

ENERGY REGULATION ACT, 2004

Act**No. 20 of 2004****ARRANGEMENT OF SECTIONS**

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An Act to establish an Energy Regulatory Authority to regulate the energy sector, to define the functions and powers of the Energy Regulatory Authority, to provide for licensing of energy undertakings, and for matters connected therewith and incidental thereto.

PART 1 - PRELIMINARY

Short title and Commencement	1	This Act may be cited as the Energy Regulation Act, 2004 and shall come into force on such date or dates as the Minister shall appoint by notice published in the Gazette.
Interpretation	2	<p>In this Act, unless the context otherwise indicates-</p> <p>“Authority” means the Malawi Energy Regulatory Authority established under section 3;</p> <p>“coal” means coal as defined in the Energy Laws;</p> <p>“Customer” means a person purchasing energy;</p> <p>“Consumer” means a person consuming energy;</p>
No. 22 of 2004		<p>“electricity undertaking” means electricity undertaking as defined in the Electricity Act;</p> <p>“energy” means such sources of renewable and no-renewable energy as defined in this Act;</p> <p>“Energy Laws” means this Act and any other energy legislation made under which the Authority is to exercise any function;</p> <p>“Energy Undertaking” means any undertaking selling energy or commercial activities related thereto, whether public or private as defined in the Energy Laws;</p> <p>“licence” means a licence granted under Part III of this Act;</p> <p>“licensee” bears a corresponding meaning;</p> <p>“liquid fuels and gas” means liquid fuels and gas as defined in the Energy Laws;</p> <p>“Member” means a member of the Authority and includes the Chairperson or Vice-Chairperson;</p> <p>“Non Renewable Energy” means those sources of energy available to mankind arising from natural processes in the interaction between the sun and the earth’s surface but not regularly replenished and these include uranium and fossil fuels e.g. coal, peat, crude oil, natural gas;</p> <p>“Public Appointments Committee” Means the Public Appointments Committee established under section 56 (7) of the Constitution</p> <p>“Renewable Energy” means those sources of energy available to mankind arising from natural processes in the interaction between</p>

the sun and the earth's surface and regularly replenished and these include the sun as the primary renewable energy resource and the secondary renewable energy resources that derive from the sun including wind energy, hydro, ocean thermal, ocean wave, ocean tidal and electricity from photovoltaic effects, biomass, geothermal, etc;

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“Rural Electrification” means rural electrification as defined in the Rural Electrification Act;

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“Rural Electrification Fund” or “Fund” means the fund set up under the Rural Electrification Act.

“Solar, wind, biogas,” means solar, wind, biogas as defined in the Energy Laws;

PART II - ESTABLISHMENT OF THE ENERGY REGULATORY AUTHORITY: ONSTITUTION, FUNCTIONS, POWERS AND DUTIES

Establishment of the Authority

3 here is hereby established an Authority known as the Malawi Energy Regulatory Authority (in this Act otherwise referred to as the “Authority”) which shall be a body corporate by that name with perpetual succession and a Common Seal and capable of suing and being sued in its corporate name and capable of acquiring and disposing of any moveable or immovable property and performing such acts and things as bodies corporate may by law do or perform and have power to perform such functions and exercise such powers as are conferred by this Act and the Energy Laws.

Constitution of the Authority

4(1)The Authority shall comprise:

- a) a chairperson, a Vice-Chairperson and three other members;
- b) the Principal Secretary responsible for Energy Affairs as ex-officio member.
- c) the Director of Energy Affairs; and
- d) the Chief Executive of the Authority as ex-officio member so long as he/she remains in the post of Chief Executive.

(2) Members of the Authority shall be persons who have adequate knowledge and experience in any one or more of the following functional areas-

- a) energy supply and demand, including the end use consumption of energy;

- b) commercial and business practices and procedures;
- c) financial and funding aspects of the energy sector;
- d) energy tariffs, pricing or charges;
- e) energy planning and project development;
- f) energy technology and standards or renewable energy technologies;
- g) environmental issues; or
- h) legal matters.

(3) Candidates shall be selected on the basis of their knowledge and experience of national, regional and international issues relating to the supply of energy in Malawi.

(4) The overall composition of the Authority shall as far as possible reflect a balance of knowledge and experience relevant to the different types of energy supply regulated by the Authority and the distinct industries involved in the energy sector;

(5) Any person who-

- a) is a Member of Parliament;
- b) is a Minister or Deputy Minister;
- c) is a holder of a licence;
- d) is an employee of a licensee;
- e) is a director of a company holding a licence under this Act;
- f) holds five per cent or more shares in a company holding a licence under this Act;
- g) has been convicted of an offence under this Act, or an offence involving fraud or dishonesty by a competent court in Malawi or elsewhere;
- h) is in a position where there is a material conflict of interest between the interests of the member as member of the Authority and the business interest of that member, shall be disqualified from being appointed as a member of the Authority.

Appointment of members of the Authority	<p>5(1) The President shall appoint members of the Authority, and each appointments shall be subject to confirmation by the Parliamentary Committee on Public Appointments.</p> <p>(2) The first appointment of members of the Authority as provided for in subsection (1) shall be made within twenty-eight days of the coming into force of this Act.</p> <p>(3)The names of all members of the Authority as first constituted and every change of membership of the Authority shall be published in the <i>Gazette</i>.</p> <p>(4) In appointing members of the Authority under subsection (1), the President shall have regard to the need for continuity of service on the Authority so that at least half of the members of the Authority appointed thereunder shall be re-appointed for the next term of office.</p>
Chairperson of the Authority	<p>6.The President shall appoint one of the members of the Authority as Chairperson and another member as Vice-Chairperson.</p>
Tenure of Office of members	<p>7(1) A member of the Authority, other an <i>ex officio</i> member, shall hold office for a period of three years and shall be eligible for reappointment:</p> <p>Provided that no member may be re-appointed for more than two consecutive terms.</p> <p>(2) The office of a member of the Authority shall become vacant-</p> <ul style="list-style-type: none">a) if he/she resigns;b) upon his/her death;c) if he/she becomes bankrupt;d) if he/she knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority;e) if he/she is absent, without the consent of the Chairperson or without valid excuse, from three consecutive meetings of the Authority of which he/she has had notice;f) upon the expiry of the term of his/her appointment;g) if he/she becomes, by reason of mental or physical infirmity, incapable of performing his/her duties as a member; orh) if any circumstances arise that, if he/she were not a member, would cause that member to be disqualified for appointment as a member.
Removal from Office and vacancy	<p>8(1) A member of the Authority shall not be removed from office except for reasons of incompetence or misconduct and only after</p>

due inquiry and subject to the approval of the Parliamentary Committee on Public Appointments.

(2) A vacancy in the Authority shall be filled by the appointment of another member in accordance with this Act, and the member so appointed shall hold office for the unexpired period of the term of office of his/her predecessor.

Powers and Functions

9(1) The Authority shall have power to regulate the activities of the energy industry in accordance with this Act and the Energy Laws and without limitation to the generality of the foregoing, shall carry out the following functions

- (a) receive and process licence applications for energy undertaking;
- (b) grant, revoke or amend licences granted under this Act and Energy Laws;
- (c) approve tariffs, and prices of energy sales and services;
- (d) monitor and enforce compliance by licensees with licences granted under this Act and the Energy Laws;
- (e) develop and enforce performance and safety standards for energy exploitation, production transportation and distribution;
- (f) prescribe and collect fees, charges, levies or rates under this Act and Energy Laws;
- (g) arbitrate commercial disputes under this Act and Energy Laws;
- (h) Recommend reforms to this Act and the Energy Laws as the Authority may deem desirable;
- (i) Resolve or mediate consumer complaints against licensees; and
- (j) do all such things as are necessary or incidental or conducive to the better carrying out of the functions of the Authority provided for in this Act and Energy Laws.

(2) In exercising its powers and functions under this Act and the Energy Laws, the Authority shall be independent of interference or direction of any other person or authority, and shall:-

- (a) promote the interests of consumers of energy with respect to energy prices and charges and the continuity and quality of energy supply;
- (b) monitor the efficiency and performance of energy undertakings, having regard to the purposes for which they were established;

- (c) in conjunction with other relevant agencies, monitor the levels and structures of competition within the energy sector in order that competition in and accessibility to the energy sector in Malawi is promoted;
- (d) facilitate increasing access to energy supplies;
- (e) promote energy efficiency and energy savings;
- (f) promote consumer awareness and education;
- (g) promote the integrity and sustainability of energy undertakings and seek to ensure that energy undertakings, whilst providing efficient service, are able to finance the carrying on of the activities which they are licensed or authorized to carry on;
- (h) in conjunction with other relevant agencies, formulate measures to minimize the environmental impact of the exploitation, production, transportation, storage, supply and use of energy and enforce such measures by the inclusion of appropriate conditions to licences held by energy undertakings;
- (i) promote the exploitation of renewable energy resources; and
- (j) take all such measures as are necessary to fulfill the above purposes through regulations to be made under this Act or the Energy Laws.

(3) The Authority shall, in undertaking its regulatory tasks, regulate in a manner that is transparent, cost effective and fair.

(4) The Authority may advise the Government on matters affecting the energy sector generally and energy undertakings specifically.

Minister to Gazette Policy

10(1) Whenever the Minister intends to revise the policy with regard to the energy sector he/she shall prepare a draft thereof and invite comments from licensees and other stakeholders, and he/she shall take those comments into account before issuing the new policy.

(2) Any policy issued under subsection (1) shall be in writing and shall be published in the *Gazette* and in such other manner as the Minister may determine.

Remuneration of Members

11(1) A member of the Authority shall be paid such remuneration or allowances as the Minister of Finance may approve on the recommendation of the Authority:

Provided that such allowances or remuneration shall be set at levels that are Comparable to that offered to similar professionals on the open market in Malawi.

(2) Members shall be paid out of the funds of the Authority.

Meetings of the Authority

12(1) The members of the Authority shall meet at such times and places and in the manner as the chairperson may from time to time determine provided that the Authority shall meet at least once every quarter.

(2) The chairperson may at any time convene an extraordinary meeting of the Authority to be held at a time and place and in the manner determined by him or her and must, upon a written request of at least two other members of the Authority, convene an extraordinary meeting to be held within two weeks after the date of such request.

(3) The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson shall preside over any meeting of the Authority, and in the absence of both the Chairperson and Vice Chairperson, the members present shall elect one of their number to preside at the meeting.

(4) The Authority may publish in the *gazette* the procedure to be followed at a meeting.

(5) In the absence of a published procedure under subsection (4), the person presiding at such a meeting of the Authority shall determine the procedure to be followed thereat.

(6) The quorum for a meeting of the Authority shall be a majority of all its members.

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

(8) No member of the Authority, except *ex-officio* members, shall attend the meeting of the Authority by representation.

(9) Other officers of the Authority as the Chief Executive may designate shall attend meetings of the Authority and of any committee of the Authority and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at the meeting may, for good cause, require such other officers to withdraw from such meetings.

(10) No decision taken by the Authority or act performed under it shall be invalid only by reason of a vacancy on the Authority or of the fact that any person not entitled to sit as a member of the Authority sat at such a meeting at the time the decision was taken or the act was authorized.

(11) The Authority may, at its discretion, allow members of the public or licensees to attend any of its meetings.

(12) If the Authority takes a decision in any manner other than at a formal meeting such decision shall come into effect immediately but must be reduced to writing and submitted for ratification at the first formal meeting of the Authority following such decision.

(13) The Authority shall cause a record of its proceedings to be kept.

Duties and Responsibilities of members

13 (1) Any member of the Authority shall –

- a) act in a justifiable and transparent manner whenever the exercise of his or her discretion is required.
- b) at all times act in the interests of the Authority and not in his or her sectoral interest;
- c) act independently of any outside influence or instruction; and
- d) act in a manner that is required of any holder of a public office.

(2) A member of the Authority having any interest, directly or indirectly, in any matter under discussion by the Authority, shall as soon as possible after the relevant facts have come under his or her knowledge, disclose to the Authority the facts of his or her interest and nature thereof.

(3) A disclosure under subsection (2) shall be recorded in the minutes of the Authority and, after the disclosure, the member –

- a) shall not take part nor be present in any deliberation or decision of the Authority; and
- b) shall be disregarded for the purpose of constituting a quorum of the Authority.

(4) Any member of the Authority who fails to disclose his or her interest as provided under subsection (1) shall be guilty of an offence and liable on conviction to a fine of K500,000 and to imprisonment for a period of five years.

(5) No act or proceedings of the Authority shall be invalidated on the ground that any member of the Authority has contravened the provisions of this section.

Just administrative action

14(1) Any decision of the Authority affecting the rights of another person shall –

- (a) be within the powers of the Authority as set out in this Act and Energy Laws;
- (b) be taken within a procedurally fair process; and
- (c) be reasonable.

(2) Any person adversely affected by a decision of the Authority shall on request be furnished with written reasons for the decision.

Committees of the Authority

15(1) The Authority may appoint committees consisting of as many members of the Authority and employees of the Authority as may be deemed necessary to perform such functions or exercise such powers of the Authority as the Authority may perform or exercise under this Act, and Energy Laws and may at any time dissolve or reconstitute such committees, and the chairperson of any such committee shall be a member of the Authority but so however that the Authority is not divested of any function or power conferred upon a committee under this subsection.

(2) Any decision of a committee performing a function or exercising a power of the Authority shall be tabled at a meeting of the Authority and may be withdrawn or amended by the Authority or referred back to such committee and shall, until it has been so withdrawn or amended, be deemed to be a decision of the Authority.

Advisory Committees and
Customer-consumer forums

16 (1) The Authority may appoint committees consisting of as many members of the Authority, employees of the Authority and other persons as may be deemed necessary to advise the Authority in general or on a particular matter.

(2) The Authority may establish customer-consumer forums consisting of as many of the members of the Authority, employees of the Authority and other persons as may be deemed necessary to represent the interests of customers or consumers of energy in relation to customer or consumer information, education, energy pricing and dispute resolution.

Member or employee not to be
engaged in licenced activity

17(1) A member or employee of the Authority shall not seek employment with any licensee for a period of two years after leaving the position as member or employee of the Authority.

(2) A member or employee of the Authority as the case may be, shall not, after leaving the membership or employment of the Authority act as an agent for or on behalf of a licensee in any matter before the Authority that was under consideration by the Authority during the term of office of that member or during the employment of the employee with the Authority.

Chief Executive of
The Authority

18(1) The Authority shall appoint a Chief Executive to be known by such title as the Authority may deem fit, who shall be the chief executive officer of the Authority and responsible for the administrative control of, and supervision over the work and staff of the Authority.

Other Staff of the Authority

19(1) The Authority shall establish its own Secretariat and may appoint such staff, subordinate to the Chief Executive, as the Authority deems necessary.

(2) The Authority may delegate to the Chief Executive the appointment of staff of such ranks as the Authority may specify.

(3) The Authority may pay to persons in its employ, or provide them with, such remuneration, pension and employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the employment market in Malawi.

Disclosure of interest

20 (1) The Chief Executive shall disclose to the Authority any interest he or she has, whether in a private or professional capacity, in any matter that is under consideration by the Authority and shall not attend any meeting of the Authority or of any committee of the Authority while any question touching such matter is being discussed.

(2) Any employee of the Authority or any consultant, adviser or sub-contractor to the Authority shall disclose to the Chief Executive any interest he or she has, whether in a private or professional capacity, in any matter that is under consideration by the Authority, and the Chief Executive shall take such decision as he/she considers appropriate in each case and submit a report thereon to the Authority.

Hiring of Services

21 The Authority may, subject to such conditions as the Authority may determine contract with any person to provide goods or supply services as may be necessary to perform the work connected with the powers, functions and duties of the Authority.

Delegation of powers and
Authority

22(1) The Authority may delegate any power or function assigned to it under this Act and Energy Laws to the Chairperson or any member of the Authority or to any employee of the Authority to facilitate the day to day operation of the Authority.

(2) The Chairperson may, with the approval of the Authority delegate any power or function assigned to him or her under this Act and Energy Laws or delegated to him or her under subsection (1) to any member of the Authority.

PART III - FINANCIAL PROVISIONS

Funds of the Authority

23 The funds of the Authority shall consist of -

- a) all fees, charges, Energy Regulation levies, dues or rates imposed under this Act and Energy Laws;
- b) one half of all fines imposed by a competent court for the contravention of the provisions of this Act and Energy Laws or by-laws made by the Authority;
- c) revenue accruing to the Authority from the Government or other body or person, whether as a grant-in-aid or otherwise;
- d) all such monies as are, from time to time, appropriated to the Authority by Parliament; and
- e) any other income authorized under this Act and Energy Laws or income recognized as such by accounting standards and practices.

Energy regulation levy

24(1) For the purposes of the levies referred to in section 23 the Authority may by notice in the *Gazette* impose an energy regulation levy on energy sales to be paid by licensees.

(2) A notice in terms of subsection (1)-

- a) shall state the amount of the levies or the basis or method of calculation or determination of the amounts;
- b) shall specify the date on which or periods within which the levies are payable and the manner of payment; and
- c) may stipulate that a licensee becomes liable for payment of interest on any arrear payments of the levy and specify the rate of interest and manner of calculation thereof.

Rural electrification levy

25(1) In order to promote and fund rural electrification every licensee shall pay to the Authority a rural electrification levy which levy shall be part of the tariffs or prices of energy payable by energy customers.

(2) The rural electrification levy referred to in subsection (1) shall be 4.5% of retail energy sales.

(3) The licensees shall pay the said levy to the Authority within 45 days from the date of sale or billing for the energy as the case may be whichever shall occur first.

(4) The Authority shall pay the said levy to the Rural Electrification Fund within seven days of receipt of the same from a licensee.

(5) If a licensee or the Authority fails to remit the said levy within the periods specified in subsections (3) and (4) interest at the rate of 2% above the bank lending rate shall be payable to the Rural Electrification Fund.

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(6) The rural electrification levy shall be used for the purposes prescribed under the Rural Electrification Act, 2004.

Books of Accounts

26 (1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The Authority shall as soon as possible after the end of each financial year cause to be prepared a statement of the cash-flow and income and expenditure of the Authority for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.

(3) The accounts of the Authority shall -

- a) be audited annually by independent public auditors appointed by the Authority; and
- b) be examined by the Auditor General before being presented to Parliament in accordance with this Act.

(4) The financial year of the Authority shall be a period of twelve months commencing on 1st July and ending on 30th June the following year:

Provided that the financial year of the Authority may be a period shorter or longer than twelve months as the Authority may determine, but in any case not longer than eighteen months.

Annual Report

27 (1) The Authority shall as soon as practicable, but not later than six months after the expiry of the financial year, submit to Parliament a report concerning its activities during that financial year.

(2) The annual report referred to in subsection (1) shall include:

- a) an audited balance sheet and income statement, including any notes thereon and documents annexed thereto whereby relevant information is provided;
- b) the report of the examination of the accounts referred to in section 26 (3);
- c) information regarding licences granted, renewed, amended, suspended, cancelled or withdrawn;
- d) information regarding the amount of rural electrification levies collected and paid to the Rural Electrification Fund;
- e) a report regarding the execution of the business plan of the Authority;
- f) a report of the future strategic plans of the Authority;
- g) a status report on the performance of the energy sector and energy undertakings; and
- h) such other information as the Authority may from time to time deem necessary.

(3) The Authority shall after submission of the annual report to Parliament in accordance with subsection (1), the Authority shall cause a summary of the report to be published in such manner as the Authority shall deem appropriate or as Parliament may direct.

PART IV - REGULATION OF THE ENERGY SECTOR

Activities to be carried out
under licence

28 (1) No person may establish, operate, carry on or be involved in any manner in an energy undertaking in Malawi, without a licence issued by the Authority.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

(3) For purposes of this section the Authority has the power –

- a) to determine whether any person is carrying on or involved in any energy undertaking; and
- b) to order any person not holding a licence and who is obliged to apply for and hold a licence under this Act or Energy Laws to cease carrying on or being involved in any energy undertaking.

Application for and issuing of licence	29 Any person obliged to hold a licence under this Act or Energy Laws shall apply to the Authority for a licence in accordance with the procedure and subject to payment of fees laid down in this Act or Energy Laws.
Tariffs or Prices of Energy	30 A licensee shall not charge a customer any other tariff, price or charge more than that forming part of the conditions of his/her licence or revision thereof and as approved by the Authority.
Transfer of licences	31 No licence and no rights or privileges thereunder shall be assigned or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Authority, and such consent shall not be unreasonably withheld.

PART V - RESOLUTION OF DISPUTES

Authority may arbitrate	32 The Authority shall, if requested thereto by a party to a dispute, act as arbitrator in disputes between licensees or between a licensee and its customer or consumer relating to: <ul style="list-style-type: none">(a) the right to energy supply;(b) the duty to supply energy;(c) the tariffs, process or charges at which energy is supplied;(d) delays in or refusal to supply energy; and(e) the quality of energy supply and the provision of services in connection therewith.
Authority may act as mediator	33 The Authority may act as mediator in any other matter in respect of which a licensee, customer, or consumer requests the Authority to act as such.
Authority may appoint another arbitrator	34 The Authority may, on approval of the parties involved, appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a person so appointed is deemed to be an action or decision of the Authority.
Procedure and fees for mediation and Arbitration	35 The Authority shall by notice in the <i>Gazette</i> prescribe the procedure to be followed and mediation and arbitration fees to be paid in mediating and arbitrating disputes.

Decision of the Authority is final

36 The decision of the Authority in arbitrating a dispute, including a decision as to costs, shall be final and binding on the disputing parties, subject only to the right of appeal to the High Court.

PART VI - INSPECTIONS, ACCIDENTS, INQUIRIES AND INVESTIGATIONS

Inquiries and formal investigations

37 (1) The Authority may, at its own instance or on receipt of a complaint or enquiry relating to the supply of energy, appoint a person to make enquiries in respect thereof and report thereon to the Authority.

(2) On receipt of a report under subsection (1), the Authority may:

- a) issue such licensing conditions, guidelines, rules or directives as it is empowered under this Act; or
- b) institute a formal investigation.

(3) The Authority shall, on receipt of a complaint regarding unlawful behavior by a licensee, institute a formal investigation in respect of that complaint.

(4) Upon instituting a formal investigation under subsections (2) or (3):

- a) the Authority may appoint a person to chair the investigation and as many persons as may be necessary to assist with the investigation;
- b) the person appointed under subparagraph (a) and the persons assisting him or her may summon witnesses and conduct the investigation in accordance with the rules published by the Authority in the *Gazette*.

(5) On completion of the investigations under subsection (4) the person chairing the investigation shall submit his or her written report thereon to the Authority.

(6) On receipt of the report under subsection (5), the Authority:

- a) may refer it to the Attorney-General for his or her consideration;
- b) if a licensee is involved, may take action in accordance with this Act or the Energy Laws,

and the Authority shall give a copy of the report to a concerned consumer or affected person who requests for it.

Licensee to report accidents

38(1) A licensee shall send to the Authority notice of any accident of such a kind as to have caused, or likely to have caused, loss of life or serious personal injury which has occurred in any part of such licensee's works or equipment, together with notice of any loss of life or serious personal injury occasioned by any such accident, within twenty-one days of such accident.

(2) Nothing contained in subsection (1) shall absolve the licensee from the duty of complying with the provisions of any other written law relating to the reporting of accidents.

Entry and inspection of premises

39(1) The Authority or any person authorized thereto in writing by it may:

- a) at any time enter upon the premises of a licensee and inspect any plant, machinery, books of accounts and other documents found thereat for the purpose of ascertaining whether or not the provisions of this Act, the Energy Laws or other laws or the conditions of any licence are being complied with or for the purpose of any inspection which is incidental to or connected with the carrying out of the duties of the licensee;
- b) call upon any licensee to furnish to the Authority such periodical or other returns in such form as the Authority may from time to time prescribe by notice in the *Gazette*

(2) The Authority may require that the accuracy of the returns and particulars be verified on oath by the licensee.

(3) A person authorized by the Authority to carry out an inspection or call for a return shall on request by a licensee show his or her authorization.

(4) A person who intentionally alters, destroys or otherwise suppresses a document or information required of him or her or under subsection (1) shall be guilty of an offence.

PART VII - OFFENCES AND PENALTIES

Offences

40(1) Any person who carries on in any manner any activity for the supply of energy in contravention of this Act, or fails to carry out any order or decision of the Authority made or given under this Act or otherwise contravenes the provisions of this Act, shall be guilty of an offence.

(2) Without prejudice to the right of a licensee to recover for any illegal consumption of energy, including costs associated with such recovery, a customer or any other person who

- (a) illegally abstracts energy;
- (b) disturbs or tampers with any meter or other energy measuring instrument or apparatus;
- (c) denies access to premises for inspections by authorized personnel of the licensee or the Authority ;
- (d) damages or vandalises any energy installation equipment or apparatus,

shall be guilty of an offence.

(3) Any transmitter who denies access on his/her system to licensees shall be guilty of an offence.

Penalties

41(1) Any person who is guilty of an offence under this Act shall be liable to a fine of up to K5,000,000 and imprisonment for ten years.

PART VIII - MISCELLANEOUS PROVISIONS

Service of notice

42 Any notice or other document required or authorized to be given, delivered or served under this Act may be given, delivered or served -

- a) by delivering it to the person to whom it is to be given or delivered or on whom it is to be served;
- b) by leaving it at the usual or last known place of abode of that person;
- c) by sending it in a prepaid registered letter addressed to that person at his or her usual or last known place of abode or postal address;
- d) in the case of company, by delivering it to the secretary or clerk thereof at its registered or numbered office or by sending it in a prepaid registered letter addressed to the secretary or clerk of the company at that office; or
- e) if it is not practicable after reasonable enquiry to ascertain the name or address of a person to whom it should be given or delivered or on whom it should be served, as being a person having an interest in land, being the person to whom by the description of the person having that interest in the premises (naming those premises) to which it relates, or by delivering it to some person on the premises or, if there is no person on the premises to whom it can be addressed, by affixing a true copy of it to some conspicuous part of the premises.

- Right of Appeal to the High Court **43**(1) Any person aggrieved by the decision or action of the Authority under this Act may appeal to the High Court by way of petition and lodged within three months from the date of the decision or action of the Authority.
- (2) The Chief Justice may make such rules as he/she considers proper in relation to the procedure on the hearing of such appeals, including the appointment and remuneration of assessors and regulating the costs of the appeal.
- Obligation of secrecy **44** Except for any of the purposes of this Act or the Energy Laws or for the purpose of any civil or criminal proceedings under any written law or where otherwise authorized by the Authority, no member of the Authority or a committee of the Authority or any officer, servant or agent of the Authority or any person attending any meeting of the Authority or a committee of the Authority, whether during his or her tenure of office or during his or her employment or for a period of five years thereafter, shall disclose any information which has been obtained by him or her in the course of his or her duties and which is not published in pursuance of this Act or the Energy Laws.
- By-Laws **45** The Authority is empowered to make By-Laws to give effect to any of the provisions of this Act and without prejudice to the generality of such powers may make By-Laws -
- (a) for securing that the supply and use of energy is regular, safe and efficient;
 - (b) prioritizing of fuels and technologies for energy supply;
 - (c) for bulk stockholdings;
 - (d) for protecting the public in so far as practicable from any personal injury, fire or other dangers arising from the use of energy;
 - (e) prescribing anything (including fees) to be prescribed under this Act prohibiting, controlling or restricting the importation, disposal, sale of defective or dangerous goods or fittings used in the supply of energy;
 - (f) for the testing of meters and the adjustment of accounts where meters are found to be defective; and
 - (g) providing for matters incidental to and connected with the matters mentioned in the preceding paragraphs of this section.

Passed in Parliament this nineteenth day of March two thousand and four