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5th Session 1969-70



Mahaweli Development Board Act, No. 14 of 1970

Date of Assent : March 21, 1970

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Mahaweli Development Board Act, No. 14 of 1970

L.D.—O. 49/69.

AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND REGULATION OF THE MAHAWELI DEVELOPMENT BOARD WITH THE GENERAL OBJECTS OF EXERCISING, DISCHARGING AND PERFORMING CERTAIN POWERS, FUNCTIONS AND DUTIES WITHIN AREAS WHICH ARE CAPABLE OF DEVELOPMENT WITH THE WATER RESOURCES OF THE MAHAWELI GANGA.

[Date of Assent: March 21, 1970]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Mahaweli Development Board Act, No. 14 of 1970, and shall come into operation on such date as may be appointed by the Minister by Order published in the *Gazette*.

Short title and date of operation.

PART I

ESTABLISHMENT AND CONSTITUTION OF THE MAHAWELI DEVELOPMENT BOARD

2. (1) With effect from such date as may be fixed by the Minister by notification published in the *Gazette*, there shall be established a Board which shall be called the "Mahaweli Development Board", hereinafter referred to as "the Board".

Establishment of the Mahaweli Development Board.

(2) The Board shall by the name assigned to it by sub-section (1) be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

3. (1) The Board shall consist of the following members:—

Constitution of the Board.

(a) four members appointed by the Minister from persons who have had experience and shown capacity in engineering, agriculture, science, commerce, administration or accountancy, hereinafter referred to as "appointed members"; and

(b) subject to the provisions of sub-section (13), seven *ex officio* members, being—

(i) the Permanent Secretary to the Ministry of Irrigation, or his representative from that Ministry;

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- (ii) the Permanent Secretary to the Ministry of Agriculture, or his representative from that Ministry;
- (iii) the Permanent Secretary to the Ministry of Finance, or his representative from that Ministry;
- (iv) the Permanent Secretary to the Ministry of Planning, or his representative from that Ministry;
- (v) the person for the time being holding the office of Director of Irrigation;
- (vi) the person for the time being holding the office of Director of Agriculture;
- (vii) the person for the time being holding the office of Land Commissioner; and

(c) one representative member, that is to say, a member nominated as its representative by the Electricity Board.

(2) The Minister may, with the approval of the Government, appoint one of the appointed members of the Board to be the Chairman of the Board.

(3) A person shall be disqualified for appointment, or for continuing, as a member of the Board—

(a) if he is a Senator or a Member of Parliament, or

(b) if he has, directly or indirectly, any interest in a subsisting contract with, or in any work being done for, the Board except as a shareholder (other than a director) in an incorporated company.

(4) Where a member of the Board is a shareholder (other than a director) in an incorporated company which has entered into any contract with, or is doing any work for, the Board, he shall disclose to the Minister the nature and extent of the shares held by him in such company.

(5) The Minister may, if he thinks it expedient to do so, remove, by Order published in the *Gazette*, any appointed member of the Board from office without reason stated.

(6) A member of the Board in respect of whom an Order under sub-section (5) is made by the Minister shall vacate his office on the date of the publication of such Order in the *Gazette*.

(7) A member of the Board who has been removed from office shall not be eligible for reappointment as a member of the Board, or to serve the Board in any other capacity.

(8) Any appointed member of the Board may at any time resign his office by letter addressed to the Minister.

(9) If the Chairman or any other appointed member of the Board is temporarily unable to discharge the duties of his office on account of ill health or absence from Ceylon or for any other cause, the Minister may appoint some other person to act in his place as the Chairman or as such member.

(10) Every appointed member of the Board shall, unless he earlier vacates office by death, resignation or removal, hold office for a period of three years. Any appointed member of the Board who vacates office by effluxion of time shall be eligible for reappointment.

(11) No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the appointment of a member thereof.

(12) The members of the Board shall be remunerated in such manner and at such rates, and shall be subject to such conditions of service, as may be determined by the Minister with the concurrence of the Minister of Finance.

(13) The Government Agent of any administrative district within which any special area falls in whole or in part shall be an *ex officio* member of the Board. Any Minister of any Ministry referred to in section 3 (1) (b) may, with the approval of the Minister, nominate any other person, by office, to be an *ex officio* member of the Board. No *ex officio* member referred to in this sub-section shall be entitled to vote at any meeting of the Board.

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Seal of the Board.

4. (1) The seal of the Board shall be in the custody of the Board.

(2) The seal of the Board may be altered in such manner as may be determined by the Board.

(3) The seal of the Board shall not be affixed to any instrument or document except in the presence of a member of the Board who shall sign the instrument or document in token of his presence.

General Manager of the Board.

5. (1) The Board shall, with the approval of the Minister, appoint a competent and experienced person as General Manager of the Board.

(2) The General Manager shall be entitled to be present and to speak at meetings of the Board, but shall not be entitled to vote at such meetings.

(3) The General Manager shall, subject to the general direction and control of the Chairman, be charged with the direction of the business of the Board, the organization and execution of the powers, functions and duties of the Board, and the administrative control of the employees of the Board.

(4) The General Manager may, with the approval of the Board, delegate in writing to any other employee of the Board such of his powers, functions or duties as he may from time to time consider necessary, and any employee to whom any such powers, functions or duties are so delegated shall exercise them subject to the general or special directions of the General Manager.

(5) The General Manager shall retire from office on reaching the age of sixty years.

(6) The General Manager may not be removed from office except for good and sufficient cause and without the prior approval of the Minister.

PART II

FUNCTIONS AND POWERS OF THE BOARD

Special areas.

6. (1) The Minister may, with the approval of the Government, by Order published in the *Gazette* from time to time declare any area which can be developed with the water resources of the Mahaweli Ganga to be a special area (hereinafter referred to as a "special area") within which the Board may, subject to the

other provisions of this Act, discharge all or any of its functions and exercise or perform all or any of its powers or duties.

(2) The Minister shall, within one year of an Order having been made under sub-section (1) in respect of any special area, submit for approval by the Senate and the House of Representatives the plan, and the estimated cost, of the development of such area.

(3) The Minister may, by Order published in the *Gazette*, direct that, as respects any such special area as shall be specified in the Order, the Board shall cease to exercise, discharge or perform—

(a) all its powers, functions or duties within such area; or

(b) any such powers, functions or duties as shall be so specified within such area,

and it shall be the duty of the Board to comply with such Order.

7. (1) The Board may, subject to the provisions of section 6 (3) and the other provisions of this Act, exercise, discharge and perform any of its powers, functions and duties within any special area.

Powers,
functions and
duties of the
Board to be
exercised,
discharged and
performed within
special areas.

(2) Nothing in this section shall be deemed to preclude the Board from maintaining any office or stores outside any special area.

(3) Notwithstanding anything to the contrary in this Act, the Board may, acting under the authority granted by the Minister by Order under his hand, execute outside any special area any such work specified in the Order as may be necessary for the discharge of its functions under this Act.

8. The functions of the Board, within any special area, shall be—

Functions of
the Board.

(a) to promote and operate schemes of irrigation, water supply, drainage, flood control and control of soil erosion;

(b) to promote agricultural and economic development;

(c) to ensure the necessary co-ordination between the Government and local bodies in the development of such area.

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Powers of the Board.

9. The Board may exercise all or any of the following powers within any special area:—

- (a) to construct, maintain and operate such dams, channels, drainage systems and other irrigation works and structures as may be required for any of its purposes;
- (b) to determine and levy rates for the supply of water for irrigation;
- (c) to construct waterworks for the supply of water for industrial and domestic purposes and levy rates or fees for the supply of such water in bulk or by retail;
- (d) to construct and maintain roads, buildings and other public utilities;
- (e) to undertake land and agricultural development operations;
- (f) to enter into and perform, either directly or through authorized agents, such contracts as may be necessary for the exercise and performance of its powers and duties;
- (g) to acquire and hold any movable or immovable property, or dispose of any movable or immovable property acquired or held by it;
- (h) to establish provident funds and to provide welfare and recreational facilities, houses, hostels and other like accommodation for the employees of the Board;
- (i) to do all other things which are necessary for the proper discharge of its functions.

Generation and supply of electrical energy.

10. The Board may, with the concurrence of the Electricity Board, construct such installations as may be necessary for the purpose of the generation and supply of electrical energy.

Activities of the Board.

11. (1) The Board may establish its own departments or agencies for the purpose of any work of planning, designing, construction operations or any other work involved in the discharge of its functions, or may make arrangements with Government departments, public corporations and local authorities and other similar bodies for carrying out its functions.

(2) The Board may, with the approval of the Minister given with the concurrence of the Minister of Finance, make arrangements with Government

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departments and educational and research institutions for carrying out research, and make cash grants to such departments or institutions for the purpose.

(3) The Board may establish, maintain and operate laboratories, experimental and research stations and farms, for conducting such experiments and research as may be necessary in the exercise and discharge of its powers and functions.

12. (1) Where any land or any interest in any land in any special area is required by the Board for any of its purposes, that land or interest may be acquired under the Land Acquisition Act by the Government for the Board, and the provisions of that Act shall, save as otherwise provided in sub-section (2), apply for the purposes of the acquisition of that land or interest.

Compulsory
acquisition of
land in any
special area.

(2) In any case where any land or any interest in any land in any special area is to be acquired under the Land Acquisition Act for any purpose of the Board and public notice of the intention to acquire that land or interest is published as required by that Act at any time within the period of three years commencing on the date of the publication in the *Gazette* under section 6 (1) of the Order declaring such special area, the following provisions shall apply for the purpose of determining the amount of compensation to be paid in respect of that land or interest, notwithstanding anything to the contrary in that Act:—

(a) the market value of the land shall be deemed to be the market value which the land would have had on the date of such Order if it then was in the same condition as it is at the time of acquisition;

(b) in ascertaining the market value of the land at the date of such Order no account shall be taken of any benefit or increase in value which may have accrued, or any expectation of benefit or increase in value likely to accrue, directly or indirectly, from any work of development or other operation of the Government after the date of such Order, or from any work of development or other operation of the Board in pursuance of this Act.

Possession of
land in any
special area
otherwise than
under the Land
Acquisition Act.

13. (1) The Board may, by notice published and displayed in accordance with the provisions of sub-section (2), require every person who claims any right, title or interest to or in any land situated in such part of a special area as is described in the notice to prefer his claim in writing to the Board within such time as may be specified in the notice.

(2) The notice referred to in sub-section (1) shall be published in the *Gazette* and in at least one newspaper in the Sinhala language and one newspaper in the Tamil language and shall be displayed, in accordance with directions of the Board, at conspicuous places in such part of a special area as is described in the notice.

(3) Where the Board requires for any of its purposes any land situated in such part of a special area as is described in a notice published and displayed under the preceding provisions of this section and where no claim of any right, title or interest to or in that land has been made to the Board as required by that notice or all the claims made in respect of that land are, after due investigation, considered by the Board to be invalid, the Board may take possession of that land and cause any work to be done thereon, notwithstanding that no proceedings under the Land Acquisition Act have been taken in respect of that land.

(4) Any person authorized in writing in that behalf by the Board may, for and on behalf of the Board, take possession of any land referred to in sub-section (3).

(5) Where any person who is authorized in writing by the Board to take possession of any land referred to in sub-section (3) is unable to take possession of that land because of any obstruction or resistance which has been offered, he shall, on his making an application in that behalf to the Magistrate's Court having jurisdiction where that land is situated, be entitled to an order of that court directing the Fiscal to deliver possession of that land to him for and on behalf of the Board.

(6) Where an order under sub-section (5) is issued to the Fiscal by a Magistrate's Court, he shall forthwith execute that order and in writing report to that court the manner in which that order is executed.

(7) For the purpose of executing an order issued by a Magistrate's Court under sub-section (5), the Fiscal or any person acting under his direction may use such force as may be necessary to enter the land to which that order relates and to eject any person offering obstruction or resistance and to deliver possession of that land to the person who is duly authorized to take such possession for and on behalf of the Board.

14. (1) Any land of which possession is taken by the Board under section 13 shall, with effect from the date of commencement of such possession, vest absolutely in the Board free from all encumbrances.

Effect of
possession under
section 13.

(2) No person claiming any right, title or interest to or in any land of which possession has been taken by the Board under section 13 shall, save as provided in sub-section (3), be entitled to institute any suit or other legal proceeding against the Board in respect of that land, or of taking possession thereof by the Board or of the doing of any work thereon by or under the authority of the Board.

(3) Any person who would but for the provisions of sub-section (1) have any right, title or interest to or in any land of which possession has been taken by the Board under section 13, may institute in a court of competent jurisdiction an action against the Board for a declaration of such right, title or interest and for obtaining compensation from the Board in respect of that land.

(4) The amount of compensation which is to be awarded to any person in an action under sub-section (3) shall, save as otherwise provided in sub-section (5), be determined on the basis on which compensation would be determined under the Land Acquisition Act if the land in respect of which compensation is to be awarded were acquired under that Act.

(5) Where compensation is to be awarded to any person in an action under sub-section (3) in respect of a land of which possession has been taken by the Board at any time within the period of three years commencing on the date of the Order made under section 6 (1) in respect of any special area within which such land is situated, the provisions of paragraphs (a) and (b) of sub-section (2) of section 12 shall apply for the purpose of determining the amount of such compensation.

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Crown lands.

15. In a special area, the Board shall in addition, notwithstanding the provisions of Part XI of the Crown Lands Ordinance, be charged with the administration of that Ordinance and accordingly every reference in that Ordinance to the Land Commissioner or any officer of the Government entrusted with any duties in respect of Crown lands shall, for the purpose of the application of that Ordinance to such area, be deemed to include a reference to the Board or to any such officer of the Board as may be authorized by the Board for the purpose of that provision.

Special powers
in respect of
special areas.

16. The written laws for the time being specified in the Schedule to this Act shall have effect in every special area subject to the modification that it shall be lawful for the Board to exercise and discharge in such area any of the powers or functions vested by any such written law in any officer or person in like manner as though the reference in any such written law to the authority, officer or person empowered to exercise or discharge such powers or functions included a reference to the Board.

PART III

STAFF OF THE BOARD

Appointment of
staff of the
Board.

17. (1) The Board may appoint such officers and servants as it considers necessary for the efficient discharge of its functions:

Provided that a person who is not a citizen of Ceylon according to the law for the time being in force relating to citizenship of Ceylon, shall not be appointed an officer or servant of the Board without the prior sanction of the Minister.

(2) The officers and servants of the Board shall be remunerated in such manner and at such rates, and shall be subject to such conditions of service, as may be determined by rules made under section 18.

(3) No person who has, directly or indirectly, by himself or his partner or agent, any share or interest in any contract made by or on behalf of the Board shall become or remain an officer or servant of the Board.

18. (1) The Board may make rules in respect of all or any of the following matters:—

Power of Board to make rules.

- (a) any matter which has to be determined under sub-section (2) of section 17;
- (b) the appointment, promotion, dismissal and disciplinary control of its officers and servants;
- (c) the meetings of the Board and the quorum for and the procedure to be followed at such meetings.

(2) No rule made under sub-section (1) shall have effect until it has been approved by the Minister.

(3) The Minister shall not, without the concurrence of the Minister of Finance, approve of any rule made by the Board in respect of any matter referred to in paragraph (a) or paragraph (b) of sub-section (1).

19. (1) At the request of the Board, any officer in the public service may, with the consent of that officer and of the Secretary to the Treasury, be temporarily appointed to the staff of the Board for such period as may be determined by such Board with like consent or be permanently appointed to such staff.

Special provisions relating to the appointment of public officers, &c., to the staff of the Board.

(2) Where an officer in the public service is temporarily appointed to the staff of the Board—

- (a) he shall be subject to the same disciplinary control as any other member of such staff;
- (b) if, at the time of his temporary appointment to the staff of the Board, his substantive post in the public service was a post declared to be pensionable under the Minutes on Pensions—
 - (i) he shall, while in the employ of the Board, be deemed to have been seconded to an office to which pension rights are not attached, and accordingly section 24 of those Minutes shall apply to him, and
 - (ii) in respect of him the Board shall pay out of the funds of the Board to the Secretary to the Treasury to be credited to the Consolidated Fund of Ceylon for every complete month

during which he is in the employ of the Board such sum not exceeding twenty-five *per centum* of the salary payable to him in his substantive post in the public service as may be determined by the Minister of Finance; and

- (c) if, at the time of his temporary appointment to the staff of the Board, he was a contributor to the Public Service Provident Fund established under the Public Service Provident Fund Ordinance, his service to the Board shall, for the purposes of that Ordinance, be deemed to be service to the Government, and accordingly he shall, while he is in the employ of the Board, continue to pay such contributions as he was liable under that Ordinance to pay, and in respect of him the Board shall pay at the close of each financial year out of the funds of the Board to the Deputy Secretary to the Treasury to be credited to the officer's account in the Public Service Provident Fund a sum equivalent to such contribution as the Government is liable to pay to the Public Service Provident Fund in respect of him.

(3) Where an officer in the public service is permanently appointed to the staff of the Board—

(a) he shall be deemed to have left the public service;

(b) if, at the time of his permanent appointment to the staff of the Board, his substantive post in the public service was a post declared to be pensionable under the Minutes on Pensions—

(i) he shall be eligible for such an award under those Minutes as might have been made to him if he had been retired from the public service on the ground of ill health on the date of his permanent appointment to the staff of the Board,

(ii) the amount of any such award made under those Minutes shall not be paid to him unless his employment in

the Board is terminated by retirement on account of age or ill health or by the abolition of the post held by him in the Board or on any other ground approved by the Minister of Finance,

(iii) in the event of his death while in the employ of the Board, such an award as might have been made in respect of him under those Minutes if he had died immediately before his permanent appointment to the staff of the Board may be made in respect of him; and

(c) if, at the time of his permanent appointment to the staff of the Board, he was a contributor to the Public Service Provident Fund established under the Public Service Provident Fund Ordinance, he shall, for the purposes of that Ordinance, be deemed to have left the service of the Government upon the determination of contract with the consent of the Government otherwise than by dismissal.

(4) Where the Board employs any person who has entered into a contract with the Government by which he has agreed to serve the Government for a specified period, any period of service to the Board by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such contract.

PART IV

FINANCE

20. (1) The Board shall have its own fund. All moneys received by the Board, including such sums as may be voted by Parliament for the use of the Board, shall be credited to the fund, and all payments made by the Board shall be made therefrom.

Fund of the
Board.

(2) All moneys voted for the development of the Mahaweli Ganga out of the Consolidated Fund of Ceylon may with the approval of the Government be credited to the fund established under sub-section (1).

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Waiver of
customs duty.

21. Notwithstanding anything in any other written law, the Principal Collector of Customs may, with the sanction of the Secretary to the Treasury, waive the customs duty on any articles imported by, or for, the Board, or purchased out of bond by the Board, for any of its purposes.

Accounts and
audit of
accounts.

22. (1) The Board shall cause proper accounts of the income and expenditure of the Board and of all its other transactions to be kept and shall prepare an annual statement of accounts and statistics relating to the business of the Board in such form and containing such particulars as the Minister with the concurrence of the Minister of Finance may from time to time specify.

(2) The accounts of the Board for each financial year shall be audited by the Auditor-General. For the purpose of assisting him in the audit of such accounts the Auditor-General may employ the services of any qualified auditor or auditors who shall act under his direction and control.

(3) For the purpose of meeting the expenses incurred by him in the audit of the accounts of the Board, the Auditor-General shall be paid by the Board such remuneration as the Minister may determine with the concurrence of the Minister of Finance. Any remuneration received from the Board by the Auditor-General shall, after deducting any sums paid by him to any qualified auditor employed by him for the purposes of such audit, be credited to the Consolidated Fund of Ceylon.

(4) The Auditor-General shall examine the accounts of the Board and furnish a report stating—

(a) whether he has or has not obtained all the information and explanations required by him;

(b) whether in his opinion the accounts have been drawn up so as to exhibit a true and fair view of the affairs of the Board;

(c) drawing attention to any item in the accounts which in his opinion may be of interest to the Senate and the House of Representatives in any examination of the activities and accounts of the Board.

(5) The Auditor-General shall transmit his report to the Board.

(6) For the purposes of this section the expression "qualified auditor" means—

- (a) an individual who, being a member of the Institute of Chartered Accountants of Ceylon, possesses a certificate to practise as an Accountant issued by the Council of that Institute; or
- (b) a firm of Chartered Accountants each of the partners of which, being a member of that Institute, possesses a certificate to practise as an Accountant issued by the Council of that Institute.

23. The Auditor-General and any person authorized by him shall have access to all such books, deeds, contracts, vouchers and other documents of the Board as the Auditor-General considers necessary for the purposes of the audit, and shall be furnished by the Board and the officers of the Board with such information within their knowledge as may be required for such purposes.

Powers of the Auditor-General and any person authorized by the Auditor-General.

24. (1) The Board shall, as soon as possible after the end of each financial year of the Board, make to the Minister a report on the exercise and performance by such Board of its powers and duties during that year and on its policy and programme. Such report for any year shall set out any direction given by the Minister to the Board during that year.

Report of the Board and copies of the auditor's report and the statement of accounts and statistics to be sent to the Minister and laid before the Senate and the House of Representatives.

(2) The Board shall, on receipt of the Auditor-General's report, in each year, transmit to the Minister—

- (a) a copy of such report, and
- (b) a copy of the statement of accounts and statistics prepared under sub-section (1) of section 22.

(3) The Minister shall lay copies of the reports and the statements referred to in sub-section (1) and (2) before the Senate and the House of Representatives.

PART V

GENERAL

25. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

Regulations.

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(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall as soon as it is convenient after its publication in the *Gazette* be brought before the Senate and the House of Representatives for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of disapproval, but without prejudice to anything previously done thereunder.

Powers of the
Minister.

26. (1) The Minister may, after consultation with the Board, give to the Board in writing general or special directions as to the performance of the duties and the exercise of the powers of the Board.

(2) The Minister may, from time to time, direct the Board in writing to furnish to him in such form as he may require, returns, accounts and other information with respect to the property and business of the Board, and the Board shall carry out every such direction.

(3) The Minister may order all or any of the activities of the Board to be investigated and reported upon by such person or persons as he may specify and upon such order being made, the Board shall afford all such facilities to carry out such order.

Acquisition of
land, other than
Crown land.

27. The Minister may, by Order published in the *Gazette*, approve of the proposed acquisition of any land, or any interest in any land, other than Crown land, for any purpose of the Board, and where such an Order is so published, the land or the interest in any land specified in the Order shall be deemed to be required for a public purpose and may be acquired under the Land Acquisition Act, and when so acquired shall be transferred to the Board under the Crown Lands Ordinance.

Officers and
servants of the
Board deemed
to be public
servants.

28. All officers and servants of the Board shall be deemed to be public servants within the meaning and for the purposes of the Penal Code.

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29. (1) No suit or other legal proceeding shall lie against the Board for any damage caused, or likely to be caused, by any act which in good faith is done, or purported to be done, under this Act.

Suits or legal proceedings not to lie against Board or employees in certain circumstances.

(2) No suit, prosecution or legal proceeding shall lie against any person in the employment of the Board for any act which in good faith is done, or purported to be done, under this Act.

30. In this Act, unless the context otherwise requires—

Interpretation.

“ Chairman ” means the Chairman of the Board;

“ Electricity Board ” means the Ceylon Electricity Board established under the Ceylon Electricity Board Act, No. 17 of 1969;

“ General Manager ” means the General Manager of the Board;

“ special area ” means any area in respect of which there is for the time being in force an Order published by the Minister under section 6(1).

SCHEDULE

(Section 16).

Forest Ordinance.

Irrigation Ordinance.

Land Development Ordinance.

Paddy Lands Act.

Written law enacted under any of the aforesaid enactments.