

STATE OF SABAH

DRAINAGE AND IRRIGATION ORDINANCE, 1956

(Sabah No. 15 of 1956)

LIST OF AMENDMENTS

<i>G.N.S. No</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
122/1964	12 (2)	1-10-1964
87/1965	Long title, 2 (definitions of "Committee", "drainage area" and "irrigation area"), 3, 4 (1), (2), (3), (4), 5, 6 (2), 8 (1), (4), 9 (2), 10, 22 (1), (2), 25 (1)	16-9-1963
Act 160	14, 15 (3), 17, 18 (1), (2), 22 (1), 25 (3)	29-8-1975
20/1978	14, 15 (3), 23 (1), (2)	1-1-1979
3/1983	2 (definition of "executive officer"), 21, 22 (3)	14-4-1983
10/1983	4 (2), (3), (5), 7 (2), 19	1-1-1984
8/1995	2 (definitions of "executive officer" and "President"), 4 (2), (2A), (3), (5), 7 (2), 19, 21, 22 (3)	27-7-1995

An Ordinance relating to the establishment and regulation of drainage and irrigation areas in Sabah.

[15th October, 1957.]

ENACTED by the Governor of the colony of North Borneo with the advice and consent of the Legislative Council as follows:

Short title and commencement.

1. This Ordinance may be cited as the Drainage and Irrigation Ordinance, 1956, and shall come into operation on such date as the Governor may, by notification in the *Gazette*,* appoint.

Interpretation.

2. In this Ordinance –

“Collector” shall have the same meaning as in the Land Ordinance [Cap. 68.];

“Committee” means a committee appointed by the Yang di-Pertua Negeri under section 4;

“drainage” means the practice of causing water to be removed from the surface or sub-soil of land by natural or artificial means for agricultural or other purposes;

“drainage area” means any area used for agricultural or other purposes which may from time to time be so declared by the Yang di-Pertua Negeri† under the provisions of section 3;

“drainage water” means water which is removed from land by means of drainage works or by natural means;

* In force 15th October, 1957 - see G.N.S. 111/1957.

† Throughout the Ordinance “Yang di-Pertua Negeri” substituted for “Yang di-Pertua Negara” by virtue of Enactment No 17 of 1976.

“drainage works” includes the construction and maintenance of drainage canals and channels including sub-soil drains, banks, bunds, water gates, culverts, sluices, drains and other similar works for drainage purposes;

“Executive Officer” in respect of any drainage or irrigation area means such Irrigation and Drainage Engineer or such other officer not below the grade of Technical Assistant as the Director of Irrigation and Drainage may from time to time appoint in writing in that behalf;

“irrigation” means the practice of causing water to flow upon or spread over or under the surface of land for agricultural purposes and includes drainage for the removal of irrigation water;

“irrigation area” means any area which may from time to time be so declared by the Yang di-Pertua Negeri under the provisions of section 3;

“irrigation season” means that period of time determined by the Committee during which irrigation water shall be made available to an irrigation area;

“irrigation water” means water which is put on to or retained on land in an irrigation area by means of irrigation works and includes water reaching such land as rainfall;

“irrigation works” includes the construction and maintenance of headworks, pumping stations, tanks, main canals, subsidiary canals, distribution channels, banks, water gates, culverts, sluices, and other similar works for irrigation purposes;

“occupier” includes a leasee or tenant and the cultivator or other person in actual possession, management or control of any land;

“owner” means owner as defined in the Land Ordinance [Cap. 68,];

“President” means the President of a Municipal Council established under the Local Government Ordinance 1961 [Ord. No. 11/1961.].

Declaration of drainage or irrigation area.

3. The Yang di-Pertua Negeri may declare* any land in Sabah within the area affected or to be affected by any drainage or irrigation works, wholly or in part carried out or sanctioned by the Government, to be a drainage area or an irrigation area or both. Such declaration shall define the boundaries of such area and may include headworks and main canals. The Director of Lands and Surveys or Collector as the case may be shall, prior to the registration of the first dealing in the land effected after the date of coming into force of this Ordinance, endorse on all documents of title to land registered in their respective registries affected by this declaration a reference to such declaration under this section.

Drainage and Irrigation Committees.

4. (1) The Yang di-Pertua Negeri shall constitute a Committee in respect of each area declared under section 3, for the purposes of –

- (a) fixing the dates of commencement and cessation of the irrigation season or seasons in each year;
- (b) fixing the date of commencement of cultivation of padi in respect of such irrigation season;
- (c) recommending to the Yang di-Pertua Negeri any scheme of classification of land within the drainage or irrigation area for utilisation or rating;
- (d) recommending to the Yang di-Pertua Negeri, within one month of the cessation of each irrigation season as fixed under paragraph (a) above, and annually in respect of any drainage area, the rate or rates to be imposed under the provision of section 8 in respect of that season on all or any classification of land within the area. In making such recommendations the Committee shall if so required by the Yang di-Pertua Negeri have regard to the capital cost, depreciation of machinery, maintenance and operation costs of the works, the extent of all operations

* See G.N.S 46/1962, 47/1962, 48/1962 and 37/1963.

during the period under review and the number of irrigation seasons;

- (e) recommending to the Yang di-Pertua Negeri any measures necessary to ensure the co-operation of cultivators in the area or the efficient operation of drainage or irrigation within the area;
- (f) exercising any other executive or advisory power specified in the Ordinance or conferred upon it by the Yang di-Pertua Negeri in furtherance of or related to the provisions of the Ordinance.

(2) The Committee shall consist of the following persons:

- (a) the District Officer of the district, or the President of the municipality, in which the drainage or irrigation area is located or, if such area extends over more than one district or municipality, then all the District Officers of such districts and the Presidents of such municipalities;
- (b) the Collector of the district, where the District Officer is not the Collector, or the Collector of the municipality, in which the drainage or irrigation area is located, or if such area extends over more than one district or municipality, then all the Collectors of such districts and municipalities;
- (c) the Executive Officer as Secretary;
- (d) the Director of Agriculture, or his appointed representative; and
- (e) not more than five other persons nominated by the Yang di-Pertua Negeri as representing the cultivators within the drainage or irrigation area.

(2A) The quorum of the Committee shall be five members:

Provided that at all times the number of members nominated by the Yang di-Pertua Negeri who are present shall exceed the number of other members present.

(3) The District Officer or the President, as the case may be, shall be Chairman of the Committee:

Provided that where there is more than one District Officer or more than one President or

there are both a District Officer and a President on the Committee, such District Officer or President as the Yang di-Pertua Negeri may appoint, shall be the Chairman of the Committee.

(4) The nominated members of the Committee shall hold office for a period of three years and shall be eligible for renomination. In any case where the Committee is satisfied that any nominated member is incapacitated by illness, absence or other sufficient reason from performing the duties of his office it shall so report to the Yang di-Pertua Negeri who may revoke the appointment and nominate some other qualified person in his place.

(5) When the Committee shall have fixed any date in exercise of its powers under paragraphs (a) and (b) of subsection (1) it shall cause notice of such dates to be published on the notice board of the District Office or the Municipal Council Office as the case may be and in such manner as the Committee shall in each case decide.

Nature of cultivation.

5. The Yang di-Pertua Negeri may declare in respect of any unalienated State land within a drainage or irrigation area that such land shall not be alienated for any purpose other than such as may be approved by the Committee for that area.

Padi cultivation.

6. (1) Notwithstanding anything to the contrary contained in the Land Ordinance [Cap. 68.], or any other written law, no land within an area subject to the provisions of this section shall be used for any purpose other than the cultivation of padi without the consent of the Committee for the drainage or irrigation area within which such land is situated.

(2) The provisions of subsection (1) shall not, for so long as such land continues to be used for the same purpose, apply to any land in respect of which the Committee, upon the application of any owner or occupier, has recorded that such land was prior to the date of commencement of this Ordinance, or one year before an order under this section, whichever date is the later, lawfully used for any purpose other than the cultivation of padi.

(3) The Yang di-Pertua Negeri may order that any area or areas of land within a drainage or irrigation area shall be subject to the provisions of this section and upon

publication of such order the Director of Lands and Surveys or Collector as the case may be shall, prior to the registration of the first dealing in the Land effected after the date of coming into force of this Ordinance, endorse on all documents of title to land registered in their respective registries within any such area a reference to such order.

(4) All land subject to an order under the provisions of subsection (3) shall cease to be subject to the provisions of paragraph (a) of subsection (1) of section 5 of the Native Rice Cultivation Ordinance [Cap. 87].

Classification of lands.

7. (1) The Committee shall classify all land within a drainage or irrigation area according to its utilisation. Agricultural land shall be classified according to the nature of the cultivation that might reasonably be expected thereon. If at any time any land so classified shall be used for a different purpose or, if agricultural land, for different cultivation the Committee shall forthwith reclassify such land.

(2) The Committee's original classification and all reclassifications shall be prepared in draft and such drafts shall be made available for inspection by the public in the District Office of the district or the Municipal Council Office of the Municipality in which the land is situated. Public notice of the preparation of such drafts shall be given by a notification in the *Gazette* and in such other manner as the Committee may think desirable. Such notice shall also state a date not less than one month after the publication of the notice on which and the time and place at which the Committee proposes to hold a public meeting at which any owner affected by the draft classification may appear and state his objections to it.

(3) After the public meeting referred to in subsection (2) has been held and any objections considered, the Committee shall publish its classification or reclassification which shall then be final. Such publication shall be effected by notice in the *Gazette*.

Imposition of water rates.

8. (1) The Yang di-Pertua Negeri may by order impose upon all or any land within a drainage or irrigation area rates, hereinafter called water rates. Such water rates shall be imposed in accordance with the classification made under section 7.

(2) Upon such publication all owners of such land shall become liable to pay water rates. Payment will be due as set out in sub-sections (3) and (4) of this section.

(3) Water rates imposed upon land classified for the cultivation of padi shall become payable three months after the cessation of the irrigation season fixed under paragraph (a) of subsection (1) of section 4 in respect of such land:

Provided that water rates shall be remitted until irrigation water has been available on such land or the area has been drained for a period sufficiently long to allow three successive annual crops to be planted and gathered.

(4) Water rates imposed upon land classified for any purpose other than the cultivation of padi shall become payable on the first day of January next following the date of publication of the order of the Yang di-Pertua Negeri under subsection (1) and thereafter on the first day of January of each succeeding year.

Reduction or remission of water rates.

9. (1) In any case in which the irrigation works on land classified for the cultivation of padi have for any reason not been effective or have been only partly effective during any annual period the Committee may reduce the amount of the rate imposed and such reduction may if the works have been ineffective for the whole period amount to total remission.

(2) In any other case the Committee may make recommendations to the Yang di-Pertua Negeri for the reduction or remission of any water rates imposed setting out their reasons for so recommending and the Yang di-Pertua Negeri shall have power to authorise such reduction or remission as may to him seem fit after consideration of the Committee's recommendations and reasons.

Collection of water rates.

10. All sums due for water rates under this Ordinance shall be paid and may be recovered, so far as may be practicable, in the manner provided by Part VII of the Land Ordinance [Cap. 68.] for the collection of land revenue and shall form part of the revenues of Sabah.

Special supply of water.

11. Any owner or occupier may apply to the Committee for a supply of water at periods not within the irrigation season and the Committee, in its absolute discretion, may supply such water in which case the owner or occupier shall pay for such water at a rate or rates to be determined by the Committee and agreed and paid by the landowner in advance.

Management of drainage or irrigation area.

12. (1) Every drainage or irrigation area and the works therein shall be in the charge of an Executive Officer.

(2) Such Executive Officer shall report to the Committee annually, and at such other times as the Committee may require, upon the working of the area in his charge, and shall in like manner furnish annual accounts in such form as the Minister for Finance may direct showing in respect of that area the receipts on account of water rates and any other revenue arising from the operation of the works, and the expenditure on construction, management, supervision and maintenance of the works in his charge.

(3) For the purposes of such accounts the Collector of each district concerned shall furnish to the Executive Officer a statement at the cessation of each irrigation season of the amount of water rate collected by him or in arrears in respect of the area and of any sums received by him under subsection (2) of section 22*.

Delegation of powers and duties.

13. (1) Any Executive Officer may, with the approval of the Director of Public Works and subject to such limitations as the Director of Public Works may think fit to impose from time to time authorise by writing under his hand any officer of Government to exercise any of the powers and perform any of the duties conferred and imposed by this Ordinance on the Executive Officer and may in like manner and with the like approval withdraw any such authority.

(2) Everything done in pursuance of an authority granted under this section shall

* See Corrigenda in 1958 Annual Volume at page LXI.

have the same effect as if it were done by the Executive Officer.

Filling up water-ways.

14. The Executive Officer may, if it appears to him that it will be of benefit to the drainage or an irrigation works in his charge so to do enter upon any land and fill up, construct, widen or drain any canal, watercourse, drain, ditch, pond or swamp whether within or without a drainage or irrigation area:

Provided that there shall be paid to any owner or occupier thereof reasonable compensation for any damage, loss or inconvenience arising therefrom, and if the parties fail to agree as to the amount so payable the question shall be referred to the Committee whose decision thereon upon any claim for a sum of less than five hundred ringgit shall be subject to appeal to the Magistrate and in any other case be subject to appeal to the High Court.

Removal of trees or refuse.

15. (1) (a) The Executive Officer may, by notice in writing, require the owner or occupier of any land within any drainage or irrigation area to clear the banks or sides of any drainage or irrigation works on such land of any trees, plants or weeds growing thereon or to remove from any land adjoining any drainage or irrigation works any growth or refuse likely to damage such works or harbour rats or other vermin.

(b) Such notice shall require the owner or occupier to take the necessary action within a certain fixed time, which shall not be less than fourteen days from the date of the service of the notice, and if default is made in complying with the provisions of such notice the Executive Officer may enter upon such land and cause action to be taken as is required by the notice and may recover the cost of so doing from such owner or occupier in any Court of competent jurisdiction.

(2) (a) The Executive Officer may, by notice in writing, prohibit the owner or occupier of any land within such area from planting any tree or plant on the banks or sides of any drainage or irrigation works on such land or from depositing on any land adjoining any drainage or irrigation works any

refuse likely to damage such works or harbour rats or other vermin.

- (b) If default is made in complying with the provisions of a notice issued under this subsection the Executive Officer may enter upon such land and cause action to be taken to clear any tree, plant or weed from such banks or sides or to remove any such refuse and may recover the cost of so doing from the said owner or occupier in any Court of competent jurisdiction.

(3) In cases in which the Executive Officer requires the destruction of, or destroys, valuable trees or plants he shall, unless notice has been issued on a previous occasion under this subsection in respect of the land on which such trees or plants are growing, pay the owner or occupier reasonable compensation for the same; and if the parties fail to agree as to the amount so payable the question shall be referred to the Committee whose decision thereon upon any claim for a sum of less than five hundred ringgit shall be subject to appeal to the Magistrate and in any other case shall be subject to appeal to the High Court.

Compulsory provision of bunds.

16. (1) The Executive Officer may, by notice in writing under his hand, require the owner or occupier of any land within such area to provide, either individually or jointly with other owners or occupiers, proper banks or bunds to specified levels and distribution or drainage channels for the supply, drainage, retention or exclusion of water:

Provided that no person shall be required under this section to provide banks, bunds, distribution or drainage channels which will not benefit land whereof he is the owner or occupier.

(2) Such notice shall require the owner or occupier to commence to take the necessary action within a stated time, which shall not be less than fourteen days from the date of the service of the notice, and thereafter to carry out any work specified in such notice without delay.

(3) If default is made in complying with the provisions of such notice, the Executive Officer may enter upon any such land and cause such action to be taken as is required by the notice and may thereafter certify under his hand the cost thereof, and thereupon the

amount so certified shall be recoverable by the Executive Officer from the person by whom default was made as aforesaid in any Court of competent jurisdiction.

(4) Any person aggrieved by such notice may within fourteen days of service of such notice appeal to the Committee for the area who, after holding an enquiry, may modify the terms of such notice or extend, in respect of any particular work or part of the land, the time within which the work is to be done.

Obstruction or damage.

17. Any person who-

- (a) damages or causes damage to any drainage or irrigation works; or
- (b) wilfully or maliciously pollutes water in any drainage or irrigation works; or
- (c) wilfully or maliciously blocks up or causes in any way to be blocked up or obstructed any drainage or irrigation works; or
- (d) breaches or cuts through the banks or sides of or interferes in any manner with the flow of water in any drainage or irrigation works; or
- (e) wilfully causes waste of water conserved by any irrigation works or obtained from such works; or
- (f) obtains water from irrigation works by any act contrary to the provisions of this Ordinance or the written directions of the Executive Officer; or
- (g) not being a payer of water rates under the provisions of section 8 draws off or converts to his own use any irrigation water; or
- (h) being an owner or occupier of land within a drainage or irrigation area refuses to allow the passage of irrigation water over his land or obstructs such passage: or
- (i) constructs any canal, watercourse, drain, ditch, or pond, or deepens or enlarges any existing canal, watercourse, drain, ditch, or pond within a drainage or irrigation area without having obtained the consent thereto in writing of the Executive Officer or his duly appointed representative; or

- (j) tampers with any sluice gate, regulator or any other part of any drainage or irrigation works; or
- (k) leads any animal or, being the owner or person in charge, fails to prevent any animal from straying upon the banks or sides of any drainage or irrigation works,

shall be liable to a fine of five hundred ringgit and to imprisonment for three months and in any case where damage is done to the works or expense caused by such acts then the cost of repairing such damage or the expenses involved may be recovered from the offender by the Executive Officer in any Court of competent jurisdiction.

Waste or obstruction of water.

18. (1) Any person who –

- (a) drives, draws or pushes, or causes to be driven, drawn or pushed, on the banks or sides of, or uses or causes to be used any boat, vessel, raft, float, timber or other material on any drainage or irrigation works without the written permission, which may be general or specific, of the Executive Officer; or
- (b) uses, sets or places any fish trap in any canal, watercourse, drain, ditch or pond within a drainage or irrigation area,

shall be liable to imprisonment for one month and to a fine of one hundred ringgit.

(2) In respect of any drainage or irrigation works the Executive Officer may declare any part of such works to be a closed area and shall give public notice of such closure in such manner as the Chairman of the Committee for such drainage or irrigation area shall approve, and during the period of such closure any person who –

- (a) encroaches on or fishes or attempts to take fish out of a drainage or irrigation tank, canal, channel or watercourse; or
- (b) bathes or washes articles in any tank, canal, channel or watercourse without the written permission of the Executive Officer,

shall be liable to imprisonment for one month and to a fine of one hundred ringgit.

(3) In any case where damage is done to drainage or irrigation works or expense is caused by any act or acts which are offences under subsection (1) or (2), the cost of repairing such damage or such expense, as the case may be, may be recovered from the offender by the Executive Officer in any Court of competent jurisdiction.

Straying cattle or pigs.

19. The Committee may by resolution authorise the Executive Officer to issue written authority to any person approved in such a resolution and named in the written authority to destroy any cattle in the act of straying on the drainage or irrigation works between the hours of sunset and sunrise and any pigs so straying at any time and, except as hereinafter provided, the owner of such cattle or pigs shall not be entitled to any compensation for the destruction thereof and shall be liable as provided in this Ordinance to any penalties, civil or criminal, arising from the straying of such animals:

Provided that any owner shall be entitled to the carcase of any animal destroyed under the provisions of this section if claimed within twenty-four hours:

And provided further that compensation for any cattle destroyed under the provisions of this section shall be payable if, in the opinion of the District Officer or the President, such drainage or irrigation works are not adequately fenced.

Onus of proof to lie with persons benefited.

20. If any person or persons benefit by reason of any action or actions which would be an offence under the provisions of section 17, the onus of proving that the person or persons benefiting did not perform or cause to be performed such forbidden action or actions shall lie on such person or persons.

Power to arrest.

21. Any police officer or any officer of the Department of Irrigation and Drainage authorised thereto by order signed by the Director of Irrigation and Drainage may arrest without warrant any person found committing an offence against the provisions of section 17, and shall

forthwith cause the person arrested to be produced before a Magistrate.

Power compound offences.

22. (1) The Yang di-Pertua Negeri may by order empower any Executive Officer or other officer of Government by name to accept from any person whom he is satisfied has committed any offence under this Ordinance, a sum of money not exceeding one hundred ringgit by way of composition for such offence.

(2) All sums so received shall be paid forthwith to the Collector and shall form part of the revenues of Sabah.

(3) Any officer empowered by order to compound shall upon demand produce a copy of such order certified by the Director of Irrigation and Drainage for the inspection of any person about to compound any offence.

(4) Composition under subsection (1) shall be accepted only in cases where the person reasonably suspected of having committed an offence has expressed his consent in writing to the offence being dealt with under this section.

(5) In any proceedings brought against any person for an offence against this Ordinance it shall be a good defence if such person proves to the satisfaction of the Court that he has compounded the offence under the provisions of this section.

Appeals.

23. (1) Save in such cases as it shall have been provided in this Ordinance that the decision of the Committee shall be final or shall be subject to appeal to the High Court, any person aggrieved by any decision of the Committee may appeal to the Magistrate whose decision shall be final.

(2) Any appeal whether to the High Court or to the Magistrate shall be lodged within a period of fourteen days from the day when such decision was brought to the notice of the appellant.

Service of notices.

24. Any notice issued under the provisions of this Ordinance may be served in the manner prescribed for the service of notices in the Land Ordinance [Cap. 68].

Power to make rules.

25. (1) The Yang di-Pertua Negeri may make rules for the encouragement and extension of cultivation within drainage or irrigation areas and for any other purposes consistent with the provisions of this Ordinance.

(2) In respect of any drainage or irrigation area the Committee may make rules not inconsistent with the provisions of this Ordinance for the management and control of any drainage or irrigation works within its jurisdiction and for controlling the periods during which or conditions upon which such works shall operate or water shall or shall not be available.

(3) Any rules made under the provisions of subsections (1) and (2) may provide a penalty for the breach or contravention thereof which in the case of any rule made under subsection (1) shall not exceed a fine of five hundred ringgit and imprisonment for three months and in the case of any rule made under subsection (2) shall not exceed one hundred ringgit and imprisonment for one month.