



Republic of Namibia
Annotated Statutes

Petroleum Products and Energy Act 13 of 1990

(GG 64)

came into force on date of publication: 29 August 1990

as amended by

Petroleum Products and Energy Amendment Act 29 of 1994 (GG 979)

came into force on date of publication: 30 November 1994

Petroleum Products and Energy Amendment Act 3 of 2000 (GG 2289)

brought into force on 3 July 2000 by GN 154/2000 (GG 2357)

Petroleum Products and Energy Amendment Act 16 of 2003 (GG 3113)

brought into force on 17 March 2005 by GN 29/2005 (GG 3396)

ACT

To provide measures for the saving of petroleum products and an economy in the cost of the distribution thereof, and for the maintenance of a price therefore; for control of the furnishing of certain information regarding petroleum products; and for the rendering of services of a particular kind, or services of a particular standard, in connection with motor vehicles; for the establishment of the National Energy Fund and for the utilization thereof; for the establishment of the National Energy Council and the functions thereof; for the imposition of levies on energy sources; and to provide for matters incidental thereto.

[The long title is amended by Act 16 of 2003. The spelling of “therefor” is changed to “therefore”, without being indicated by amendment markings, but the original spelling “therefor” is grammatically correct.]

(Signed by the President on 20 August 1990)

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BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates -

“approved agency” means any institution of State, body or person including any body corporate or association of persons, approved by the Minister under section 19A(1);

[definition of “approved agency” inserted by Act 16 of 2003]

“council” means the National Energy Council established by section 12;

“financial year” means the financial year of the fund referred to in section 11(4);

[definition of “financial year” inserted by Act 16 of 2003]

“fund” means the National Energy Fund established by section 11;

“inspector” means a person appointed or authorized in terms of section 3 to act as an inspector;

“Manager” means the Manager: National Energy Fund appointed under section 18B;

[definition of “Manager” inserted by Act 16 of 2003]

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“Minister” means the Minister of Mines and Energy;

“outlet”, in relation to a petroleum product, means any place where any petroleum product is sold or is offered for sale to consumers;

“Permanent Secretary” means the Permanent Secretary for Mines and Energy;

“petroleum product” means any petroleum fuel and any lubricant, whether used or unused, and includes any other substance which may be used for a purpose for which petroleum fuel or any lubricant may be used;

“regulation” means a regulation made or in force under this Act;

[definition of “regulation” inserted by Act 3 of 2000]

“service” means the repair and maintenance of motor vehicles, and includes any other service provided at an outlet in connection with a motor vehicle;

“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

[definition of “staff member” inserted by Act 16 of 2003]

“this Act” includes any condition imposed, directive or notice issued and regulation made under this Act.

[definition of “this Act” amended by Act 16 of 2003;
not all of the changes are indicated by amendment markings]

Powers of Minister and others with regard to petroleum products

2. (1) The Minister may by regulation or by notice in writing served on any person, whether personally or by post, and any person authorized thereto by the Minister may by such notice so served -

- (a) for the purposes of ensuring a saving of petroleum products, regulate in such manner as the Minister or such person may deem fit, including the imposition upon any person of any duty in connection therewith, or prohibit -
 - (i) the use of any petroleum product for any purpose specified in the regulation or notice, as the case may be, or for the performance of any act so specified in a manner so specified;
 - (ii) the purchase, sale, supply, acquisition, possession, disposal, storage or transportation or the recovery and re-refinement of any petroleum product so specified;
- (b) for the purpose of ensuring an economy in the cost of distribution of petroleum products or the rendering of a service of a particular kind or of services of a particular standard, regulate in such manner as the Minister or such person may deem fit, or prohibit -
 - (i) the supply to any person of any equipment intended for the dispensing of any petroleum products;

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- (ii) the establishment or creation of an outlet for the sale of any petroleum product;
 - (iii) the transfer from one place to another of any business or undertaking conducted at an outlet;
 - (iv) the change of suppliers of petroleum products to any business or undertaking conducted at any outlet;
 - (v) the rendering of any service;
 - (vi) the supply of petroleum products to any business or undertaking conducted at any outlet at which any service of a particular kind or a service of a particular standard is not available to the public;
- (c) prescribe the price or a maximum or minimum price, or a maximum and minimum price, at which petroleum products may be sold or determine that such products may be sold without any restriction being applicable in relation to the selling price thereof.

[Paragraph (c) is substituted by Act 29 of 1994. The words “or a maximum or minimum price” are unnecessarily repeated. The paragraph should end with a semicolon rather than a full stop.]

- (d) regulate in such manner as the Minister or such person may deem fit, or prohibit, any business practice, method of trading, agreement, arrangement or understanding which, in the opinion of the Minister or such person, is calculated to influence, or which may have the effect of influencing, directly or indirectly, the purchase or selling price of petroleum fuel at any outlet;
- (e) regulate in such manner as the Minister or such person may deem fit the supply of any petroleum fuel to any business or undertaking conducted at any outlet, including the imposition of conditions relating to the price at which such product may be sold to such business or undertaking or at such outlet, or prohibit such supply.

(2) Different regulations or notices may be issued under subsection (1) in respect of different classes or kinds of petroleum products or services or different persons or categories or groups of persons.

(3) Any person who, as a retailer in petroleum products, sells or offers for sale any such product shall display, on the pump or other apparatus by means of which such product is sold, or in a conspicuous place at such person's place of business, the price at which that product is being sold.

[subsection (3) substituted by Act 29 of 1994]

Regulations

2A. (1) The Minister may make, without prejudice to any other power granted by this Act to him or her to make regulations, regulations especially relating to -

- (a) the licensing of outlets and petroleum product wholesalers, including -
 - (i) the establishment and constitution of a licensing authority to evaluate and consider applications for the granting of licences, and the different kinds of licences which may be granted;

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- (ii) the form and manner in which an application for a licence shall be made, including the procedures relating to the lodging of applications, the evaluation or consideration of an application, and the granting or refusal of licences;
 - (iii) the qualifications of applicants;
 - (iv) the application fees and the licence fees payable, and the circumstances in which application fees or licence fees may be refunded;
 - (v) general conditions, restrictions or privileges applicable to all licences;
 - (vi) special conditions, restrictions or privileges which may be imposed by the licencing authority, at its discretion, in respect of a particular licence or a category of licences, and the manner in which such discretion shall be exercised;
 - (vii) criteria or procedures to be applied in the evaluation of an application for a licence;
 - (viii) the form and duration of a licence, the obligations of a licence-holder to furnish, during the currency of a licence and on the discontinuance of the business conducted in terms of the licence, information to the licensing authority, and the information to be furnished;
 - (ix) the discontinuance of a business conducted in terms of a licence, and the procedures relating to such discontinuance;
 - (x) amendments to, and the transferability of, licences;
 - (xi) the consequences of the contravention of, or the failure to comply with, any restriction or general or special condition relating to a licence, including the unconditional or conditional suspension or cancellation of a licence, the procedures to be followed in connection with such suspension or cancellation, and the effects thereof; and
 - (xii) circumstances other than those provided for in paragraph (xi), wherein licences may be unconditionally or conditionally suspended or cancelled, and procedures to be followed in connection with such suspension or cancellation, and the effects thereof;
- (b) the conducting of business in respect of petroleum products, including -
- (i) the prohibition on discounting with regard to petroleum product sales, or any category thereof, and self-service by consumers, cash deposits and storage facilities, and the prevention of vertical integration in the oil industry;
 - (ii) the application of health, hygiene, safety and environmental standards and requirements, including -
 - (aa) the obligation to comply with standards and requirements prescribed by any other law;

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- (bb) the duties of persons in respect of the protection of the health of others and the avoidance of environmental harm, the precautions in respect of the keeping, handling, conveying, using and disposing of petroleum products and in respect of underground leaks or other spills of petroleum products; and
 - (cc) the minimum safety standards, fire-fighting, security drills and contingency plans, pre-planning against fires and pollution, security of premises, safety equipment, emergency measures and provisions for product security;
- (c) the premises where petroleum products are stored, including -
 - (i) the specifications in respect of the physical aspects;
 - (ii) the facilities, equipment, design and construction;
 - (iii) the minimum electrical and other standards; and
 - (iv) the regulation of the abandonment,of or in respect of such premises, and the application to such premises, facilities and equipment of specifications or standards prescribed by any other law;
- (d) the records and information to be kept in respect of licences and registrations by the licensing authority;
- (e) the maintenance of security and the continuity of petroleum product supplies in Namibia, and the maintenance of contingency and reserve petroleum product stocks;
- (f) the regulation of, including the imposition of prohibitions and duties in connection with, consumer installations;
- (g) the powers and functions of controllers and inspectors;
- (h) the cleaning-up of petroleum product spills, leaks and other accidents or incidents relating thereto, and the insurance and recovery of costs in respect thereof;
- (i) the regulation of state subsidies, rebates, refunds and remissions in respect of the sale of petroleum products;
- (j) the specifications for quality control and other standards in respect of petroleum products, including the incorporation by reference into the regulations of specifications prescribed by or issued under any other law and the prohibition on the blending or mixing of such products with other substances;
- (k) the powers, duties and functions of the Permanent Secretary in respect of the implementation of measures to enforce, on an administrative level, compliance with the regulations by licence-holders and by the petroleum products industry, the appointment of compliance officers by licensed resellers and wholesalers, the approval of such appointments by the Permanent Secretary, and the powers, duties and functions of such compliance officers;
- (kA) any matter which the Minister considers necessary or expedient -

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- (i) to be considered for the purpose of imposing a levy under section 19; or
- (ii) for the effective performance by the council of its functions in terms of this Act;

[paragraph (kA) inserted by Act 16 of 2003]

- (1) appropriate transitional provisions for the phasing-in of the provisions of the regulations made under this section, in order to ensure a smooth and fair phasing-in of the regulatory regimes envisaged by this section; and
- (m) any other matter related to any subject-matter specified or referred to in this subsection and deemed necessary or expedient to be prescribed by the Minister for the better achieving of the objects of this Act, the generality of this paragraph not being limited by anything contained in any paragraph of this subsection.

(2) Different regulations may be made under subsection (1) in respect of different categories of petroleum products, outlets, licences, licence-holders, standards, specifications and requirements, wholesalers, subsidies, rebates, refunds or remissions, provided that any such differential treatment does not amount to unfair discrimination.

(3) The provisions of this section, in so far as they provide for a limitation on the right to conduct business relating to the petroleum industry by any person are enacted upon the authority of Article 21(2) of the Namibian Constitution.

[section 2A inserted by Act 3 of 2000]**Appointment and powers of controllers and inspectors**

3. (1) The Minister may -

- (a) subject to the laws governing the public service, appoint any person in the public service as Controller of Petroleum Products and appoint persons in the public service as regional controllers of petroleum products or as inspectors for Namibia or any part thereof;
- (b) on such conditions and at such remuneration as the Minister, in consultation with the Public Service Commission, may determine, appoint or authorize any other person or person belonging to any other category of persons to act as regional controller of petroleum products or as inspector for Namibia or any part thereof.

(2) Subject to the provisions of this Act, the Controller of Petroleum Products, a regional controller of petroleum products and an inspector -

- (a) may assist the Minister in the exercise of any power and the performance of any function conferred or imposed upon the Minister under this Act;
- (b) may gather such information in connection with the operation or administration of this Act as the Minister may desire, and investigate any offence relating to this Act.

(3) The Minister shall, subject to the provisions of this Act, determine the powers, duties and functions of the Controller of Petroleum Products, a regional controller of petroleum products and an inspector, and different powers, duties and functions may thus be determined in

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respect of different persons or categories of persons appointed or authorized under subsection (1).

- (4) (a) Until such time as a notice is issued under section 334(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977), in respect of an inspector under this Act, the Minister may in respect of an offence under this Act, subject to the provisions of Article 13 of the Namibian Constitution, by regulation confer upon an inspector such powers as the Minister may deem necessary, expedient or useful in respect of -
- (i) the searching of any premises, including any vehicle, vessel or aircraft and any receptacle of whatever nature;
 - (ii) the seizure of any petroleum product and the disposal thereof.
- (b) Different powers may be conferred under paragraph (a), or under the said section 334(1), in respect of different inspectors or categories of inspectors.
- (c) A notice issued under the said section 334(1) shall have the effect of repealing any regulation made under paragraph (a).

(5) An inspector, when exercising any power or performing any function under this section or a notice under section 334(1) of the Criminal Procedure Act, 1977, shall be subject to the directions and control of the Minister and no power conferred upon such inspector shall be exercised by him or her unless he or she is at the time of exercising such power in possession of a certificate of appointment issued by the Minister in terms of subsection (1)(a) or (b), which certificate shall be produced on demand.

(6) A document in the form determined by the Minister, certifying that any person has been appointed or authorized to act as Controller of Petroleum Products or as regional controller of petroleum products or as inspector under this Act, and purporting to have been signed by a person designated for the purpose by the Minister, shall be *prima facie* proof of such appointment or authorization.

Regulation or prohibition of publication, releasing, announcement, disclosure or conveyance of information, or making of comment

4. The Minister may by regulation or by notice in writing served on any person, whether personally or by post, and any person authorized thereto by the Minister may by such notice so served, regulate in such manner as the Minister or such person may deem fit, or prohibit, the publication, releasing, announcement, disclosure or conveyance to any person of information or the making of comment regarding -

- (a) the source, manufacture, transportation, destination, storage, consumption, quantity or stock level of any petroleum product acquired or manufactured or being acquired or manufactured for or in Namibia;
- (b) the taking place and particulars of negotiations in respect of the acquisition of petroleum products for Namibia and the transportation or consumption thereof, or of any other business transaction in connection with any such petroleum product.

Agreements between operators and wholesalers

4A. Any dealer agreement concluded between a wholesaler and an operator, and any supplementary provisions to such an agreement, shall be based on and comply with the following:

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- (a) Any law, including a provision of the common law, applicable in Namibia regarding competition and fair contractual procedures and practices;
- (b) in so far as the dealer agreement or any provision supplementary thereto provides for the exercise of any discretionary powers which adversely affects rights or interests, such owner shall, subject to the other provisions of this section be exercised in accordance with fair and reasonable practices and procedures, which shall include -
 - (i) the giving of adequate notice of the exercise of the discretion and the nature and purpose thereof, as well as the furnishing of reasons for a decision (if requested thereto);
 - (ii) compliance with the principle providing the other party reasonable opportunity to be heard;
 - (iii) acting in good faith having regard to clearly established facts and circumstances only;

unless it is justifiable and reasonable under the circumstances to depart from the requirements set out in this paragraph;

[The word “form” in the phrase “to depart form the requirements” should be “from”. There is also an apparent error in the phrase “such owner shall, subject to the other provisions of this section be exercised in accordance with fair and reasonable practices and procedures...”; the word “owner” should be “powers”.]

- (c) notwithstanding paragraph (b), in so far as the dealer agreement or any provision supplementary thereto provides for the termination of the agreement in the event of a breach thereof -
 - (i) in the case of a non-material breach, written notice shall be given that such non-material breach has occurred and a reasonable period shall be allowed to rectify such breach prior to termination of the agreement;
 - (ii) in the case of a material breach, the agreement may be terminated without prior notice or opportunity to rectify the material breach if it is fair and reasonable under the circumstances to do so,

and for the purposes of this paragraph -

- (aa) only a breach of the agreement which relates to a fundamental and substantive term of the agreement shall be deemed to be a material breach; and
- (bb) no agreement shall contain a provision deeming all provisions of the agreement to be material;
- (d) reasonable access to correspondence, documents and property only in so far as they relate to the business of operating an outlet in terms of the dealer agreement; and
- (e) promotion of security of tenure, but subject thereto that a reasonable probationary lease period may be provided for in the case where a dealer agreement is concluded with a new operator.

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- (2) (a) Without derogating from any other right a person may have in terms of any other law or with regard to access to a court, where a party is of the opinion that a provision in a dealer agreement does not comply with a principle set out in subsection (1), such party may refer the matter for arbitration as provided in paragraph (b).
- (b) The Minister shall by notice in the *Gazette* determine the arbitration procedure which shall apply with regard to a matter referred to in paragraph (a) and the Minister may by regulation prescribe any matter supplementary to such arbitration procedures.
- (3) The provisions of this section, in so far as they provide for a limitation on the right to conduct business relating to the petroleum industry by any person, are enacted upon the authority of Article 21 (2) of the Namibian Constitution.
- (4) Section 21 of this Act shall not apply to subsection (1) of this section.
- (5) For the purposes of this section -
- (a) “wholesaler” means any person who imports or distributes petrol or diesel for purposes of the wholesale thereof by that person in Namibia or who exports petrol or diesel;
- (b) “operator” means any person who conducts business for the sale of petrol and diesel at an outlet.

[section 4A inserted by Act 3 of 2000]

Minister may enter into certain agreement

5. (1) The Minister may enter into an agreement with any person or category of persons to exempt such person or category of persons from the provisions of a regulation or notice referred to in section 4, and to regulate the publication, releasing, announcement, disclosure or conveyance of, or making of comments regarding, information in connection with petroleum products by such person or category of persons.

- (2) (a) Any agreement in terms of subsection (1) shall be published in the *Gazette* and may not be unilaterally cancelled save in the case of a serious breach of the provisions thereof.
- (b) In the case of a dispute as to the question whether or not there is such a breach, such dispute shall be submitted to a tribunal specified in the agreement for a decision.

(3) In the event of the cancellation of any such agreement the provisions of the said regulation or notice referred to in section 4 shall apply to such person or category of persons with effect from the date of notification of the cancellation by notice in the *Gazette*.

Exemptions

6. The Minister may on such conditions as the Minister may deem fit by notice in writing to any person or category of persons, or by notice in the *Gazette*, exempt such person or category of persons from any provision of this Act.

[section 6 amended by Act 3 of 2000;

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a comma is deleted without being indicated by amendment markings]

Delegation of powers

7. The Minister may delegate to any person any power conferred upon the Minister by this Act, on such conditions as the Minister may determine.

Application of certain regulations to persons in service of State

8. (1) The Minister may by notice in the *Gazette* declare any regulation issued under section 2(1)(a), 2A or 4 to apply also with reference to any person or category of persons in the service of the State while acting in the performance of his or her duties.

[subsection (1) substituted by Act 3 of 2000]

(2) A notice issued under subsection (1) may grant exemption from the provisions thereof or may provide for the granting of such exemption,

Evidence

9. (1) A certificate purporting to be issued by the Minister or any person authorized thereto by the Minister and setting forth the price at which it would have been permissible for any particular person to sell on any particular date or during any particular period any petroleum product specified in the certificate, shall on its mere production by any person in any criminal proceedings be *prima facie* proof of such price.

[The word "permissible" is misspelt in the *Government Gazette*, as reproduced above.]

- (2) If it is alleged in a charge in any criminal proceedings under this Act -
- (a) that any petroleum product alleged to have been sold or purchased, or supplied or acquired, is a petroleum product of a particular class or kind; or
 - (b) that any petroleum product or service is a petroleum product or service of a kind to which any provision of this Act applies,

such allegation shall be *prima facie* proof of the matter alleged.

(3) If in any prosecution for a contravention of a prohibition imposed under section 2(1)(a) relating to the use of any petroleum product specified in the charge, it is proved that the accused performed an act which would have constituted the contravention, if only such petroleum product had been used for the performance of that act, it shall be presumed that only such petroleum product was used for the performance of that act, unless it is proved that other factors contributed to the performance of that act to the extent that in the absence thereof that act would not have been performed.

Construction of reference in Criminal Procedure Act, 1977, to certain amounts

10. In the application of sections 56, 57 and 112 of the Criminal Procedure Act, 1977 (Act 51 of 1977), in respect of an offence in terms of this Act, any reference in any such section to an amount of R300 shall be construed as a reference to an amount of R500.

Establishment of National Energy Fund

11. (1) There is hereby established a fund to be known as the National Energy Fund, into which shall be paid -

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- (a) money collected in respect of levies imposed under section 19 and interest on late payments of the levy;
- (b) money payable to the State by suppliers of petroleum products in accordance with the slate-account;
- (c) money paid to the fund in terms of section 20;
- (d) interest received on investments made in terms of subsection (6);
- (e) capital repayments and interest received in respect of funding made under section 19A in a form which is repayable in accordance with the conditions attached to the funding;
- (f) with the prior written approval of the Minister, granted with the concurrence of the Minister of Finance-
 - (i) money received by way of donations or grants made for the benefit of the fund; and
 - (ii) money accruing to the fund from any other source.

[subsection (1) substituted by Act 16 of 2003]

- (2) Money available in the fund shall be utilized -
 - (a) for the payment of such amounts of money which may become payable by the State to suppliers of petroleum products in accordance with the slate-account;
 - (b) for providing funding in terms of section 19A;
 - (c) to provide funding, as determined by the Minister, to any statutory body which has functions relating to the energy sector;
 - (d) to defray the administrative expenses of the council and committees of the council constituted under section 16(1), including the payment of remuneration and allowances in terms of section 17;
 - (e) for any other purpose which the Minister, with the concurrence of the Minister of Finance, may direct or approve.

[subsection (2) substituted by Act 16 of 2003]

(3) For the purposes of subsections (1)(b) and (2)(a) “slate-account” means the account which is being kept pursuant to an agreement between the Government of Namibia and suppliers of petroleum products for the purpose of determining, in accordance with a formula likewise agreed upon, the amount of compensation payable from time to time by the State to suppliers of petroleum products or by such suppliers to the State, as the case may be, in respect of losses suffered or profits gained by such suppliers as a result of fluctuations in the purchase price of petroleum products *vis-à-vis* the selling price thereof as determined under this Act.

(4) The Permanent Secretary shall be responsible for the administration of the fund and shall be the accounting officer charged with the responsibility of accounting for moneys

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received by and payments made out of the fund during every financial year, which shall end on the thirty- first day of March.

(5) The Permanent Secretary shall open a bank account for the fund with a commercial bank registered under the Banks Act, 1965 (Act 23 of 1965).

[The Banks Act 23 of 1965 has been replaced by the Banking Institutions Act 2 of 1998.]

(6) Any moneys standing to the credit of the fund and which are not required for immediate use or as a reasonable operating balance shall be invested in such manner as the Minister may determine.

(7) The books and accounts of the fund shall be audited by a qualified auditor designated by the Minister.

- (8) (a) Separate books and records of account shall be kept in respect each energy source contemplated in section 19(1) from or for which money is received for the benefit of the fund in accordance with subsection (1), and any money received which cannot be linked to a specific energy source, shall be accounted for in a general account.
- (b) Interest received on investments made under subsection (6), shall be accounted for in the general account referred to in paragraph (a).
- (c) Except for -
- (i) money in the general account, which may be applied for any energy purpose; and
 - (ii) administrative expenses referred to in subsection (2)(d), which shall be deducted proportionately from the different accounts referred to in paragraph (a),

money in an account standing to the benefit of a specific energy source may only be applied for the benefit of that energy source, unless the Minister, after consultation with the council, directs otherwise.

[subsection (8) inserted by Act 16 of 2003]

(9) No money shall be withdrawn from the fund except in accordance with an approved budget referred to in section 11A.

[subsection (9) inserted by Act 16 of 2003]

Budgeting of fund

11A. (1) The Permanent Secretary shall annually, after consultation with the council, submit a budget for the next ensuing financial year of the fund to the Minister for approval.

- (2) Every annual budget referred to in subsection (1) shall contain particulars of -
- (a) the income estimated to accrue to the fund during the financial year;
 - (b) the estimated expenditure of each project or activity to be continued from the previous financial year;

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- (c) the estimated amount to be spent or to be made available in respect of each new project or activity to be undertaken and funded from the fund, including particulars of any approved agency involved in such project or activity;
- (d) the estimated administrative expenses referred to in section 11(2)(d); and
- (e) such additional information as the Minister may require.

(3) The Permanent Secretary, after consultation with the council, may at any time during a financial year submit to the Minister for approval such supplementary estimates of income and expenditure for that financial year as may be considered necessary.

(4) The annual budget of the fund and any supplementary budget referred to in subsection (3) shall be submitted to the Minister for approval at least two months before the commencement of the financial year or that part of the financial year to which the budget relates.

[section 11A inserted by Act 16 of 2003]

Annual report

11B. (1) Within six months after the end of each financial year the Permanent Secretary shall submit to the Minister -

- (a) an annual report, prepared in consultation with the council, on the activities of the fund and the council during the financial year in question; and
- (b) the annual financial statements of the fund in respect of that financial year, duly audited, together with the report of the auditor relating to those statements.

(2) The annual report referred to in subsection (1)(a) shall contain -

- (a) particulars of projects and activities funded from the fund during the financial year in question, including the particulars of the approved agencies involved in such projects and activities, if any;
- (b) particulars regarding the activities of the council during that financial year; and
- (c) such other matters as the Minister may require.

(3) The annual financial statements referred to in subsection (1)(b) shall contain -

- (a) detailed particulars of moneys received and expenditure incurred by the fund during the financial year in question, and of the assets and liabilities of the fund as at the end of that financial year; and
- (b) such additional particulars as the Minister may determine.

(4) The Minister shall table copies of the annual report and audited financial statements in the National Assembly received in terms of subsection (1), within 30 days from the date of their receipt, if the National Assembly is in ordinary session or if it is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

[section 11B inserted by Act 16 of 2003]

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Establishment and object of National Energy Council

12. (1) There is hereby established a council to be known as the National Energy Council.

(2) The objects of the council shall be, in general -

- (a) to advise the Minister, whether on the instructions of the Minister or of its own accord, on matters concerning the supply of energy in Namibia, and the development, exploitation and utilization of the energy resources of Namibia, or energy resources potentially capable of being developed, exploited or utilized for Namibia from time to time; and
- (b) to assist the Minister to co-ordinate and rationalize activities connected with the energy industry in Namibia.

Functions of council

13. (1) The functions of the council are -

- (a) to make recommendations to the Minister regarding the effective and efficient administration of the fund;
- (b) to make recommendations to the Minister regarding the approval of funding to approved agencies;
- (c) to advise the Minister with regard to investment policies of the fund;
- (d) to make recommendations to the Permanent Secretary in respect of the annual budget of the fund;
- (e) to make recommendation to the Minister in respect of any amendment of this Act or any regulation to be made under this Act; and
- (f) to take action or steps which are conducive to the exercise of its powers or the performance of its functions under this Act.

(2) In performing its functions, the council shall -

- (a) enquire into and evaluate the energy supply situation in Namibia;
- (b) keep abreast of international developments and trends in the field of energy supply;
- (c) enquire into and evaluate the application and effectiveness of the laws governing energy matters in Namibia; and
- (d) carry out or cause to be carried out, with the approval of the Minister, such research in connection with energy supply or energy resources as the council may deem to be in the best interest of the country.

[section 13 substituted by Act 16 of 2003]

Constitution of the council

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14. (1) The Council shall consist of -
- (a) the Minister, or any person nominated by the Minister, who shall be the chairperson of the council;
 - (b) one officer nominated by the Minister responsible for energy affairs;
 - (c) one officer nominated by the Minister responsible for finance;
 - (d) one officer nominated by the Minister responsible for agricultural and water affairs;
 - (e) one officer nominated by the Minister responsible for transport;
 - (f) one officer nominated by the Minister responsible for trade and industry;
 - (g) one officer nominated by the Minister responsible for fisheries and marine resources;
 - (h) so many other persons as the President may appoint as members of the council, but who shall include -
 - (i) one person nominated by the National Planning Commission;
 - (ii) one person nominated by the National Petroleum Corporation of Namibia (Pty) Ltd. referred to in section 1 of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991);
 - (iii) one person nominated by the national electricity utility company;
 - (iv) one person nominated by Transnamib Limited established by section 2 of the National Transport Corporation Act, 1987 (Act 21 of 1987); and

[The National Transport Corporation Act 21 of 1987 has been replaced by the National Transport Services Holding Company Act 28 of 1998. Section 18 of Act 28 of 1998 provides that references to Act 21 of 1987 shall be construed as references to Act 28 of 1998.]

- (i) if the President thinks it fit, one person nominated by the suppliers of petroleum products in Namibia.

[subsection (1) substituted by Act 29 of 1994]

- (2) (a) The council shall elect one member as vice-chairman of the council.
- (b) If the Minister or, in the absence of the Minister, the person nominated by the Minister under subsection (1)(a), is for any reason absent from any meeting of the council or is unable to act as chairman, the vice-chairman shall act as chairman.

Term of office and vacating of office by members of council

15. (1) A member of the council appointed under section 14(1)(h) or (i) shall hold office for such period not exceeding three years as the President may determine at the time of his or her appointment.

[subsection (1) amended by Act 29 of 1994; punctuation changed without being indicated by amendment markings]

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(2) A member of the council referred to in subsection (1) shall vacate his or her office if he or she -

- (a) resigns as member by written notice to the Minister;
- (b) is absent from three consecutive meetings of the council without leave of the chairman.

(3) The President may at any time remove any member referred to in subsection (1) from office if in the President's opinion there are sufficient reasons for doing so.

(4) If a member referred to in subsection (1) for any reason ceases to hold office, the President may, with due regard to the provisions of section 14(1)(h) or (i) appoint a person in his or her place for the unexpired period of such member's term of office.

[Subsection (4) is amended by Act 29 of 1994.

A comma after the phrase "with due regard to the provisions of section 14(1)(h) or (i)" is erroneously deleted, without being indicated by amendment markings.]

(5) Any member of the council whose term of office has expired in terms of subsection (1), shall be eligible for reappointment.

Committees

16. (1) The council may constitute one or more committees to perform such functions as the council may determine.

- (2) The council may at any time dissolve or reconstitute any such committee.
- (3) The council shall designate a member of the committee as the chairman thereof.

Remuneration of members of council and committees

17. (1) A member of the council or a member of a committee of the council, who is not in the full-time employment of the State, shall be paid such remuneration and allowances as the Minister, with the concurrence of the Minister responsible for Finance, may determine.

(2) Notwithstanding subsection (1), a member of the council or a member of a committee of the council, appointed prior to the commencement of this provision, shall continue to receive such remuneration and allowances as determined at the date of such member's appointment, or as amended after such date, for the remaining term of the member's office.

[section 17 amended by Act 16 of 2003; punctuation is changed in subsection (1) without being indicated by amendment markings]

Meetings of council

18. (1) The council shall meet at such times and places as the Minister or the person nominated by the Minister under section 14(1)(a), may determine: Provided that the council shall meet at least three times during any period of twelve months as from the date of its first meeting.

- (2) The majority of its members shall form a quorum for a meeting of the council.

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(3) If both the Minister or, in the absence of the Minister, the person nominated by the Minister under section 14(1)(a), and the vice-chairman are absent from a meeting of the council, the members present shall elect a person from among their number to preside at the meeting.

(4) The decision of the majority of the members of the council present at a meeting shall constitute a decision of the council, and, in the event of an equality of votes on any matter, the person presiding shall have a casting vote in addition to his or her deliberative vote.

(4A) No decision of the council or an act performed by authority of the council shall be invalid by reason only of the existence of a vacancy on the council, or of the fact that a person who was not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members who were present at the time and entitled to sit as members.

[subsection (4A) inserted by Act 16 of 2003]

(5) The council shall cause a record to be kept of the proceedings of the meetings of the council.

(6) The council may make rules in relation to the holding of, and procedures at, meetings of the council or any committee established by it.

Disclosure of interest by council and committee members

18A. (1) A member of the council or a committee of the council shall not participate in the deliberations or vote on any matter which is the subject of consideration at a meeting of the council or the committee if, in relation to such matter, such member has any interest, whether direct or indirect, which precludes that member from performing the functions of a member in a fair, unbiased and proper manner.

(2) If at any stage during a meeting of the council or a committee of the council it appears that a member has or may have an interest which may cause a conflict of interest to arise, that member shall forthwith and fully disclose the nature of such interest and leave the meeting so as to enable the remaining members to discuss such disclosure and determine whether that member is precluded from participating in such meeting by reason of a conflict of interest.

(3) A disclosure by a member in accordance with subsection (2), and the decision taken by the remaining members in connection therewith, shall be recorded in the minutes of that meeting.

[section 18A inserted by Act 16 of 2003]

Appointment of Manager: National Energy Fund and designation of staff members

18B. (1) The Minister shall, subject to the laws governing the Public Service, appoint a competent person to be known as Manager: National Energy Fund.

(2) The Manager shall be responsible -

(a) for the execution of the administrative work of the fund; and

(b) to direct, organise, plan and execute the activities of the fund subject to the control of the Permanent Secretary.

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(3) The Manager shall be assisted by such other staff members as may be designated by the Permanent Secretary for such purpose.

[section 18B inserted by Act 16 of 2003]

Levies on energy sources

19. (1) Subject to subsection (4), the Minister, after consultation with the council, may by notice in the *Gazette* or by notice served on any person, whether personally or by post, impose a levy for the benefit of the fund, on -

- (a) any petroleum product;
- (b) electricity;
- (c) natural gas or liquefied natural gas;
- (d) hydropower or windpower;
- (e) nuclear;
- (f) geothermal;
- (g) bio mass;
- (h) any other energy source,

which is manufactured, generated, transmitted, distributed or sold at any point in Namibia, or is imported into Namibia.

(2) A levy imposed under subsection (1) may differ according to the purpose for which the energy source in question is used or the place where, or method by which, that energy source is manufactured, generated, transmitted or sold.

(3) A notice referred to in subsection (1) -

- (a) shall state -
 - (i) the amount of the levy;
 - (ii) the date on which the levy becomes of effect;
 - (iii) the person who shall be liable for the payment thereof;
 - (iv) the energy source in respect of which the levy is payable;
 - (v) the person who shall be responsible for the collection thereof; and
 - (vi) the times when, the manner in which, and the person to whom the levy shall be paid;

(b) may state that interest shall be payable, at the rate determined in such notice, on any levy received after the date on which it became payable;

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(c) may exempt, if there are good reasons therefor, in part or in full, any person from any provision thereof;

(d) may contain a directive that the amount of the levy or the proceeds of the levy, where the levy is not imposed by notice in the *Gazette*, shall not be disclosed by any person to any unauthorised person, or the notice in the *Gazette* may contain any appropriate condition.

(4) In imposing a levy under subsection (1), the Minister shall -

(a) consult with such persons or bodies as the Minister deems representative of the energy source in question;

(b) in order to maintain a reasonable stability, in real terms, in energy levies, avoid in so far as possible, substantial increases in levies or the introduction of new levies in any period of 12 months; and

(c) consider any other matter as may be prescribed by regulation or as the Minister deems relevant.

(5) The Minister may withdraw or amend any levy imposed under this section and the provisions of this section, in as far as they are applicable, apply in the same manner, with the necessary changes, to such withdrawal or amendment.

[section 19 substituted by Act 16 of 2003]

Funding of approved agencies

19A. (1) The Minister may, in the manner prescribed by regulation, on his or her own initiative, or upon application made to him or her, approve any institution of State, body or person including any body corporate or association of persons, as being eligible for funding from the fund, including the form and amount of such funding, with regard to any project or activity for or relating to -

(a) the purchase, acquisition, distribution, sale, saving, development, conservation, storage or utilization of any energy source;

(b) research in connection with any energy source; or

(c) such other purpose in connection with energy as may be prescribed by regulation.

(2) The Minister shall consult with, and obtain a recommendation from the council before granting approval under subsection (1).

(3) The Minister, after consultation with the council, may by regulation prescribe in relation to funding contemplated in subsection (1) -

(a) the procedure for an application for approval of an institution body or person including any body corporate or association of persons, for the purposes of subsection (1);

(b) the criteria for the assessment of projects or activities;

(c) the conditions attached to any such funding;

(d) the form in which funding may be made;

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- (e) in respect of funding made in a form which is repayable in accordance with the conditions attached to the funding, the procedures applicable in the event of default on payments and the interest applicable in respect of late payments;
- (f) such other matters regarding funding as the Minister may deem necessary.

[section 19A inserted by Act 16 of 2003]

Personal liability

19B. A member of the council or a committee of the council or the Manager, a staff member referred to in section 18B(3), or any other person to whom any power or duty has been delegated or assigned by the Minister, the Permanent Secretary, the council or the Manager, shall not be personally liable for any loss or damage arising out of, or in connection with, the performance of his or her functions under this Act, unless the loss or damage is due to anything done by him or her in bad faith or due to negligence, dishonesty or fraud on his or her part.

[section 19B inserted by Act 16 of 2003]

Disposal of certain money

20. (1) The Minister may, in consultation with the Minister of Finance, from time to time direct that any money recovered by way of fines or bail money declared forfeited to the State in connection with an offence or category of offences under this Act and specified in the direction, shall be paid to the fund.

- (2) The Minister may amend or revoke any direction given under subsection (1).

Offences and penalties

21. (1) If any person contravenes or fails to comply with any provision of this Act, and such contravention or failure is not elsewhere in this Act declared an offence, or hinders an inspector in the exercise of his or her powers or the performance of his or her duties under this Act, such person shall be guilty of an offence and liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[subsection (1) amended by Act 3 of 2000]

- (2) Any person who -
 - (a) contravenes any prohibition referred to in section 2(1)(d), 2(1)(e) or 4;
 - (b) fails to comply with a provision of a regulation or a notice referred to in section 2(1)(d), 2(1)(e) or 4, or commits an act in contravention of such a regulation or provision,
 - (c) fails to comply with the provisions of section 2(3),

[paragraph (c) inserted by Act 29 of 1994;
the comma at the end of paragraph (b) should be replaced with a semicolon]

shall be guilty of an offence and liable on conviction to a fine not exceeding four thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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(3) Except in the case of an offence under section 8 or subsection (2) of this section, in so far as the said subsection creates an offence relating to section 4, the court may, in addition to any penalty under subsection (1), on such conditions as it may deem fit to impose -

- (a) suspend or cancel the driver's licence, or the licence, permit or authorization to use a motor vehicle for a particular purpose, of any person who committed the offence in question by using, or by means or with the aid of, a motor vehicle;
- (b) suspend or cancel the trading licence, permit or authorization of the person convicted, which is required in respect of the sale of any petroleum product, if the offence in question relates to the sale of any petroleum product;
- (c) confiscate any property of the person convicted, which was used to commit the offence in question or by means or with the aid of which the offence in question was committed.

Jurisdiction

22. (1) Any act prohibited by regulation or notice referred to in section 4 and which is committed outside Namibia by any Namibian citizen or any person domiciled in Namibia, shall be deemed to have been committed in Namibia.

(2) Any offence contemplated in subsection (1) shall for the purposes of jurisdiction be deemed to have been committed in any place in Namibia where the accused happens to be.

(3) For the purposes of this section and any regulation or notice under this Act, "petroleum product" shall include crude oil.

Repeal of laws and saving

23. (1) The Petroleum Products Act, 1977 (Act 120 of 1977), and the Levy on Fuel Proclamation, 1984 (Proclamation AG. 16 of 1984), are hereby repealed.

(2) A regulation made, notice given or any other act done under any provision of the Act or Proclamation referred to in subsection (1), and which is in force at the repeal of that Act and Proclamation by this section, shall, notwithstanding such repeal, remain in force after the commencement of this Act in so far as it deals with any matter in respect of which the Minister may make regulations or give any notice or perform any act under this Act, until it is repealed, replaced, amended or withdrawn under any provision of this Act.

Short title

24. This Act shall be called the Petroleum Products and Energy Act, 1990.