



# GOVERNMENT GAZETTE

OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK — 29 August 1990

No. 64

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 45

1990

### PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 13 of 1990: Petroleum Products and Energy Act, 1990.

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**PETROLEUM PRODUCTS AND ENERGY  
ACT, 1990****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 therefor; 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 fuel; and to provide for matters incidental thereto.**

*(Signed by the President on 20 August 1990)*

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

## Definitions.

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

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

“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;

“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;

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“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;

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

“this Act” includes any regulation or notice issued or given in terms of this Act.

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;

(ii) the establishment or creation of an outlet for the sale of any petroleum product;

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- (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 at which any petroleum product may be sold by any person, which price shall include any levy imposed under section 19 of this Act or by or under any other law;
- (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.

Appointment and powers  
of controllers and inspec-  
tors.

**3. (1) The Minister may -**

- (a) subject to the laws governing the public service, appoint any person in the public service as

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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 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;

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- (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;

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- (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.

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 regulation or by notice in writing to any person or category of persons, exempt such person or category of persons from any provision of this Act.

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) 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 or their duties.

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(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.

(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.



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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 -

- (a) all moneys collected in respect of levies imposed under section 19;
  - (b) all moneys payable to the State by suppliers of petroleum products in accordance with the slate-account;
  - (c) such moneys as may accrue to the fund by virtue of section 20;
  - (d) interest recovered under section 19(3)(b);
  - (e) interest on investments;
  - (f) moneys which, with the approval of the Minister and with the concurrence of the Minister of Finance, may accrue to the fund from any other source.
- (2) The moneys 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 or in connection with the purchase, acquisition, distribution, sale, saving, conservation, storage or utilization of petroleum products or research in connection with petroleum products, as determined by the Minister, with the concurrence of the Minister of Finance, and in accordance with directives so determined;
  - (c) for the payment of such contributions, as the Minister, with the concurrence of the Minister of Finance, may direct, to any competent institution of State, or any person or body, which in the opinion of the Minister -
    - (i) is involved in any activity connected with the purchase, acquisition, distribution, sale, saving, conservation, storage or utilization

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of petroleum products or research in connection with petroleum products;

(ii) undertakes research in connection with and the development of any other form of energy;

(d) for any other purpose which the Minister, with the approval of the Minister of Finance, may direct or approve.

(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 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).

(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.

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 -

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- (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 the council.

**13. In exercising its functions, the council shall -**

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

Constitution of the council.

**14. (1) The council shall consist of -**

- (a) the Minister, or any person nominated by the Minister, who shall be the chairman of the council;
- (b) one officer of the Ministry of Mines and Energy nominated by the Minister;
- (c) one officer of the Ministry of Finance nominated by the Minister of Finance;
- (d) one officer of the Ministry of Agriculture, Fisheries, Water and Rural Development nominated by the Minister of Agriculture, Fisheries, Water and Rural Development;

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- (e) one officer of the Ministry of Works, Transport and Communication nominated by the Minister of Works, Transport and Communication;
  - (f) one officer of the Ministry of Trade and Industry nominated by the Minister of Trade and Industry;
  - (g) so many other persons as the President may appoint as members of the council, but who shall include -
    - (i) when, after the commencement of this Act, the National Planning Commission established by Article 129 of the Namibian Constitution shall have been constituted in terms of an Act of Parliament enacted pursuant to the provisions of subarticle (3) of the said Article 129, one person nominated by the National Planning Commission;
    - (ii) one person nominated by each of the following bodies or institutions -
      - (aa) the national oil company of Namibia;
      - (bb) the national electricity utility company;
      - (cc) Trans.na.mib Limited established by section 2 of the National Transport Corporation Act, 1987 (Act 21 of 1987); and
  - (h) if the President deems it fit, one person nominated by the suppliers of petroleum products in Namibia.
- (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.

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Term of office and vacating of office by members of council.

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

(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)(g) or (h), appoint a person in his or her place for the unexpired period of such member's term of office.

(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.** 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 may determine on the recommendation of the Public Service Commission.

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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.

(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.

(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.

Levy on fuel.

**19.** (1) The Minister may with the concurrence of the Minister of Finance by notice in the *Gazette* or by notice in writing served on any person, whether personally or by post, impose a levy for the benefit of the fund, on every litre of petrol, aviation spirit, kerosene, distillate fuel, residual fuel oil, naphta, base oil, products of base oil or every kilogram of grease or liquefied petroleum gas or any other petroleum product which is manufactured, distributed or sold by an undertaking at any point in Namibia, or imported by any person into Namibia.

(2) A levy imposed under subsection (1) may differ according to the purpose for which the product in question is used or the place where or method by which the product in question is sold.

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

(a) shall state the amount of the levy, the person who shall be liable for the payment thereof, the

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product in respect of which it shall be payable, the person who shall be responsible for the collection thereof and the times when and the manner in which it shall be paid to a person mentioned in the notice for the fund;

- (b) may prescribe that interest shall be payable at the rate prescribed in the notice on any levy received after the date on which such levy was payable;
- (c) may exempt, in part or in full, any person from any provision thereof, or may contain a directive that the amount of the levy, where the levy is not imposed by notice in the *Gazette*, or the proceeds of a levy, shall not be disclosed by any person to any unauthorized person, or the notice may contain any appropriate condition.

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 two thousand rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(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,

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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.

(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.



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(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.

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