applicant for an adoption order if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving the consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(3) The consent of any person to the making of an adoption order in pursuance of an application may be given, either unconditionally or subject to conditions with respect to the religious persuasion in which the child is to be brought up, without knowing the identity of the applicant for the order; and where consent so given by any person is subsequently withdrawn on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to be unreasonably withheld.

(4) While an application for an adoption order in respect of a child is pending in any court, any parent or guardian of the child who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the Court, to remove the child from the care and possession of the applicant; and in considering whether to grant or refuse such leave the Court shall have regard to the welfare of the child.

[PCh335s6]6. Evidence of consent of parent or guardian

(1) Where any person whose consent to the making of an adoption order is required by paragraph (a) of subsection (4) of section 4 of this Act does not attend in the proceedings for the purpose of giving it, then, subject to the provisions of subsection (3) of this section, a document signifying his consent to the making of such an order shall, if the person in whose favour the order is applied for is named in the document or, where the identity of that person is not known to the consenting party, is distinguished therein in the prescribed manner, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings.

(2) Where any such document is attested by a magistrate or justice of the peace, or, if executed outside Tanzania, by a person of any such class as may be prescribed, the document shall be admissible without further proof of the signature of the person by whom it is executed; and for the purposes of this subsection, a document purporting to be attested shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved.

(3) A document signifying the consent of the mother of a child shall not be admissible under this section unless—

(a) the child was at least six weeks old on the date of the execution of the document; and

(b) the document was attested on that date by a magistrate or justice of the peace, or, as the case may be, by a person of a class prescribed for the purposes of subsection (2) of this section.

[PCh335s7]7. Functions of Court as to adoption orders

(1) The Court before making an adoption order shall be satisfied that—

(a) every person whose consent is necessary under this Act, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child; and

(c) the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction.

(2) The Court in an adoption order may impose such terms and conditions as the Court may think fit, and in particular may require the adopter by bond or otherwise to make for the child such provisions, if any, as in the opinion of the Court is just and expedient.

[PCh335s8]8. Interim orders

(1) Subject to the provisions of this section, the Court may, upon any application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the child to the applicant for a period not exceeding two years by way of a

probationary period upon such terms as regards provision for the maintenance education and supervision of the welfare of the child and otherwise as the Court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the Court to dispense with any such consent.

(3) An interim order shall not be made in any case where the making of an adoption order would be unlawful by virtue of subsection (5) of section 4 of this Act.

(4) An interim order shall not be deemed to be an adoption order within the meaning of this Act.

[PCh335s9]9. Adoption order in respect of a child previously adopted

An adoption order or an interim order may be made in respect of a child who has already been the subject of an adoption order under this Act or any other law relating to adoption for the time being in force in any of the East African countries and upon an application for an adoption order in respect of such a child, the adopter or adopters under the previous or last previous adoption order shall, if living, be deemed to be the parent or parents of the child for all the purposes of this Act.

[PCh335s10]10. Appeal

Any person aggrieved by any adoption order or interim order of the Court in proceedings under this Act may appeal therefrom in the same manner as if it were a decree made by the Court in a suit under the Civil Procedure Code *, or any enactment replacing or amending the same, in the exercise of its original civil jurisdiction.

[PCh335s11]11. Power to make rules and procedure

(1) The Court may make rules in regard to any matter to be prescribed under this Part, and dealing generally with all matters of procedure and incidental matters arising out of this Part and for carrying this Part into effect, and such rules may provide for applications for adoption orders being heard and determined otherwise than in open court.

(2) For the purpose of any application for an adoption order, the Court shall, subject to any rules under this section, appoint some person to act as guardian ad litem of the child upon the hearing of the application with the duty of safeguarding the interests of the child before the Court.

PART III

EFFECTS OF ADOPTION ORDERS (ss 12-15)

[PCh335s12]12. Rights and duties of parents and capacity to marry

(1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if the child were a child born to the adopter in lawful wedlock; and in respect of the matters aforesaid and in respect of the liability of a child to maintain its parents the child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

(2) In any case where two spouses are the adopters, the spouses shall in respect of the matters aforesaid, and for the purpose of the jurisdiction of any Court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the child in the same relation as they would have stood if they had been the lawful father and mother of the child and the child shall stand to them respectively in the same relation as to a lawful father and mother respectively.

(3) For the purpose of the law relating to marriage, an adopter and the person whom he has been authorised to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and the provisions of this subsection, shall continue to have effect notwithstanding that same person other than the adopter is authorised by a subsequent order to adopt the same child.

[PCh335s13]13. Affiliation orders, etc.

(1) Where an adoption order is made in respect of a child who was born out of wedlock, then, subject to the provisions of this section, any order under section 5 of the Affiliation Act * and any other decree or order of any Court in Tanzania and any agreement whereby the father of the child has been ordered or has undertaken to make payment specifically for the benefit of the child, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order, decree or agreement at the date of the adoption order.

(2) Where a child to whom any such order, decree or agreement under subsection (1) relates, is adopted by his mother, and the mother is a single woman, the order, decree or

agreement shall not cease to have effect by virtue of the subsection (1) upon the making of the adoption order, but shall cease to have effect if she subsequently marries.

[PCh335s14]14. Intestacies, wills and settlements

(1) Where, at any time after the wills and making of an adoption order the adopter or the settlements adopted person or any other person dies intestate in respect of any real or personal property, other than property subject to an entailed interest under a disposition made before the date of the adoption orders, that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

(2) In any disposition of real or personal property made after the date of an adoption order—

(a) any reference, whether express or implied, to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;

(b) any reference, whether express or implied, to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and

(c) any reference, whether express or implied, to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

(3) For the purposes of this section the expression "disposition" means a disposition of any interest in property by any instrument whether inter vivos or by will including codicil.

[PCh335s15]15. Provisions supplementary to section 14

(1) For the purposes of the application of any law for the time being in force in Tanzania to the devolution of any property in accordance with the provisions of section 14 and for the purposes of the construction of any such disposition as is mentioned in that section, an adopted person shall be deemed to be related to any other person being the child or adopted child of the adopter or, in the case of a joint adoption, of either of the adopter—

(a) where he or she was adopted by two spouses jointly, and that other person is the child or adopted child of both of them, as brother or sister of the whole blood;

(b) in any other case, as brother or sister of the half-blood.

(2) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date of an adoption order shall not be treated for the purposes of section 14 as made after that date by reason only that the will or codicil is confirmed by a codicil executed after that date.

(3) Notwithstanding anything in section 14 of this Act, trustees or personal representatives may convey or distribute any real or personal property to or among the persons entitled without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in

this subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

(4) Where an adoption order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of section 14 of this Act in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made after that date.

PART IV

REGISTRATION OF ADOPTION ORDERS (ss 16-18)

[PCh335s16]16. Adopted Children Register

(1) The Registrar-General shall maintain a register, to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but, except as provided by section 18 of this Act, no other entries.

(2) A certified copy of any entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the Registrar-General, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country of birth of the adopted person, shall also be received as evidence of that date or country in all respects as if the copy were a certified copy of an entry in the Register of Births.

(3) The Registrar-General shall cause an index of the Adopted Children Register to be made and kept; and every person shall be entitled to search that index and to have a certified copy

of any entry in the Adopted Children Register subject to such terms, conditions and regulations as to payment of fees and otherwise as may be prescribed by regulations made under section 21 of this Act.

(4) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the Registers of Births which has been marked "Adopted" pursuant to section 17 of this Act, and any corresponding entry in the Adopted Children Register; but the registers and books kept under this subsection shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of a court of competent jurisdiction, shall the Registrar-General furnish any person with any information contained in, or with any copy or extract from, any such registers or books.

[PCh335s17]17. Registration of adoptions

(1) Every adoption order made by the Court shall contain a direction to the Registrar-General to make in the Adopted Children Register an entry in the form set out in the First Schedule to this Act, and, subject to the provisions of subsection (2), shall specify the particulars to be entered under the headings in columns 2 to 6 of the First Schedule.

(2) For the purpose of compliance with the requirements of the subsection (1)–

(a) where the precise date of the child's birth is not proved to the satisfaction of the Court, the Court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth;

(b) where the name or surname which the child is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original;

and where the country of birth of the child is not proved to the satisfaction of the Court, the particulars of that country may, notwithstanding anything in that subsection, be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon any application to the Court for an adoption order in respect of a child, not being a child who has previously been the subject of an adoption order made by the Court under this Act, there is proved to the satisfaction of the Court the identity of the child with a child to whom an entry in the Register of Births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar-General to cause the entry in the Register of Births to be marked with the word "Adopted".

(4) Where an adoption order is made by the Court in respect of a child who has previously been the subject of an adoption order made by the Court under this Act, the order shall contain a direction to the Registrar-General to cause the previous entry in the Adopted Children Register to be marked with the word "Re-adopted".

(5) Where an adoption order is made by the Court, the Court shall cause the order to be communicated in the prescribed manner to the Registrar-General, and upon receipt of such

communications the Registrar-General shall cause compliance to be made with the directions contained in the order both in regard to marking any entry in the Registers of Births with the word "Adopted" and in regard to making the appropriate entry in the Adopted Children Register.

[PCh335s18]18. Amendment orders and rectification of Registers

(1) The Court by which an adoption order has been made under this Act may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein; and where an adoption order is so amended, the Court shall cause the amendment to be communicated in the prescribed manner to the Registrar-General; and any necessary correction of or addition to the Adopted Children Register shall be made accordingly.

(2) Where the adoption order was made before the date of the coming into operation of this Act, the power of the Court under subsection (1) shall include power to amend the order—

(a) by the insertion of the country of the adopted person's birth;

(b) where the order does not specify a precise date as the date of the adopted person's birth, by the insertion of the date which appears to the Court to be the date or probable date of his birth;

and the provisions of subsection (1) shall have effect accordingly.

(3) Where an appeal against an adoption order is allowed, the Court which made the order shall give directions to the Registrar-General to cancel any marking of an entry in the Register of

Births and any entry in the Adopted Children Register which was effected in pursuance of the order.

(4) Where the Registrar-General is notified by the Registrar-General or Administrator-General of any of the East African countries that an adoption order has been made by a court in such country under the law with regard to the adoption of children in force in such country in respect of a child to whom an entry in the Register of Births or the Adopted Children Register relates, the Registrar-General shall cause the entry to be marked "Adopted (Kenya)", "Adopted (Uganda)" or "Adopted (Zanzibar)" as the case may be, or, as the case may be, "Re-adopted (Kenya)", "Re-adopted (Uganda)" or "Re-adopted (Zanzibar)" and where, after an entry has been marked in pursuance of this subsection, the Registrar-General is notified that the adoption order has been quashed or that an appeal against an adoption order has been allowed, he shall cause the marking to be cancelled.

(5) A copy or extract of an entry in any register, being an entry the marking of which is cancelled under this section, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.

PART V

ADOPTION SOCIETIES (ss 19-20)

[PCh335s19]19. Restriction on making arrangements for adoption

(1) It shall not be lawful for any body of persons to make any arrangements for the adoption of a child unless that body is a registered adoption society.

(2) Any person who takes any part in the management or control of a body of persons which exists solely or in part for the purpose of making arrangements for the adoption of children and which is not a registered adoption society commits an offence and is liable upon conviction to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) In any proceedings under this section, proof of things done or words written, spoken or published by any person taking part in the management or control of a body of persons, or in making arrangements for the adoption of children on behalf of the body shall be admissible as evidence of the purpose for which that body exists.

(4) This section shall not apply to arrangements for the adoption of a child made by officers of the Ministry responsible for social welfare acting in the course of their official duties.

[PCh335s20]20. Registration of adoption societies

(1) Subject to the provisions of this Part where application is made in the prescribed manner by or on behalf of an adoption society and there is furnished therewith the prescribed information relating to the activities of the society, the Minister may on payment by the society of such fees, not exceeding twenty shillings, as may be prescribed, register the society under this part of this Act.

(2) The Minister shall not register an adoption society under this Part unless he is satisfied, by such evidence as he may reasonably require, that the society is a charitable association.

(3) The Minister may refuse to register an adoption society under this Part if it appears to him that—

(a) the activities of the society are not controlled by a committee of members of the society who are responsible to the members of the society;

(b) any person proposed to be employed, or employed, by the society for the purpose of making any arrangements for the adoption of children on behalf of the society is not a fit and proper person to be so employed;

(c) the number of competent persons proposed to be employed, or employed, by the society for the purpose aforesaid is in the opinion of the authority, insufficient having regard to the extent of the activities of the society in connection with that purpose; or

(d) any person taking part in the management or control of the society or any member of the society has been convicted of an offence under this Act or any rules or regulations made thereunder.

(4) The Minister may at any time cancel the registration of an adoption society on any grounds which would entitle him to refuse an application for the registration of the society or on the ground that the society is no longer a charitable association.

PART VI

GENERAL PROVISIONS (ss 21-25)

[PCh335s21]21. Prohibition of certain payments

(1) Subject to the provisions of subsection (2) of this section—

(a) any adopter or any parent or guardian of a child who receives any payment or other reward in consideration of the adoption of a child under this Act; or

(b) any person who makes or gives or agrees to make or give to any adopter or any parent or guardian of a child any payment or other reward in consideration of the adoption of any child under this Act; or

(c) any person who makes arrangements for the adoption of a child and receives or makes or gives or agrees to receive or make or give any payment or other reward in connection with the making of the arrangements,

commits an offence under this Act and is liable upon conviction to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) The provisions of subsection (1) of this section shall not apply to any payments—

(a) the making or receipt of which is sanctioned by the Court to which an application for an adoption order in respect of a child is made;

(b) made by or on behalf of a registered adoption society in respect of the maintenance of a child who has been placed at the disposition of the society;

(c) made to a registered adoption society by the parent or guardian of a child or by any other person in respect of the maintenance of the child so long as the child is not in the care and possession of a person who has adopted or proposes to adopt him, whether under an adoption

order or otherwise, being payments made weekly and at a rate not exceeding such rate as may be prescribed.

[PCh335s22]22. Restriction upon advertisements

(1) It shall be lawful for any advertisement to be published indicating—

- (a) that the parent or guardian of an infant desires to cause the infant to be adopted; or
- (b) that a person desires to adopt an infant; or
- (c) that any person is willing to make arrangements for the adoption of an infant.

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section commits an offence under this Act and is liable upon conviction to a fine not exceeding one thousand shillings.

[PCh335s23]23. Power to make regulations

The Minister may make regulations for the better carrying out of the provisions and purposes of this Act, and, without prejudice to the generality of the foregoing, for either of the following purposes:

- (a) for regulating and maintaining supervision over the activities of registered adoption societies and persons or bodies of persons purporting to assist in or make arrangements for the adoption of children; and
- (b) for prescribing any matter authorised or required to be prescribed under this Act, except the matter to be prescribed by rules made by the Court under section II.

[PCh335s24]24. Exemption

The Minister shall have power, by an order, either retrospectively from the passing of this Act or prospectively, to exclude from the operation of all or any of the provisions of this Act the members of any race, tribe, or sect in Tanzania, or any part of such race, tribe or sect, to whom he may consider it impossible or inexpedient to apply such provisions, and the Minister shall also have power to revoke such order, but not so that the revocation shall have any retrospective effect and all orders and revocation made under this section shall be published in the Gazette.

[PCh335s25]25. Repeal of R.L. Cap. 14

[Repeals the Adoption of Infants Ordinance with savings.]

FIRST SCHEDULE

FORM OF ENTRY IN ADOPTED CHILDREN REGISTER

(Section 17)

1 2 3 4 5 6 7 8

No. of entry Date and country of birth of child Name and surname of child Sex of child

Name and surname, address and occupation of adopter or adopters Date of adoption order and
description of Court by which made Date of entry Signature of officer deputy by Registrar-

General to attest the entry

SECOND SCHEDULE

[Omitted: Transitional provisions relating to the repeal of Cap. 14, the Adoption of Infants Ordinance, which preceded R.L. Cap. 335.]

[PCh336]CHAPTER 336

THE PUBLIC HEALTH (SEWERAGE AND DRAINAGE) ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY PROVISIONS

1. Short title.
2. Interpretation.
3. Application of the Act.

PART II

PUBLIC SEWERS

4. Provision of public sewers and sewage disposal works.
5. Public sewers to vest in the Authority.
6. Duty of Authority to keep map showing public sewers.
7. Power of Authority to alter or close public sewers.
8. Certain matters not to be passed into sewers or drains.

PART III

CONNECTIONS WITH PUBLIC SEWERS

9. Rights of owners and occupiers within area of Authority to drain into public sewers.
10. Use of public sewers by owners or occupiers outside the area of an Authority.
11. Sewer connections in streets and through private land
12. Procedure in regard to making communication with public sewers.

PART IV

DRAINAGE AND LATRINES OF NEW BUILDINGS

13. New buildings to be provided with any necessary drains.
14. Latrine accommodation to be provided for new buildings.

PART V

DRAINAGE AND LATRINES OF EXISTING BUILDINGS

15. Provisions as to drainage of existing buildings.
16. Replacement of earth closets, by water closets.
17. Buildings having insufficient latrines or latrines so defective as to require reconstruction.
18. Buildings having defective latrines capable of repair.
19. Drainage of buildings in combination into the existing public sewer.

PART VI

GENERAL PROVISIONS

20. Payment of advances for defraying drainage expenses.

21. Provisions as to appeals against and the enforcement of, notices requiring execution of works.
22. Execution of works.
23. Certain expenses recoverable from owners or occupiers to be a charge on the premises; power to accept payment by instalment.
24. Powers to make a charge in respect of establishment expenses.
25. Recovery of expenses.
26. Powers of entry and closing of streets.
27. Protection of Authority and its officers from personal liability.
28. Liability of director, secretary or manager of company.
29. Proceedings against several persons.
30. Prosecutions.
31. Power of Authority outside its area.
32. Service of notices.

PART VII

RULES

33. Rules.

34. Rules made under this Act to prevail.

CHAPTER 336

THE PUBLIC HEALTH (SEWERAGE AND DRAINAGE) ACT

An Act to make better provision for the preservation of public health by means of sewerage, drainage and sanitation.

[1st August, 1955]

Ord. No. 44 of 1953

[R.L. Cap. 336]

PART I

PRELIMINARY PROVISIONS (ss 1-3)

[PCh336s1]1. Short title

This Act may be cited as the Public Health (Sewerage and Drainage) Act.

[PCh336s2]2. Interpretation

(1) In this Act, unless the content otherwise requires—

"Authority" means, in the case of a municipality to which the provisions of this Act have been applied, the municipal council, and, in the case of a township to which the provisions of this Act have been applied, the town council or township authority, as the case may be, and, in the case of an area, other than a municipality or township, to which the provisions of this Act have been applied, such officer or authority as the Minister may by notice in the Gazette declare to be the Authority for the purposes of this Act;

"cesspool" means a tank or receptacle for the reception of soil water or waste water or both for which no outlet is provided;

"Chief Inspector" means the Chief Inspector of Factories appointed under the Factories Act *;

"drain" means any pipe, duct or channel, whether open or closed together with its appurtenances used or intended to be used for the drainage of buildings within the same curtilage and under the same ownership and made merely for the purpose of communicating therefrom with a sewer or with a cesspool or other like receptacle for drainage and includes any pipe, duct or channel, whether open or closed, used or intended to be used for the drainage of land;

"earth closet" means a closet in which faecal matter is deposited, or may be deposited, into a movable receptacle;

"factory" has the meaning assigned to it in the Factories Act;

"foul water" means soil water and waste water;

"lateral drain" means that portion, including the intercepting trap, if any, and sewer connection, of a system of drains or sewers which—

(a) in the case of a sewer for foul matter lies between the intercepting chamber and the sewer; or

(b) in the case of a sewer for storm water lies between the last inspection chambers and the sewer, or, if there be no inspection chamber, between the curtilage of the premises and the sewer;

"latrine" includes privy, urinal, earth closet and water closet;

"prejudicial to health" means injurious or likely to cause injury to health;

"private sewer" means a sewer which is not a public sewer;

"privy" means a closet for the reception of faecal matter into a non-movable receptacle and includes pit latrine and bore-hole latrine;

"public sewer" means any sewer vested in or constructed by or on behalf of or under the control of the Authority;

"septic tank" means a tank or receptacle for the reception of soil water or waste water or both for the effluent from which an outlet is provided;

"sewer" does not include a drain as defined in this Act but, save as aforesaid, includes all sewers, drains, pipes, ducts, or channels, whether open or closed, used for the drainage of buildings or land;

"soil water" means any discharge from water closets or urinals and all water containing excremental liquid or substance;

"storm water" includes surface or rain water;

"waste water" means liquid waste of a non-excremental nature but does not include storm water;

"water closet" means latrine accommodation used, adapted or intended to be used in connection with a water carriage system and comprising provision for the flushing of the receptacle by means of water;

"workplace" does not include a factory or workshop but save as aforesaid includes any place in which persons are employed otherwise than in domestic service;

"workshop" means any building or part of a building or any premises in which manual labour is exercised for the purposes of trade.

(2) Any reference in this Act to a drain, sewer, or other sewage disposal works shall be construed as including a reference to any manholes, ventilating shafts, pumping stations or other accessories belonging to that drain, sewer, or other sewage disposal works.

(3) For the purposes of this Act, a building or proposed building shall not be deemed to have a public sewer available unless—

(a) there is or there is in course of construction within one hundred feet of the curtilage of the building or proposed building, and at a level which makes it reasonably

practicable to construct a drain to communicate therewith, a public sewer or other sewer which the owner of the building or proposed building is, or will be, entitled to use; and

(b) the intervening land is land through which he is entitled to construct a drain:

Provided that, for the purpose of this definition, the limit of one hundred feet shall not apply if the Authority undertakes to bear so much of the expenses reasonably incurred in constructing a drain to communicate with a public sewer as may be attributable to the fact that the distance of the public sewer exceeds one hundred feet as aforesaid.

[PCh336s3]3. Application of the Act

The provisions of this Act shall apply to such municipalities or townships or other areas as the Minister may by notice in the Gazette from time to time declare.

PART II

PUBLIC SEWERS (ss 4-8)

[PCh336s4]4. Provision of public sewers and sewage disposal works

(1) An Authority may within its area and also, subject to the prior approval of the Minister, outside its area—

(a) construct and maintain a public sewer—

(i) in, on, under, or over any street, or under or through any cellar or vault below any street; and

(ii) in, on, under, or over any land, or in, on or under any building not forming part of a street, after giving reasonable notice to every owner or occupier of such land or building; and

(b) construct and maintain sewage disposal works on any public land or land acquired or lawfully appropriated for the purpose.

(2) In the exercise of its powers under subparagraph (ii) of paragraph (a) of subsection (1), the Authority shall not be liable to pay any compensation to an owner or occupier of any private land but shall make good, or, at its option, shall pay for any damage done or occasioned by reason of the exercise of the said powers.

[PCh336s5]5. Public sewers to vest in the Authority

Notwithstanding the provision of any other law, all public sewers within the area of an Authority and all public sewers outside the area of an Authority which such Authority has constructed or is maintaining under the provisions of section 4, shall vest in such Authority.

[PCh336s6]6. Duty of Authority to keep map showing public sewers

(1) Every Authority shall keep deposited at its offices for inspection by any person at all reasonable hours, free of charge, a map showing and distinguishing all public sewers and other public sewage disposal works existing or in the course of construction within its area or under its control.

(2) Where some of the public sewers are reserved for foul water only, or for storm water only, the map referred to in this section shall show also the purposes which each sewer is intended to serve.

[PCh336s7]7. Power of Authority to alter or close public sewers

An Authority may alter the size and course of any public sewer vested in it, or may discontinue and prohibit the use of any such public sewer, either entirely, or for the purpose of foul water drainage, or for the purpose of storm water drainage, but, before any person who is lawfully using the public sewer for any purpose is deprived by the Authority of the use of the public sewer for that purpose, the Authority shall provide a public sewer equally effective for his use for that purpose and shall at its expense make his drains or sewers to communicate with the public sewer so provided.

[PCh336s8]8. Certain matters not to be passed into sewers or drains

(1) No person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any sewer or into any drain—

(a) any matter likely to injure the sewer or drain, or to interfere with the free flow of its content, or to effect prejudicially the treatment and disposal of its contents; or

(b) any chemical refuse or waste steam, or any liquid of a temperature higher than one hundred and ten degrees Fahrenheit, being refuse or steam which, or a liquid which, when so heated, is, either alone or in combination with the contents of the sewer or drain, dangerous, or the cause of a nuisance, or prejudicial to health; or

(c) any petroleum spirit, or carbide or calcium except, subject to the provisions of paragraphs (a) and (b) of this subsection, into a drain specially constructed for the purpose.

(2) Where separate public sewers are provided for foul water and for storm water no person shall discharge or permit to be discharged, either directly or indirectly—

(i) soil water or waste water into a sewer provided for storm water; or

(ii) except with the approval of the Authority, storm water into a sewer provided for foul water.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding one thousand shillings and to a further fine not exceeding one hundred shillings for each day on which the offence continues after conviction therefor.

(4) In this section the expression "petroleum spirit" means any—

(a) crude petroleum; or

(b) oil made from petroleum, or from coal, shale peat or other bituminous substance;

or

(c) such product of petroleum or mixture containing petroleum, as, when tested in the manner prescribed by or under the Petroleum (Consolidation) Act *, gives off an inflammable vapour at a temperature of less than seventy-three degrees Fahrenheit.

PART III

CONNECTIONS WITH PUBLIC SEWERS (ss 9-12)

[PCh336s9]9. Rights of owners and occupiers within area of Authority to drain into public sewers

Subject to the provisions of this section and section 12, the owner or occupier of any premises, or the owner of any private sewer, within the area of an Authority shall be entitled to have his drains or private sewer made to communicate with any available public sewer of that Authority, and thereby to discharge foul water and storm water from those premises or that private sewer:

Provided that nothing in this section shall entitle any person—

(a) to discharge directly or indirectly into any public sewer—

(i) any matter from a manufacturing process or any matter from a factory, other than domestic sewage or storm water except by agreement with the Authority; or

(ii) any matter the discharge of which into public sewers is prohibited under this Act or any other law; or

(b) to have his drains or private sewer made to communicate directly with a storm water overflow sewer; or

(c) to have his drains or private sewer made to communicate with a public sewer provided for foul water unless and until he satisfies the Authority that the premises to be drained have a sufficient water supply available; or

(d) to have his drains or private sewer made to communicate with any public sewer if such sewer is situated in excess of one hundred feet of the curtilage of the premises.

[PCh336s10]10. Use of public sewers by owners or occupiers outside the area of an Authority

Subject as hereinafter provided, the owner or occupier of any premises and the owner of any private sewer outside the area of an Authority shall have the like rights with respect to drainage into the available public sewers of the Authority as he would have had under section 9 if his premises or private sewer were situate within its area and the provisions of that section shall apply accordingly:

Provided that, without prejudice to the prohibition contained in section 9 against the discharge of certain matters into public sewers or into some public sewers or the right of an Authority under section 12 to refuse to permit a communication to be made on any of the grounds set out in subsection (1) of that section and to require the drain or private sewer to be laid open for inspection the Authority may, in the case of a drain or private sewer from premises outside its area, refuse to permit a communication to be made except under such reasonable terms and conditions as may be prescribed or as the Minister may approve. Such terms and conditions may include—

(a) compliance with any reasonable requirements of the Authority that the premises to be drained shall be sanitary or in a proper state of repair; and

(b) such reasonable payment or periodical payment as, subject to any special or general directions of the Minister, the Authority may see fit to impose.

[PCh336s11]11. Sewer connections in streets and through private land

For the purpose of making or maintaining a communication with a public sewer it shall be lawful for an Authority to construct or repair a lateral drain or, with the prior consent of the Authority and in such manner as it may approve, for the owner of any building to construct or repair a drain or private sewer, as the case may be, in, on, under or over any land or building, but where such land or building does not form part of a street such Authority or owner shall give to every owner or occupier of such land or building reasonable notice and shall be liable to make good or, at the option of the Authority or the owner undertaking the works, to pay for any damage done or occasioned by reason of the exercise of the said power:

Provided that the works intended to be carried out in exercise of the powers herein conferred shall not interfere unduly with the amenities or future development of the land or building or any adjacent land or buildings and, in case of dispute, a person aggrieved may appeal to a subordinate court in the manner set forth in subsections (6) and (7) of section 21.

[PCh336s12]12. Procedure in regard to making communication with public sewers

(1) A person who wishes or who is required to have his drains or private sewer made to communicate with a public sewer shall give to the Authority notice of his proposals in writing in such manner as may be prescribed and at any time within twenty one days of the receipt thereof the Authority may by notice to him refuse to make the communication if it appears to the Authority that the mode of construction of the drain or private sewer is not in conformity with the

rules in force governing the same or that the condition of the drain or private sewer or the matter carried or to be carried thereby is such that the making of the communication would be prejudicial to the sewerage system of the Authority and for the purpose of examining the mode of construction and condition of the drain or private sewer the Authority may, if necessary, require it to be laid open for inspection.

(2) If no such notice as aforesaid is served on such person, the Authority shall, with all reasonable despatch, cause the communication to be made by means of a lateral drain to the public sewer in such manner as may be prescribed or as the Authority may decide, but it shall not be obligatory on the Authority to make the communication until the estimated cost of the work has been paid to it or security for payment has been given to its satisfaction.

(3) If any payment so made to the Authority exceeds the expenses reasonably incurred by it in the execution of the work, the excess shall be repaid by it and, if and so far as those expenses are not covered by the payments made to it, the Authority may recover the expenses or the balance thereof, from the person for whom the work was done.

(4) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street and the taking of any steps which the Authority may consider necessary for repairing, relaying and safeguarding any pipes, drains, lines or any other works which may be or are liable to be disturbed or damaged by or in the course of making such communication.

(5) Any lateral drain so constructed shall vest in the Authority (but shall not thereby become a public sewer) and the maintenance, repair and renewal of the same from time to time

shall be carried out by the Authority at the expense of the owner of the premises served by such drain.

(6) Any person (other than a person lawfully acting on behalf of an Authority) who causes a drain or sewer to communicate with a public sewer and any person who fails to comply with or acts in contravention of any of the provisions of this section, shall be guilty of an offence and liable to a fine not exceeding one thousand shillings, and whether proceedings have or have not been taken in respect of that offence, the Authority may close any communication made in contravention of any of such provisions, and recover from the offender any expenses reasonably incurred by it in so doing.

PART IV

DRAINAGE AND LATRINES OF NEW BUILDINGS (ss 13-14)

[PCh336s13]13. New buildings to be provided with any necessary drains

(1) Where plans of a building or of an extension of a building are, in accordance with any building rules, deposited with an Authority, the Authority shall reject the plans unless either the plans show that satisfactory provision for drainage of the building or of the extension, as the case may be, will be made or the Authority is satisfied that in the case of that particular building or extension it may properly dispense with any provision for drainage.

(2) Except in cases where the Authority is satisfied that in the case of any particular building or extension it may properly dispense with any provision for drainage, for the purposes of subsection (1), "satisfactory provision for drainage" means that the drainage system and

appliances of the building comply with any law for the time being in force relating to the same and that the drainage systems of the premises connect either directly or indirectly with available public sewers, or, if there be no such sewers, discharge into cesspools or other places which the Authority may approve.

[PCh336s14]14. Latrine accommodation to be provided for new buildings

Where plans of a building or of an extension of a building are, in accordance with any building rules, deposited with an Authority, the Authority shall reject the plans unless either the plans and the prescribed particulars deposited therewith show that the prescribed or sufficient and satisfactory latrine accommodation will be provided, or the Authority is satisfied that in the case of a particular building or extension it may properly dispense with the provision of latrine accommodation:

Provided that—

(i) unless a sufficient water supply and public sewer are available, the Authority shall not reject the plans on the ground only that the proposed latrine accommodation consists of or includes an earth-closet or earth-closets or a privy or privies of a type approved by the Authority; and

(ii) if the plans and the deposited particulars show that the proposed building or extension is likely to be used as a factory, workshop, workplace, club, place of entertainment or other place in which persons of both sexes or different races will be employed, or will be in attendance, the Authority shall reject the plans, unless either it is satisfied after consultation with the Chief Inspector that sufficient and satisfactory separate latrine accommodation for persons of

each sex and race will be provided, or that in the circumstances, of the particular case it may properly dispense with the provision of such separate accommodation.

PART V

DRAINAGE AND LATRINES OF EXISTING BUILDINGS (ss 15-19)

[PCh336s15]15. Provisions as to drainage of existing buildings

(1) If it appears to an Authority that in the case of any building—

(a) satisfactory provisions for drainage has not been, and ought to be, made; or

(b) any appliance provided for the building is defective or insufficient; or

(c) any appliance provided for the building is in such a condition as to be prejudicial to health or a nuisance; or

(d) any appliance formerly used for the drainage of the building, but no longer used therefor, is prejudicial to health or a nuisance,

it shall by notice require the owner of the building to make satisfactory provision for drainage of the building, or, as the case may be, require either the owner or the occupier of the building to take such action and to do such work as may be necessary for connecting the drainage system to the sewer or for altering, renewing, repairing, or cleansing any existing appliance, or for filling up, removing or otherwise rendering innocuous any disused appliance.

(2) Except in cases where the Authority is satisfied that in the case of any particular building it may properly dispense with any provision for drainage, for the purpose of subsection

(1), "satisfactory provision for drainage" means that the drainage system and appliances of the building comply with any law for the time being in force relating to the same and that the drainage systems of the premises connect either directly or indirectly with available public sewers, or, if there be no such sewers, discharge into cesspools or other places which the Authority may approve.

(3) In this section "appliance" means any cesspool, septic tank, private sewer, drain, soil pipe, rain waterpipe, wastepipe, sink or other appliance for drainage.

[PCh336s16]16. Replacement of earth closets, by water closets

If any existing building in the area of an Authority has a sufficient water supply and a public sewer is available, the Authority, may, subject to the provisions of subsection (3) of section 2, by notice to the owner of the building require that any latrines, other than water closets, provided for, or in connection with, the building shall be replaced by water closets and that the owner shall make an application within a specified time to have his drains made to communicate with a public sewer under section 12, notwithstanding that the latrines are not insufficient in number and are not prejudicial to health or a nuisance.

[PCh336s17]17. Buildings having insufficient latrines or latrines so defective as to require reconstruction

If it appears to an Authority—

(a) that any building is without sufficient latrine accommodation; or

(b) that any latrines provided for or in connection with a building are in such a state as to be prejudicial to health or a nuisance and cannot without reconstruction be put into a satisfactory condition,

the Authority shall by notice to the owner of the building require him to provide the building with such latrines or additional latrines, or such substituted latrines, as the Authority may approve and may consider necessary:

Provided that, unless a sufficient water supply and public sewer are available, the Authority shall not require the provision of a water closet except in substitution for an existing watercloset:

Provided further that where a sufficient water supply, but no public sewer, is available the Authority may require the provision of a watercloset or waterclosets together with all necessary drainage discharging into a septic tank or other place which the Authority may approve.

[PCh336s18]18. Buildings having defective latrines capable of repair

(1) If it appears to an Authority that any latrines provided for or in connection with a building are in such a state as to be prejudicial to health or a nuisance, but that they can without reconstruction be put into a satisfactory condition, the Authority shall by notice require the owner or the occupier of the building to execute such works, or take such steps by cleansing the latrines or otherwise, as may be necessary for that purpose.

(2) In so far as such a notice requires a person to take any steps other than the execution of works, he shall, if he fails to comply with the notice, be guilty of an offence and liable to a fine

not exceeding one hundred shillings and to a further fine not exceeding forty shillings for each day on which the offence continues after conviction therefor:

Provided that in any proceedings under this subsection it shall be open to the defendant to question the reasonableness of the Authority's requirements, or of its decision to address the notice to him and not to the occupier or, as the case may be, to the owner of the building.

[PCh336s19]19. Drainage of buildings in combination into the existing public sewer

(1) Where an Authority might under this Act require each of two or more buildings to be drained separately into an existing public sewer, but it appears to the Authority that those buildings may be drained more economically or advantageously in combination, the Authority may require that the buildings be drained in combination into the existing public sewer by means of a private sewer to be constructed either by the owners of the buildings in such manner as the Authority may direct, or if the Authority so elects, by the Authority on behalf of the owners:

Provided that an Authority shall not, except by agreement with the owners concerned, exercise the powers conferred by this subsection in respect of any building for the drainage of which plans have been previously passed by the Authority.

(2) An Authority which makes such a requirement as aforesaid shall fix the proportions in which the expenses of constructing, and of maintaining and repairing, the private sewer are to be borne by the owners concerned, or, in a case in which the distance of the existing public sewer from the curtilage of any of the buildings in question is or exceeds one hundred feet, the

proportions in which those expenses are to be borne by the owners concerned and the Authority, and shall forthwith give notice in writing of the decision to each owner affected.

(3) An owner aggrieved by a decision of an Authority may appeal in the manner set forth in subsections (6) and (7) of section 21. Subject to any such appeal, any expenses reasonably incurred in constructing, or in maintaining or repairing, the private sewer shall be borne in the proportions so fixed, and those expenses, or, as the case may be, contributions thereto, may be recovered accordingly by the person, whether the Authority or owners, by whom they were incurred in the first instance.

(4) A sewer constructed by an Authority under this section shall not be deemed to be a public sewer by reason of the fact that the expenses of its construction are in the first instance defrayed by the Authority, or by reason of the fact that some part of those expenses is borne by it.

PART VI

GENERAL PROVISIONS (ss 20-32)

[PCh336s20]20. Payment of advances for defraying drainage expenses

(1) In any case where it shall appear to an Authority that the owner or occupier of any premises is unable to make a present payment of the amount of the expenses necessary to be incurred for the drainage and sewerage and latrine accommodation of such premises and the communication thereof with an available public sewer, the Authority may, subject to any general or special directions of the Minister in that behalf, make an agreement in the prescribed form with such owner or occupier for the advance of a sum of money for such necessary expenses and

at such interest thereon as may be prescribed and for its repayment in such and in so many instalments as the Authority may determine.

(2) Any sum of money so advanced shall be a charge on the premises and all estates and interests therein in respect of which the advance is made and the provisions of section 23 shall apply mutatis mutandis as if the sum advanced were expenses incurred by an Authority under this Act.

[PCh336s21]21. Provisions as to appeals against and the enforcement of, notices requiring execution of works

(1) The provisions of this section and of section 22 shall, subject to any express modifications specified in the section under which the notice is given, apply with respect to appeals against, and the enforcement of, notices requiring the execution of works under section 15, section 16, section 17, section 18 or section 19, and any appeal under section 11 or section 19 of this Act.

(2) Any such notice shall be in writing and shall indicate the nature of the works to be executed, and state the time within which they are to be executed.

(3) A person served with such a notice as aforesaid may appeal in the manner hereinafter provided on any of the following grounds which are appropriate in the circumstances of the particular case—

(a) that the notice or requirement is not justified by the terms of the law under which it purports to have been given or made;

(b) that the works required by the notice to be executed are unreasonable in character or extent;

(c) that the time within which the works are to be executed is not reasonably sufficient for the purpose;

(d) that the notice might lawfully have been served on the occupier of the premises in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served.

(4) Where the grounds upon which an appeal under this section is brought include a ground specified in paragraph (d) of subsection (3), the appellant shall serve a copy of his notice of appeal on each other person referred to, and in the case of any appeal under this section may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question, and on the hearing of the appeal an order may be made with respect to the person by whom any work is to be executed or as to the proportions in which any expenses which may become recoverable by the Authority are to be borne by the appellant and such other person.

(5) In the exercise of the powers conferred by subsection (4), regard shall be had as between an owner and an occupier to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required.

(6) Any appeal in pursuance of this section shall be referred to the court of a District Magistrate or Resident Magistrate exercising jurisdiction in the place where the premises are situated in pursuance of any rules made in that behalf by the High Court.

(7) The time within which any such appeal may be brought shall be twenty-one days from the date on which notice requiring the works was served upon the person desiring to appeal.

[PCh336s22]22. Execution of works

(1) Subject to a right of appeal, if any person required by a notice to execute works fails to execute the works indicated within the time thereby limited, the Authority may itself execute the works and recover from that person the expenses reasonably incurred by it in so doing and, without prejudice to its rights to exercise that power, he shall be liable to a fine not exceeding one hundred shillings, and to a further fine not exceeding forty shillings for each day on which the default continues after conviction therefor.

(2) In proceedings by an Authority against the person served with the notice for the recovery of any expenses which the authority is entitled to recover from him it shall not be open to him to raise any question which he could have raised on an appeal against such notice.

[PCh336s23]23. Certain expenses recoverable from owners or occupiers to be a charge on the premises; power to accept payment by instalment

(1) Where an Authority has incurred expenses for the repayment of which the owner or occupier of the premises in respect of which the expenses were incurred is liable under this Act or under any rule to which the provisions of subsection (3) of section 33 apply or by agreement with the Authority, those expenses, together with interest from the date of service of a demand for the expenses, may be recovered by the Authority from the person who is the owner or occupier of the premises at the date when the works are completed, or, if he has ceased to be the owner or occupier of the premises before the date when a demand for the expenses is served,

either from him or from the person who is the owner or occupier at the date when the demand is served, and as from the date of the service of a notice on the Registrar pursuant to subsection (3), the expenses and interest accrued due thereon shall, until recovered, be a charge on the premises and on all estates and interests therein. The charge hereby created shall be deemed to extend to any expenses lawfully paid to the Registrar in connection with the entry or filing or withdrawal of the notice of a charge in pursuance of the other provisions of this section.

(2) The charge created by subsection (1) shall be in favour of the Authority and the Authority shall have all the powers and remedies conferred on mortgagees by any law for the time being in force.

(3) The Authority shall, prior to the commencement of any work the cost of which will constitute a charge on land on or in respect of which the same is done, serve on the Registrar a notice stating that such work is about to be commenced and specifying the property that will be the subject of such charge and thereupon the Registrar shall enter such notice in the appropriate folio of the land register or file the same in the appropriate register for the registration of documents, as the case may be. Any person acquiring any estate or interest in any land in respect of which a notice has been so entered or filed shall be deemed to have actual notice thereof.

(4) On the completion of such work the Authority shall serve on the Registrar a further notice specifying the amount in respect of which such land by virtue of subsection (1) stands charged and thereupon the Registrar shall protect the interest of the Authority in such manner as shall appear to him appropriate.

(5) In making any entry or filing any document pursuant to subsection (4) the Registrar shall accept as conclusive the statement in writing relating to such charge of any duly constituted officer of any Authority.

(6) The Registrar shall cancel any memorial in the land register relating to a notice served on him under the provisions of subsection (3) or subsection (4) on receipt of a statement signed by the Authority that all amounts secured by the charge have been paid, or file any such statement in the appropriate register of documents, whichever may be appropriate.

(7) Any person having any registered interest in land in respect of which any such entry or notice appears on the land register or appropriate register of documents or any interest protected by the entry of a caveat may summon the Authority to appear before the High Court and show cause why such notice or entry should not be removed from the land register and such Court may make such order in the premises either ex parte or otherwise and as to costs as it deems fit.

(8) An Authority may agree that any expenses recoverable by it under this section shall be payable with interest by instalment within such period as it thinks fit, until the whole amount is paid. Any such instalment and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises in respect of which the expenses were incurred, and, if recovered from the occupier and the owner is liable, may be deducted by the occupier from the rent of the premises:

Provided that an occupier shall not be required to pay at any one time any sum in excess of the amount which was due from him on account of rent at, or has become due from him on

account of rent since, the date on which he received a demand from the Authority together with a notice requiring him not to pay rent to his landlord without deducting the sum so demanded.

(9) The rate of interest chargeable under subsection (1) and subsection (8) shall be such rate as the Minister may determine.

(10) Every Authority shall keep at its offices a register of all expenses incurred and advances made under this section, and shall show in such register the total amounts thereof, the instalment in which the same are payable, the land or premises in respect of which the same have been incurred or made, and the balances for the time being outstanding; and shall keep such register open at all reasonable times to the inspection of any person, free of charge. Such register and any extract therefrom, certified by any person authorised by the Authority in that behalf, shall, in any proceedings for the recovery of such expenses, advances or interest thereon or any instalment thereof, be prima facie evidence of the matters contained therein.

(11) In this section, the expression "Registrar" means the Registrar of Titles in any matter relating to registered land, or the Registrar of Documents in any matter relating to unregistered land.

[PCh336s24]24. Powers to make a charge in respect of establishment expenses

Where under this Act an Authority is empowered to execute works and to recover from any person the expenses incurred by it in so doing, it may include in, and recover as part of, the expenses an additional sum to cover customs duties and other charges and departmental expenses on such scale or in such manner as may be prescribed or as the Minister may direct.

[PCh336s25]25. Recovery of expenses

(1) Any sum which an Authority is entitled to recover under this Act and with respect to the recovery of which no other provision is made, may be recovered either summarily as a civil debt, or as a simple contract debt in any court of competent jurisdiction.

(2) The time within which summary proceedings may be taken for the recovery of any such sums shall, except where otherwise expressly provided, be reckoned from the date of the service of a demand therefor.

[PCh336s26]26. Powers of entry and closing of streets

(1) In the exercise of any powers and the performance of any duties conferred or imposed by this Act an Authority or any officer thereof or any person acting on behalf of or under the direction of such Authority may—

(a) enter any lands or premises at all reasonable times after notice to the owner or occupier and remain for such period as may reasonably be necessary for the performance of any inspection or work;

(b) examine, open up or cause to be opened up and examined any sanitary convenience, sewer, drain, cesspool, soil-pipe, water-pipe or any other fitting or thing connected with the drainage system of any building or any land as may reasonably be necessary for the performance of any inspection or work;

(c) temporarily close any street or thoroughfare to vehicular or pedestrian traffic or both and break open the surface of such street or thoroughfare for such period as may reasonably be necessary for the performance of any inspection or work.

(2) Any person who fails or refuses to allow any person seeking to enter any lands or premises under subsection (1) to enter such lands or premises or obstructs or hinders such person in the performance of any duties under this Act shall be guilty of an offence and liable on conviction to a fine not exceeding three hundred shillings.

[PCh336s27]27. Protection of Authority and its officers from personal liability

No matter or thing done and no contract entered into by any Authority, and no matter or thing done by any officer of any such Authority or by any person acting on behalf or under the authority or direction of such Authority, shall, if the matter or thing were done or the contract entered into bona fide for the purpose of executing this Act, subject any such Authority, officer or person as aforesaid to any action, liability, claim or demand whatsoever.

[PCh336s28]28. Liability of director, secretary or manager of company

Where a contravention of any of the provisions of this Act or any rules made hereunder is committed by any company or corporation any director, secretary or manager thereof may be prosecuted and may be held liable for such contravention and the consequences thereof.

[PCh336s29]29. Proceedings against several persons

Where proceedings under this Act are competent against several persons in respect of the joint act or default of such persons, it shall be sufficient to proceed against one or more of them without proceeding against the others.

[PCh336s30]30. Prosecutions

An Authority may itself or by any of its officers, or by any person generally or specially authorised in writing by such Authority, sue for any sum recoverable under this Act, or prosecute for any contravention of, offence against, or default in complying with, any provision of this Act or any rule made hereunder, if the contravention, offence, or default is alleged to have been committed within or to affect its area, or to affect any public sewer vested in it outside its area.

[PCh336s31]31. Power of Authority outside its area

Nothing in any law shall be construed as preventing any Authority from exercising any power or performing any duty under this Act by reason only that in exercising such power or performing such duty it must do some act or thing or incur expenditure outside its areas.

[PCh336s32]32. Service of notices

(1) Notices and other documents under this Act may be authenticated by the signature of any officer or person authorised by an Authority.

(2) Notices and other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of the premises by delivering the same, or a true copy thereof, to some person on the premises, or if there is no

person on the premises who can be served, by fixing the same, on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall prima facie be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice, order or other document was properly addressed and put in the post.

(3) No defect in the form of any notice or order made under this Act shall invalidate or render unlawful the administrative action taken or be a ground for exception to any legal proceedings which may be taken in the matter to which such notice or order relates, provided the requirements thereof are substantially and intelligibly set forth.

PART VII

RULES (ss 33-34)

[PCh336s33]33. Rules

(1) The Minister may make rules for the better carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, in respect of any of the following matters—

- (a) the protection of public sewers;
- (b) private and public sewers and the supervision and maintenance thereof, and the communications and connections between drains and sewers, and between sewers;

(c) the drainage of land, public places, streets and premises, and the disposal of foul water and storm water and subsoil water;

(d) the plans, execution, construction, inspection and testing of drainage and sewerage works, and latrine accommodation, and the materials to be used in the construction thereof;

(e) the giving of notices, and the making of and adherence to plans, sections, specifications and written particulars in relation to sewerage and drainage works, latrine accommodation and sanitary conveniences;

(f) any forms, charges and fees relating to the subject matter of this Act and any rules made hereunder;

(g) the prescribing of any matter which is to be or may be prescribed under this Act.

(2) Rules made under this section may prescribe penalties for an offence consisting of the breach or contravention of such rules not exceeding three hundred shillings, and, if the offence is of a continuing nature, a further fine not exceeding forty shillings for each day during which the offence continues.

(3) Rules under this section may provide that if any work to which such rule applies contravenes such rule—

(i) the Authority, without prejudice to its right to take proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the

work or to effect such alterations therein as may be necessary to make it comply with such rule; and

(ii) if a person to whom such a notice has been given fails to comply with that notice before the expiration of such time as may therein be stated or such longer period as the Authority may allow the Authority may pull down or remove the work in question or effect such alterations therein as may be necessary and may recover from him the expenses reasonably incurred by it in so doing.

(4) No such notice as is mentioned in subsection (3) of this section shall be given after the expiration of twelve months from the date of the completion of the whole of the work authorised, and, in any case where plans were deposited, it shall not be open to the Authority to give such a notice on the ground that the work contravenes any building rule, if either the plans were passed by the Authority, or notice of their rejection was not given within the prescribed period from the deposit thereof, and if the work has been executed in accordance with the plans and of any requirements made by the Authority as a condition of passing the plans.

[PCh336s34]34. Rules made under this Act to prevail

If any rule or by-law relating to sewerage, drainage or sanitation made under the Local Government (Urban Authorities) Act *, or the Local Government (District Authorities) Act *, conflicts with or is inconsistent with or repugnant to any rule made under this Act the rule made under this Act shall prevail.