



Number 7 of 2007

NATIONAL OIL RESERVES AGENCY ACT 2007

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Number 7 of 2007

NATIONAL OIL RESERVES AGENCY ACT 2007

AN ACT TO PROVIDE FOR THE TRANSFER OF THE SHARE HELD BY THE IRISH NATIONAL PETROLEUM CORPORATION LIMITED IN THE NATIONAL OIL RESERVES AGENCY LIMITED TO THE MINISTER FOR COMMUNICATIONS, MARINE AND NATURAL RESOURCES; TO CONTINUE IN EXISTENCE THE NATIONAL OIL RESERVES AGENCY LIMITED AS AN GHNÍOMHAIREACHT CHÚLTACA OLA NÁISIÚNTA OR THE NATIONAL OIL RESERVES AGENCY; TO DEFINE ITS FUNCTIONS, INCLUDING THOSE RELATING TO OIL STOCKHOLDING OBLIGATIONS; TO IMPOSE A LEVY ON RELEVANT DISPOSALS OF PETROLEUM PRODUCTS; TO AMEND THE IRISH NATIONAL PETROLEUM CORPORATION LIMITED ACT 2001; AND TO PROVIDE FOR RELATED MATTERS.
[13th March, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the National Oil Reserves Agency Act 2007. Short Title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

2.—In this Act— Interpretation.

“Act of 1963” means the Companies Act 1963;

“Act of 2001” means the Irish National Petroleum Corporation Limited Act 2001;

“Agency” means the body corporate formed and registered under the Companies Acts and continued in existence under *section 7* as An Ghníomhaireacht Chúltaca Ola Náisiúnta or, in the English language, as the National Oil Reserves Agency;

“authorised officer” has the meaning assigned by *section 46*;

“bilateral agreement” means any agreement between the Government and the government of another state relating to the holding of oil stocks;

“chief executive” means the chief executive of the Agency;

“Council Directive” means Council Directive 2006/67/EC of 24 July 2006¹ imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products;

“designated subsidiary” means a subsidiary in respect of which an order is in operation under *section 16(12)*;

“holding contract” has the meaning assigned by *section 33*;

“IEP Agreement” means the Agreement on an International Energy Program signed at Paris on 18 November 1974;

“intermediate product” means any substance other than crude oil that is capable of being processed into petroleum products of any description;

“levy” means the levy imposed under *Part 5*;

“local authority” has the same meaning as in the Local Government Act 2001;

“Minister” means the Minister for Communications, Marine and Natural Resources;

“national oil reserves” means at any time the total volume of oil stocks (excluding stocks held in the State under a bilateral agreement) held at that time by—

- (a) the Agency or another person on its behalf under a holding contract,
- (b) oil companies, and
- (c) oil consumers;

“oil” means crude oil, intermediate products and petroleum products;

“oil company”, with respect to any month, means any person (other than the Agency) that, in the preceding calendar year—

- (a) imported into the State or acquired, by purchase or otherwise, from another oil company or from an oil refining or oil storage facility in the State, oil for that person’s own consumption, for resale or for disposal to a third party, or
- (b) operated an oil refining or oil storage facility in the State that held in storage, consumed or sold oil;

“oil consumer”, with respect to any month, means any person that, in the preceding calendar year—

- (a) imported into the State,

¹OJ No. L217, 8.8.2006, p.8

(b) acquired, by purchase or otherwise, from an oil company in the State, or

(c) held in storage in the State,

1,000 or more tonnes of petroleum products exclusively for that person's own consumption in the State and not for resale or for disposal to a third party;

“petroleum products” includes the following categories of products:

(a) motor spirit and aviation fuel (that is to say, jet fuel of the gasoline type and aviation spirit);

(b) gas oil, diesel oil and kerosene (including jet fuel of the kerosene type);

(c) fuel oils;

“prescribed” means prescribed by regulation;

“regulations relating to returns” means regulations under *section 59*;

“share transfer day” means the day appointed under *section 5*;

“stockholding obligations”, in relation to the State, means its obligations relating to the maintenance of oil stocks under—

(a) the Council Directive,

(b) any provision of the treaties governing the European Communities,

(c) any act adopted by the institutions of those Communities,

(d) the IEP Agreement, and

(e) any international convention or agreement to which the State is or becomes a party;

“subsidiary” means a subsidiary (within the meaning of section 155 of the Act of 1963) of the Agency;

“superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas. Expenses.

PART 2

SHARE TRANSFER

Transfer to Minister of share owned by Irish National Petroleum Corporation Limited in National Oil Reserves Agency Limited. **4.**—Notwithstanding any enactment or rule of law or any provision contained in the memorandum or articles of association of the Irish National Petroleum Corporation Limited, the Minister shall by order direct the Irish National Petroleum Corporation Limited to transfer, on the share transfer day, the share owned by it in the National Oil Reserves Agency Limited to the Minister on such terms and conditions as the Minister, after consulting with the Minister for Finance, thinks fit.

Share transfer day. **5.**—The Minister shall by order appoint a day to be the day on which the Irish National Petroleum Corporation Limited transfers the share owned by it in the National Oil Reserves Agency Limited to the Minister.

Transfer costs and stamp duty. **6.**—(1) Amounts (if any) paid by the Minister in respect of a transfer directed under *section 4* shall be repaid to the Central Fund out of monies provided by the Oireachtas.

(2) Stamp duty is not chargeable on an instrument under which the share owned by the Irish National Petroleum Corporation Limited in the National Oil Reserves Agency Limited is transferred to the Minister.

PART 3

THE NATIONAL OIL RESERVES AGENCY

Continuation of Agency. **7.**—(1) The National Oil Reserves Agency Limited continues in existence under this Act, but is to be known as An Ghníomhaireacht Chúltaca Ola Náisiúnta or, in the English language, as the National Oil Reserves Agency.

(2) Subject to this Act, the Companies Acts continue to apply to the Agency.

(3) Section 6(1)(a) of the Act of 1963 does not apply to the Agency.

Object and functions of Agency. **8.**—(1) The principal object of the Agency is to perform the functions assigned to it by or under this Act, including the functions of—

- (a) maintaining, in accordance with *Part 4*, oil stocks,
- (b) providing, on its own initiative or at the request of the Minister, advice, information or guidance to the Minister on any matter relating to the holding of oil stocks,
- (c) collecting and recovering the levy,
- (d) providing, as the Agency considers appropriate, such consultancy, advisory, technical assistance and contract services (including research and training services) in the

State or elsewhere, on any matter relating to the Agency's functions under *subsection (1)(a)*, and

- (e) representing, at the request of the Minister, a Minister of the Government at meetings of international bodies in so far as the meetings relate to the holding of oil stocks.

(2) The object specified in *subsection (1)* is to be included in the Agency's memorandum of association.

(3) The Agency has power to do anything that appears to it to be requisite, advantageous or incidental to, or appears to it to facilitate (either directly or indirectly), the performance by it of its functions as specified in or under this Act or in its memorandum of association and that is not inconsistent with any enactment for the time being in force, including power—

- (a) to acquire, by purchase or otherwise, hold, store, import, export, transport and exchange oil,
- (b) subject to the prior approval of the Minister given with the consent of the Minister for Finance, to acquire land or an interest in land,
- (c) to construct, acquire, maintain, operate and develop, in the State or elsewhere, works, plant, equipment, storage tanks and pipelines for holding and transporting oil stocks,
- (d) to acquire, charter, hire or otherwise engage ships, vehicles and other means of transportation,
- (e) to undertake in the State or elsewhere any other commercial business or operations in connection with the functions of the Agency,
- (f) to invest and deal with the Agency's money,
- (g) subject to the prior approval of the Minister given with the consent of the Minister for Finance, to enter into joint ventures, partnerships or other commercial arrangements with other persons to construct, acquire, maintain and develop in the State or elsewhere works, plant, equipment, storage tanks and pipelines for holding and transporting oil stocks,
- (h) to sell, as the Agency thinks fit, oil held by or on behalf of the Agency,
- (i) subject to the prior approval of the Minister given with the consent of the Minister for Finance, to sell all or part of any other property of the Agency for such consideration as the Agency thinks fit and in particular for shares, stock, debentures or other securities of any body corporate, and
- (j) subject to the prior approval of the Minister given with the consent of the Minister for Finance, to enter into any commercial agreement with a third party in the State or elsewhere for the purpose of enabling the Agency to perform its functions under *subsection (1)(a)*.

(4) This section does not prevent the inclusion in the memorandum of association of all objects and powers, consistent with this Act, that are reasonable, necessary or proper for, or incidental or ancillary to, the due attainment of the principal object of the Agency.

(5) The Agency may perform any of its functions through or by the chief executive or any member of its staff duly authorised in that behalf by the Agency.

Additional functions.

9.—The Minister may, with the consent of the Minister for Finance and after consulting with the Agency and any other Minister of the Government who, in the Minister's opinion, is concerned, by order assign to the Agency such additional functions connected with the functions assigned to it by or under this Act as the Minister considers appropriate.

Share capital of Agency.

10.—The authorised share capital of the Agency, as stated in its memorandum of association, shall be such amount, divided into shares of such value, as may be determined from time to time by the Minister for Finance after consulting with the Minister.

Issue of shares.

11.—(1) Shares in the share capital of the Agency may be issued only with the consent of the Minister for Finance given after consulting with the Minister.

(2) The cost of any shares issued to the Minister by the Agency shall be advanced to the Minister by the Minister for Finance out of the Central Fund or the growing produce of the Fund.

Exercise by Minister of functions exercisable by shareholders.

12.—The Minister may exercise, in respect of the shares held by him or her in the Agency, all the rights and powers of a holder of such shares and, where a right or power is exercisable by attorney, exercise it by his or her attorney.

Memorandum and articles of association.

13.—(1) The Agency shall take such steps as may be necessary under the Companies Acts to alter its memorandum and articles of association for the purpose of making them consistent with this Act.

(2) Notwithstanding anything contained in the Companies Acts, any alteration that is made in the memorandum or articles of association of the Agency takes effect only if the alteration is made with the prior approval of the Minister given with the consent of the Minister for Finance.

Board of directors.

14.—(1) The board of directors of the Agency is to consist of—

- (a) not more than 5 directors (including the chairperson), and
- (b) the person holding the office of chief executive who, by virtue of that office, is a director.

(2) The directors (other than the chief executive) shall be appointed by the Minister with the consent of the Minister for Finance.

(3) A person appointed as a director under *subsection (2)* shall be a person who, in the Minister's opinion, has experience and competence in one or more of the following areas:

- (a) oil or oil related industries;
- (b) chemical or chemical related industries;
- (c) finance;
- (d) economics;
- (e) legal matters;
- (f) energy production and supply industries.

(4) Each director appointed under *subsection (2)* shall be appointed for a period not exceeding 5 years and is eligible for reappointment.

(5) The Minister shall designate one of the directors (other than the chief executive) as chairperson.

(6) The Minister with the consent of the Minister for Finance may, at any time, remove from office a director appointed under *subsection (2)* if—

- (a) in the Minister's opinion, the director has become incapable through ill-health of performing his or her functions,
- (b) in the Minister's opinion, the director has committed stated misbehaviour,
- (c) the director's removal from office appears to the Minister to be necessary for the Agency to perform its functions effectively, or
- (d) the director has contravened *section 24* of this Act or an applicable provision of the Ethics in Public Office Act 1995.

(7) Section 182 of the Act of 1963 does not apply to the Agency.

(8) The chairperson and other directors appointed under *subsection (2)* shall be paid by the Agency out of the levy such remuneration (if any) and allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

(9) A person who, immediately before the commencement of this section, held office as a director of the Agency shall, subject to *subsection (6)* and *section 23* and the terms and conditions upon which he or she was appointed, continue in office as such director until the end of the period for which he or she was appointed, as if appointed under *subsection (2)*.

(10) In this section "applicable provision of the Ethics in Public Office Act 1995", in relation to a director appointed under *subsection (2)*, means a provision of that Act that, by virtue of a regulation under section 3 of that Act, applies to that director.

Strategy statement. **15.—**(1) As soon as practicable after the share transfer day, the Agency shall prepare and submit to the Minister for approval a strategy statement for—

- (a) in the case of the initial strategy statement, the ensuing five year period, and
- (b) in the case of each subsequent strategy statement, the period specified by the Minister.

(2) Each strategy statement shall be prepared in such form and manner as the Minister may direct.

(3) In preparing a strategy statement, the Agency shall have regard to the need to ensure the most beneficial, effective and efficient use of its resources and shall include the following information:

- (a) the key strategies and activities the Agency will pursue to further its objects and perform its functions;
- (b) the outputs the Agency aims to achieve and against which its performance will be assessed;
- (c) the staff, resources and expenditure proposals necessary to pursue the strategies and activities referred to in *paragraph (a)*.

(4) As soon as practicable after approving a strategy statement, the Minister shall cause a copy of the statement to be laid before each House of the Oireachtas.

Power to establish subsidiaries.

16.—(1) The Agency may, with the consent of the Minister and the Minister for Finance, perform any of its functions through a subsidiary.

(2) For the purpose of *subsection (1)*, the Agency may do one or more of the following:

- (a) acquire, form or establish one or more than one subsidiary;
- (b) acquire or hold shares, or any other interest, in a company or become a member of a company.

(3) A subsidiary that is acquired, formed or established under *subsection (2)* may be formed and registered under—

- (a) the Companies Acts, or
- (b) the laws of a place other than the State.

(4) The Agency shall ensure that the memorandum and articles of association of each subsidiary are in a form consistent with this Act and that the prior approval of the Minister and the Minister for Finance is obtained in relation to the memorandum and articles of association of each subsidiary and any alterations to them.

(5) Each subsidiary formed or established under the Companies Acts shall be limited by shares and comply with those Acts.

(6) The Minister may, subject to *subsection (7)*, give a direction in writing to the Agency on any matter relating to a subsidiary, and the Agency shall ensure compliance with the direction.

(7) A direction that relates to the disposal of any assets or surpluses of a subsidiary may only be given with the consent of the Minister for Finance.

(8) The grades of staff and the number of staff of a subsidiary shall be determined by the Agency, with the consent of the Minister and the Minister for Finance.

(9) A member of the staff of a subsidiary holds office or employment subject to such terms and conditions as are approved by the Minister with the consent of the Minister for Finance.

(10) The directors of a subsidiary shall be appointed and may be removed from office by the Agency with the prior approval of the Minister given with the consent of the Minister for Finance.

(11) If a person who is both a director of a subsidiary and a director of the Agency is removed under *section 14(6)* from office as a director of the Agency or ceases under *section 23* to hold such office, that person immediately ceases to be a director of the subsidiary.

(12) The Minister may, by order, designate a subsidiary that complies with the requirements of this section as a subsidiary whose operating costs and administrative expenses are to be paid out of the levy.

(13) Where any function of the Agency is, under the memorandum of association of a subsidiary, a function of the subsidiary, every provision of, or of any instrument under this Act or any other enactment relating to the Agency shall, in respect of that function, apply to the subsidiary as it applies to the Agency.

17.—(1) The Agency may charge, receive and recover fees for work undertaken by it on behalf of any person other than a Minister of the Government. Power to charge and recover fees.

(2) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from any such person any amount due and owing to it under *subsection (1)*.

18.—(1) The Agency may engage such consultants or advisers as it considers necessary for performing its functions. Power to engage consultants and advisers.

(2) Any fees due to a consultant or adviser engaged under this section shall be paid by the Agency out of the levy.

19.—(1) There shall be a chief executive of the Agency. Chief executive (appointment and term of office).

(2) The chief executive shall be appointed and may be removed or suspended from office by the directors appointed under *section 14(2)*.

(3) The chief executive holds office for such period and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) that the directors

appointed under *section 14(2)* may, with the approval of the Minister given with the consent of the Minister for Finance, determine.

(4) The remuneration and allowances determined under *subsection (3)* and any superannuation benefits payable to or in respect of the chief executive shall be paid by the Agency out of the levy.

(5) A person may be reappointed as chief executive subject to the other provisions of this section.

(6) Where and for so long as the chief executive is suspended from office, the chief executive is suspended from being a director of the Agency.

Functions of chief executive.

20.—(1) The functions of the chief executive are—

- (a) to carry on, manage and control generally the administration and business of the Agency, and
- (b) to perform any other functions that may be determined by the directors.

(2) The chief executive is responsible to the board of directors for the performance of his or her functions and the implementation of the board's policies.

(3) The chief executive shall provide the directors with such information, including financial information, in relation to the performance of his or her functions as the directors may require.

(4) The functions of the chief executive may be performed in his or her absence or when the position of chief executive is vacant by such member of the staff of the Agency as may be designated for that purpose by the directors.

(5) The person designated under *subsection (4)* to perform functions of the chief executive is not entitled to act as a director of the Agency.

(6) The directors may at any time revoke or alter a designation made under *subsection (4)*.

(7) The chief executive shall not hold any other office or position or carry on any business, trade or profession without the consent of the directors.

Staff of Agency.

21.—(1) The Agency may, subject to a determination under *subsection (2)*, appoint persons to be members of its staff.

(2) The Agency shall, with the approval of the Minister given with the consent of the Minister for Finance, determine—

- (a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of staff appointed under this section, and
- (b) the grades and the numbers of staff of the Agency at each grade.

(3) The remuneration and allowances of the members of the Agency's staff and any superannuation benefits payable to or in respect of those members shall be paid by the Agency out of the levy.

(4) A member of staff of the Agency shall perform such duties as the chief executive may assign to him or her.

(5) A person who, immediately before the commencement of this section, was a member of staff of the Agency shall, subject to *section 23(2)* and the terms and conditions upon which he or she was appointed, continue in employment as if appointed under *subsection (1)*.

22.—(1) The Agency shall prepare and submit to the Minister a scheme, or more than one scheme, for granting superannuation benefits to or in respect of such members of staff (including the chief executive) of the Agency as it may think fit. Superannuation.

(2) A superannuation scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

(3) A superannuation scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Agency in accordance with its terms.

(4) A superannuation scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

(5) The Agency may not grant, or enter into any arrangement for the provision of any superannuation benefit to or in respect of a member of staff (including the chief executive) of the Agency except in accordance with a superannuation scheme approved under this section or approved by the Minister with the consent of the Minister for Finance.

(6) Each superannuation scheme shall include provision for appeals from a decision relating to a superannuation benefit under the scheme.

(7) The Minister shall ensure that a superannuation scheme approved under this section, including an amendment of a scheme, is laid before each House of the Oireachtas as soon as practicable after it is approved.

(8) Either House of the Oireachtas may, by a resolution passed within 21 sitting days after the day on which the superannuation scheme is laid before it, annul the scheme.

(9) The annulment of a superannuation scheme under *subsection (8)* takes effect immediately on the passing of the resolution concerned, but does not affect the validity of anything done under the scheme before the passing of the resolution.

(10) A scheme for granting superannuation benefits to or in respect of members of the staff of the Agency that is in existence immediately before the passing of this Act and that has been

approved by the Minister with the consent of the Minister for Finance is deemed to have been submitted and approved under this section.

Membership of either House of Oireachtas, European Parliament or local authority.

23.—(1) A director of the Agency (including the chief executive) immediately ceases to hold office on—

- (a) being nominated as a member of Seanad Éireann,
- (b) being elected as a member of either House of the Oireachtas or of the European Parliament,
- (c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or
- (d) becoming a member of a local authority.

(2) A member of staff of the Agency is immediately seconded from employment with the Agency on—

- (a) being nominated as a member of Seanad Éireann,
- (b) being elected as a member of either House of the Oireachtas or of the European Parliament, or
- (c) being regarded, pursuant to section 19 of the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy.

(3) No remuneration or allowances are payable by the Agency in respect of the secondment period to a person seconded under *subsection (2)* from employment, and that period is not to be counted as service with the Agency for the purposes of any superannuation benefit.

(4) In relation to a person seconded under *subsection (2)* from employment, the secondment period begins on the occurrence of the relevant event referred to in that subsection and ends when the person ceases to be a member of either House of the Oireachtas or of the European Parliament.

(5) A person who is entitled under the Standing Orders of either House of the Oireachtas to sit in that House or who is a member of the European Parliament is, while so entitled or such a member, not eligible to become a director of the Agency or to be employed in any capacity by the Agency.

Unauthorised disclosure of confidential information.

24.—(1) Except in the circumstances specified in *subsection (2)*, a person shall not disclose confidential information obtained while performing functions as—

- (a) a director of the Agency,
- (b) a member of a committee of the Agency,
- (c) the chief executive or any other member of staff of the Agency,
- (d) an authorised officer,

(e) a person engaged by the Agency as a consultant or adviser, or

(f) an employee of a person referred to in *paragraph (e)*.

(2) A person does not contravene *subsection (1)* by disclosing confidential information if—

(a) the Agency authorises its disclosure,

(b) the disclosure is made to the Agency,

(c) the disclosure is made to the Minister by or on behalf of the Agency or in compliance with a requirement of this Act, or

(d) the disclosure is otherwise required by law.

(3) In this section “confidential information” means—

(a) information that is expressed by the Agency to be confidential either as regards particular information or as regards information of a particular class or description, and

(b) proposals of a commercial nature or tenders submitted to the Agency by a contractor, a consultant or any other person.

25.—(1) The Agency shall, following consultation with the Minister, draw up a code of conduct in respect of proper standards of integrity, conduct and concern for the public interest to be maintained by a person while performing functions as— Code of conduct.

(a) a director of the Agency,

(b) a member of a committee of the Agency,

(c) the chief executive or any other member of staff of the Agency,

(d) a consultant or adviser engaged by the Agency, or

(e) an employee of a person referred to in *paragraph (d)*.

(2) The Agency shall publish any code of conduct drawn up under this section.

26.—(1) The Agency may, subject to *subsections (2) and (3)*, raise or borrow money (including money in a currency other than the currency of the State) by means of the issue of debentures or otherwise, for the purpose of providing for current or capital purposes. Power to borrow.

(2) The aggregate amount at any time of money raised or borrowed under this section shall not exceed €1 billion.

(3) No money may be raised or borrowed under this section except with the prior approval of the Minister given with the consent of the Minister for Finance and subject to such terms and conditions as they may determine.

(4) The terms on which money may be raised or borrowed under this section may include—

- (a) provisions charging all or part of the money raised or borrowed and any related financial obligation (including interest) on all property, of whatever kind, being the assets for the time being of the Agency, or on any particular property, and
- (b) provisions establishing the priority of such charges among themselves.

(5) For the purposes of this section and *section 27* money raised or borrowed in a currency other than the currency of the State is deemed to be the equivalent in the currency of the State of the actual money raised or borrowed, such equivalent being calculated according to the rate of exchange, at the time the money is raised or borrowed, for that currency and the currency of the State.

(6) The limit on borrowings provided for under *subsection (2)* applies to the aggregate at any one time of borrowings of the Agency and all subsidiaries.

Temporary borrowing.

27.—The Agency may, with the prior approval of the Minister given with the consent of the Minister for Finance, borrow temporarily by arrangement with bankers or otherwise such sums of money (including money in a currency other than the currency of the State) as it may require for the purpose of providing for current expenditure.

Annual report.

28.—(1) The Agency shall submit an annual report of its activities and those of any subsidiaries after the end of the financial year to which the report relates.

(2) Each annual report shall be in such form and include information regarding such matters as the Minister may direct.

(3) The Minister shall cause copies of the annual report to be laid before each House of the Oireachtas not later than 6 months after the end of the financial year to which the report relates.

Accounts and audit.

29.—(1) Without prejudice to the requirements of the Companies Acts in relation to proper books of account, the Agency shall keep, in such form as may be approved by the Minister with the consent of the Minister for Finance, all proper books and records of account of—

- (a) all income received by it including the sources,
- (b) all expenditure incurred by it, and
- (c) its assets and liabilities.

(2) The Agency shall submit its accounts annually to the Comptroller and Auditor General for audit at such times as the Minister, with the consent of the Minister for Finance, shall direct.

(3) After the audit, the Agency shall present to the Minister the audited accounts together with the Comptroller and Auditor General's report.

(4) The Minister shall cause copies of the documents presented under *subsection (3)* to be laid before each House of the Oireachtas not later than 6 months after the end of the financial year to which the audited accounts relate.

30.—(1) If required by the Minister, the Agency shall provide the Minister with information in relation to such matters as he or she may specify concerning or relating to—

Information to Minister on performance of functions.

- (a) the performance of its functions (including those performed through a subsidiary),
- (b) its plans for the future performance of its functions,
- (c) any strategy statement that has been laid before each House of the Oireachtas under *section 15*,
- (d) any report or account prepared by it under *sections 28* or *29*,
- (e) the economy and efficiency of use of the Agency in the use of its resources,
- (f) the systems, procedures and practices employed by the Agency for the purpose of evaluating the effectiveness of its operations, or
- (g) the policy and activities, other than day-to-day activities, of the Agency and of any subsidiaries.

(2) Information required by the Minister under *subsection (1)* shall be provided in such form and within such period as the Minister may direct.

31.—(1) Whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, the chief executive shall give evidence to that Committee on all matters pertaining to the expenditure of the Agency and any of its subsidiaries.

Information to Oireachtas on performance of functions.

(2) Whenever requested to do so by a committee (other than the Committee referred to in *subsection (1)*) of one or both Houses of the Oireachtas, the chief executive shall account to such committee for the performance of the functions of the Agency and any of its subsidiaries.

PART 4

MAINTENANCE OF OIL STOCKS

32.—(1) The Agency shall maintain at the Minister's disposal, such oil stocks as will secure that at all times, subject to *section 35*, national oil reserves are maintained at—

Duty of Agency.

- (a) a level sufficient to comply with the State's stockholding obligations, or
 - (b) such higher level as the Minister may, by written direction, specify if he or she considers it necessary to do so for the effective performance of the Agency's functions.
- (2) The Agency may carry out its duty under *subsection (1)* by—
- (a) holding the oil stocks itself, or
 - (b) entering into holding contracts.

Holding contracts.

33.—(1) A holding contract is a contract between the Agency and another person by which that other person undertakes to hold at the disposal of the Agency an agreed volume of oil stocks (whether or not owned by the Agency) for the purposes of the Agency's functions.

(2) A holding contract may provide for the agreed volume of oil stocks to be held—

- (a) inside the State, or
- (b) outside the State in the territory of another state in accordance with a bilateral agreement.

(3) Before entering into a holding contract providing for oil stocks to be held outside the State in accordance with a bilateral agreement, the Agency shall submit its proposals to the Minister for approval.

(4) Before deciding whether to give or withhold approval of proposals submitted under *subsection (3)*, the Minister shall have regard to such factors as he or she considers appropriate, including any need for particular categories of oil stocks to be held within the State.

Duties of Minister.

34.—(1) The Minister shall, in accordance with the State's stockholding obligations, from time to time determine the extent to which, and the manner in which, crude oil, intermediate products and different categories of petroleum products may be taken into account—

- (a) in calculating national oil reserves, and
- (b) in determining the volume of oil stocks to be maintained by the Agency in order to carry out its duty under *section 32*.

(2) The Minister shall keep the Agency informed of the volume of oil stocks, calculated by reference to the information supplied to the Minister in accordance with the regulations relating to returns, that the Agency must maintain to comply with its duty under *section 32*.

Release of oil stocks in cases of particular urgency.

35.—(1) If the Minister considers that a case of particular urgency exists and that it is necessary for the compliance by the State with its stockholding obligations to do so, he or she shall notify the Agency that the oil stocks maintained by it may be reduced below the level required under *section 32* for such period and to such level as the Minister may, in writing, direct.

- (2) After consulting the Agency, the Minister may, in writing—
- (a) issue a direction specifying the procedures to be applied by the Agency for releasing such oil stocks, and
 - (b) authorise the Agency to release oil stocks in accordance with those procedures.

PART 5

LEVY ON RELEVANT DISPOSALS OF PETROLEUM PRODUCTS

36.—In this Part—

Definitions for
Part 5.

“expenses” means the operating costs and administrative expenses of the Agency and each designated subsidiary, including the following:

- (a) oil storage costs;
- (b) the costs of holding under a holding contract oil stocks not owned by the Agency;
- (c) the remuneration, if any, and allowances for expenses of the directors;
- (d) the remuneration and allowances for expenses of the chief executive and any superannuation benefits payable to or in respect of him or her;
- (e) the remuneration and allowances of the members of staff and any superannuation benefits payable to or in respect of such members;
- (f) fees due to any consultants or advisers engaged under this Act;
- (g) the costs incurred by the Agency in collecting the levy;
- (h) the payment of any interest and other bank charges incurred on borrowings under *sections 26 and 27*;
- (i) the repayment of principal borrowed under *section 26 or 27* to purchase oil or to do anything specified in *section 8(3)(a), (b), (c) or (f)*;

“levy assessment notice” means a notice issued under *section 41*;

“marine bunkers” means petroleum products that are exempt from excise duty as being intended for the fuel tanks of sea-going vessels;

“petroleum products” does not include marine bunkers, aviation fuel and jet fuel of the kerosene type;

“relevant disposal of petroleum products” has the meaning assigned by *section 37(2)*;

“volume assessment” means an assessment under *section 39* of relevant disposals of petroleum products.

Liability of oil companies and oil consumers to pay levy.

37.—(1) For the purpose of meeting expenses properly incurred, or likely to be so incurred, by the Agency and each designated subsidiary in performing functions under this Act, oil companies and oil consumers shall, in accordance with this Part and the regulations under *section 44*, pay to the Agency in each month a levy on their relevant disposals of petroleum products in the preceding month.

(2) A relevant disposal of petroleum products is the volume (expressed in tonnes or litres) of petroleum products that in any month—

(a) in relation to an oil company, it consumes or it disposes of by sale or otherwise to persons in the State, and

(b) in relation to an oil consumer, it consumes in the State.

(3) No levy is payable by an oil company (other than an oil company operating an oil refining or oil storage facility in the State) or an oil consumer on its relevant disposals of petroleum products where the levy has been paid by the oil company from which it acquired the petroleum products.

Exemptions from levy.

38.—(1) Subject to *subsection (2)*, no levy is payable in any month by an oil consumer that, throughout the preceding month, held within the State stocks of petroleum products owned by it that equalled or exceeded—

(a) 55 times the average volume of those products consumed by it on each day in the preceding calendar year, or

(b) such other daily volume as may be prescribed by the Minister for the purpose of securing supplies of oil in accordance with the State's stockholding obligations or with its national requirements.

(2) In calculating for the purposes of this section stocks of petroleum products held throughout the preceding month by an oil consumer, the Minister shall not take into account any volume of petroleum products held within the State on behalf of the oil consumer under a contract between the oil consumer and another person, unless—

(a) the contract provides for an agreed volume of petroleum products owned by the oil consumer to be so held by the other person for the purpose of a claim by the oil consumer for exemption from levy under this section, and

(b) before the contract was entered into, the contract proposals (within the meaning assigned by *section 62*) were submitted to the Minister.

(3) An oil consumer that claims exemption from levy under this section shall supply to the Minister, in accordance with and within the time specified in the regulations relating to returns, all information relevant to the exemption claimed.

Volume assessment.

39.—(1) Before the end of each month, the Minister shall notify the Agency of the Minister's assessment of the volume of each category of petroleum products appearing to have been relevantly disposed of in the preceding month by each oil company and oil consumer liable to pay the levy.

(2) The volume assessment is to be based on—

- (a) the information supplied by the oil company or oil consumer in accordance with the regulations relating to returns, or
- (b) if that information has not been supplied or if the Minister has reason to believe that information so supplied is inaccurate or incomplete in any material respect, such estimates as appear to the Minister to be reasonable having regard to any other available information.

40.—(1) The Minister shall calculate in accordance with this section the amount of levy payable in respect of a month by each oil company and oil consumer liable to pay the levy on its relevant disposals in the month and shall notify the Agency of that amount. Calculation of levy.

(2) The amount of levy shall be calculated by reference to—

- (a) the oil company's or the oil consumer's relevant disposals of petroleum products (including, where appropriate, of each category of petroleum products) in the month as specified in its volume assessment for the month, and
- (b) the rate of levy prescribed under *section 44* for the month.

41.—The Agency shall give each oil company and oil consumer liable to pay the levy in respect of a month a levy assessment notice specifying— Levy assessment notice.

- (a) the oil company's or oil consumer's relevant disposals of petroleum products as specified in its volume assessment for that month,
- (b) the rate of levy prescribed under *section 44* for the month and, where appropriate, for each category of petroleum products specified in that assessment,
- (c) the amount of the levy payable by it in respect of that month as calculated under *section 40*,
- (d) the date, determined in accordance with the regulations, on which the levy becomes payable, and
- (e) where appropriate, any exemption from levy in accordance with *section 38*.

42.—(1) If all or part of the amount specified in a levy assessment notice is not paid on or before the date specified in the notice as the date on which the amount becomes payable, interest on the unpaid amount accrues at the rate prescribed under *section 44* from that date to the date of payment. Interest on unpaid amount of assessment.

(2) Notwithstanding *subsection (1)*, interest does not accrue on an amount that in a review under *section 44(1)(e)* the Minister determines is not payable.

Recovery of unpaid
levy and interest.

43.—The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from the oil company or oil consumer by whom it is payable any amount due and owing to it under this Part in respect of the levy and any interest that has accrued on that amount.

Regulations relating
to levy.

44.—(1) The Minister may, by regulations, provide for all or any of the following matters relating to the levy:

- (a) the rate of levy per tonne or litre of relevant disposals of petroleum products;
- (b) the daily volume of petroleum products to be held by an oil consumer for the purposes referred to in *section 38(1)(b)*;
- (c) the manner in which levy assessment notices are to be prepared by the Agency;
- (d) the keeping by oil companies and oil consumers of specified records in respect of matters connected with liability to pay the levy and the specifying of the form in which and the period for which such records are to be kept;
- (e) the review by the Minister of a levy assessment notice at the request of an oil company or oil consumer that claims that the notice is erroneous;
- (f) the time within which a request for such review shall be made and the conditions to be satisfied by an oil company or oil consumer before the request can be made;
- (g) the manner in which the amount of any overpayment or underpayment made by an oil company or oil consumer in respect of the levy may be set off against or added to any subsequent liability of such oil company or oil consumer to the Agency;
- (h) the times at which payment becomes due;
- (i) the form in which payment is to be made to the Agency by an oil company or oil consumer;
- (j) the rate of interest on amounts not paid when due;
- (k) such other matters as are necessary for or incidental to the imposition, payment and collection of the levy.

(2) Different rates of levy may be prescribed by the Minister for different categories of petroleum products and in relation to different months.

(3) In determining the rates of levy, the Minister shall seek to ensure that (taking one year with another) the sums realised by applying those rates to the volume assessments meet but do not exceed the estimated expenses of the Agency and of each designated subsidiary.

(4) For the purpose of determining in any year such estimated expenses of the Agency, the Minister may—

- (a) consider the information contained in the Agency's strategy statement,
- (b) have regard to such information as is provided under *section 29*, and
- (c) take account of the expenses of the Agency and of each designated subsidiary in the previous financial year, and of any additional expenditure likely to be incurred by any of them in the forthcoming financial year.

(5) The rate of levy determined under Regulation 6(4) of the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995 (S.I. No. 96 of 1995) and in effect immediately before the revocation of those Regulations by *section 56* is deemed to have been prescribed under this section and continues in effect until it is varied under this section.

(6) If the prescribed rate of levy is varied, the new rate of levy takes effect no earlier than 3 months after the making of the regulation varying the prescribed rate.

(7) Regulations under *subsection (1)(j)* may prescribe a formula for determining the interest rate by reference to—

- (a) the prevailing Euro Interbank Offered Rate,
- (b) an additional rate certified by the Central Bank and Financial Services Authority of Ireland, and
- (c) such other additional rate as the Minister considers appropriate taking into account the cost of recovering unpaid levy, including any bank charges the Agency may incur in maintaining a bank overdraft to cover a shortfall in funds arising out of unpaid levy.

PART 6

ENFORCEMENT PROVISIONS

45.—In this Part—

Definitions for *Part 6*.

“premises” means any place, ship or other vessel, aircraft, railway wagon or other vehicle and includes any container, storage tank or pipeline used for holding, storing or transporting oil;

“relevant activity” means—

- (a) any activity connected with the Agency, an oil company or oil consumer, and
- (b) any activity connected with the holding of oil stocks in the State on behalf of another state in accordance with a bilateral agreement.

46.—(1) The following persons are authorised officers for the purposes of this Act: Authorised officers.

- (a) any officer of Customs and Excise;

- (b) an auditor appointed by the Agency with the consent of the Minister;
- (c) any other person (including an officer of the Minister or the Agency) appointed by the Minister.

(2) An appointment under *subsection (1)(b)* or *(c)* may, subject to *subsection (3)*, be for a fixed period for the purposes of all or any of the provisions of this Act.

(3) Where the exercise of the powers conferred under *section 47* or *section 48* relate to a relevant activity of the Agency, such powers may not be exercised by a person appointed by the Agency or an officer of the Agency.

(4) A person appointed to be an authorised officer under *subsection (1)(b)* or *(c)* shall, on appointment, be provided with a certificate of appointment issued—

- (a) in the case of a person appointed under *subsection (1)(b)*, by the Agency, and
- (b) in the case of a person appointed under *subsection (1)(c)*, by the Minister.

(5) An authorised officer, when exercising a power conferred on him or her by this Act shall, if requested by a person affected by the exercise of such power, produce the certificate of his or her appointment to that person.

(6) An appointment under this section as an authorised officer ceases—

- (a) if made by the Agency, on the Agency revoking the appointment,
- (b) if made by the Minister, on the Minister revoking the appointment,
- (c) if for a fixed period, on the expiry of that period, or
- (d) if the person is an officer of Customs and Excise or an officer of the Minister or the Agency, on that person ceasing to be such officer.

(7) A person who immediately before the commencement of this section was an authorised officer under the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995 (S.I. No. 96 of 1995) is deemed to have been appointed under this section.

Powers of
authorised officers.

47.—(1) For the purpose of obtaining any information necessary for the performance by the Minister or the Agency of their functions under this Act (including any functions relating to the holding of oil stocks in the State on behalf of another state in accordance with a bilateral agreement), an authorised officer may do any or all of the following:

- (a) at all reasonable times enter and inspect any premises at or by means of which a relevant activity is carried on or in which records in relation to such activity are kept;

- (b) at such premises, inspect any books, records or other documents (including documents stored in non-legible form) that the officer finds in the course of the inspection, and take copies of them or extracts from them;
- (c) direct that such books, records or other documents found at the premises be retained for such period as may be reasonable for further examination;
- (d) remove from the premises any such books, records or other documents and retain them for such period as the officer reasonably considers to be necessary for further examination;
- (e) require the owner or person in charge of the premises or any person whom the officer reasonably believes to be employed there to give to the officer such assistance and information, and to produce to him or her such books, records or other documents (and in the case of documents stored in non-legible form, produce to the officer legible reproductions of them) that are in that person's power or procurement, as the officer may reasonably require;
- (f) carry out, or have carried out, such examinations, inspections, tests and measurements of oil, plant, equipment, storage tanks, pipelines or any other equipment or appliances at the premises as the officer considers appropriate;
- (g) remove, or have removed, from the premises any such oil, equipment or appliance and retain them for such period as the officer reasonably considers to be necessary for further examination;
- (h) secure for later inspection any premises or part of any premises in which a relevant activity is carried on or in which records in relation to such activity are kept;
- (i) take photographs or make any record or visual recording of any relevant activity carried on at such premises.

(2) Any information obtained by an auditor appointed under *section 46(1)(b)* shall be given directly to the Minister who, if he or she considers it appropriate for the purpose of the effective performance of the Agency's functions, may pass on all or any of that information to the Agency.

(3) Where an authorised officer in exercise of his or her powers under this section is prevented from entering any premises, an application may be made under *section 48* for a warrant authorising such entry.

(4) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless the officer has obtained a warrant under *section 48* authorising such entry.

(5) An authorised officer who has reasonable grounds to believe that a person has committed an offence under this Act may require that person to provide the officer with his or her name and the address at which he or she ordinarily resides.

Search warrants.

48.—(1) A Judge of the District Court may issue a search warrant if satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that information required by an authorised officer for the purpose of the performance by the Minister or the Agency of their functions under this Act is to be found at any premises where a relevant activity is carried on.

(2) A search warrant issued under this section shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers and members of the Garda Síochána as the named officer thinks necessary, at any time or times, within 28 days of the date of issue of the warrant, on production, if so requested, of the warrant, to enter (if need be by reasonable force) such premises as are specified in the warrant.

(3) Where any premises are entered by an authorised officer pursuant to a warrant issued under this section, the officer may, in relation to those premises, exercise all or any of the powers conferred on an authorised officer under *section 47*.

Duty of authorised officers to report certain matters.

49.—(1) An authorised officer who, after entering premises under *section 47* or under the authority of a warrant issued under *section 48*, forms the opinion in the course of exercising his or her powers under *section 47* that—

- (a) a relevant activity has been or is being carried on by any person at the premises otherwise than in compliance with a regulatory provision, or
- (b) there is a risk to the health, safety or welfare of any employees at work on the premises,

shall report the matter to the appropriate authority.

(2) In this section—

“appropriate authority” means—

- (a) a member of the Garda Síochána,
- (b) the Health and Safety Authority,
- (c) the Environmental Protection Agency,
- (d) the local authority in whose administrative area the premises are located, or
- (e) the Revenue Commissioners;

“regulatory provision” means—

- (a) any provision that is contained in or made under an enactment passed for the protection of employees, the protection of the environment or the regulation of planning and development, or
- (b) any provision of Chapter 1 of Part 2 of the Finance Act 1999 or of a regulation made under section 104 of that Act.

50.—A person is guilty of an offence under this section if the person— Offences.

- (a) obstructs, impedes or assaults an authorised officer in the exercise of a power conferred under *section 47*,
- (b) without reasonable excuse, fails or refuses to comply with a direction or requirement of an authorised officer under *section 47(1)(c)* or *(e)*,
- (c) without reasonable excuse, fails to comply with *section 62(4)(b)*,
- (d) alters, suppresses or destroys any books, records or documents (including documents stored in non-legible form) that the person has been required to produce or may reasonably expect to produce,
- (e) gives to an authorised officer information that the person knows to be false or misleading in a material respect, or
- (f) falsely represents himself or herself to be an authorised officer.

51.—Where the Agency is satisfied that any member of staff of the Agency or an authorised officer appointed by it has carried out his or her duties in relation to the enforcement of the provisions of this Act in good faith, the Agency shall indemnify such member of staff or such authorised officer against all actions or claims that may arise in carrying out those duties. Indemnification.

PART 7

AMENDMENTS AND REVOCATION

52.—Section 7 of the Act of 2001 is amended—

Amendment of
section 7 of Act of
2001.

- (a) by deleting subsection (1),
- (b) by substituting the following subsection for subsection (2):

“(2) Notwithstanding any enactment or rule of law or any provision contained in the memorandum or articles of association of the Corporation, the Minister may, by order, direct the Corporation to transfer all or any of its assets or liabilities or both to the Minister or other public authority on such terms and conditions as the Minister after consulting with the Minister for Finance thinks fit.”,

- (c) by substituting the following subsection for subsection (3):

“(3) Amounts (if any) paid by the Minister in respect of a transfer directed under subsection (2) shall be repaid to the Central Fund out of monies provided by the Oireachtas.”,

and

- (d) by deleting subsection (4).

Amendment of section 8 of Act of 2001.

53.—Section 8 of the Act of 2001 is amended—

(a) by substituting the following subsection for subsection (5):

“(5) Notwithstanding any enactment or rule of law, the Corporation shall not be liable to repay to the Minister any amount paid by the Minister under the provisions of the guarantee referred to in subsection (1).”.

and

(b) by deleting subsection (6).

Amendment of section 9 of Act of 2001.

54.—The following section is substituted for section 9 of the Act of 2001:

“Alteration of memorandum and articles of association of Corporation.

9.—The Corporation shall take such steps as may be necessary under the Companies Acts to alter its memorandum and articles of association for the purpose of making them consistent with this Act.”.

Amendment of Third Schedule to Freedom of Information Act 1997.

55.—The Third Schedule to the Freedom of Information Act 1997 is amended by inserting at the end of Part I—

(a) in column (2), “*National Oil Reserves Agency Act 2007.*”,
and

(b) in column (3), opposite the mention in column (2) of the *National Oil Reserves Agency Act 2007*, “*section 24.*”.

Revocation.

56.—The European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995 (S.I. No. 96 of 1995) are revoked.

PART 8

MISCELLANEOUS PROVISIONS

Regulations to give effect to acts of European Communities.

57.—The power to make regulations under this Act includes the power to make provision in such regulations to give effect to—

(a) a provision of the treaties of the European Communities,
or

(b) an act adopted by an institution of those Communities.

Regulations and orders.

58.—(1) The Minister may make regulations—

(a) for any purpose in relation to which regulations are provided for in this Act,

(b) for prescribing any matter or thing referred to in this Act as prescribed or to be prescribed, and

(c) generally for the purpose of giving effect to this Act.

(2) The Minister may make orders for any matter in relation to which orders are provided for in this Act.

59.—(1) The Minister may make regulations—

Minister's power to make regulations relating to returns.

- (a) for the purposes of *Parts 4 and 5*, requiring the Agency, oil companies and oil consumers to supply the Minister with written returns in each month, and
- (b) for the purposes of a bilateral agreement, requiring persons holding oil stocks in the State on behalf of another state in accordance with that agreement to supply the Minister with written returns as and when required by the Minister.

(2) Regulations under this section may, among other things, make provision for the following matters:

- (a) the information to be contained in returns;
- (b) requirements relating to the certification of returns;
- (c) the dates by which returns are to be supplied;
- (d) the form in which returns are to be supplied;
- (e) for the purpose of *section 61*, procedures for making representations to the Minister.

(3) A person is guilty of an offence under this section if the person—

- (a) fails to supply for a period of 3 consecutive months from the applicable date required under *subsection (2)(c)* a return in such form and containing such information as is required under *subsection (2)(a)*, or
- (b) provides in a return information that is false or misleading in a material respect and that the person knows is false or misleading.

60.—(1) Every regulation and order made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made.

Laying of regulations and orders before Houses of Oireachtas.

(2) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a regulation or an order (other than an order under *section 1(2), 4 or 5*) was laid before it in accordance with *subsection (1)*, annul the regulation or order.

(3) The annulment of a regulation or order under this section takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the regulation or order before the passing of the resolution.

Power of Minister to apply for compliance order and issue directions.

61.—(1) If it appears to the Minister that a person has failed to comply with any requirement of regulations relating to returns the Minister, having afforded the person the opportunity to make representations to him or her in accordance with procedures prescribed under *section 59(2)(e)*, may—

- (a) apply to the High Court for an order under *subsection (3)*, or
- (b) give to the person such directions as the Minister thinks fit for securing compliance with the relevant requirement.

(2) Before making an application under *subsection (1)(a)*, the Minister shall give the person concerned a notice in writing specifying the nature of the default and giving the person a period of 14 days after being notified of the default within which to make good the default.

(3) If satisfied on application under *subsection (1)(a)* that the person concerned has failed to comply with such requirement, the High Court may make an order requiring that person to comply with the requirement.

Minister's prior approval required for certain contracts, holding contract obligations, etc.

62.—(1) An oil company or oil consumer shall submit contract proposals to the Minister for approval before it enters into a contract with a person (other than the Agency) by which the oil company or the oil consumer, as the case may be, undertakes to hold in the State in accordance with a bilateral agreement an agreed volume of oil stocks in respect of the other person's stockholding obligations.

(2) Before deciding whether to give or withhold approval of proposals submitted under *subsection (1)*, the Minister shall have regard to such factors as he or she considers appropriate, including—

- (a) the level of national oil reserves, and
- (b) the availability of adequate holding facilities in the State for the purpose of meeting the State's stockholding obligations.

(3) For the purposes of *subsection (2)*, the Minister may seek the advice of the Agency in relation to the matters referred to in *paragraphs (a) and (b)* of that subsection.

- (4) (a) Where a contract to which *subsection (1)* relates has been entered into by an oil company or an oil consumer to hold oil stocks in the State in accordance with a bilateral agreement, then the oil stocks concerned shall be so held by such oil company or oil consumer.
- (b) Where in respect of oil stocks a holding contract has been entered into by a person with the Agency and such contract in whole or in part relates to holding of oil stocks in the State, then, subject to *paragraph (c)*, the oil stocks to be held in the State under such contract shall be so held by such person.
- (c) Oil stocks maintained in the State for the purposes of *paragraph (b)* shall be so maintained—

- (i) where duly held in conjunction with an oil refining business carried on in the State, as a specific amount of non-identified oil, and
- (ii) in any other case, as a specific amount of identified oil which may not be drawn upon or replenished (except by the Agency), but without prejudice to the replacement of the oil from time to time, with the prior consent of the Agency, for the purpose of avoiding degradation of quality.

(5) In this section and *section 38* “contract proposals” means—

- (a) the name and address of the parties to the contract to hold oil stocks,
- (b) the nature and quantity of the stocks,
- (c) the location where the stocks are to be held,
- (d) the period for which the stocks are to be held, and
- (e) such other information as the Minister may require under the State’s stockholding obligations.

63.—Where in proceedings for the recovery of levy a dispute arises as to whether no levy is payable by virtue of *section 37(3)* or as to whether the terms and conditions have been met for claiming an exemption from levy in accordance with *section 38*, the burden of proof rests with the defendant oil company or oil consumer.

Burden of proof in certain proceedings.

64.—(1) Summary proceedings for an offence may be brought and prosecuted—

Prosecution of offences.

- (a) in relation to an offence under *section 50*, by the Minister or the Agency, and
- (b) in relation to an offence under *section 59*, by the Minister.

(2) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, proceedings for an offence under this Act may be instituted at any time within 2 years from the date of the alleged commission of the offence.

65.—Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Offences by bodies corporate.

66.—(1) A person guilty of an offence under this Act is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both.

Penalties.

(2) If the contravention in respect of which a person is convicted of an offence under this Act continues after the conviction, the person is guilty of a further offence on every day on which the contravention continues and for each such offence the person is liable on summary conviction to a fine not exceeding €250.

Giving of notices.

67.—(1) A notice required or permitted under this Act to be given to a person is to be addressed to the person by name and may be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by post in a pre-paid registered letter to the address at which the person ordinarily resides or carries on business;
- (d) if an address has been provided by the person, by leaving it at the address provided or sending it by pre-paid registered post addressed to the person at that address;
- (e) if the person giving the notice considers that notice should be given immediately and a fax machine is located at an address mentioned in *paragraph (b)* or *(d)*, by sending it by fax to that machine but only if the sender's fax machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) For the purposes of this section, a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.