

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE WATER AUTHORITY LAW
(2011 REVISION) AS A CONSEQUENCE OF THE ESTABLISHMENT
OF THE UTILITY REGULATION AND COMPETITION OFFICE; TO
TRANSFER THE WATER AUTHORITY'S ECONOMIC REGULATORY
RESPONSIBILITIES TO THE UTILITY REGULATION AND
COMPETITION OFFICE; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

THE WATER AUTHORITY (AMENDMENT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Water Authority Law (2011 Revision), as a consequence of the establishment of the Utility Regulation and Competition Office. The Water Authority's economic regulatory responsibilities would be transferred to that Office.

Clause 1 of the Bill provides for the short title and commencement of the legislation.

Clause 2 amends section 2 of the principal Law to define various terms for the purposes of the legislation.

Clause 3 of the Bill renames the heading of Part II of the principal Law to make it clear that Part II deals with the establishment, functions and duties of the Water Authority.

Clauses 4 and 5, respectively, amend sections 6 and 7 of the principal Law, to remove a number of the Authority's regulatory powers (for example, the power to monitor and regulate the tariffs, rate structures and terms and conditions for water supply and wastewater services charged to consumers).

Clause 6 inserts into the principal Law section 65A which makes provision for a compensation order by a court in any case where a person is convicted of an offence under the principal Law.

Clause 7 of the Bill removes the power to make regulations in respect of certain matters.

Clause 8 deletes references to the "Governor in Cabinet" and substitutes references to the "Cabinet" in order to comply with Constitutional requirements.

Clause 9 contains transitional provisions.

THE WATER AUTHORITY (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 - definitions and interpretation
3. Amendment of heading of Part II - Central Administration
4. Amendment of section 6 - duty of Authority in regard to water supply and sewerage
5. Amendment of section 7 - powers of Authority in regard to water supply and sewerage
6. Insertion of section 65A - order for payment of compensation
7. Amendment of section 70 - power to make regulations
8. Amendment of miscellaneous sections - substitution of the word “Cabinet” for the word “Governor”
9. Transitional provisions

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Water Authority (Amendment) Law, 2017. Short title and commencement
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.
2. The Water Authority Law (2011 Revision), in this Law referred to as the “principal Law” is amended in section 2(1) as follows - Amendment of section 2 of the Water Authority Law (2011 Revision)- definitions and interpretation
 - (a) by inserting, in the appropriate alphabetical sequence, the following definitions -

“administrative determination” has the meaning assigned to that expression by section 2(1) of the Utility Regulation and Competition Law, 2016;

“concession” means an instrument by which the Cabinet grants a right or privilege enabling a person -

- (a) to produce or supply water, or both, under the Water (Production and Supply) Law, 2011; or
- (b) to collect, convey and treat wastewater under the Wastewater Collection and Treatment Law, 2011;

“non-potable water” means water which may or may not be potable water but can be beneficially used, and does not include process water, wastewater or trade effluent;

“Office” means the Utility Regulation and Competition Office established under section 4 of the Utility Regulation and Competition Law, 2016;

“potable water” means water which is intended for consumption by humans, that is, water which has no impurities present in amounts sufficient to cause disease or harmful physiological effects, and the bacteriological and chemical and aesthetic quality parameters of which comply with values established under section 4 of the Public Health Law (2002 Revision) or, if none have been established, standards established by the Authority;

“service provider” means the Authority or any concessionaire that has been issued with a licence by the Office to provide water or wastewater services;

“wastewater” means any waste substance, liquid or solid, associated with human habitation, or which contains or may be contaminated with human or animal excrement or offal;

“water” means potable water and non-potable water; and

“water resources” 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, including groundwater lens; and
- (e) any watercourse;”;

- (b) by deleting the definition of the word “concessionaire” and substituting the following definition -

“ “concessionaire” means a person to whom a concession has been granted;”;

- (c) by deleting the definition of the word “Governor”;
- (d) by deleting the definition of the words “rate cap and adjustment mechanism” and substituting the following definition -

“ “ rate cap and adjustment mechanism” means the mechanism for determining and modifying prices for services rendered by the Authority or a concessionaire to consumers, as approved by the Office and specified by the Office in administrative determinations issued by the Office in respect of the Authority or in a licence issued by the Office to a concessionaire;” and

- (e) in the definition of the words “public water supply system” by inserting after the word “Authority” the words “or a concessionaire”.

- 3. The principal Law is amended by deleting the heading of Part II and substituting the following heading -

Amendment of heading of Part II - Central Administration

“PART II - Establishment, functions and duties of the Water Authority”.

- 4. The principal Law is amended in section 6 as follows -

Amendment of section 6 - duty of Authority in regard to water supply and sewerage

- (a) in paragraphs (a) and (b) by deleting the words “on terms to be agreed by the Authority” and substituting the words “forms part of investment plans approved by the Office”; and
- (b) by repealing paragraph (d).

- 5. The principal Law is amended in section 7 as follows -

Amendment of section 7 - powers of Authority in regard to water supply and sewerage

- (a) in subsection (1) -
 - (i) by deleting the words “including the sole right” and substituting the words “including (subject to any concession in force) the sole right”;
 - (ii) by inserting the word “and” at the end of paragraph (g);
 - (iii) in paragraph (h) by deleting “; and” and substituting a full stop; and
 - (iv) by repealing paragraph (i);
- (b) in subsection (4) by inserting after the word “appropriate” the words “but rates and charges for the provision of water supply and wastewater services shall not be fixed or imposed without the prior written approval of the Office”;

- (c) by repealing subsections (5), (6), (8), (9) and (10); and
- (d) by repealing subsection (7) and substituting the following subsection -

“(7) The Authority shall -

- (a) establish minimum safety standards for the production and supply of water and for wastewater systems and the Office shall include provisions for compliance with these standards as licence obligations on service providers; and
- (b) establish minimum environmental standards for the protection of the environment generally, including standards for the limitation of discharge into the atmosphere, water or land and shall include provisions for compliance with these standards as licence obligations on service providers.”.

Insertion of section 65A
- order for payment of
compensation

6. The principal Law is amended by inserting after section 65 the following section -

“Order for
payment of
compensation

65A.(1) Where a person is convicted of an offence under this Law, the court may make an order for the payment of compensation to any person for damage caused by the offence.

(2) A claim by a person for damages sustained by reason of the offence shall be deemed to have been satisfied to the extent of any amount which has been paid to that person under an order for compensation, but the order shall not prejudice any right to a civil remedy for the recovery of damages from the person convicted of the offence beyond the amount of compensation paid under the order.”.

Amendment of section
70 - power to make
regulations

7. The principal Law is amended in section 70 as follows -

- (a) by deleting the words “(1) The Governor” and substituting the words “The Cabinet”; and
- (b) by repealing paragraphs (j), (k), (l), (m) and (n).

Amendment of
miscellaneous sections -
substitution of the word
“Cabinet” for the word
“Governor”

8. The principal Law is amended by deleting the word “Governor” wherever it appears and substituting the word “Cabinet”.

9. (1) A licence or other enabling instrument issued to a person to provide any aspect of water supply or wastewater services, pursuant to the Water (Production and Supply) Law, 2011 or the Wastewater Collection and Treatment Law, 2011, in the Islands and valid and in force immediately prior to the coming into force of this Law, shall, on the coming into force of this Law, continue valid and in force for the remainder of the term as if it were a licence or enabling instrument granted under the Water Sector Regulation Law, 2017 and the licence or enabling instrument shall continue to be subject to each and every one of the terms, conditions and exemptions attaching to the licence or enabling instrument as if the terms, conditions and exemptions had been imposed or granted under the Water Sector Regulation Law, 2017.

Transitional provisions

Law 2 of 2011

Law 3 of 2011

(2) Where a person who possesses a licence or enabling instrument as described in subsection (1) has entered into an agreement with the Water Authority, being an agreement to surrender and terminate the licence or enabling instrument and to replace the same with a new licence or licences, immediately upon the surrender and termination of the licence or enabling instrument, the Office shall grant to that person the new licences on such terms, conditions and exemptions as have been so agreed, but the licences shall otherwise be subject to the Water Sector Regulation Law, 2017.

(3) Where, immediately prior to the coming into force of this Law, a person is in the process of negotiating with the Water Authority an agreement to provide any aspect of water supply or wastewater services, pursuant to the Water (Production and Supply) Law, 2011 or the Wastewater Collection and Treatment Law, 2011, those negotiations shall, on the coming into force of this Law, cease and the Office shall continue the negotiations pursuant to its functions and powers under the Water Sector Regulation Law, 2016.

(4) A licence or other enabling instrument issued to a person to provide any aspect of water supply or wastewater services, pursuant to the Water (Production and Supply) Law, 2011 or Wastewater Collection and Treatment Law, 2011, in the Islands and valid and in force immediately prior to the coming into force of this Law shall, on the coming into force of this Law, be subject to the provisions of the Water Sector Regulation Law, 2017 and the authority of the Office, as though the licence or enabling instrument were issued by the Office under the Water Sector Regulation Law, 2017.

(5) All rates and charges, standards or any rules or regulatory policies that are in effect on the date of commencement of this Law shall, on the coming into force of this Law, remain in effect as though they were determined by the Office until otherwise modified, replaced or repealed by the Office.

(6) The applicable standards (to be referred to as the 'Interim Cayman Islands Standards') for potable water shall be the standards set out in the

applicable WHO Guidelines which shall remain in effect until replaced by Cayman Islands Standards.

(7) In this section -

“Office” and “potable water” have the meanings respectively assigned to those expressions in the principal Law.

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.