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THE ENERGY ACT

CAP. 314

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Energy Act

Cap. 314

Legislation as at 31 December 2022

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ENERGY ACT
CAP. 314

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AN ACT of Parliament to consolidate the laws relating to energy, to provide for National and County Government functions in relation to energy, to provide for the establishment, powers and functions of the energy sector entities; promotion of renewable energy; exploration, recovery and commercial utilization of geothermal energy; regulation of midstream and downstream petroleum and coal activities; regulation, production, supply and use of electricity and other energy forms; and for connected purposes

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Energy Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"agent" means a person appointed in writing by the Authority to perform any of its functions;

"Agency" means the Nuclear Power and Energy Agency established under section 54 of this Act;

"area of supply" means the area within which the licensee is for the time being authorised to supply electrical energy;

"Authority" means the Energy and Petroleum Regulatory Authority established under section 9;

"biomass" means non-fossilised and biodegradable organic material originating from plants, animals and micro-organisms and includes bio-ethanol, bio-diesel, biogas, charcoal, fuel-wood and agro-waste;

"Board" means the Board of Directors of the various institutions under the Act;

"building" has the meaning assigned to it under the relevant written law;

"bulk supply" means the supply of electrical energy by a licensee to another licensee for the purpose of enabling the supply of electrical energy to consumers;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for energy;

"coal" includes anthracite, bituminous coal, sub-bituminous coal, lignite, and peat;

"co-generation" means a process which simultaneously produces two or more forms of useful energy;

"company" means a company within the meaning of the Companies Act (Cap. 486);

"Competition Authority" means the Authority established under section 7 of the Competition Act (Cap. 504);

"compulsory acquisition" has the meaning assigned to it under the relevant written law;

"conductor" means an electrical conductor connected or arranged to be electrically connected to a system;

"conservation" means any reduction in consumption of energy as a result of increase in the efficiency in supply and use of energy;

"consumer" means any person supplied or entitled to be supplied with electrical energy or petroleum;

"Corporation" means the Rural Electrification and Renewable Energy Corporation established under section 43;

"danger" means risk to the environment, health, life, person or property of anyone from shock, fire or otherwise arising from the importation, exportation, generation, transmission, distribution, supply and use of electrical energy or from the exploration, production, importation, exportation, transportation,

refining, storage and sale of coal, or from the production, storage, distribution and supply of any other form of energy;

"distributed generation" means a system of small generation plants supplying directly to the distribution system, any one of which does not exceed ten thousand kilowatts in capacity;

"distribution" means the ownership, operation, management or control of facilities for the movement or delivery of energy to enable supply to consumers;

"distribution licence" means any document or instrument authorizing a person to operate a distribution system for the purpose of enabling supply of electrical energy to consumers or to other licensees;

"distribution of electricity" means the conveyance of electricity by a distribution licensee through its distribution system;

"distribution licence", means any document or instrument authorizing a person to distribute energy in the manner described in such document or instrument in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;

"distribution system" means a system, works, plant, equipment or service for the delivery or supply of energy directly to the consumers, but does not include a power plant or transmission line;

"electric supply line" means a wire, conductor or other means used for the purpose of conveying, transmitting, transforming or distributing electricity, together with a casing, coating, covering, tube, pipe, pillar, pole or tower, post, frame, bracket or insulator enclosing, surrounding or supporting it or part of it, or an apparatus connected therewith for the purpose of conveying, transmitting, transforming or distributing electricity;

"electrical energy" means energy involving the use of electric current which may be produced either by mechanical, chemical, photovoltaic or any other means;

"electrical installation" means an electric supply line or electrical apparatus placed in, on or over land or a building and used or intended to be used for or for purposes incidental to the conveyance, control or use of electricity supplied or intended to be supplied by a licensee, and includes additions and alterations to an electrical installation;

"electrical installation licence" means a licence authorizing a person to carry out electrical installation work for, business, training, or teaching purposes either for gain or reward or for no charge at all;

"electrical installation work" means the work of installing, altering or adding to an electrical installation and the supervision of such work;

"electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include—

(a) an electric supply line; or

(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(c) an electrical equipment, apparatus or appliance under the control of a consumer;

"electrical worker" means a person who carries out electrical installation work specified in the certificate issued to him under section 149;

"electricity market" means the market where licensees who are authorized to generate, import or export electric power offer to sell electrical energy to retail licensees for resale to consumers through the power systems operated by licensees who are authorized to carry out transmission and distribution of electricity and includes all the rules and regulations governing transactions between licensees, the system operator and consumers;

"eligible consumer" means a consumer that is allowed to choose any licensee to be his supplier and with whom he may contract for the purchase of electrical energy for his own use, in accordance with regulations made under this Act;

"energy" means any source of electrical, mechanical, hydraulic, pneumatic, chemical, nuclear, or thermal power for any use; and includes electricity, petroleum, coal, geothermal, biomass and all its derivatives, municipal waste, solar, wind and tidal wave power;

"energy audit" means the verification, monitoring and analysis of use of energy including submission of technical report containing recommendations for improving energy efficiency with cost benefit analysis and an action plan to reduce energy consumption;

"energy conservation" means the efficient, economic and cost effective production and use of energy;

"energy conservation building codes" means the norms and standards of energy consumption expressed in terms of per square meter of the area wherein energy is used and includes the location of the building;

"equipment or appliance" means any equipment or appliance which consumes, generates, transmits or supplies energy and includes any device that consumes any form of energy;

"exclusive economic zone" has the meaning assigned to it in the Maritime Zones Act (Cap. 371);

"factory" has the meaning assigned to it under the Occupational Safety and Health Act (Cap. 236A);

"feed-in tariff system" means a system that promotes generation of electricity from renewable energy sources;

"gas" means methane, ethane, propane, butane or hydrocarbons which may consist of one or more of any of those gases, either in the form of gas or liquid;

"generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

"generating entity" means any person who owns or operates or maintains a generating station;

"generating licence" means a licence authorising a person to generate electrical energy;

"generating station" means any station for generating electricity, including any buildings and plant used for the purpose, and the site thereof, but does not include any station for transforming (other than generator transformers), converting or distributing electrical energy;

"grid" means the network of transmission systems, distribution systems and connection points for the movement and supply of electrical energy from generating stations to consumers;

"installation" includes all material, wiring or apparatus situated upon any premises for use or intended for use in connection with the supply of energy;

"Kenya Standard" means a specification or code of practice declared by the Council under the Standards Act (Cap. 496);

"large hydro" means a hydro power plant with a generation capacity exceeding ten megawatts;

"licence" means any document or instrument in writing granted under this Act, to any person or authorizing the importation, exportation, generation, transmission, distribution and supply of electrical energy or the exploration and production of geothermal energy, in the manner described in such document or instrument;

"licensee" means a holder of any licence issued under this Act;

"licensing authority" means any person or body, including the Authority, with powers to grant, revoke or suspend a licence under this Act;

"local community" means a people living in a sub-county within which an energy resource under this Act is situated and are affected by the exploitation of that energy resource;

"local content" means the added value brought to the Kenyan economy from energy related activities through systematic development of national capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits;

"meter" means any type of machine, device or instrument used for the measurement of the quantity of electrical energy, and includes such auxiliary appliances as resistors, shunts, reactances, current transformers, voltage transformers and time switches external and necessary to the meter;

"natural gas" means hydrocarbons that are in a gaseous phase at atmospheric conditions of temperature and pressure, including wet mineral gas, dry mineral gas, casing head gas and residue gas remaining after the extraction or separation of liquid hydrocarbons from wet gas and non-hydrocarbon gas produced in association with liquid or gaseous hydrocarbons;

"open access" means the non-discriminatory provision for the use of an electric transmission or distribution system by any licensee or consumer;

"outer continental shelf" means the outer continental shelf as defined in the United Nations Convention on the Law of the Sea or all submerged lands seaward and outside the area of lands beneath navigable waters;

"permit" means an authorisation granted to a person to enable the carrying out of any activity in the energy business in accordance with this Act;

"person" means any natural or juridical person;

"petroleum" means all natural organic substances composed of carbon and hydrogen and includes oil and natural gas and all other mineral substances, products, by-products and derivatives that are found in conjunction with such substances;

"pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by discharging, emitting or depositing wastes or emitting noise so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare or to animals, birds, wildlife, fish or aquatic life, land and water sources or to plants or to cause a contravention of any condition, limitation or restriction which is subject to a licence under this Act;

"power" means electrical power or the quantity of electrical energy per unit of time;

"power system" means the electricity supply system including the generating stations, transmission and distribution networks operated as an integrated system or otherwise for the purpose of enabling supply of electrical energy;

"premises" includes any land, building or structure;

"public" means the Government or any department or branch of the Government;

"public lamp" means any electric lamp, which is under the control of a public authority, person or group of persons, used for the lighting of any street;

"renewable energy" means non-fossil energy generated from natural non-depleting resources including but not limited to solar energy, wind energy, biomass energy, biological waste energy, hydro energy, geothermal energy and ocean and tidal energy;

"retail" means—

(a) selling or offering to sell energy to a consumer;

(b) acting as agent or broker for a retailer with respect to the sale or offering for sale of energy; or

(c) acting or offering to act as an agent or broker for a consumer with respect to the sale or offering for sale of energy;

"retail supply licence" means any document or instrument authorizing a person to supply electrical energy in the manner described in such document or instrument to any premises and such licence shall also entitle the licensee to receive a bulk supply from another licensee;

"reticulation" means the planning and construction of the network used to supply energy to a consumer and in the case of—

(a) electricity, it is planning and construction of the network consisting of low and medium voltage electric supply lines together with service lines to enable a consumer get supply of electricity; and

(b) gas, it is the system through which a consumer gets a continuous supply of gas at the turn of a tap through a piping network from a centralised storage system or gas pipeline;

"service line" means any portion of any electric supply line through which electrical energy is or is intended to be supplied by a licensee—

(a) to a consumer either directly from the premises of the licensee, or from a distributing main; or

(b) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main up to the point where such electric supply line reaches the supply terminals;

"small hydro" means a hydro power plant with a generation capacity not exceeding ten megawatts;

"social impact assessment" means a method of analysing the impacts of a proposed activity, project or plan on the social aspects of the environment which include, without limitation, the way—

(a) people cope with life through their economy, social systems, and cultural values;

(b) people use the natural environment, for subsistence, recreation, spiritual activities and cultural activities;

(c) people use the built environment for shelter, making livelihoods, industry, worship, recreation and gathering together;

(d) communities are organised and held together by their social and cultural institutions and beliefs; and

(e) of life that communities value as expressions of their identity;

"specification" has the meaning assigned to it in the Standards Act (Cap. 496);

"strategic environmental assessment" means a formal and systematic process to analyse and address the environmental effect of policies, plans and programmes and other strategic initiatives;

"street" includes any way, road, lane, square, court, alley, passage, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge, or causeway;

"sugar miller" means a person licensed to operate a sugar mill or a jaggery mill in Kenya for the production of sugar including refined sugar and other by-products;

"supply" in relation to electricity, means the sale of electricity to a licensee or consumer;

"supply terminals" means the ends of the electric supply lines upon any consumer's premises at which the supply of electrical energy is delivered from the service line of the licensee, and is situated—

(a) in any case where the supply of electrical energy is measured by a meter, at the point at which the conductor from the service line enters the meter, or, in respect of a conductor from the service line which does not pass through the meter, the point on such conductor nearest to the meter;

(b) in any other case, at the point at which the conductor from the service line enters the consumer's main switch, or, if there is more than one main switch, that main switch on the consumer's premises which is nearest to the source of supply; or

(c) in any case in which the supply of electrical energy is made to a public lamp, at the point of attachment to the distributing main of the electric supply line serving such public lamp;

"system" means an electrical system or grid in which all the conductors and apparatus are electrically connected to a common source of electrical energy;

"system operations" means performance of generation scheduling, commitment and dispatch, scheduling of transmission and ancillary services, and generation outage co-ordination, transmission congestion management and co-ordination, and such other activities as may be required for the reliable and efficient operation of the grid;

"tariff" means a set of prices, rates, charges, and any cost associated with capacity, supply and delivery of energy which may vary by category of consumers, service voltage or time of use, and may include any adjustments, as approved by the Authority;

"transmission" means the operation, management or control of facilities, consisting of high voltage electric supply lines for movement of electrical energy in bulk between generating stations and transmission substations for the purposes of enabling supply;

"transmission licence" means any document or instrument authorizing a person to transmit electrical energy in the manner described in such document or instrument, such licence may also entitle the licensee to carry out system operations of the grid;

"transmission system" means a system, works, plant or equipment for the transmission of electricity but does not include power plant or distribution system;

"Tribunal" means the Energy and Petroleum Tribunal established under section 25;

"undertaking" means any business undertaken pursuant to a licence or a permit and includes all the assets and liabilities from time to time constituting or belonging or appertaining to such business, whether public or private, for—

(a) the importation, exportation, generation, transmission, distribution and supply of electrical energy; or

(b) the production, storage, distribution or supply of any other form of energy;

but does not include an undertaking which the Authority in consultation with the Cabinet Secretary, by statutory instrument, declares not to constitute an undertaking for the purposes of this Act;

"use of electrical energy" means the conversion of electrical energy into chemical energy, mechanical energy, sound, heat or light, or the use or application of electrical energy to or for any of the purposes for which it may be or become or be found to be adapted;

"vandalise" means to commit any wilful, negligent, reckless or malicious act which destroys or damages energy infrastructure;

"voltage" means the effective difference of electrical potential between any two conductors, or between a conductor and the earth, and is said to be—

(a) low when it does not exceed one thousand volts under normal conditions, subject however to the percentage variation allowed by any regulations made under this Act;

(b) medium when it exceeds one thousand volts but does not exceed thirty three thousand volts under normal conditions, subject however to the percentage variation allowed by any regulations made under this Act; and

(c) high when it normally exceeds thirty three thousand volts under normal conditions, subject however to the percentage variation allowed by any regulations made under this Act;

"wheeling" means the operation whereby the transmission system, distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 136; and

"works" means—

(a) electric supply lines, machinery, lands, buildings, structures, earth works and water works, and includes any apparatus or things of whatsoever description, required for the importation, exportation, generation, transmission, distribution supply and use of electrical energy; or

(b) machinery, land, buildings, structures, earth works and water works, and includes any apparatus required for the production, importation, exportation, storage, transportation, distribution and supply of any other form of energy.

3. Act to prevail

(1) If there is a conflict between this Act and any other Act, this Act shall prevail on the following matters—

(a) the importation, exportation, generation, transmission, distribution, supply or use of electrical energy;

(b) the exploration, production, transportation, distribution, and supply of any other form of energy; and

(c) all works and apparatus for any or all of these purposes.

(2) Save where this Act expressly provides otherwise, any licence granted or anything done under this Act shall not affect the right, privilege, obligation or liability acquired by any licensee or other person in any contract or under any written law prior to the commencement of this Act.

Part II – ENERGY POLICY AND INTEGRATED ENERGY PLAN

Energy Policy and Plan

4. National energy policy

(1) The Cabinet Secretary shall in consultation with the relevant stakeholders develop and publish a national energy policy which shall be reviewed every five years.

(2) Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national energy policy.

5. Integrated national energy plan

(1) The Cabinet Secretary shall in consultation with the relevant stakeholders develop, publish and review energy plans in respect of coal, renewable energy and electricity so as to ensure delivery of reliable energy services at least cost.

(2) Each national energy service provider shall develop and submit to the Cabinet Secretary plans for provision of energy services in accordance with its mandate.

(3) Each County Government shall develop and submit a county energy plan to the Cabinet Secretary in respect of its energy requirements.

(4) The Cabinet Secretary shall consolidate the plans contemplated in subsections (2) and (3) into an integrated national energy plan which shall be reviewed after every three years.

(5) The energy plans shall—

(a) take into account the national energy policy;

(b) serve as a guide for energy infrastructure investments;

(c) take into account all viable energy supply options; and

(d) guide the selection of the appropriate technology to meet energy demand.

(6) The Cabinet Secretary shall prescribe regulations on the content and timelines for the preparation of the energy plans.

6. Monitoring implementation of National integrated energy plan

Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national integrated energy plan.

Government obligations

7. Obligation to provide energy in all areas

(1) The Government shall facilitate the provision of affordable energy services to all persons in Kenya.

(2) Where the National or County Government determines that a supply of energy in any area is necessary and upon assessment it is established to be commercially inexpedient to provide for the necessary reticulation by any licensee, the Cabinet Secretary or County Executive Committee member as the case may be, may undertake the provision of any such works or provide the funds necessary for the development of such works.

(3) Without limiting the generality of subsection (2), the Cabinet Secretary shall develop and implement a fair, transparent and equitable strategy to ensure that all households are connected to a supply of electricity by 2030.

8. Promotion of energy investments

(1) The Cabinet Secretary shall develop a conducive environment for the promotion of investments in energy infrastructure development, including formulation of guidelines in collaboration with relevant county agencies on the development of energy projects and to disseminate the guidelines among potential investors.

(2) In its effort to promote energy investments, the National and County Governments shall facilitate the acquisition of land for energy infrastructure development in accordance with the law.

Part III – NATIONAL ENERGY ENTITIES

Energy and Petroleum Regulatory Authority

9. Establishment of the Energy and Petroleum Regulatory Authority

(1) There is established the Energy and Petroleum Regulatory Authority hereinafter referred to as the Authority.

(2) The Authority shall be a body corporate with perpetual succession, a common seal and shall in its corporate name be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing and lending money; and

(d) doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.

(3) Except as otherwise provided in this Act, the Authority shall be independent in the performance of its functions, exercise of its powers and shall not be subject to the direction or control of any person or authority.

10. Functions of the Authority

The functions of the Authority shall be to—

(a) regulate—

(i) generation, importation, exportation, transmission, distribution, supply and use of electrical energy with the exception of licensing of nuclear facilities;

(ii) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;

(iii) production, conversion, distribution, supply, marketing and use of renewable energy;

(iv) exploration, extraction, production, processing, transportation, storage exportation, importation and sale of coal bed methane gas and other energy forms;

(b) regulate, monitor and supervise upstream petroleum operations in Kenya in accordance with the law relating to petroleum, the regulations made thereunder and the relevant petroleum agreement;

(c) provide such information and statistics in relation to upstream petroleum operations in Kenya to the Cabinet Secretary responsible for matters relating to petroleum as may be required from time to time;

(d) collect, maintain and manage upstream petroleum data;

(e) receive, review and grant an application for a non-exclusive exploration;

(f) co-ordinate the development of upstream petroleum infrastructure and promote capacity building in upstream petroleum operations;

(g) inspect and test any machinery or equipment that has been used, is used or shall be used in upstream petroleum operations;

(h) assess field development plans and make recommendations to the Cabinet Secretary responsible for matters relating to petroleum for approval, amendment or rejection of the plans;

(i) assess tail-end production and cessation of upstream petroleum operations and oversee decommissioning by a contractor;

(j) verify the measurements of petroleum production to allow for estimation and assessment of royalties and profits of oil and gas due to the National Government;

(k) verify the recoverable cost of oil and gas due to the parties to a petroleum agreement;

(l) audit contractors for cost recovery;

(m) monitor in consultation with the Competition Authority conditions of contractors' operations and their trade practices;

(n) provide information to the relevant authority for the collection of taxes and fees from upstream petroleum operations;

(o) set, review and approve contracts, tariffs and charges for common user upstream petroleum facilities;

(p) make proposals to the Cabinet Secretary responsible for matters relating to petroleum in relation to regulations which may be necessary or expedient for the regulation of the upstream petroleum sector or for carrying out the objects and purposes of this Act;

(q) work with the relevant statutory authorities to formulate, enforce and review environmental, health, safety and quality standards for the upstream petroleum sector;

(r) develop guidelines, in consultation with other statutory authorities, in relation to the implementation of treaties, conventions or protocols affecting the upstream petroleum sector that have been ratified by Kenya;

(s) regulate contracts on upstream petroleum operations not specifically provided for under the law relating to petroleum;

(t) advice the Cabinet Secretary responsible for matters relating to petroleum in the evaluation of the bids and applications made for upstream petroleum blocks;

(u) ensure that contractors uphold the relevant laws, regulations and petroleum agreement terms;

(v) ensure optimal levels of recovery of petroleum resources;

(w) promote well planned, executed and cost-efficient operations;

(x) ensure optimal utilization of existing and planned facilities;

(y) ensure the establishment of a central database of persons involved in upstream petroleum operations;

(z) manage upstream petroleum data and provide periodic updates and publication of the status of upstream petroleum operations;

(aa) take such action as is necessary to enforce the requirements in a petroleum agreement or any regulations and to protect the environment, the health and safety of workers and the public;

(bb) ensure and facilitate competition, access and utilization of facilities by third parties;

(cc) prescribe the form and manner in which any application for any authority, consent or approval under the law relating to petroleum shall be made;

(dd) investigate complaints or disputes arising from petroleum operations;

(ee) enforce local content requirements;

(ff) issue operational permits and non-exclusive exploration permits in accordance with the law relating to petroleum;

(gg) ensure enforcement and compliance with the national values and principles;

(hh) protect consumer, investor and other stakeholder interests;

(ii) provide such information and statistics to the Cabinet Secretary as the Cabinet Secretary may from time to time require;

(jj) collect and maintain energy data;

(kk) develop guidelines on applicable treaties, conventions and protocols affecting the energy sector in consultation with other statutory authorities except those relating to nuclear energy;

(ll) co-ordinate the development and implementation of a national energy efficiency and conservation action plan, in consultation with relevant statutory authorities and other stakeholders;

(mm) develop testing and certification procedures, in conjunction with relevant statutory agencies, for certification and testing for energy consumption of equipment and appliances;

(nn) ensure, in collaboration the Kenya Bureau of Standards, that only energy efficient and cost effective appliances and equipment are imported into the country;

(oo) certify energy managers and license energy auditors;

(pp) promote, in consultation with the Kenya National Accreditation Service, the establishment of accredited laboratories for energy efficiency; and

(qq) perform any other function that is incidental or consequential to its functions under this Act or any other written law.

11. Powers of the Authority

The Authority shall have all powers necessary for the performance of its functions under this Act and in particular, the Authority shall have the power to—

(a) issue, renew, modify, suspend or revoke licences and permits for all undertakings and activities in the energy sector;

(b) set, review and approve contracts, tariffs and charges for common user petroleum logistics facilities and petroleum products;

(c) set, review and adjust electric power tariffs and tariff structures and investigate tariff charges, whether or not a specific application has been made for a tariff adjustment;

(d) prescribe the form and manner in which any application for any authority, licence, consent or approval under this Act shall be made and the fees payable in respect of such application;

(e) make and enforce directions to ensure compliance with this Act and with the conditions of licenses issued under this Act;

(f) issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled;

(g) formulate, set, enforce and review environmental, health, safety and quality standards for the energy sector in coordination with other statutory authorities;

(h) approve electric power purchase and network service contracts for all persons engaging in electric power undertakings;

(i) investigate and determine complaints or disputes between parties over any matter relating to licences and licence conditions under this Act;

(j) enter, inspect and search any premises where an offence is being committed or is suspected to have been committed;

(k) issue orders or directions to ensure compliance with this Act;

(l) impose such sanctions and fines not exceeding one hundred thousand shillings per violation per day for a maximum of thirty days;

(m) enter, inspect and search any premises at which any undertaking relating to petroleum operations is carried out or an offence is being committed or is suspected to have been committed;

(n) issue orders either requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled in furtherance of its powers under the law relating to petroleum;

(o) impose such sanctions and civil fines not exceeding five hundred thousand shillings per violation per day to secure compliance with orders issued under the law relating to petroleum;

(p) take or remove, for analysis, testing or for use in evidence in connection with the commission of an offence under the law relating to petroleum, samples of petroleum or other substances from any area where any upstream petroleum operations are being carried on; and

(q) inspect, take extracts from, or make copies of any document relating to any upstream petroleum operations.

12. Board of the Authority

(1) The management of the Authority shall vest in the Board of Directors of the Authority consisting of —

(a) a Chairperson who shall be appointed by the President;

(b) the Principal Secretary responsible for Energy or his representative;

(c) the Principal Secretary responsible for Petroleum or his representative;

(d) the Principal Secretary in the National Treasury or his or her authorized representative;

(e) one County Executive Committee member responsible for energy and petroleum or his representative nominated by the Council of County Governors;

(f) the Director-General; and

(g) five other members not being public officers appointed by the Cabinet Secretary.

(2) A person shall be qualified for appointment as a Chairperson under subsection (1) (a) or member of the Board under subsection (1)(g) if such person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya or its equivalent;

(c) has at least seven years' relevant professional experience;

(d) is a member in good standing of the relevant professional association; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The Chairperson and members of the Board under subsection (1)(g) shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

13. Director-General

(1) The Board shall subject to the approval of the Cabinet Secretary, appoint a Director-General who shall be the chief executive officer of the Authority and shall, subject to the directions of the Board, be responsible for the day to day management of the Authority.

(2) The appointment of the Director-General under this section shall be through a competitive recruitment process.

(3) A person shall be qualified for appointment as a Director-General if such person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya or its equivalent in the fields of engineering, physical sciences, law, finance, environmental studies, economics or energy;

(c) has at least seven years management experience at a senior level;

(d) has at least two years of experience in petroleum and energy;

(e) is a member in good standing of the relevant professional association; and

(f) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Director-General shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(5) The Director-General shall be an *ex officio* member of the Authority but shall have no right to vote at any meetings of the Authority.

14. Conduct of business and affairs of the Board

The conduct and regulation of the business of the Board shall be as provided in the First Schedule, but subject thereto, the Board shall regulate its own procedure and the procedure of any committee constituted under the Act.

15. Terms of office, common seal, annual estimates and books of accounts

The terms of office, vacancy of office, removal from office of the members of the Board, the common seal, the financial year, annual estimates and books of accounts, records, audit and reports of the Authority shall be as accounts provided in the Second Schedule.

16. Staff of the Authority

The Authority may in consultation with the Public Service Commission, appoint such staff as it may require for the proper discharge of its functions under this Act, on such terms and conditions of service as the Authority may determine.

17. Remuneration of members of the Board

The Authority shall upon the advice of the Salaries and Remuneration Commission pay its members of the Board such remuneration, fees or allowances for expenses as it may determine.

18. Protection from personal liability

A matter or thing or an act done by a member of the Board or an officer, employee or agent of the Authority shall not, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority, render the members of the Board, officer, employee or agent or any person acting on lawful directions of the Authority personally liable to any action, claim or demand whatsoever.

19. Liability of the Authority for damages

This Act shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to that person, that person's property or any of that person's interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

20. Funds of the Authority

(1) The funds of the Authority shall consist of—

(a) levies not exceeding one half of a percent on the sales of electricity and petroleum products;

(b) licence fees;

(c) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;

(d) such monies as may be provided by Parliament for the purposes of the Authority;

(e) any revenues generated from any proprietary interest held by the Authority whether movable or immovable;

(f) interest from bank deposits; and

(g) all monies from any other source provided for or donated or lent to the Authority:

Provided that any monies collected by the Authority including levies, fines and penalties in exercise of its functions shall be paid into the Consolidated Fund.

(2) Any funds retained by the Authority shall make part of the funds of the Authority by way of appropriation.

(3) The Cabinet Secretary responsible for matters relating to petroleum may make Regulations to provide for a levy prescribing—

(a) the amount in Kenya Shillings payable per cubic metre of crude oil;

(b) the amount of Kenya Shillings payable per one thousand cubic metre of marketable natural gas;

(c) when the relevant levy may be applied; and

(d) any other requirements for implementation of the levy.

(4) There shall be paid out of the funds of the Authority, all expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

21. Delegation of powers or functions to committees or agents

(1) The Authority may, by resolution either generally or in any particular case delegate to any committee of the Authority or to any member, officer, employee, self-regulated organization or agent of the Authority, the exercise of any of the powers or the performance of any of its functions or duties.

(2) Every such committee, officer, employee, self-regulated organisation or agent shall be appointed by the Authority in writing, setting out the duration of the appointment, the duties, reporting requirements, functions, authority and powers so conferred.

(3) The Authority may at any time revoke a delegation under this section.

(4) A delegation conferred under this section shall not prevent the Authority from performing the delegated function.

(5) In this section, a self-regulated organisation means an organisation whose object is to regulate the operations of its members or the users of its services and includes the organisations that may be recognised as such by the Authority.

22. Powers of committees or agents

(1) Subject to any other written law, a committee member, officer, employee or agent appointed under section 21 may, upon production of evidence of appointment to any person reasonably requiring it, for the purposes of this Act—

(a) enter upon any premises at which any undertaking is carried out or an offence under this Act is or is suspected to have been committed;

(b) inspect and test any process, installation, works or other operation which is or appears likely to be carried out in those premises;

(c) be accompanied by a police officer if there is a reason to believe that any serious obstruction may occur;

(d) require from any person the production of any book, notice, record, list or other document which appears to the committee, officer, employee or agent to have relevance to the inspection or inquiry, which is in the possession or custody or under the control of that person or of any other person on that committee's or agent's behalf;

(e) examine and copy any part of any book, notice, record, list or other document which appears to have relevance to the inspections or inquiry, and require any person to give an explanation of any entry therein, and take possession of any such book, notice, record, list or other document as the committee, officer, employee or agent believes may afford evidence of an offence under this Act;

(f) require information relevant to the committee, officer, employee or agent's inspection or inquiry from any person whom the committee, officer, employee or agent has reasonable grounds to believe is or has been employed at any such premises or to have in that person's possession or custody or under the person's control any article referred to in this subsection; or

(g) exercise such other powers as may be necessary in connection with the inspection or inquiry and other powers of his appointment under section 21.

(2) A committee, member, officer, employee or agent entering any premises under this section may be accompanied by such persons as the committee, officer, employee or agent deems necessary and may enter with such equipment as may be necessary for the performance of their functions.

(3) Where—

(a) the premises to which this section relates are unoccupied;

(b) the owner, occupier or person in charge thereof is temporarily absent; or

(c) entry thereon is refused or obstructed;

the committee, officer, employee or agent may use such force as is reasonably necessary to effect entry:

Provided that in the case of an entry under paragraph (a) or (b)—

(i) reasonable steps shall be taken prior to entry by the committee, officer, employee or agent to find the owner, occupier or person in charge of the premises to be entered; and

(ii) the premises shall be left by the committee, officer, employee or agent as effectively secured against trespassers as they were found.

(4) Where it is suspected that an undertaking is being carried contrary to any licence, permit or regulations issued under this Act, an officer or agent of the Authority may, in the course of his duty, lock up, seal, mark or otherwise secure—

(a) any building, room, place, receptacle or item of plant;

(b) any goods or materials in a factory; or

(c) aircraft, vessels, vehicles or containers.

(5) A person who, unless authorized, opens, breaks, alters or in any way interferes with a lock, seal, mark or other fastening placed by a committee, officer, employee or agent in accordance with the provisions of this section on any building, room, place, receptacle, item of plant, goods, or materials, commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

(6) A person who resists, hinders or obstructs any committee, officer, employee or agent acting in the course of the committee's or agent's duty under this section or who wilfully fails to comply with any requirements lawfully made thereunder commits an offence and shall, on conviction, be liable to a fine of not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs.

23. Decisions of the Authority

(1) The Authority shall within sixty days from the date of receipt of a request by an applicant, make its decision on any matter before it.

(2) A decision of the Authority shall be in writing and any order given and reasons thereof shall be served upon all parties to the proceedings, and may be published in the *Gazette* as prescribed by regulations.

(3) The Authority shall, within seven days of making a decision, communicate such decision to the parties involved.

(4) All orders of the Authority shall become effective on the date of entry thereof, and shall be complied with within the time prescribed therein.

(5) Where the Authority does not make a decision as provided in subsection (1) the appellant may appeal to the Tribunal within seven days of the expiry of the prescribed period.

24. Appeal against a decision of the Authority

(1) A person aggrieved by a decision of the Authority may appeal to the Tribunal within thirty days of receipt of the decision.

(2) Notwithstanding subsection (1), the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.

Energy and Petroleum Tribunal

25. Establishment of the Energy and Petroleum Tribunal

There is established the Energy and Petroleum Tribunal, hereinafter referred to as "the Tribunal", for the purpose of hearing and determining disputes and appeals in accordance with this Act or any other written law.

26. Members of the Tribunal

(1) The Tribunal shall consist of not more than seven members as follows—

(a) a chairperson who shall be appointed by the President from among persons qualified to be judges of the High Court and who has at least five years' experience in energy and petroleum matters; and

(b) six other persons possessing knowledge and experience in law, petroleum and energy and who are not in the employment of the Government, Agency or the Authority.

(2) The members of the Tribunal shall at the first meeting of the Tribunal elect a vice-chairperson who shall be a person qualified to be a judge of the High Court possessing at least five years' experience in energy and petroleum matters.

(3) A person shall be qualified for appointment under subsection (1) if that person—

(a) is a citizen of Kenya;

(b) holds a degree in a relevant area from a university recognized in Kenya;

(c) is a member in good standing of the relevant professional association;

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chairperson, Vice-Chairperson and members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms office shall fall at different times.

(5) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of a member of the Tribunal, the Cabinet Secretary shall—

(a) by notice in the *Gazette* and in at least two newspapers of national circulation, declare vacancies in the Tribunal, and invite applications from qualified persons; and

(b) convene a selection panel for the purpose of selecting suitable candidates for appointment as members of the Tribunal.

(6) The selection panel shall at its first meeting appoint a chairperson and a vice-chairperson.

(7) An application in respect of a vacancy declared under subsection (5) shall be forwarded to the selection panel within fourteen days of the publication of the notice.

(8) The selection panel shall subject to this section determine its procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions.

(9) The selection panel shall consider the applications, shortlist and publish the names and qualifications of all the applicants and those shortlisted by the panel in the *Gazette* and at least two daily newspapers of national circulation seven days from the expiry of the deadline of receipt of applications under subsection (7).

(10) The selection panel shall interview the shortlisted applicants fourteen days from the date of publication of the list of short listed applicants under subsection (9).

(11) After carrying out the interviews, the selection panel shall select three persons qualified to be appointed as members of the Tribunal, for each vacant position, and forward the names to the Cabinet Secretary.

(12) The Cabinet Secretary shall within seven days of receiving the names, by notice in the *Gazette*, appoint a member or members to the Tribunal.

(13) Where the Cabinet Secretary rejects the list of names forwarded under subsection (11) he shall submit a notice of rejection within seven days of receipt of the names.

(14) Upon the receipt of the notice of rejection under subsection (13), the selection panel shall submit fresh nominations and the procedure set out in this section shall with the necessary modifications apply.

(15) Notwithstanding any provision in this section, the Cabinet Secretary may by notice in the *Gazette* extend the period specified in respect of any matter under this section by a period not exceeding fourteen days.

(16) In selecting, nominating, approving or appointing the members of the Tribunal, the selection panel and the Cabinet Secretary shall—

(a) ensure that the nominees to the Tribunal reflect the interests of all sections of the society;

(b) ensure equal opportunities for persons with disabilities and other marginalized communities; and

(c) ensure that no more than two-thirds of the members shall be of the same gender.

(17) The selection panel shall stand dissolved upon the appointment of the members of the Tribunal.

(18) The members of the Tribunal shall hold office for a period of three years, but shall be eligible for reappointment for one further term.

27. Vacancy in the Tribunal

(1) The office of a member of the Tribunal shall become vacant—

(a) at the expiration of three years from the date of appointment;

(b) if the member accepts any office the holding of which, if he or she were not a member of the Tribunal, would make him or her ineligible for appointment to the office of member of the Tribunal;

(c) if he or she is removed from membership of the Tribunal by the Cabinet Secretary on the recommendation of a tribunal set up for that purpose under subsection (3); or

(d) if he or she dies or resigns from office.

(2) A person desiring the removal of a member of the Tribunal on the ground specified in subsection 1(c) may present a complaint under oath to the Cabinet Secretary setting out the alleged facts constituting that ground.

(3) The Cabinet Secretary shall consider the complaint and if satisfied that it discloses a ground under subsection 1(c)—

(a) may suspend the member pending the outcome of the complaint; and

(b) shall appoint a tribunal in accordance with subsection (4).

(4) The tribunal appointed under subsection (3)(b) shall consist of—

(a) a person who holds or has held office of a judge of a superior court, who shall be the chairperson;

(b) at least two persons who are qualified to be appointed as judge of the high court; and

(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(5) The tribunal shall investigate the matter expeditiously, report on the facts and make a recommendation to the Cabinet Secretary who shall act in accordance with the recommendation within thirty days.

28. Oath of office

A person who is appointed a member of the Tribunal shall, before assuming the duties of the office, take and subscribe to the oath of allegiance to the office.

29. Disclosure of interest

Where a member of the Tribunal, as constituted for the purposes of a proceeding, has any interest, direct or indirect, that could conflict with the proper performance of the member's functions, he or she shall disclose the interest to the parties to the proceeding and shall not be present during any deliberations on the matter by the Tribunal or take part in a decision of the Tribunal on the matter.

30. Secretary and other staff

(1) The Cabinet Secretary shall appoint the secretary to the Tribunal.

(2) A person shall be qualified to be appointed to hold office as secretary to the Tribunal under subsection (1) if such a person is an advocate of the High Court of Kenya of not less than seven years standing.

(3) The Tribunal may appoint such other staff as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

31. Terms of office, common seal, annual estimates and books of accounts

The terms of office, vacancy of office, removal from office of the members of the Tribunal, the common seal, the financial year, annual estimates and books of accounts, records, audit and reports of the Tribunal shall be as provided in the Second Schedule.

32. Arrangement of business

(1) The Chairperson shall be responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal.

(2) Without limiting the operation of subsection (1), the Chairperson shall give directions relating to the—

(a) arrangement of the business of Tribunal;

(b) places at which the Tribunal may sit generally; and

(c) procedure of the Tribunal at a particular place.

(3) The times and places of the hearings of the Tribunal shall be determined by the Chairperson with a view to securing a reasonable opportunity for applicants to appear before the Tribunal with as little inconvenience and expense as is practicable.

(4) The rules of procedure of the Tribunal shall be published in the *Gazette* by the Chairperson.

33. Quorum and conduct of business of the Tribunal

(1) The Chairperson shall preside at all sittings of the Tribunal at which he is present and in the absence of the Chairperson the Vice-Chairperson shall preside.

(2) The quorum of the Tribunal shall be three members including the Chairperson or the Vice-Chairperson as the case may be.

34. Technical advice

The Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings:

Provided that such persons shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.

35. Remuneration

(1) The Tribunal shall, in consultation with the Cabinet Secretary and upon the advice of the Salaries and Remuneration Commission, pay its members such remuneration, fees or allowances for expenses as it may determine from time to time.

(2) Any person who gives technical advice in accordance with section 34 to the Tribunal shall be paid such allowance as may be determined by the Tribunal.

(3) The members of the Tribunal shall serve on part-time basis.

36. Jurisdiction of the Tribunal

(1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the energy and petroleum sector arising under this Act or any other Act.

(2) The jurisdiction of the Tribunal shall not include the trial of any criminal offence.

(3) The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.

(4) The Tribunal shall have appellate jurisdiction over the decisions of the Authority and any licensing authority and in exercise of its functions may refer any matter back to the Authority or any licensing authority for re-consideration.

(5) The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.

(6) The Tribunal shall hear and determine matters referred to it expeditiously.

37. Power of review and appeals from Tribunal

(1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its judgments and orders.

(2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a court of law.

(3) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.

(4) The law applicable to applications for review to the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to applications for review from the Tribunal to the High Court.

38. Procedure of the Tribunal

(1) The Tribunal shall meet as and when there is need to exercise its jurisdiction under this Act.

(2) Unless a unanimous decision is reached, a decision on any matter before the Tribunal shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(3) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice and rules of evidence of a similar nature.

(4) Except as prescribed in this Act, the Tribunal shall regulate its own procedure.

39. Funds of the Tribunal

(1) The funds of the Tribunal shall consist of—

(a) such monies as may, from time to time, be appropriated by Parliament for that purpose;

(b) interest from bank deposits; and

(c) grants as may approved by the Judicial Service Commission.

(2) There shall be paid out of the funds of the Tribunal, all expenditure incurred by the Tribunal in the exercise of its powers or the performance of its functions under this Act.

40. Appeals from decisions of the Authority

Where under this Act the provision is made for appeals from the decisions of the Authority or any licensing authority, all such appeals shall be made to the Tribunal, in accordance with the provisions of this Act.

41. Protection from personal liability

A matter or thing or act done by a member of the Tribunal or any officer, employee or agent of the Tribunal shall not, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Tribunal, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

42. Any reference that has been made to the court

The Tribunal shall have appellate jurisdiction to hear and determine appeals to all disputes arising from decisions of the Authority or licensing authority relating to energy matters and any matter referred to the Authority or any licensing authority.

Rural Electrification and Renewable Energy Corporation

43. Establishment of the Rural Electrification and Renewable Energy Corporation

(1) There is established the Rural Electrification and Renewable Energy Corporation herein referred to as the Corporation.

(2) The Corporation shall be a body corporate with perpetual succession, a common seal and shall in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing and lending money; and

(d) doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.

44. Functions and powers of the Corporation

(1) The Corporation shall perform such functions and exercise such powers as may be necessary under this Act to—

(a) oversee the implementation of the Rural Electrification Programme;

(b) manage the Rural Electrification Programme Fund established under section 143;

(c) source additional funds for the Rural Electrification Programme and renewable energy;

(d) develop and update the rural electrification master plans in consultation with County Governments;

(e) develop and update the renewable energy master plan taking into account county specific needs and the principle of equity in the development of renewable energy resources;

(f) support the establishment of energy centres in the counties;

(g) establish framework for collaboration with County Governments in the discharge of its mandate;

(h) undertake on-farm and on station demonstration of wood-fuel species, seedling production and management;

(i) undertake feasibility studies and maintain data with a view to availing the same to developers of renewable energy resources;

(j) develop, promote and manage in collaboration with other agencies, the use of renewable energy and technologies, including but not limited to biomass (biodiesel, bio-ethanol, charcoal, fuel-wood, biogas) municipal waste, solar, wind, tidal waves, small hydropower and co-generation but excluding geothermal;

(k) formulate, in conjunction with the Agency, a national strategy for coordinating research in renewable energy;

(l) undertake, in conjunction with the Agency, research, development and dissemination of appropriate renewable energy technologies;

(m) provide an enabling framework for the efficient and sustainable production, conversion, distribution, marketing and utilization of biomass, solar, wind, small hydros, municipal waste;

(n) promote, in conjunction with the agency responsible for forests, the use of fast maturing trees for energy production including bio-fuels and the establishment of commercial woodlots including peri-urban plantations;

(o) promote, in collaboration with other agencies, the development of appropriate local capacity for the manufacture, installation, maintenance and operation of renewable technologies such as bio-digesters, solar systems, turbines and other renewable energy technologies;

(p) promote international co-operation programmes focusing on renewable energy sources;

(q) harness opportunities offered under clean development mechanism and other mechanisms including, but not limited to, carbon credit trading to promote the development and exploitation of renewable energy sources;

(r) promote the development of electricity generation through co-generation by sugar millers;

(s) provide technical and other capacity building support to County Governments in the discharge of the function of electricity reticulation and energy regulation; and

(t) undertake any other duty or perform such other function as may be necessary for the execution of its mandate under this Act.

(2) In developing the master plans contemplated under subsections (1)(d) and (e), the Corporation shall take into account the provisions of section 5(5) of this Act.

45. Board of the Corporation

(1) The management of the Corporation shall vest in the Board of Directors of the Corporation which shall consist of—

(a) a Chairperson appointed by the President;

(b) the Principal Secretary in the Ministry responsible for energy or his representative;

(c) the Principal Secretary in the National Treasury or his representative;

(d) the Chief Executive Officer who shall be the Secretary to the Board;

(e) three members appointed by the Cabinet Secretary; and

(f) four other members appointed by the Council of County Governors.

(2) A person shall be qualified for appointment as a chairperson or member of the Board under subsections (1)(a), (e) and (f) respectively if such person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya or its equivalent in the fields of engineering, physical sciences, law, finance, economics, social sciences or energy;

(c) has at least seven years relevant professional experience;

(d) is a member in good standing of the relevant professional association; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The Chairperson and members under subsection (1)(e) and (f) shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

46. Chief Executive Officer

(1) The Board shall appoint a Chief Executive Officer who shall be the chief executive of the Corporation and shall, subject to the directions of the Board, be responsible for the day to day management of the Corporation.

(2) The Chief Executive Officer shall be appointed through a competitive recruitment process.

(3) A person shall be qualified for appointment as a Chief Executive Officer if such person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya or its equivalent in the fields of engineering, physical sciences, law, finance, economics or energy;

(c) has at least seven years relevant professional experience;

(d) is a member in good standing of the relevant professional association; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall have no right to vote at any meetings of the Board.

47. Conduct of business of the Corporation

The conduct and regulation of the business of the Board shall be as provided in the First Schedule, but subject thereto, the Board shall regulate its own procedure and the procedure of any committee thereof.

48. Terms of office, common seal, annual estimates and books of accounts

The terms of office, vacancy of office, removal from office of the members of Board, the common seal, the financial year, annual estimates and books of accounts, records, audit and reports of the Corporation shall be as provided in the Second Schedule.

49. Staff of the Corporation

The Corporation shall in consultation with the Public Service Commission appoint such staff as it may require for the proper discharge of the functions of the Corporation under this Act, on such terms and conditions of service as the Board may determine.

50. Remuneration of Board members

The Corporation shall, in consultation with the Cabinet Secretary and upon the advice of the Salaries and Remuneration Commission, pay its members such remuneration, fees or allowances for expenses as it may determine from time to time.

51. Protection from personal liability

A matter or thing or act done by a member of the Board or any officer, employee or agent of the Corporation shall not, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Corporation, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

52. Liability of the Corporation for damages

This Act shall not relieve the Corporation of the liability to pay compensation or damages to any person for an injury to that person, that person's property or any of the persons' interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

53. Funds of the Corporation

(1) The funds of the Corporation shall consist of—

(a) monies from the Rural Electrification Programme Fund established under section 143;

(b) such monies as may, from time to time, be appropriated by Parliament for that purpose;

(c) money's allocated from the consolidated energy fund for promotion and development of renewable energy initiatives;

(d) interest from bank deposits; and

(e) revenue from other sources including loans, grants, gifts or donations approved by the Cabinet Secretary.

(2) There shall be paid out of the funds of the Corporation, all expenditure incurred by the Corporation in the exercise of its powers or the performance of its functions under this Act or any other written law.

Nuclear Power and Energy Agency

54. Establishment of the Nuclear Power and Energy Agency

(1) There is established the Nuclear Power and Energy Agency hereinafter referred to as the Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and

(c) doing or performing all such other things or acts for the furtherance of the provisions of this Act or the performance of its functions which may lawfully be done by a body corporate.

55. Headquarters

(1) The headquarters of the Agency shall be in Nairobi.

(2) Subject to the provisions of any other written law as to the meetings of the Agency, the Agency may hold its sittings at any place in Kenya.

56. Objects and functions of the Agency

(1) The Agency shall—

(a) be the nuclear energy programme implementing organization and promote the development of nuclear electricity generation in Kenya; and

(b) carry out research, development and dissemination activities in the energy and nuclear power sector.

(2) Notwithstanding the generality of sub section (1), the Agency shall—

(a) propose policies and legislation necessary for the successful implementation of a nuclear power programme;

(b) undertake extensive public education and awareness on Kenya's nuclear power programme;

(c) identify, prepare and facilitate implementation of an approved roadmap for a nuclear power programme;

(d) in collaboration with the relevant Government agencies develop a comprehensive legal and regulatory framework for nuclear electricity generation in Kenya;

(e) develop a human resource capacity to ensure Kenya has the requisite manpower to successfully establish and maintain a nuclear power programme;

(f) identify appropriate sites in Kenya for the construction of nuclear power plants and their related amenities;

(g) enter into collaborative programmes with other countries, international and national organisations in relation to nuclear electricity research and development;

(h) identify a suitable operator for nuclear power plants;

(i) establish a well-stocked library and information centre on nuclear science and technology;

(j) promote local, regional and international participation in research activities, particularly in technology-oriented research;

(k) put in place mechanisms to attract private sector funding in research and human resource development for matters relating to energy;

(l) undertake a national research and human resource development road-mapping to assess the status of research in key energy technologies;

(m) promote local production of energy technologies;

(n) collaborate with institutions that collect, analyse and prepare policy papers in order to access energy sector specific information;

(o) enhance research linkages between industry and academia in matters relating to energy;

(p) continuously train and upgrade human resource capacity in the energy sector to keep up with the changing technological issues in collaboration with training institutions;

(q) advise on training curriculum and training needs targeting key areas in the energy sector;

(r) direct, monitor, conduct and implement energy research and technology development in all fields of energy;

(s) promote energy research and technology innovation;

(t) provide for—

(i) training and development in the field of energy and petroleum, research and technology development; and

(ii) commercialization of energy technologies resulting from energy research and development programmes;

(u) register patents and intellectual property in its name resulting from its activities;

(v) authorize other persons for the use of its patents and intellectual property on such terms as the Agency may deem fit;

(w) publish its research findings and other research materials;

(x) establish facilities for the collection and dissemination of information in connection with research, development and innovation in the energy sector;

(y) undertake any other energy technology development related activity as directed by the Cabinet Secretary;

(z) collaborate with relevant training centres to ensure synergy in matters relating to energy;

(aa) promote relevant energy research through cooperation with any entity, institution or person equipped with the relevant skills and expertise;

(bb) make grants to educational and scientific institutions in aid of research in energy issues or for the establishment of facilities for such research;

(cc) promote the training of research workers in the energy sector by granting bursaries or grants-in-aid for research;

(dd) undertake the investigations or research that the Cabinet Secretary, after consultation with relevant institutions, may assign to it;

(ee) advise the Cabinet Secretary on research in the field of energy technology;

(ff) create awareness and disseminate information on the efficient use of energy and its conservation; and

(gg) undertake any other functions as may be necessary for the execution of its mandate under this Act.

57. Powers of the Agency

The Agency shall have all the powers necessary for the performance of its functions under this Act.

58. Board of Directors of the Agency

The management of the Agency shall vest in the Board of Directors of the Agency which shall consist of—

(a) a Chairperson who shall be appointed by the President;

(b) the Attorney-General or his representative;

(c) the Principal Secretary or his representative in each of the Ministries for the time being responsible for—

(i) energy and petroleum;

(ii) education, science and technology; and

(iii) the National Treasury.

(d) the Chief-Executive Officer; and

(e) not more than four other members appointed by the Cabinet Secretary out of whom—

(i) one person shall be a registered engineer with experience of five years in nuclear energy; and

(ii) one person from an institution of higher education.

59. Qualifications for appointment as a Chairperson and member of the Board

(1) A person shall be qualified for appointment under section 58 as a Chairperson if the person is a holder of a degree recognized in Kenya in the fields of engineering, physical sciences, law, finance, economics or energy.

(2) In addition to the qualifications listed in subsection (1), for appointment as member of the Board, the person must—

(a) be a citizen of Kenya;

(b) have had at least seven years' relevant professional experience;

(c) be a member in good standing of the relevant professional association; and

(d) meet the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The Chairperson and members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

60. Functions of the Board

The Board shall have all the powers necessary for the proper performance of its functions under this Act, and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

(a) manage, supervise and administer the assets of the Agency in such a manner as best promotes the purpose for which it is established;

(b) determine the provisions to be made for capital, recurrent expenditure and reserves of the Agency;

(c) receive any grants, gifts, donations or endowments on behalf of the Agency and make legitimate disbursements there from;

(d) open a banking account or bank accounts for the funds of the Agency;

(e) approve the annual work plan including the short and long term programs of the Agency; and

(f) any other function that enhances or adds value to the proper performance of the Agency.

61. Chief Executive Officer

(1) The Board shall appoint a Chief Executive Officer of the Agency who shall, subject to the directions of the Board, be responsible for the day to day management of the Agency.

(2) The appointment of the Chief Executive Officer under this section shall be through a competitive recruitment process.

(3) A person shall be qualified for appointment as Chief Executive Officer if such person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya or its equivalent in the fields of engineering, nuclear sciences, law, finance, economics or energy and related fields;

(c) has at least seven years' relevant professional experience;

(d) is a member in good standing of the relevant professional association;

(e) has at least seven years' management experience in a senior position; and

(f) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(5) The Chief Executive Officer shall be an *ex officio* member of the Board but shall have no right to vote at any meetings of the Board.

62. Conduct of business of the Agency

The conduct and regulation of the business of the Agency shall be as provided in the First Schedule, but subject thereto, the Agency shall regulate its own procedure and the procedure of any committee thereof.

63. Terms of office, common seal, annual estimates and books of accounts

The terms of office, vacancy of office, removal from office of the members of the Board, the common seal, the financial year, annual estimates and books of accounts, records, audit and reports of the Agency shall be as provided in the Second Schedule.

64. Committees

(1) The Board may establish such committees as it may consider appropriate.

(2) The Board may from time to time co-opt into its membership one or more persons to assist it in any particular matter for the time being before the Board but such co-opted person shall have no voting rights.

65. Delegation by Board

The Board may, by resolution either generally or in any particular case delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions or duties.

66. Staff of the Agency

The Agency may, in consultation with the Public Service Commission, appoint such staff as it may require for the proper discharge of its the functions.

67. Remuneration

The Chairperson, members, and staff of the Agency shall be paid such remuneration, fees or allowances as the Cabinet Secretary on the recommendation of the Salaries and Remuneration Commission may determine.

68. Protection from personal liability

Nothing done by a member of the Board or any officer, employee or agent of the Agency shall, if it is done *bona fide* for executing the functions, powers or duties of the Agency, render the member, officer, employee or agent or any person acting on the directions of the Agency personally liable to any action, claim or demand whatsoever.

69. Liability of the Agency for damages

This Act shall not relieve the Agency of the liability to pay compensation or damages to any person for an injury to that person, that persons' property or any of the persons' interests caused by the exercise of the

powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

70. Funds of the Agency

The funds of the Agency shall comprise—

(a) such sums as may be appropriated by Parliament for the purposes of the Agency;

(b) funds from the Consolidated Energy Fund established under section 216;

(c) interests from bank deposits;

(d) donations, grants, fees or contributions which the Agency may receive from any person, body, government or administration; and

(e) such monies as may accrue to or vest in the Agency in the course of the exercise of its powers or the performance of its functions under this part or under any other written law.

71. Investments of funds

(1) The Agency may from time to time, with the approval of the Cabinet Secretary and concurrence of the National Treasury, invest any of its funds in any securities in trust funds authorized by law.

(2) The Agency may, subject to approval of the Cabinet Secretary and concurrence of the National Treasury, place on deposit with such bank or banks as it may determine, any monies not immediately required for any of its purposes.

72. Discoveries, inventions and improvements

(1) Subject to subsections (5) and (6), the rights in all discoveries and inventions and in all improvements in respect of processes, apparatus and machines made by—

(a) employees of the Agency or officers and employees in the public service who have been seconded to the Agency;

(b) persons assisting the Agency with any investigation or research; or

(c) persons to whom contracts, including bursaries or grants-in-aid, have been granted by the Agency,

shall vest in the Agency.

(2) The Agency may make the discoveries, inventions and improvements referred to in subsection (1) available for use in the public interest subject to the conditions and the payment of fees or royalties that the Agency may determine.

(3) In respect of the rights in any discovery, invention or improvement that are contemplated in subsection (1), the Agency may award to the person responsible for the discovery, invention or improvement such bonus as it may consider necessary, or make provision for financial participation by him or her in the profit derived from such discovery, invention or improvement to such extent as the Cabinet Secretary may determine in consultation with the Cabinet Secretary of the National Treasury.

(4) The Agency may apply for a patent in respect of any discovery, invention or improvement contemplated in subsection (1), and shall for the purposes of the Industrial Property Act (Cap. 509) be regarded as the assignee of the discoverer or inventor in question.

(5) Unless it is otherwise agreed, the rights in a discovery, invention or improvement made by the Agency in the course of an investigation for or on behalf of another person, Government or administration shall vest with the Agency.

(6) The provisions of this section shall not apply in respect of a discovery or an invention or improvement referred to in subsection (1) which, in the opinion of the Board, was made by the person concerned other than—

(a) in the course of the performance of his or her duties as an employee of the Agency;

(b) during the performance of functions in respect of which he or she has been seconded to the Agency;

(c) in the course of any investigation or research while assisting the Agency; or

(d) in the course of any research in respect of which he or she receives a bursary or grant-in-aid from the Agency, which is not connected with such employment, functions, investigation or research.

Part IV – RENEWABLE ENERGY

73. Vesting of renewable energy resources

All unexploited renewable energy resources under or in any land vests in the National Government subject to any rights which, by or under any written law, have been or are granted or recognized as being vested in any other person.

74. Preparation of resource maps and renewable energy resources inventory

(1) The Cabinet Secretary shall, within twelve months of coming into force of this Act, commence a countrywide survey and a resource assessment of all renewable energy resources.

(2) The Cabinet Secretary shall prepare a renewable energy resources inventory and resource map in respect of each renewable energy resource area and thereafter prepare updates biennially which shall be published in the *Gazette*.

(3) In preparing the renewable energy resources inventory and resource map under subsection (2), the Cabinet Secretary shall have regard to relevant data, information, maps, documents or reports.

75. Promotion of renewable energy

(1) The Cabinet Secretary shall promote the development and use of renewable energy technologies, including but not limited to biomass, biodiesel, bioethanol, charcoal, fuelwood, solar, wind, tidal waves, hydropower, biogas and municipal waste.

(2) The Cabinet Secretary may in conjunction with relevant agencies perform such functions and exercise such powers as may be necessary under this Act to promote the development and use of renewable energy, including but not limited to—

(a) formulating a national strategy for coordinating research in renewable energy;

(b) providing an enabling framework for the efficient and sustainable production, distribution and marketing of biomass, solar, wind, small hydros, municipal waste, geothermal and charcoal;

(c) promoting the use of fast maturing trees for energy production including biofuels and the establishment of commercial woodlots including peri-urban plantations;

(d) promoting the use of municipal waste for energy production;

(e) promoting the development of appropriate local capacity for the manufacture, installation, maintenance and operation of basic renewable technologies such as bio-digesters, solar systems and turbines;

(f) promoting international co-operation on programmes focusing on renewable energy sources;

(g) harnessing opportunities offered under clean development mechanism and other mechanisms including, but not limited to, carbon credit trading to promote the development and exploitation of renewable energy sources;

(h) promoting the utilization of renewable energy sources for either power generation or transportation;

(i) promoting co-generation of electric power by sugar millers and sale of such electric power through the National Grid directly to the consumers; and

(j) promoting the production and use of gasohol and biodiesel.

76. Establishment of Renewable Energy Resource Advisory Committee

(1) There is established an inter-ministerial Committee known as the Renewable Energy Resource Advisory Committee.

(2) The Renewable Energy Resource Advisory Committee is composed of—

(a) principal secretary in the Ministry of Energy or his or her representative who shall be the Chairperson;

(b) chief executive officer of the Corporation or his representative, who shall be the Secretary;

(c) managing director of the Geothermal Development Company Limited or his or her representative;

(d) managing director of the Kenya Electricity Generating Company Limited or his or her representative;

(e) Attorney-General or his or her representative;

(f) principal secretary of the National Treasury or his or her representative; and

(g) principal secretary responsible for matters relating to natural resources or his or her representative.

(3) The Renewable Energy Resource Advisory Committee may co-opt such other members as it may deem necessary but in any case not more than four members shall be co-opted.

(4) The Renewable Energy Resource Advisory Committee shall advise the Cabinet Secretary on—

(a) criteria for allocation of renewable energy resource;

(b) licensing of renewable energy resource areas;

(c) management of water towers and catchment areas;

(d) development of multi-purpose projects such as dams and reservoirs for power generation, portable water, flood control and irrigation with a view to ensuring proper coordination at policy, regulatory, conservation and operational levels on matters relating to the various uses of water resources; and

(e) management and development of renewable energy resources.

(5) The Renewable Energy Resource Advisory Committee may upon request advise the County Governments on matters relating to renewable energy resources.

Geothermal Resources

77. Geothermal resources vested in the National Government

All unextracted geothermal resources under or in any land shall vest in the National Government.

78. Unauthorized use of geothermal resources prohibited

Notwithstanding anything to the contrary in any written law or instrument of title, no person shall sink a well, tap, take, use or apply geothermal resources for any industrial or commercial purpose unless he is granted authority or licence under this Act.

79. Cabinet Secretary to authorize search of geothermal resources

(1) The Cabinet Secretary may authorize any person in writing, to make surveys, investigations, tests and measurements in search of geothermal resources and for that purpose the authorized person may—

(a) enter upon any land specified in the authority with such other persons, gear, appliances, and equipment as he or she deems fit;

(b) sink any well on the land;

(c) make geological surveys and geophysical surveys on the land; and

(d) generally do all things necessary in connection with the survey, investigation, test or measurement.

(2) A person granted authority under this section, shall comply with the provisions of Part VIII of this Act.

(3) Every authority granted under this section shall be subject to—

(a) the condition that every well made pursuant to the authority shall be—

(i) kept under close supervision; and

(ii) maintained or abandoned in a safe condition;

(b) such other conditions as the Cabinet Secretary may impose either at the time of granting the authority or subsequently at the time of closure of the well.

(4) An authority granted under this section shall not be transferable, and shall be in force for a period of two years from the date of issue, but may be renewed for a period of one year from the date of expiration thereof or from the expiration of any renewal.

(5) An authority granted under this section may be revoked by the Cabinet Secretary on the grounds that—

(a) the person to whom the authority is granted has not complied with any requirement or condition of the Cabinet Secretary's authority;

(b) operations being carried on under the authority are, in the opinion of the Cabinet Secretary, detrimentally affecting other specified wells or the supplies of geothermal resources;

(c) the authorized person has not commenced a search of geothermal resources for a continuous period of five years; and

(d) it is in the public interest that operations being carried on under the authority should cease.

80. Cabinet Secretary may grant a geothermal resources licence

(1) The Cabinet Secretary may, on receiving an application for the extraction of geothermal resources in respect of any land, and in consultation with the Renewable Energy Resource Advisory

Committee grant a licence over part or the whole of a geothermal resources area under such terms and conditions as the Cabinet Secretary may determine in accordance with Article 71 of the Constitution.

(2) An application for a licence to be issued under this section shall be in the approved form and be accompanied by the prescribed fees.

(3) The Cabinet Secretary in granting a licence under this section shall do so in an open, competitive and transparent manner.

(4) A licence may be granted under this section for such term, not exceeding thirty years, as the Cabinet Secretary may determine and shall be in the prescribed form.

(5) Where the Cabinet Secretary, rejects the application for a licence under this section, the Cabinet Secretary shall provide the applicant with the reasons for such refusal within fourteen days.

(6) Any decision made under this section shall be upon the advice of the Renewable Energy Resource Advisory Committee.

(7) An applicant who is dissatisfied with the decision of the Cabinet Secretary, under this section may appeal to the Tribunal within thirty days of receipt of the decision.

(8) An applicant aggrieved by a decision of the Tribunal under subsection (7) may appeal to the High Court against the decision of the Tribunal.

(9) Within one hundred and twenty days after an applicant files an appeal under subsection (8), the High Court shall hear and determine the appeal.

(10) If the High Court fails to hear and determine the appeal within the period referred to under subsection (9), the decision of the Tribunal shall be final.

81. Rights under licence

(1) Without prejudice to Part VIII, a licence issued under section 80 shall, subject to this Act and other relevant laws, confer upon the licensee the right—

(a) to enter upon the land being the subject of the licence to sink a well and to extract geothermal resources and to do all such things as are reasonably necessary for the conduct of those operations;

(b) in so far as it may be necessary for and in connection with the operations referred to in paragraph (a) to—

(i) drill and construct all necessary wells;

(ii) erect, construct and maintain houses and buildings for his own use and for use by his employees;

(iii) erect, construct and maintain plant, machinery, buildings and other erections as may be necessary;

(iv) utilize the geothermal resources;

(v) subject to the law governing water resources, to reclaim and utilize any water; and

(vi) construct and maintain roads and other means of communication and conveniences;

(c) to take and use or apply the geothermal resources for any purpose specified in the licence.

(2) Where any by-product obtained in the production of geothermal resources may be reclaimed for further use or sale and is a mineral within the meaning of the law governing mining, the licensee shall exploit the same after obtaining a licence under the law relating to mining.

(3) Where any other natural resource is discovered in the course of exploration and production of geothermal resources, the licensee shall inform the Cabinet Secretary within seven days of such discovery.

82. Renewal and surrender of licence, etc

The Cabinet Secretary may, on the advice of the Authority—

(a) renew a licence for a term not exceeding five years after the initial expiry or any renewal thereof subject to such terms and conditions as the Cabinet Secretary may consider necessary;

(b) wholly or partly remit all or any of the terms and conditions contained in any licence where, owing to special circumstances, in his opinion, compliance therewith would be impossible or great hardship would be inflicted upon the licensee;

(c) extend time to the licensee for complying with the terms and conditions of any licence upon such terms and conditions as the Cabinet Secretary may consider necessary; or

(d) accept, whether with a view to renewing or re issuing any licence or otherwise the surrender of any licence or any part of the area comprised therein upon such terms and conditions as the Cabinet Secretary may consider necessary, but no such surrender shall affect any liability incurred by the licensee before the surrender shall have taken effect.

83. Transfer of geothermal licence

The licensee shall not transfer or assign the licence or any part thereof without the consent in writing of the Cabinet Secretary signified by endorsement thereon.

84. Forfeiture of licence

(1) The Cabinet Secretary may declare a licence to be forfeited—

(a) if the licensee ceases work in or under the land the subject of the licence during a continuous period of six months, without the written consent of the Cabinet Secretary;

(b) if the licensee commits a breach or is in default of any provision of this Act or of the regulations made thereunder or of any terms or conditions of the licence and the Cabinet Secretary has caused a notice to be served upon the licensee requiring him to—

(i) in the case of a breach which, in the opinion of the Cabinet Secretary, is capable of being repaired or made good, to repair or make good the breach within a specified period; or

(ii) in the case of a breach which, in the opinion of the Cabinet Secretary, is not capable of being repaired or made good, to show cause within a specified period why the licence should not be forfeited.

(2) The forfeiture of a licence under subsection (1) shall not affect any liability already incurred by the licensee.

(3) The forfeiture of a licence under subsection (1) shall be published in the *Gazette*.

85. Royalty

(1) The licensee shall pay a royalty on the value at the wellhead of the geothermal resources extracted —

(a) of not less than one per centum and not more that two and half per centum of the value of geothermal energy produced from such resources during the first ten years of production under the licence;

(b) of not less than two per centum and not more than five per centum of the value of the geothermal energy produced from such resources during each year after such ten year period; but

(c) shall not include any geothermal energy that is dissipated before it reaches the point of delivery to the purchaser.

(2) For purposes of this section the value of geothermal energy at the well head is a value calculated by subtracting from the price that could reasonably be realized on sale of the energy to a genuine purchaser at arm's length from the producer, all reasonable expenses, reasonably incurred by the producer in getting the energy to the point of delivery to the purchaser.

(3) Any royalty received by the National Government from geothermal energy produced under this section shall be paid into the Treasury of the National Government and apportioned between the National Government, County Government and the local community as follows—

(a) the county government's share shall be equivalent to twenty percent of the royalties:

Provided that the amount allocated in accordance to this subsection shall not exceed the amount allocated to the County Government by Parliament in the financial year under consideration.

(b) the local community's share shall be equivalent to five percent of the royalties and shall be payable through a trust fund managed by a board of trustees established by the local community in accordance with regulations under this Act:

Provided that the amount allocated above shall not exceed one quarter of the amount due to the County Government by Parliament in the financial year under consideration.

(c) the remaining seventy five per centum shall be treated as National revenue to be dealt with in accordance with Article 203 of the Constitution.

(4) Notwithstanding subsection (3), where the resource is being exploited in one or more counties the Cabinet Secretary shall, in consultation with the Commission for Revenue Allocation, determine the rate of apportionment of the county share between the counties.

(5) The Cabinet Secretary may waive, suspend, or reduce the royalty for any licensee in the interest of encouraging the greatest utilization of geothermal resources, if the Cabinet Secretary determines that this is necessary to promote development or that the licence cannot be successfully operated under the licence terms.

(6) The Cabinet Secretary shall publish any waiver granted under this section.

86. Licensee to re-enter under certain conditions

(1) Any licensee whose licence has expired or has been surrendered or forfeited may, within ninety days of the date of the expiry, surrender or forfeiture, apply to the Cabinet Secretary to enter the land which was comprised in the licence to remove the plant, machinery, engines or tools installed or erected on the land.

(2) The Cabinet Secretary may require the licensee to remove the plant, machinery, engines or tools within a reasonable time, and if the plant, machinery, engines or tools are not removed within a reasonable time they may be sold by auction at the cost of the licensee.

(3) The net proceeds of the sale conducted pursuant to subsection (2) shall be held until applied for by the licensee but may be used in the repair of breaches or faults not made good by the licensee and for the payment of the costs incurred in conducting the sale.

87. Safety of persons

A licensee shall be liable for any loss, damage or injury to any person or property resulting from the licensee's works or operations, whether as a result of negligence or otherwise.

88. Cabinet Secretary may require well to be closed

(1) Notwithstanding any other provisions of this Act, the Cabinet Secretary may, at any time, order a well to be closed after giving notice to any person in accordance with subsection (2) on any of the following grounds—

(a) that the well is a source of danger to persons or property in the vicinity;

(b) that the well is, in the opinion of the Cabinet Secretary, affecting detrimentally other specified wells or the supplies of geothermal resources for other specified purposes;

(c) that the well is a nuisance in law or that it is otherwise in the public interest that the well should be closed;

(d) that the well is no longer necessary for operation in accordance with plans approved by him;

(e) for the protection of the environment including ground water against contamination; or

(f) in the interest of conservation of the geothermal resources.

(2) Notice to close a well may be given under this section by the Cabinet Secretary to the licensee entitled to use or apply the geothermal resources from the well for any purpose and if there is no licence granted under this Act the notice may be given to—

(a) the person authorized by the Cabinet Secretary to sink the well;

(b) a person who made or assisted to sink the well without any authority; or

(c) the owner of the land if that owner permitted the well to be drilled without the authority of the Cabinet Secretary.

(3) The Government shall not pay any compensation resulting from the closure of any well but the Cabinet Secretary may consider the refund of part of the fees which may have been paid in respect of any authority or licence in relation to a well which the Cabinet Secretary has ordered to be closed under this section, except that no refund of any part of fees shall be made in respect of any well made without the authority of the Cabinet Secretary.

89. Charges payable for extraction of geothermal resources for certain purposes

(1) The Cabinet Secretary shall upon recommendation of the Authority formulate regulations to determine the prescribed levies and rentals for the extraction of geothermal resources for industrial or commercial purposes.

(2) The Cabinet Secretary shall levy the prescribed fees, and rentals for the extraction of geothermal resources for industrial or commercial purposes in accordance with subsection (1).

90. Offences and penalties

(1) A person who intends to drill or drills any well, extracts, takes, uses or applies geothermal resources for commercial or industrial purposes in contravention of this Act commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings and if the offence is of a continuing nature, to a further fine of not less than one hundred thousand shillings for every day or part of a day during which that offence continues.

(2) A person who removes, damages, destroys or otherwise interferes with any survey pegs or beacons placed on the ground in connection with any survey lawfully carried on under this Act commits an

offence and shall on conviction, be liable to a fine not exceeding one million shillings and if the offence is of a continuing nature, to a further fine not exceeding one hundred thousand shillings for every day or part of a day up to a maximum of thirty days during which that offence continues, or to imprisonment for a term not exceeding twelve months or to both.

(3) A person who removes, damages, destroys or otherwise interferes with any valve or instrument being used in connection with any such survey or with any well, or any geothermal generation power plant or steam highways commits an offence and shall on conviction, be liable to a fine not exceeding one million shillings and if the offence is of a continuing nature, to a further fine not exceeding one hundred thousand shillings for every day or part of a day up to a maximum of thirty days during which that offence continues, or imprisonment for a term no exceeding twelve months or to both.

Renewable Energy Feed-in Tariff System

91. Establishment of a renewable energy feed-in-tariff system

There is established a renewable energy feed-in-tariff system with the objective of—

(a) catalysing the generation of electricity through renewable energy sources;

(b) encouraging local distributed generation thereby reducing demand on the network and technical losses associated with transmission and distribution of electricity over long distances;

(c) encouraging uptake of, and stimulate innovation in, renewable energy technology; and

(d) reducing greenhouse gas emissions by lessening reliance on non-renewable energy resources.

92. Regulations for the feed-in-tariff system

(1) The Cabinet Secretary may upon recommendation of the Authority, make regulations necessary for the administration and implementation of the feed-in-tariff system.

(2) Without limiting the generality of subsection (1) the regulations may include—

(a) the technical and operational requirements for connection to the grid;

(b) the duration of the feed-in-tariff approval;

(c) the priority of purchase by distribution licensees of electrical energy generated using renewable energy sources; and

(d) the tariff to be paid by distribution licensees to licensees under feed-in-tariff system.

(3) In carrying out its functions and obligations under this Part of the Act, the Authority shall give due consideration to—

(a) the objectives of the feed-in-tariff system;

(b) the energy policies of the Government;

(c) the need for sustainability and diversity in renewable energy resources; and

(d) the need for fair competition and transparency in the implementation of the feed-in-tariff system.

93. Regulations under this Part

(1) The Cabinet Secretary may upon recommendation of the Authority make regulations necessary for carrying out or giving effect to the provisions of this Part.

(2) Regulations may be made under this section for the following purposes—

(a) prescribing any forms that may be required for the purposes of this Act;

(b) prescribing conditions upon or subject to which authorities and licences may be applied for, granted or renewed;

(c) providing for the keeping of records and the furnishing of information and returns by persons authorized by or under this Act, and prescribing the nature of the records, information, and returns and the form, manner and time in which they shall be kept or furnished;

(d) prescribing matters in respect of which fees, rents and royalties are to be payable under this Act and the amount of fees and rents, and persons liable to pay them;

(e) authorizing the refund of fees, rents or remission, in such circumstances as the Cabinet Secretary deems fit, of any fees or rentals payable under this Act;

(f) prescribing the responsibilities of licensees and persons to whom authorities are granted by or under this Act, and the operations to be carried out under licences;

(g) prescribing the qualifications of persons in charge of the making and closing of wells, and in particular, of persons employed as well managers, and providing for the examination of any grant of certificates to qualified persons;

(h) preventing or abating nuisances in or near wells and industries using geothermal resources;

(i) prescribing safety precautions in the making and after the completion of construction of wells, and the treatment of the ground above any well and of water above and below the ground, and preventing waste or loss of geothermal resources;

(j) prescribing drilling machinery, materials, and casting to be used in making of wells and to be available to cope with any emergency in connection with any well, and prohibiting the use of other classes of materials thereof;

(k) prohibiting or regulating the drilling of wells near other wells;

(l) regulating the cessation of drilling operations and the abandonment and closing of wells and prescribing precautions against loosening the earth in the vicinity of any well;

(m) providing for wells to be made with due diligence and by safe and satisfactory methods;

(n) generally regulating the drilling of wells;

(o) providing for the exemption of licensees and persons to whom authorities have been granted under this Act, either wholly or partially, and either absolutely or conditionally, from any of the requirements of their licences or authorities or of regulations made under this section;

(p) prescribing the value of geothermal energy at the well head;

(q) providing guidelines on direct uses of geothermal energy; and

(r) licensing and management of renewable energy sources including but not limited to wind, solar, hydro, biogas, biomas, cogeneration, municipal waste and tidal energy.

Part V – DOWNSTREAM COAL

94. Requirements of licence for coal business

(1) A licence or permit as the case may be, is required by a person who wishes to carry out the production of energy from coal.

(2) A person who wishes to undertake—

(a) electricity generation using coal must have a valid licence issued by the Authority;

(b) transportation of coal for energy production using a vehicle must have a valid permit in respect of that vehicle issued by the Authority.

(3) A person who contravenes this section commits an offence and shall on conviction, be liable to a fine of not less than—

(a) five hundred thousand shillings, or to imprisonment for a term of not less than three months, or to both such fine and imprisonment if the contravention relates to subsection (2)(a);

(b) fifty thousand shillings, or to imprisonment for a term of not less than three months, or to both such fine and imprisonment if the contravention relates to subsection (2)(b).

95. Granting of licences

(1) A person desirous of obtaining a licence or permit under this Act shall make an application to the Authority in the manner prescribed by this Act or the Authority.

(2) The Authority may, within thirty days—

(a) grant a licence or permit accordingly, either without conditions or subject to such conditions as the Authority may deem fit and shall be accompanied by the prescribed fee; or

(b) refuse to grant such licence or permit.

(3) Where the Authority—

(a) refuses to grant a licence or permit; or

(b) imposes conditions on a licence or permit, the Authority shall give to the applicant, the reasons in writing for the action.

(4) An application for a renewal of a licence or permit shall be made at least thirty days before the expiry date of the current licence or permit and must be accompanied by the prescribed fee.

(5) If the Authority is satisfied that the applicant continues to meet the requirements for the issue of the licence or permit, the Authority shall renew the licence or permit.

(6) If an application for the renewal of a licence or permit has been made before the expiry of the licence or permit but has not been dealt with by the Authority when the licence, permit or certificate is due to expire, the licence, permit or certificate continues in force until the application for renewal is dealt with and any renewal in such a case shall be taken to have commenced from the day when the licence or permit would have expired before the renewal.

(7) A person who contravenes subsection (5) shall be liable to a penalty equivalent to fifty per cent of the licence or permit fee.

96. Conditions for granting licences or permits

(1) The Authority shall, before issuing a licence or permit under section 95, take into account all relevant factors, including but not limited to—

(a) the relevant Government Policies;

(b) compliance with the environmental, health, safety, planning, maritime and any other relevant legislation or guidelines;

(c) the relevant Kenya Standard or in the absence of such standard, any other standard recommended by the Authority in consultation with the Kenya Bureau of Standards;

(d) the technical and financial capability of the applicant and methods of financing the proposed coal value addition facility and bulk coal storage facility; and

(e) any other matter which, in the opinion of the Authority, may be affected by the granting or the refusal of the permit being sought.

(2) A permit shall contain such terms and conditions as the Authority may consider necessary, including but not limited to the—

(a) duration of the permit;

(b) person authorized to execute the works;

(c) area in which the works shall be executed; and

(d) conditions to be satisfied before any works authorized by the permit are used, which may include a requirement for the execution of further works.

(3) Where a permit contains conditions prescribed in subsection (2) (d), no person shall, before the conditions are satisfied, use any works the execution of which was authorised by the permit, except to the extent specified in a notice given by the Authority to the licensee specifying the extent to which the works may be used, notwithstanding that some of the conditions have not been satisfied and such permit may, at any time, be revoked by the Authority in a subsequent notice in the *Gazette*.

(4) A notice given by the Authority under subsection (3) shall be conclusive evidence for the purposes of this Act that those conditions have been satisfied.

(5) Where a permit referred to in subsection (3) is cancelled or otherwise ceases to be in force prior to the completion of the authorized works, the licensee shall, to the extent of partially executed works, be deemed to have satisfied the prescribed conditions.

97. Amendment of licence or permit

(1) Subject to the provisions of this Act, a person may make an application in the prescribed manner for amendment of the licence or permit, and the Authority may, upon payment of the prescribed fee, amend the licence or permit and endorse it accordingly.

(2) Where the Authority refuses to amend a licence or permit under subsection (1), the Authority shall give to the applicant reasons for the refusal in writing.

(3) A licence or permit amended under this section shall retain the existing expiry date.

98. Factors to be considered in reviewing an application

The Authority shall, in granting or rejecting an application for a licence or permit, take into consideration —

(a) the impact of the undertaking on the social, cultural or recreational life of the community;

(b) the need to protect the environment and to conserve the natural resources in accordance with the environmental, health, and maritime laws and international maritime treaties ratified by Kenya and other guidelines developed by the Authority;

(c) compliance with Occupational Safety and Health Act (Cap. 236A) or other safety and health standards recommended by the Authority in consultation with the relevant statutory body;

(d) compliance this Act and the relevant Kenyan Standard and in the absence of such standard, any international standard recommended by the Authority in consultation with the Kenya Bureau of Standards;

(e) land use or the location of the undertaking;

(f) economic and financial benefits to the country or area of supply of the undertaking;

(g) the cost of the undertaking and financing arrangements;

(h) the ability of the applicant to operate in a manner designed to protect the health and safety of users of the service for which the licence or permit is required and other members of the public who would be affected by the undertaking;

(i) the technical and financial capacity of the applicant to render the service for which the licence or permit is required; and

(j) any other matter that the Authority may consider likely to have a bearing on the undertaking.

99. Environment liability policy

An application for a licence must be accompanied with such environmental liability policy as shall be prescribed by the Cabinet Secretary.

100. Forms and conditions of a licence or permit

(1) Every licence or permit shall be in such form as the Authority may determine and shall, subject to subsection (2), contain such particulars or conditions where applicable—

(a) the duration of the licence or permit;

(b) the type coal or coal products;

(c) the market area segments; and

(d) any other matter connected with the carrying on of the undertaking.

(2) All licences or permits issued by the Authority shall include—

(a) a requirement that the licensee shall comply with all applicable environmental, health and safety laws;

(b) a stipulation that the licensee is subject to liability under tort and the contract laws; and

(c) a requirement that all necessary fees associated with the licence or permit shall be paid on a timely basis.

(3) A licence or permit issued under this Act may not be altered, revised or modified, except with the consent of the licensee.

101. Display of licences and permits

(1) Every licence or permit or a certified copy thereof, shall, except when lodged with the Authority for any of the purposes of this Act, be maintained and displayed within the premises of the licensee.

(2) A licensee who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one million shillings.

102. Revocation of licence or permit

(1) The Authority may suspend or revoke a licence or permit where—

(a) the undertaking or the execution of the works related thereto has not commenced at the expiry of the period specified in the licence or permit, or at the expiry of any extended period which the Authority may allow;

(b) it is satisfied that the licensee is either not operating in accordance with the terms and conditions of the licence, permit or the provisions of this Act; or

(c) the licensee is adjudged bankrupt.

(2) Unless otherwise specified in the licence or permit, the Authority may give a licensee fourteen days' notice to show cause why the licence or permit should not be revoked.

(3) A notice under subsection (2) shall—

(a) set out the relevant condition of the licence or permit or the requirement of the Act to which the breach relates;

(b) specify the acts, omissions or other facts which, in the opinion of the Authority or the licensing agent, constitute a contravention of the conditions of the licence or permit or requirements of the Act, and the reasons why the Authority is of the opinion that any of the circumstances mentioned under subsection (1) have occurred or arisen; and

(c) be served upon the licensee at the licensee's principal place of business and shall take effect from the date of service.

(4) The Authority shall determine the matter within thirty days from the expiry of the notice.

(5) A suspension or revocation of a licence or permit shall not indemnify the licensee against any penalties for which such person may have become liable under the Act.

103. Replacement of a licence or permit

Where, upon application, it is shown to the satisfaction of the Authority that a licence or permit has been lost, destroyed or defaced, the Authority shall, upon payment of the prescribed fee, issue a duplicate licence or permit to the licensee.

104. Transfer of a licence or permit

(1) A licensee shall not transfer or otherwise divest any rights, powers or obligations conferred or imposed upon the licensee by the licence or permit without the consent of the Authority.

(2) The Authority may, on application by any of the following persons, transfer a licence or permit—

(a) in the case of a death of the licensee, to the legal representative;

(b) in the case of the bankruptcy of the licensee or assignment for the benefit of the licensee's creditors generally, to the lawfully appointed trustee or assignee;

(c) in the case of a corporation in liquidation, to the lawfully appointed liquidator;

(d) in any case where the licensee becomes subject to a legal disability, to any person lawfully appointed to administer the licensees' affairs; or

(e) in the case of voluntary transfer of the undertaking, to the new owner of the undertaking.

(3) The Authority shall satisfy itself of the legal, technical and financial competence of the transferee to carry out the undertaking.

(4) The transferee shall undertake in writing to comply with the conditions of the licence or permit.

(5) The Authority shall not withhold any consent to any application to transfer unless it has reason to believe that public interest is likely to be prejudiced by the transfer.

105. Register of licences and permits

(1) The Authority shall keep a register, in such form as it may determine, of all licenses and permits granted and shall record therein, in respect of each licence or permit—

(a) the particulars required under sections 96 and 100;

(b) particulars of any duplicate issued or any amendment of the licence or permit made under sections 97 and 103;

(c) particulars of any suspension or revocation of the licence or permit under section 102 and 108; and

(d) such other particulars as may be prescribed.

(2) Subject to subsection (3), any person may, during official working hours, and upon payment of the prescribed fee, inspect the register of licences and permits.

(3) Notwithstanding the provisions of subsection (2), a person who is—

(a) a member of the National Police Service or a public officer acting in the course of his duty; or

(b) an employee of the Authority or person authorised in writing by the Authority,

may inspect the register without payment of any fee.

106. Appeal against action of the Authority

A person aggrieved by the action of the Authority in—

(a) refusing to renew or grant a licence or permit or revoking a licence or permit; or

(b) imposing conditions on a licence or permit; or

(c) refusing to replace or amend a licence or permit,

may, within thirty days of receipt of written notification, appeal to the Tribunal.

107. Construction permits

(1) A person who intends to construct a facility that produces energy using coal shall, before commencing such construction, apply in writing to the Authority for a permit to do so.

(2) An application under subsection (1) shall—

(a) specify the name and address of the proposed owner;

(b) be accompanied by the registration documents of the proposed beneficial owner;

(c) be accompanied by a copy of detailed layout plans and specifications prepared by a professional engineer;

(d) be accompanied by a Strategic Environment Assessment and Social Impact Assessment licenses; and

(e) contain such other details as may be necessary.

(3) The Authority shall consider every application received under this section and shall, if satisfied that the applicant meets the prescribed requirements, grant to the applicant, within forty five days, the permit to construct the facility.

(4) A permit shall be subject to such conditions as maybe prescribed.

(5) Where the Authority refuses to grant a permit under this section, it shall notify the applicant of such refusal specifying the reasons thereof and shall deliver such notice to the applicant.

108. Suspension or revocation of a construction permit

(1) Subject to subsection (2), the Authority may, by notice in the *Gazette*, suspend or revoke a construction permit if any term or condition thereof has not been complied with within the prescribed period.

(2) Where the Authority intends to revoke or suspend a permit under this section, it may, at least twenty-one days before the date of the intended revocation or suspension, notify the holder of the permit of such intention, specifying the reasons thereof, and shall take every precaution to ensure fairness in the exercise of this power.

(3) The Authority may in writing, reinstate a permit revoked or suspended under subsection (1) if satisfied that the reasons for the revocation or suspension no longer exist.

109. Validity of permits

If, after a permit to construct a facility that produces energy using coal has been granted, the execution of the works has not commenced at the expiry of twelve months from the date on which the permit was granted, or at the expiration of any extended period which the Authority may allow, the permit shall cease to have effect.

110. Destruction of illegal construction

(1) Where a facility that produces energy using coal is constructed without a permit, the Authority may give the owner or occupier of such facility twenty one days' notice in writing to either obtain the requisite permits and if such permit is not obtained within the said period, stop the construction and immediately decommission the works.

(2) If the owner or occupier of the facility in sub section (1) fails to remove the works, the Authority shall decommission the works at the cost of that person.

(3) Notwithstanding subsection (1), any person who constructs a coal value addition facility and a bulk coal storage facility without a permit is liable on conviction to a fine of not less than one million shillings.

111. Contracts for common user facilities

(1) A person licensed to operate a common user facility shall provide non-discriminatory open access to its facility for use by any licensee or person on payment of fair and reasonable charges as shall be prescribed in regulations made under this Act.

(2) Where any licensee wilfully delays to comply with the terms of the contract pursuant to subsection (1), the Authority may compel the licensee to evacuate the coal products when appropriate and in the event of the licensee failing to comply with such direction the Authority may order disposal of such products held by a common user logistic facility and impose such penalties and fines as may be prescribed in regulations.

112. Forms of contract for common user facilities

(1) Every person licensed to operate a common user facility shall use a form of contract approved by the Authority which shall set out the rights and responsibilities of the licensee and users of the facility, as the case may be.

(2) In approving a form of contract under subsection (1), the Authority shall satisfy itself that such form of contract has fair and reasonable provisions dealing with issues, including but not limited to —

(a) limitation of liability of the licensee;

(b) termination and suspension provisions; and

(c) complaint handling and dispute resolution.

113. Cabinet Secretary to provide undertaking for strategic stocks of coal for electricity generation

The Cabinet Secretary may undertake in whole or in part, the provision of financing, procurement, storage, maintenance and management of strategic stocks of coal for electricity generation.

114. Compliance with environmental, health and safety laws

(1) A person engaged in production of energy utilising coal shall comply with the applicable environmental, health and safety laws.

(2) In the event of a fire, explosion, injury or fatality occurring in the course of operating a facility for energy production using coal, either by accident or through negligence, the operator of the facility shall forthwith clean up the polluted or damaged environment, at the operator's own expense, to the satisfaction of Authority.

(3) If the operator of the facility fails, or unreasonably delays, to carry out the clean-up work referred to in subsection (2), the Authority may cause any work not carried out to be executed at the expense of the said operator.

(4) Nothing contained in this section shall be construed as relieving the operator of the facility from any liability in respect of any loss or damage caused by his failure to comply with safety measures as required in subsection (5).

(5) A person transporting coal by road, rail, coastal or inland waters, or any other mode shall institute measures to ensure that their mode of transportation is safe.

(6) The Authority may, at any time, require the operator of a facility or a transporter to show that he is in compliance with the provisions of this section.

115. Offences and attempted offences

(1) A person who—

(a) being the owner or operator of a facility that produces energy using coal or being a transporter of coal for energy production, fails to institute appropriate environmental, health or safety control measures;

(b) being the owner or operator of a facility that produces energy using coal or transporter of coal for energy production, contravenes the provisions of this Act or any regulations made thereunder relating to the construction or operation of a facility that produces energy using coal;

(c) maliciously misinforms the public leading to economic sabotage;

(d) illegally acquires any interest in public land set aside for development of facilities intended to produce energy using coal;

(e) being the owner of a facility that produces energy using coal, contravenes the provisions of this Act relating to the construction such facility;

(f) owns or operates an unlicensed facility that produces energy using coal; or

(g) constructs any facility defined in section 107 without obtaining a construction permit;

commits an offence and shall on conviction, be liable to a fine of not less than—

(i) two hundred thousand shillings or a term of imprisonment of not less than one year or to both such fine and imprisonment if the offence relates to paragraphs (a) or (b); or

(ii) one million shillings or a term of imprisonment of not less than one (1) year or to both such fine and imprisonment, if the offence relates to paragraphs (c), (d), (e), (f) or (g).

(2) A person who attempts to do any such thing as mentioned in subsection (1) commits an offence and shall on conviction, be liable to a fine of not less than—

(a) one hundred thousand shillings or a term of imprisonment of not less than six months or to both such fine and imprisonment if the offence relates to subsections (1)(a) or (b); and

(b) one million shillings or a term of imprisonment of not less than three years or to both such fine and imprisonment if the offence relates to subsections (1)(c), (d), (e) (f) or (g).

116. Regulation for use of coal for energy production

Without limiting the generality of section 208, the Cabinet Secretary may, on the recommendation of the Authority, make regulations for the use of coal for energy production relating to-

(a) importation, landing, loading, shipping, transportation and storage, of coal;

(b) setting, reviewing and adjusting tariffs and charges for common user storage facilities of coal;

(c) maintenance of minimum operational stocks and procedures thereof,

(d) maintenance of strategic stocks and procedures thereof;

(e) environmental, health and safety standards associated with the handling, storage and use of coal;

(f) delivery to such officer as may be specified, samples of coal and for the testing of such samples;

(g) type and location of the premises in respect of which licences to possess coal may be granted, the inspection of premises so licensed and the taking of samples and the testing of coal found thereon;

(h) development and coordination of a national coal pollution response plan including measures to prevent coal pollution and a mechanism for compensation in the event of a coal pollution;

(i) review and approval of contracts on third party access to common user midstream coal infrastructure on reasonable terms and conditions;

(j) guidelines and standards to be applied to ensure uniform standards of operation in the sector;

(k) joint procurement of coal;

(l) generally for the better carrying out of the objects and purposes of this Act.

Part VI – ELECTRICAL ENERGY

Licensing

117. Requirement of a licence

A person who wishes to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity must apply for a licence as the case may be to the Authority in accordance with the provisions of this Act:

Provided that a person shall not require any authorization to generate electrical energy for own use of a capacity not exceeding one megawatt.

118. Offence relating to carrying out unauthorized activity

A person who carries out any electricity undertaking without a licence commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings or to a term of imprisonment not less than one year or to both such fine and imprisonment.

119. Application for licence for electric power undertakings

(1) An application for a licence under section 117 including an application for amendment, transfer or renewal, shall be made to the Authority in the form and manner prescribed by regulations made under this Act.

(2) The Authority may, through a fair, open and competitive process in accordance with procedures prescribed by the Cabinet Secretary by regulations, invite applications for a licence under section 117.

(3) Before making any application for a licence, the person intending to make an application shall give fifteen days' notice, by public advertisement, in at least two newspapers of nationwide circulation.

(4) Every notice under subsection (3) shall state that any person or body of persons desirous of making any representation on or objection to the application or to the grant of the licence shall do so by letter addressed to the Authority and marked on the outside of the cover enclosing it "Electric Power Licence Objection", on or before the expiration of thirty days from the date of the application as stated in the notice and that a copy of such representation or objection shall be forwarded to the applicant.

(5) The Authority shall, within fifteen days after receipt of the application, inform the applicant in writing whether the application is complete.

120. Hearing of objections to application for licence

The Authority may hear any objections in public, at a time and place of which not less than fifteen days' notice shall be given to the applicant and to every objector and the Authority shall make known its decision regarding any objection within thirty days after the hearing.

121. Factors to be considered in an application

(1) The Authority shall, in granting or rejecting an application for a licence, take into consideration—

(a) the impact of the undertaking on the social, cultural or recreational life of the community;

(b) the need to protect the environment and to conserve the natural resources in accordance with the Environmental Management and Co-ordination Act (Cap. 387);

(c) land use or the location of the undertaking;

(d) economic and financial benefits to the country or area of supply of the undertaking;

(e) the economic and energy policies in place from time to time;

(f) that the contractual rights, privileges, liabilities and obligations accrued to an existing licensee or any other person are not materially adversely affected;

(g) the cost of the undertaking and financing arrangements;

(h) the ability of the applicant to operate in a manner designed to protect the health and safety of its employees and users of the service for which the licence is required and other members of the public who would be affected by the undertaking;

(i) the technical and financial capacity of the applicant to render the service for which the licence is required;

(j) any representations or objections made under section 120;

(k) the applicant's proposed tariff;

(ka) the requirements under the National Electronic Single Window System; and

(l) any other matter that the Authority may consider likely to have a bearing on the undertaking.

(2) The Authority shall process all applications for a licence within sixty days after the Authority confirms to the applicant, in writing, that the application is complete.

(3) The Authority shall, where it refuses to grant a licence, give the applicant a statement of its reasons for the refusal within seven days of the refusal.

(4) An aggrieved party shall have right of appeal to the Tribunal within thirty days of the decision of the Authority.

[Act No. 25 of 2022, Sch.]

122. Forms and conditions of a licence

(1) Every licence shall be in such form as the Authority may determine and shall, subject to subsection (2), contain such particulars or conditions where applicable—

(a) provisions for bulk and retail tariffs or charges for electrical energy and capacity for different types of licensees and classes of consumers;

(b) provisions for the determination of charges for use of the transmission and distribution network services;

(c) the term of the licence;

(d) the maximum capacity of supply of the undertaking;

(e) the area of supply of the undertaking; and

(f) any other matter connected with the carrying on of the undertaking.

(2) All licences issued by the Authority shall include the following conditions—

(a) a requirement that the licensee shall comply with all applicable environmental, health and safety laws;

(b) a stipulation that the licensee is subject to liability under tort and the contract laws; and

(c) a requirement that all necessary fees associated with the licence shall be paid on a timely basis.

(3) A licence issued under this Act may not be altered, revised or modified, except with the consent of the licensee.

(4) An undertaking operating pursuant to a licence granted under this Act shall—

(a) in any case where conveyance of electrical energy to or from a transmission or distribution network is possible, meet the minimum requirements of the operator of the transmission or distribution network as approved by the Authority, and the operator of such undertaking shall inform the network operator of all connected load and generation equipment that might have material effect on the network; and

(b) be subject to such other conditions as may be specified by the Authority.

123. Licensee not to purchase other undertakings

(1) A licensee shall not purchase or acquire any undertaking of any public authority, person or body of persons supplying electrical energy under any licence, except with the consent of the Authority, which consent shall not be unreasonably withheld.

(2) A licensee who contravenes the provision of subsection (1) shall be liable to the revocation of his licence, in addition to such other action as the Authority may prescribe.

124. Transfer of licence under this Part

(1) A licensee shall not transfer or otherwise divest any rights, powers or obligations conferred or imposed upon him by the licence without the consent of the Authority.

(2) The Authority may, on application by any of the following persons, transfer a licence—

(a) in the case of the death of the licensee, to the legal representative of such licensee;

(b) in the case of the bankruptcy of the licensee or assignment for the benefit of his creditors generally, to the lawfully appointed trustee or assignee;

(c) in the case of a corporation in liquidation, to the lawfully appointed liquidator;

(d) in any case where the licensee becomes subject to a legal disability, to any person lawfully appointed to administer the licensee's affairs; or

(e) in the case of voluntary transfer of the undertaking, to the new owner of the undertaking,

and a licence so transferred shall, notwithstanding any other provision of this Act, continue to retain an expiry date existing prior to the transfer of the licence.

(3) The Authority shall satisfy itself of the legal, technical and financial competence of the transferee to carry out the undertaking.

(4) The transferee shall undertake in writing to comply with the licence conditions.

(5) The Authority shall not withhold any consent to any application to transfer unless it has reason to believe that public interest is likely to be prejudiced by the transfer.

(6) In this section—

"transfer of licence" includes the acquisition of a controlling interest directly or indirectly in the licensee; and

"controlling interest" as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that person, whether through the ownership of shares, voting, securities, partnerships or other ownership interests, agreements or otherwise.

125. Failure of licensee to meet obligations

(1) If a licensee fails to meet his obligations under this Act, the Authority shall serve upon him a notice in writing to meet those obligations within fourteen days or such longer period but not exceeding sixty days as the Authority may determine.

(2) Subject to subsection (3), if a licensee fails to comply with the requirements of the notice, the Authority may, in consultation with the Cabinet Secretary, appoint a statutory manager to operate the undertaking for and on account of the licensee and at the risk and expense of the licensee, remitting the balance, if any, of the net income derived from the undertaking to the licensee.

(3) The appointment of a statutory manager under subsection (2) shall be for such period, not exceeding twelve months, as the Authority may specify in the instrument of appointment and may be extended upon the application of the Authority if such extension appears to the court to be justified and such extension shall be notified to all interested parties.

(4) Notwithstanding subsection (2), the Authority may, at any time, revoke the licence of a licensee who contravenes subsection (1).

(5) For the purposes of subsection (2)—

(a) the entry and taking of possession by the statutory manager shall not prejudice the security of any debenture-holder or mortgagee of his right of enforcing such security;

(b) the statutory manager shall only restore possession of the undertaking at such time when the Cabinet Secretary in consultation with the Authority, is satisfied that the circumstances on account of which the entry was made no longer exists or will no longer hinder the proper

functioning of the undertaking and that the licensee has satisfied its obligations under this Act and the conditions of the licence.

(6) The application of subsection (2) or (3) shall not prejudice any claims which any consumer or other person may have against the licensee arising from the failure to fulfil its obligations in terms of the conditions of the licence.

(7) A person obstructing or causing obstruction to the statutory manager or a person authorized by the statutory manager in the execution of the duties under this section, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs.

126. Suspension or revocation of licence

(1) The Authority may suspend or revoke a licence where—

(a) the undertaking or the execution of the works related thereto has not commenced at the expiry of twenty-four months from the date on which the licence was granted, or at the expiry of any extended period which the Authority may allow;

(b) it is satisfied that the licensee is either wilfully or negligently not operating in accordance with the terms and conditions of the licence, or the provisions of this Act or any regulations thereunder;

(c) the licensee is adjudged bankrupt; or

(d) the licensee, at any time after commencement of the licence, makes representation to the Authority that the undertaking cannot be carried on with profit, and ought to be abandoned, and, upon inquiry the Authority is satisfied that the representation is true.

(2) Before suspending or revoking a licence under this section, the Authority shall give a licensee thirty days' notice in writing to show cause why the licence should not be suspended or revoked.

(3) A notice under subsection (2) shall—

(a) set out the relevant condition of the licence, or the requirement of the Act to which the breach is related;

(b) specify the acts, omissions or other facts which, in the opinion of the Authority, constitute a contravention of the conditions or the Act, and the reasons why the Authority is of the opinion that any of the circumstances mentioned under subsection (1) have occurred or arisen; and

(c) be served at the principal office of the licensee and shall take effect from the date of service.

(4) The Authority shall determine the matter within thirty days from the expiry of the notice.

(5) Where a licence is suspended or revoked, the Authority shall, in consultation with the Cabinet Secretary, take such action as is necessary to ensure that the supply of electrical energy to consumers is not unduly interrupted as a result of the revocation.

(6) A suspension or revocation of a licence under this section shall not indemnify the holder against any penalties for which such person may have become liable under the Act.

127. Replacement of a licence

(1) Where, upon application, it is shown to the satisfaction of the Authority that a licence has been lost, destroyed or defaced, the Authority shall issue a duplicate licence.

(2) Upon application for replacement of a licence under subsection (1) there shall be such fees as may be prescribed.

128. Keeping of register of licences and approvals

(1) The Authority shall maintain a register, in such form as it may determine, in which it shall enter the provisions, subject to subsection (2), of—

(a) every licence or approval granted;

(b) every modification or revocation of such licence or approval;

(c) every direction or consent given or determination made with respect to such licence or approval;

(d) every order or revocation of such order and every notice, as appropriate; and

(e) such other information as the Authority may deem necessary.

(2) In entering any provision in the register, the Authority shall have regard to the need for excluding, so far as is practicable any matter which relates to the affairs, of any person, where publication of that matter would or might, in the opinion of the Authority, be prejudicial to the interests of that person or the public interest.

(3) The contents of the register shall be available for inspection by the public, during such hours and subject to the payment of such fee as may be prescribed by the Authority.

(4) A person may, on the payment of such fee as may be prescribed, require the Authority to supply him with a copy of, or extract of, any part of the register, being a copy or extract which is certified by the Authority to be a true copy or extract.

129. Accounts, records and reports of licensee

(1) For the purposes of this Act, where a person holds a licence or licences, the accounts of each undertaking under each licence shall, unless specifically exempted by the Authority, be subject to the provisions of this Act, and be kept separate and distinct and in the manner and form prescribed by the Authority:

Provided that—

(a) the Authority may direct that the operations of a licensee holding more than one licence in respect of separate or contiguous areas of supply may be treated as a single undertaking for the purposes of this section; and

(b) a licensee holding two or more licences, the operations under which are not to be treated as a single undertaking under paragraph (a), or conducting any business or operations independent of his licence or licences, shall be required nevertheless to keep in the prescribed form additional or alternative sets of accounts, to be termed the head office accounts, in respect of all such items as, in the opinion of the auditor appointed under subsection (2), cannot properly or reasonably be attributed or allocated to, and included in, the accounts of the undertaking of any one of such licences exclusively.

(2) A licensee shall, at his own cost, cause the annual accounts to be examined and audited by independent auditors and submit the audited accounts to the Authority within three months after the end of each financial year.

(3) A licensee shall, at the request of the Authority and at his own cost, provide all available information about the technical, financial, hydrological or environmental issues and any other relevant information relating to the operations of the licensee.

(4) The Authority may exempt a licensee from the requirements of subsection (1) where—

(a) it is satisfied with the form and manner in which the records and accounts of the licensee are kept and audited; or

(b) such exemption is provided for in the licence.

130. Powers of the Authority to enter, inspect and investigate

(1) The Authority or any person authorized by the Authority in writing may—

(a) at all reasonable times, enter upon the premises of a licensee and inspect or investigate any plant, machinery, books, accounts and other documents found thereat and take copies thereof; and

(b) require a licensee to furnish to the Authority, books, accounts, records and other documents in such form as the Authority may demand.

(2) The Authority may require that the accuracy of any documents or particulars be verified.

(3) A person authorized by the Authority under subsection (1), shall produce proof of such authorization at the request of any person affected by that person's activities.

(4) A person who refuses to allow an inspection under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings for each day or part thereof that the obstruction occurs or continues.

131. Development of the electricity market

(1) The Authority shall in consultation with the Cabinet Secretary review the electricity market on a regular basis with a view to enhancing competition, improving efficiency, increasing reliability and security of supply and improving the quality of service by all licensees.

Provided that the first review of the electricity market shall be performed within three years from the day when this Act comes into force and not more than five years shall elapse between one review and the next.

(2) The Cabinet Secretary shall on the recommendation of the Authority publish regulations for operations of the electricity market

Electricity Generation

132. Rights, duties and obligations of a generating entity

(1) A generation licence authorizes the licensee to operate the generating station or plant stated in the licence and connect to a distribution or transmission network in accordance with the provisions of this Act or the regulations made thereunder.

(2) A generation licence does not relieve the licensee or anyone else from complying with laws applying to the development, building, operation or maintenance of the undertaking.

(3) Every licensee shall—

(a) submit technical details regarding its generating stations to the Authority;

(b) co-ordinate with the transmission or distribution network operator for conveyance of electrical energy produced by it from its generating station or plant; and

(c) comply with the instructions, if any, of the system operator.

133. Hydro-electric generation

(1) Any person applying for a hydro-electric power generating licence shall submit a detailed project proposal to the Authority for its consideration.

(2) The Authority shall before issuing any hydroelectric power generation licence have particular regard to, whether or not in its opinion—

(a) the proposed river-works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood-control, or other public purposes, and for this purpose the Authority shall satisfy itself, after consultation with such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;

(b) the proposed project meets the prescribed standards regarding dam design and safety.

(3) Where a multi-purpose scheme for the development of any river in any area is in operation, the licensee shall co-ordinate its activities with the activities of the person responsible for such scheme in so far as they are inter-related.

134. Direction to operate a generating plant

(1) The Cabinet Secretary may direct that any generating plant shall, in extraordinary circumstances, be operated and maintained in accordance with such directions as he may prescribe.

(2) For the purposes of this section, the expression "extraordinary circumstances" means circumstances arising out of threat to security of the state, public order or a natural calamity or such other circumstances arising in the public interest.

Transmission of electrical energy

135. Obligations and rights of a transmission licensee

(1) A transmission licence authorizes the licensee to—

(a) operate the transmission network stated in the licence; and

(b) connect its transmission network, if stated in the licence, to another transmission or distribution network within or outside Kenya.

(2) A transmission licence does not relieve the licensee or anyone else from complying with laws applying to the development, building, operation or maintenance of a transmission grid.

136. Conditions of transmission licences

(1) It shall be the duty of a transmission licensee to—

(a) build, maintain and operate an efficient, coordinated and economical transmission system;

(b) comply with the directions of the system operator;

(c) provide non-discriminatory open access to its transmission system for use by any licensee or eligible consumer on payment of fair and reasonable transmission or wheeling charges as shall be prescribed in regulations made under this Act; and

(d) provide such information as may be prescribed in regulations made under this Act to enable the Authority approve the fees, charges and requirements under paragraph (c).

(2) Unless otherwise provided in its licence, the licensee shall ensure, as far as technically and economically practicable, that the transmission system is operated with enough capacity (and, if necessary, augmented or extended to provide enough capacity) to provide network services to persons authorized to connect to the grid or take electrical energy from the grid.

(3) A transmission licensee shall—

(a) operate, maintain (including repair and replace if necessary) and protect its transmission grid to ensure the adequate, economic, reliable and safe transmission of electricity; and

(b) operate its network in coordination with the transmission or distribution networks to which it is connected directly or indirectly.

137. Reliability and quality of supply and quality of service

The licensee shall collect, analyze and maintain such data, information and statistics relating to his undertaking to enable him monitor and report to the Authority on the reliability and quality of supply as well as quality of service, as shall be prescribed in regulations made under this Act.

138. System operator

(1) The Authority may designate a system operator, responsible for matching consumer's requirements or demand with electrical energy availability or supply, maintaining electric power system security and arranging for the dispatch process.

(2) Without limiting the generality of subsection (1) the functions of the system operator shall include —

(a) managing and operating the National Control Centre and other infrastructure established by the National Government for the purpose of carrying out system operations;

(b) giving directions, exercising supervision and control as may be required for ensuring stability of network operations and for achieving the maximum economy and efficiency in the operation of the electric power system;

(c) optimal scheduling and dispatch of electrical energy and ancillary services throughout the country;

(d) keeping records of the quantity and quality of electrical energy supply on the national grid; and

(e) co-ordinating with system operators of the countries whose electric power systems are interconnected with the Kenyan system so as to ensure efficient operations.

(3) The Cabinet Secretary shall on recommendation of the Authority make regulations to provide for system operations.

(4) The system operator may levy and collect such fees and charges as may be prescribed by regulations made under this Act from the generating companies or any licensee engaged in electricity undertakings.

(5) Every licensee, operator of a generating plant, substation, transmission or distribution system and any other person connected with the operation of the electric power system shall comply with the direction issued by the system operator under subsection (2).

(6) All directions issued by the system operator to the operator of a generating plant, substation, transmission or distribution system shall be issued through the designated control centres of the respective licensees.

(7) If any dispute arises from any matter in relation to this section, it shall be referred to the Authority for decision:

Provided that pending the decision of the Authority, the directions of the system operator shall be complied with by the licensee, generating company or operator of a generating plant, substation, transmission and distribution system as the case may be.

(8) If any licensee, generating entity or any other person fails to comply with the directions issued under subsection (2), he or she shall be liable to a penalty not exceeding one hundred thousand shillings for every breach.

(9) The system operator shall not be involved in the direct or indirect buying or selling of electrical energy.

(10) The licensee carrying the functions of system operations prior to the commencement of this Act shall not be in breach of this section by reason only of non-compliance with subsection (9).

(11) In this section, "ancillary services" means services that are essential to the management of power system security, facilitate orderly trading in electricity and ensure that electricity supplies are of acceptable quality and, without limitation, may include—

(a) the provision of sufficient regulating capability to meet fluctuations in load occurring within a scheduling interval;

(b) the provision of sufficient contingency capacity reserve to maintain power system frequency in the event of network or generation outages;

(c) the provision of reactive power support to guard against power system failure through voltage collapse; and

(d) the provision of black start capability to allow restoration of power system operations after a complete failure of the power system or part of the power system.

Distribution of electrical energy

139. Obligations and rights of a distribution licensee

(1) A distribution licence authorizes the licensee to plan, build, operate and maintain the distribution system necessary for the conveyance of electrical energy from generating stations or plants either directly or through the transmission system for purposes of enabling supply to consumers as stated in the licence.

Provided that the distribution system may consist of the electric supply lines planned and build by the Corporation or County Government pursuant to section 7(2), in addition to those planned and build by the licensee.

(2) A distribution licence does not relieve the licensee or anyone else from complying with laws applying to the development, building, operation or maintenance of a distribution network.

(3) A distribution licence shall not be granted in respect of any location which is less than one quarter of a square kilometer:

Provided that this shall not apply in cases of islands in recognized rivers, lakes and in the exclusive economic zone.

140. Conditions of distribution licence

(1) It shall be the duty of a distribution licensee to—

(a) build, maintain, and keep in good state of repair suitable and sufficient electric supply lines for purposes of enabling supply to be given in the area of supply specified in that behalf in the licence;

(b) operate an efficient, safe, co-ordinated and economical distribution system;

(c) where applicable, comply with the directions of the system operator;

(d) provide non-discriminatory open access to its distribution system for use by any licensee, retailer or eligible consumer upon—

(i) payment of use of system charges as shall be prescribed in regulations made under this Act and such other fees; and

(ii) compliance with such minimum requirements of the distribution licensee;

(e) provide such information as may be prescribed in regulations made under this Act to enable the Authority approve the fees, charges and requirements under paragraph (d).

(2) Unless otherwise provided in his licence, the distribution licensee shall ensure, as far as technically and economically practicable, that the distribution system is operated with enough capacity (and, if necessary, augmented or extended to provide enough capacity) to provide network services to persons authorized to connect to the network.

141. Reliability and quality of supply and quality of service

The licensee shall collect, analyze and maintain such data, information and statistics relating to his undertaking to enable him monitor and report to the Authority on the reliability and quality of supply as well as quality of service, as shall be prescribed in regulations made under this Act.

142. Obligation to extend network to persons requiring supply of electrical energy

(1) It shall be the duty of a distribution licensee to plan and construct the requisite electric supply lines to enable any person in the licensee's area of supply receive a supply of electrical energy either directly from the licensee or from a duly authorized electricity retailer as the case maybe.

(2) A person requiring a supply of electrical energy shall apply to the duly authorized retailer, but where there is no such retailer, to the distribution licensee:

Provided that where the supply is to be provided at medium or high voltage the retailer may advise the applicant to apply directly to the distribution licensee.

(3) A person making application under subsection (2) shall specify the premises in respect of which the supply is required and the maximum power required to be supplied, and a reasonable date when the supply is required to commence.

(4) Upon receipt of the application made under subsection (2) the retailer or the distribution licensee, as the case may be, shall within the period specified in the licence and any regulations made under this Act, notify the person by whom the application is made, of the terms and conditions, which may include payments of whatever nature, to be complied with by the applicant before the supply is availed:

Provided that the licensee may in its discretion allow an applicant under this subsection to pay the cost of the installation in instalments over such periods and on such terms and conditions as may be agreed upon between the licensee and such person.

(5) Notwithstanding any payments made in accordance with subsection (4)—

(a) all electric supply lines shall be the property of the distribution licensee and may be used to supply other persons provided that such use does not prejudicially affect the supply of electrical energy to the person who first required such electric supply lines to be laid down or erected;

(b) such person shall be entitled to reimbursement by the licensee of a fair and just proportion of the cost originally paid by such person from payment made by each person subsequently connected to such electric supply lines provided that a claim for such reimbursement shall be made within six years; and

(c) the licensee shall determine the fair and just proportion of the cost to be reimbursed in accordance with regulations made under this Act.

(6) If any difference arises under this section as to the amount to be reimbursed by any person, that difference shall, upon the application of any person, be determined by the Authority.

(7) A licensee shall keep at its office forms of requisition, embodying a suitable note drawing attention to the provisions of this section, and a copy shall, on application, be supplied free of charge to any person within the area of supply, and any requisition so supplied shall be deemed valid in point of form.

Rural Electrification

143. Establishment of the Rural Electrification Programme Fund

(1) There is established a Rural Electrification Programme Fund with the objectives of accelerating electricity infrastructure in the country.

(2) The Rural Electrification Programme fund consists of—

(a) the electricity sales levy as provided under section 144;

(b) such monies as may be appropriated by Parliament for that purpose;

(c) donations, grants and loans;

(d) interests from bank deposits; and

(e) all other monies lawfully received or made available for the Rural Electrification Programme as the Cabinet Secretary may approve.

144. Electricity sales levy

The Cabinet Secretary may impose a levy of up to five percent on all electricity consumed in the country, the proceeds of which shall go into the Rural Electrification Programme Fund, set up under section 143.

Retail supply of electricity

145. Obligation and rights under a retail licence

(1) The Authority shall specify the minimum financial and technical requirements necessary for a person to be issued with a retail licence.

(2) A retail licence authorizes a person to supply electricity to consumers through a series of commercial activities including procuring the energy from other licensees, inspection of premises, metering, selling, billing and collecting revenue.

(3) A person issued with a retail licence shall discharge such duties, in relation to the supply and trade in electrical energy as may be specified by the Authority.

(4) Where a licensee enters into a contract to supply electrical energy to a consumer who is receiving electrical energy from another licensee under this Act, the new licensee shall forthwith assume all obligations of the previous licensee relating to the subject consumer and previous contract shall cease and be extinguished.

146. Area of supply under a retail licence

(1) The Authority may issue a retail licence to a licensee for the supply of electricity for a particular area or areas stated in the licence.

(2) The area of supply under a retail licence may consist of—

(a) one or more distinct geographical areas; or

(b) particular premises.

(3) A retail licence stating an area consisting of particular premises may describe the premises in the way the Authority considers appropriate including, for example, the street address or metering identifier for the premises.

147. Forms of contract for supply of electrical energy by retail licensees

(1) Every retail licensee shall use a form of contract approved by the Authority which shall set out the rights and responsibilities of the retail licensee and consumers, as the case may be.

(2) In approving a form of contract under subsection (1), the Authority shall satisfy itself that such form of contract has fair and reasonable provisions dealing with issues, including but not limited to —

(a) limitation of liability of the licensee;

(b) termination and suspension provisions;

(c) account and meter deposits;

(d) metering; and

(e) complaint handling and dispute resolution.

Electrical installation work

148. Authorization to carry out electrical installation work

(1) A person who wishes to carry out electrical installation work must be licensed as an electrical contractor by the Authority.

(2) To be licensed as an electrical contractor, a person must—

(a) be a certified electrical worker; or

(b) have in his employment a certified electrical worker.

149. Certificates for electrical workers

(1) A person who wishes to be certified as an electrical worker in accordance with section 148 shall make an application to the Authority in the form and manner prescribed.

(2) The Authority shall, within sixty days from the date of the application, and after administering such tests or examination—

(a) grant the certificate with or without conditions, or

(b) refuse to grant the certificate, giving reasons thereof.

(3) A licence for electrical installation work shall be issued for a term of three years and may be renewed for a similar term upon expiry, subject to the holder satisfying such continuing technical trainings as may be prescribed.

(4) An applicant whose application is rejected shall have a right of appeal to the Tribunal within thirty days of receipt of the decision.

150. Licences for electrical contractors

(1) A person who wishes to be licensed as an electrical contractor shall make an application to the Authority in the form and manner prescribed.

(2) The Authority shall, within thirty days from the date of the application—

(a) grant the licence with or without conditions; or

(b) refuse to grant the licence, giving reasons thereof.

(3) A licence for electrical installation work shall be issued for a term of three years and may be renewed for a similar term upon expiry.

(4) An applicant whose application is rejected shall have a right of appeal to the Tribunal within thirty days of receipt of the decision.

151. Carrying out electrical installation work

(1) It shall be the duty of any person planning, building, operating or maintaining a transmission or distribution system to ensure that such works are carried out only by electrical contractors and electrical workers duly authorized by the Authority.

(2) It shall be the duty of the owner or occupier of any premises to ensure, in accordance with regulations issued under this Act, that the electrical installation in the subject premises is—

(a) carried out only by a duly authorized electrical contractor and appropriate certificates detailing particulars of the installation submitted to the licensee, before initial connection to a supply of electricity; and

(b) tested and inspected periodically, any defects being remedied, and appropriate certificates detailing particulars of the installation issued and displayed at the point of supply.

(3) Where the electrical installation does not meet the conditions set out in subsection (1), the licensee shall decline to connect supply, or if the supply is connected, the supply may be discontinued until such time as the defects are remedied.

152. Carrying out electrical installation work without authority

(1) A person who carries out any electrical installation work while not duly authorised as an electrical worker or contractor commits an offence and shall on conviction, be liable to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

(2) A consumer who permits a person who is not duly authorised as an electrical worker or contractor to carry out electrical installation work in his premises commits an offence and shall on conviction, be liable to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding three months or to both such fine and imprisonment.

(3) A licensee or licensing authority who permits a person who is not duly authorised as an electrical worker or contractor to carry out electrical installation work on his behalf commits an offence and shall on conviction, be liable to a fine not exceeding one million shillings or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Metering of electrical energy

153. Metering of supply between licences

(1) The amount of electrical energy supplied by one licensee to another licensee or the number of hours during which the supply is given, or the maximum demand taken, or any other quantity

or time connected with the supply shall be ascertained in the manner set out in the agreement between the licensees.

(2) Provisions relating to metering in the agreement between licensees may, without limitation, include—

(a) requirement for type approval of the meters by the Kenya Bureau of Standards; and

(b) the accuracy classes of the meters and how they are arranged relative to the interconnection point or points.

154. Metering of supply to consumers

(1) The amount of electrical energy supplied to the consumer or the number of hours during which the supply is given, or the maximum demand taken by the consumer, or any other quantity or time connected with the supply shall be ascertained by meters of a type approved by the Kenya Bureau of Standards, or determined in a manner agreed upon by the retailer and the consumer.

(2) The retailer shall supply and fix meters upon the premises of the consumer and connect the supply system therewith:

Provided that the licensee may agree to the value of the supply to any consumer being ascertained by a private metre belonging to the consumer.

155. Security and protection of meters

(1) The meters shall be sealed by the licensee with an approved seal bearing the licensee's distinguishing brand or mark impressed thereon.

(2) The licensee may, in order to protect any meter or meters or any other apparatus belonging to him, install suitable cut-outs or such other apparatus on a consumer's premises on the supply side of any such meter or other apparatus, and seal such cut-outs or other apparatus with an approved seal bearing the licensee's distinguishing brand or mark impressed thereon.

(3) Where any seal or other apparatus affixed under subsections (1) or (2) is broken or tampered with without the authority of the licensee, the consumer upon whose premises the seal or other apparatus was placed commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years or to both:

Provided that, where it can be proved that the offence was committed by some person other than the consumer, that person shall be liable as if the said person were the consumer upon whose premises the breach occurred.

156. Where meter is provided by the consumer

(1) Where a consumer who is supplied with electrical energy by the licensee has provided a meter for the purpose of ascertaining the quantity of electrical energy supplied and the licensee changes the method of charging for electrical energy, the licensee shall either pay to that person the reasonable expenses which the person may have incurred in providing a new meter for the purpose of ascertaining the quantity of electrical energy supplied according to the new method of charging, or provide such consumer with a new meter.

(2) The consumer shall, at all times and at the consumer's own expense, keep all meters belonging to the consumer and used for ascertaining the quantity of electrical energy supplied, in proper order for correctly registering that quantity, and, in default, the licensee may cease to supply electrical energy through the meter until the defect is rectified.

(3) The licensee shall, subject to the provisions of section 160, for the purposes of this section, have access to, and be at liberty to remove, test, inspect and replace any meters installed by the consumer for the purpose of ascertaining the quantity of electrical energy supplied at all reasonable times.

157. Check meters

A consumer shall be entitled to install in the consumer's premises a check meter or meters for the purpose of checking the quantity of electrical energy supplied but the registrations of such check meter shall not be taken into account in determining the quantity of electrical energy supplied and no such check meter shall be fixed and connected with the supply system except in such manner and subject to such conditions as the licensee may approve.

158. Procedure before connection, disconnection or adjustment of meters

(1) The licensee shall not connect or disconnect any meter to be used for ascertaining the quantity of electrical energy supplied, or a consumer's check meter, unless the licensee has obtained the written consent of that person, or alternatively unless the licensee has given to that person not less than forty eight hours' written notice of intention to do so.

(2) The licensee shall not make any alteration, adjustment or readjustment in any meter being used for ascertaining the quantity of electrical energy supplied, as to affect the functioning of such meter unless the licensee has given to the consumer not less than forty-eight hours' written notice of the intention to do so or unless otherwise mutually arranged.

(3) A person who contravenes the provisions of subsections (1) and (2) commits an offence and shall, on conviction, be liable to a fine of not less than one hundred thousand shillings or to a term of imprisonment of not less than six months or to both such fine and imprisonment.

159. Defective meters

(1) Where a meter used to register the quantity of electrical energy supplied by a licensee to any consumer is found to be defective through no fault of the licensee or the consumer, the licensee may, in consultation with the consumer, determine the reasonable quantity of electrical energy supplied and recalculate the charges due to or from the consumer as appropriate for up to a maximum period of six months from the date the meter is established to be defective:

Provided that if the consumer had reported any suspected defect in the meter and the licensee did not within thirty days examine the meter, the licensee shall not be entitled to recover from the consumer any charges for more than thirty days from the date the meter was established to be defective.

(2) Where any meter used to register the quantity of electrical energy supplied by any licensee to any consumer is found to be defective through interference by the consumer, the licensee may determine the reasonable quantity of electrical energy supplied and recalculate the charges due from consumer as appropriate from the date the licensee determines the meter to have been interfered with:

Provided that if the subject meter is no longer suitable for ascertaining the quantity of electrical energy supplied, the licensee shall be entitled to repair or replace the meter at the cost of the consumer who interfered with it.

(3) If any dispute arises under this section as to recalculation of electrical energy consumed by consumer or as to interference with any meter, such dispute shall be referred to the Authority for determination.

(4) Where any dispute referred to in subsection (3) has been referred to the Authority the licensee shall not exercise any of the powers conferred by this section until final determination of the dispute:

Provided that the consumer shall pay for the electrical energy that may be consumed subsequent to the dispute.

160. When supply of electrical energy may be refused or discontinued

(1) A licensee shall not, except for reasons beyond the licensee's control, reduce, discontinue or refuse the supply of electrical energy to any consumer, unless—

(a) the consumer has failed to pay charges for consumption of electrical energy or instalments relating to deferred connection costs, whether such charges are due to the licensee for the supply of electrical energy to premises in respect of which such supply is demanded or in respect of other premises:

Provided that such charges have not been referred to the licensee by the consumer for resolution in accordance with the licensee's complaint handling and dispute resolution procedures approved by the Authority.

(b) the consumer fails or neglects to make good any defects in his installation:

Provided that those defects and the period within which such defects are to be rectified, have been communicated to the consumer in writing;

(a) the consumer uses or permits to be used such supply for any purpose or deals with or permits such supply to be dealt with in any manner so as to interfere unduly or improperly with the efficient supply of electrical energy by the licensee to any person, or endangers public safety;

(b) the consumer denies the licensee access to the electric supply lines or any meters on the premises under the control of the consumer;

(c) the premises or part thereof is the subject of an order for demolition made at the instance of a public or County;

(d) the supply of electrical energy is prohibited by law to such premises or part thereof; or

(e) the consumer has failed or defaulted to repay a loan or any part thereof in respect to connection costs for supply of electrical energy which is subject to a tripartite agreement between the consumer, licensee and the lender.

(2) Where a person has given a licensee a deposit as security for payment for the supply of electrical energy, the licensee may, at any time, while any such charge or other sum remains unpaid and after giving that person not less than fourteen days' notice in writing—

(a) discontinue the supply of electrical energy to such person; or

(b) apply the deposit for the electrical energy consumed and if any part of such charge or other sum remains unpaid thereafter, discontinue the supply of electrical energy to such person, until such charge or other sum together with any expenses incurred in disconnecting such supply and any lawful charges for or incidental to the reconnection thereof have been paid.

(3) If any dispute arises as to—

(a) any charges;

(b) the application of any deposit;

(c) any illegal or improper use of electrical energy;

(d) any alleged defects in any apparatus or protective devices; or

(e) any unsuitable apparatus or protective devices, it shall be referred to the Authority.

161. Where Government or its agencies default in paying electricity bills

Without prejudice to any other remedies available a licensee which has outstanding uncollected billings attributable to the National Government, County Government or any Government agency shall report

such billings to the Cabinet Secretary for the National Treasury who shall, in turn, report the same to Parliament for necessary appropriation.

162. Net-metering

(1) A consumer who owns an electric power generator of a capacity not exceeding one megawatt may apply to enter into a net-metering system agreement to operate a net-metering system with a distribution licensee or retailer, if that consumer has a generation facility that is located in the area of supply of the distribution licensee or retailer.

(2) Each distribution licensee or retailer shall, upon application, make available net metering service to any electricity consumer that the licensee serves as prescribed in regulations.

(3) "net-metering" as used in this section means a system that operates in parallel with the distribution system of a licensee and that measures, by means of one or more meters, the amount of electrical energy that is supplied—

(a) by the distribution licensee or retailer to a consumer who owns the renewable energy generator, and

(b) by the consumer who owns the renewable energy generator to the distribution licensee or retailer.

Tariffs and contracts for supply of electrical energy and network services

163. Contracts for bulk supply and network services

(1) All contracts for the sale of electrical energy as well as provision of transmission and distribution network services, between and among licensees, and between licensees and retailers and eligible consumers shall be submitted to the Authority for approval before execution.

(2) An application for approval of a contract under subsection (1) shall be in such form and submitted to the Authority in such manner, as the Cabinet Secretary may, in regulations prescribe.

(3) In considering a contract under subsection (1), the Authority shall—

(a) ensure that the rates or tariffs established in the contract are just and reasonable;

(b) satisfy itself that the application meets the minimum requirements as prescribed by the Cabinet Secretary in the regulations under this Act; and

(c) take into account any other issues which may have a bearing on the operations of the undertakings.

(4) In this section, a just and reasonable tariff shall mean a rate that enables a licensee to, *inter alia*—

(a) maintain its financial integrity;

(b) attract capital;

(c) operate efficiently; and

(d) compensate investors for the risks assumed.

164. Electricity supply contracts for retailers

Every electricity supply agreement between a retailer and another licensee for the procurement of electrical energy by a retailer for resale to consumers shall be submitted to the Authority before execution and shall include provisions on—

(a) rights and obligations of the retailer and the licensee;

(b) schedule of tariffs and charges;

(c) processing of applications for connection to supply;

(d) responsibilities and procedures for handling interruptions of supply;

(e) bulk and retail metering;

(f) complaint handling and dispute resolution; and

(g) termination and suspension.

165. Retail tariffs

(1) The tariff structure and terms for the supply of electrical energy to consumers shall be in accordance with principles prescribed by the Authority.

(2) All tariffs charged for electrical energy supplied shall be just and reasonable.

(3) Any application for the review of tariffs shall be filed with the Authority for approval not later than forty-five days before the proposed effective date:

Provided that the Authority may, at its discretion, suspend a schedule of tariffs increase for up to five months.

(4) An application under subsection (3) shall be in the form prescribed by the Authority.

(5) A licensee may require a consumer to make such account deposit, commensurate with the consumer's estimated electrical energy consumption, before electrical energy is supplied to him, which deposit may, from time to time, be revised by the licensee in order to take account of both the level of consumption and of any changes in electrical energy tariffs.

(6) The charges for electrical energy to be supplied may, subject to agreement between the parties, be paid in advance.

(7) The Authority shall review the retail tariff every three years.

166. Penalties and compensation for failure and defects in electricity supply

(1) Subject to any agreement which may be entered into between a licensee and a consumer as provided for under this Act, whenever the licensee defaults in supplying electrical energy to any consumer, the licensee shall be liable in respect of each default to a penalty as prescribed by regulations.

(2) The licensee shall be liable to pay appropriate compensation to a person if due to failure, poor quality or irregularity of electricity supply, the person incurs damage to his or her property, financial loss, loss of life due to negligence or avoidable default by the licensee.

(3) For the avoidance of doubt, the licensee shall not be liable to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's electricity supply lines or inevitable accident or force majeure was so slight as not to materially affect the quality or value of the supply.

(4) The Cabinet Secretary shall make regulations to give effect to this section within six months of the coming into force of this Act.

Regulations under this Part

167. Regulations for electrical energy

The Cabinet Secretary may upon recommendation of the Authority make such regulations as may be necessary or expedient for the achievement of the objectives and purposes of this Act and in particular, for all or any of the following purposes—

(a) prescribing the form and manner in which any application for review or adjustment of tariffs is to be made and the procedure for the review or adjustments of tariffs;

(b) providing the procedure for application and transfer of licences;

(c) prescribing generally the duties and obligations of licensees, undertakers and consumers;

(d) prescribing the form and manner in which every licensee shall keep his accounts and records of income and expenditure for the purposes of this Act;

(e) providing for securing the safety of the public from danger, personal injury or damage to property arising from the generation, transmission, distribution, retail or use of electrical energy;

(f) providing for the reporting of accidents to the Authority which have resulted in the loss of life, personal injury or damage to property;

(g) providing for the inspection of, or enquiry into, the operation of undertakings;

(h) providing for the measurement of electrical energy and the settlement of disputes as to measurements of electrical energy;

(i) providing for the conditions on which new electricity connections may be made to any premises;

(j) providing for guidelines, timelines and standard form agreements for negotiation of contracts for electrical energy;

(k) prescribing the conditions on which electrical energy supplied to a person may be resold to another person;

(l) prescribing standards relating to reliability and quality of supply, quality of service, including obligations and rights of licensees and consumers as well as penalties in events of default;

(m) prescribing the procedures for hearings, settlement of disputes and any proceedings before the Authority;

(n) retail of electrical energy; and

(o) carrying out electrical installation work by an electrician and an electrical contractor.

Offences and penalties under this Part

168. Unauthorised, fraudulent or improper supply or use of electrical energy

(1) A person who—

(a) contravenes any of the conditions of a licence granted to him under this Act;

(b) without lawful right (the proof of which shall be upon him) abstracts, branches off or diverts or causes to be abstracted, branched off or diverted any electrical energy, or consumes or uses any such electrical energy which has been wrongfully or unlawfully abstracted, branched off or diverted, knowing it to have been wrongfully or unlawfully abstracted, branched off or diverted; or

(c) lays, erects or installs, or permits to be laid, erected or installed, any conductor or apparatus and connects it, or permits it to be connected, with any electric supply line through which electrical energy is supplied by a licensee, without the consent of the licensee; or

(d) disconnects, or permits to be disconnected, any conductor or apparatus from any electric supply line belonging to a licensee, without the consent of the licensee; or

(e) makes or permits to be made any alteration in his permanent installation without the prior approval of the licensee; or

(f) in any case where the quantity of the supply of electrical energy is not ascertained by meter, uses any apparatus or device other than what he has contracted to pay for or uses such apparatus or device at any other time than the time specified and for which he has contracted to pay; or

(g) uses the electrical energy supplied to him for other purposes other than the purposes for which it is supplied for; or

(h) supplies any other person with any part of the electrical energy supplied to him by the licensee or the permit holder, without the consent of the licensee or the permit holder,

commits an offence and shall on conviction, be liable to a fine of not less than one million shillings, or to a term of imprisonment of not less than one year, or to both.

(2) In any case where the person who commits an offence under subsection (1) is the consumer, the licensee may also discontinue the supply of electrical energy to the premises of such consumer or abstain from resuming such supply, if already discontinued, for such period as the Authority may direct, notwithstanding any contract which may have been previously entered into.

(3) The existence of artificial or unlawful means for making—

(a) connection or disconnection as is referred to in paragraphs (c), (d) and (f) of subsection (1);

(b) making such alteration as is referred to in paragraph (e) of subsection (1); or

(c) facilitating such use or supply as referred to in paragraphs (g), and (h) of that subsection (1);

shall, where the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, be *prima facie* evidence that such connection or disconnection, alteration, improper use or supply, as the case may be, has been fraudulently, knowingly and wilfully caused or permitted by the consumer.

(4) A person who wilfully or with intent to interfere with the management or operation of the apparatus of a licensee—

(a) extinguishes or causes to be extinguished, any public lamps;

(b) vandalises or damages any works of or under the control of a licensee;

(c) steals or with intent to steal, breaks, throws down or damages any works of or under the control of a licensee; or

(d) steals, illegally trades or improperly uses any of the electrical energy supplied by a licensee;

commits an offence and shall on conviction, be liable to a fine of not less than five million shillings, or to a term of imprisonment of not less than five years, or to both such fine and imprisonment.

169. Offences deemed to be economic crimes

(1) A person who wilfully—

(a) encroaches, illegally acquires or deals in public land set aside for energy infrastructure projects;

(b) vandalises or attempts to vandalise energy installations and infrastructure;

(c) steals or attempts to steal any energy equipment or appliance or handles any energy equipment or appliance (otherwise than in the course of stealing) knowing or having reason

to believe the equipment or appliance may be stolen, or dishonestly receives or retains the equipment or appliance, or dishonestly undertakes, or assists in its retention, removal, disposal or realization by or for the benefit of himself or another person or if he arranges to do so;

(d) destroys or damages energy infrastructure; or

(e) maliciously misinforms the public on matters of energy with criminal intent or driven by gain leading to economic sabotage;

commits an offence which is deemed to be an economic crime and shall on conviction, be liable to a fine of not less than five million shillings or to a term of imprisonment of ten years or to both such fine and imprisonment.

(2) Any vessel used to convey the vandalised equipment or appliance in the attempted vandalism detailed in subsection (1) shall be forfeited to the state.

(3) Civil recovery may also be instituted to make good the loss suffered.

Part VII – RIGHTS OF WAY, WAYLEAVES AND USE OF LAND FOR ENERGY RESOURCES AND INFRASTRUCTURE

170. Power to develop energy infrastructure on any land

A person may develop energy infrastructure, including but not limited to electric supply lines, petroleum or gas pipelines, geothermal or coal infrastructure, on, through, over or under any public, community or private land subject to the provisions of this Act and relevant written law.

171. Permission to survey land for energy infrastructure

(1) A person who wishes to enter upon any land, other than his own to—

(a) undertake exploratory activities relating to exploitation of energy resources and development of energy infrastructure, including but not limited to laying or connecting electric supply lines, petroleum or gas pipelines, or drilling exploratory wells;

(b) carry out a survey of the land for the purposes of paragraph (a),

shall seek the prior consent of the owner of such land, which consent shall not be unreasonably withheld:

Provided that where the owner cannot be traced, the applicant shall give fifteen days' notice, through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation and an announcement in a radio station of local coverage for a period of two weeks.

(2) The Cabinet Secretary shall prescribe the forms and procedures for seeking and granting of the consent.

172. Power of entry to inspect land

The relevant person or government agency responsible for management of the subject land may authorize in writing, any person to enter upon any land specified in section 171(1) and inspect the land and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose.

Provided that if there is any damage resulting from such entry the applicant shall pay in full, just compensation as is payable under the relevant written law.

173. Consent to proposal

(1) An owner, after receipt of a request for consent under section 171 may consent in writing to the development of energy infrastructure, upon agreement being reached with the applicant as to the amount of compensation payable, if any, and any consent so given shall be binding on all parties having an interest in the land, subject to the following provisions—

(a) that any compensation to be paid by the licensee giving notice to the owner, in cases where the owner is under incapacity or has no power to consent to the application except under this Act, shall be paid to the legal representative of the owner; and

(b) that an occupier or person other than the owner interested in the land shall be entitled to compensation for any loss or damage he may sustain by the development of energy infrastructure, including but not limited to laying or connecting electric supply lines, petroleum or gas pipelines, drilling geothermal wells or coal long as the claim is made within three months after the development.

(2) No consent expressed in writing in accordance with subsection (1) shall be void by reason only of non-compliance with any statutory requirements as to registration.

(3) Where the owner of the land cannot be traced the applicant shall give thirty days' notice prior to the development of energy infrastructure on the land through appropriate mechanisms including public advertisement in at least two newspapers of nationwide circulation and an announcement in a radio station of local coverage for a period of two weeks:

Provided that no development shall commence unless the amount of compensation payable, if any as determined by the relevant government agency responsible for the management of that land, has been deposited into a special compensation fund held by the said agency.

174. Objection to proposal

Any person who objects to the acquisition of rights of way or wayleaves in his land may raise the objection in accordance with the provisions of the relevant written law.

175. Payment of compensation

If any difficulty or question arises as to the amount, entitlement to compensation or person entitled to compensation payable under this Act, the determination shall be made in accordance with the provisions of the relevant written law.

176. Power of the licensee to enter land to inspect or repair energy infrastructure

(1) After energy infrastructure has been laid in accordance with this Act, the licensee or any person authorized by the licensee may, from time to time as it becomes necessary, enter the land on which the energy infrastructure is laid with such assistance as may be necessary, for the purpose of operating, inspecting or repairing the infrastructure, or removing such infrastructure in case where the infrastructure is no longer required.

(2) Where energy infrastructure is removed, the surface of the land shall forthwith be restored to its former condition as far as possible by the licensee and in default thereof restoration may be carried out by the owner of the land, and the costs thereof shall be recoverable from the licensee.

177. Liability of licensee to make compensation for damage

The provisions of this Act shall not relieve a licensee of the liability to make compensation to the owner or occupier of any land or the agents, workmen or servants of the owner or occupier of any land which is the subject of the provisions of this Act, for damage or loss caused by the exercise or use of any power or authority conferred by this Act or by any irregularity, trespass or other wrongful proceeding in the

execution of this Act or by the loss or damage or breaking of any energy infrastructure or by reason of any defect in such infrastructure.

178. Installation of energy infrastructure along roads, railways, etc

(1) For the purpose of the production, conveyance and supply of energy, a licensee may erect, fix, install or lay any electric supply lines, oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or Government property, including forests, National parks, reserves and heritage sites, in the manner and on the conditions as provided in this Act and any other relevant law.

(2) Subject to the provisions of this section, a licensee may break up any street within his area of operation, and may erect energy infrastructure along, under or over any such street, and may, from time to time, operate, repair, alter or remove any such infrastructure so erected, laid or constructed:

Provided that the person having the control of such street road, railway, tramway, river, canal, harbour or Government property shall have a prior right to break up and repair such street with reasonable despatch upon payment to him of a reasonable charge by the licensee.

(3) A licensee shall, not less than thirty days before exercising any power conferred upon him by this section, give notice in writing to the person concerned of the intention to do so, except in a case of emergency and in such case the licensee shall notify the person concerned as soon as possible after the emergency has arisen.

(4) The powers conferred upon a licensee by this section shall, except in a case of emergency, be exercised only under the superintendence of the person concerned and according to a plan showing the location or route and in terms of specifications approved by the person concerned, or, if any dispute arises in respect of such plan, route or specifications, as may be approved by the licensing authority.

Provided that if the said person concerned fails to exercise the powers of superintendence conferred by this section the licensee may, after giving notice, exercise those powers without such superintendence.

(5) Whenever a licensee carries out any work authorized by this section, he shall comply with the legislation, if any, of the County Government concerned and shall complete that work with reasonable despatch and reinstate the street broken up and remove any debris or rubbish occasioned thereby and shall, while the street is broken up or obstructed, cause the works to be, at all times, fenced and guarded and during the night, adequately lit.

(6) If the licensee fails or unreasonably delays in carrying out the work referred to in subsection (5), the County Government concerned may cause the work to be executed at the expense of the said licensee.

(7) A licensee shall pay to the said County Government the costs reasonably and necessarily incurred by it in executing such work.

(8) Nothing in this section shall be construed as relieving a licensee of any liability in respect of any loss or damage caused by his negligence in carrying out such work or by his failure to comply with the provisions of this section.

179. Compulsory acquisition of land

If the Cabinet Secretary is satisfied that the holder of a licence under this Act—

(a) reasonably requires land for purposes of constructing, modifying or operating any energy infrastructure or for incidental purposes; and

(b) has failed to acquire the land by agreement after making reasonable attempts to do so,

the Cabinet Secretary may apply to the government agency responsible for the management of the subject land to acquire it compulsorily under the relevant written law.

180. Power to lop trees and hedges

(1) Where any tree or hedge obstructs or interferes with the construction by a licensee of any energy infrastructure, or interferes or is likely to interfere with the maintenance or working of any such infrastructure, owned by any licensee, such licensee shall give a seven days' notice to the owner or occupier of the land on which the tree or hedge is growing, requiring the person to lop or cut it so as to prevent the obstruction or interference of the infrastructure, subject to the payment by such licensee of the expenses reasonably incurred by the owner or occupier of the land in complying with the notice:

Provided that in any case where such a notice is served upon an occupier who is not the owner of the land on which the tree or hedge is growing, a copy of the notice shall also be served upon the owner thereof, if his address is known.

(2) If within fourteen days from the date of giving such notice the owner or occupier of the land on which the tree or hedge is growing gives a counter-notice to the licensee objecting to the requirements of the notice, the matter shall, unless the counter-notice is withdrawn following consultations between the licensee and the owner or occupier, be referred to the Authority for determination and the Authority may, after giving the parties an opportunity to be heard, make such orders as it thinks just, and any such order may empower the licensee, after giving a seven day prior notice to any such person by whom the counter-notice was given of the commencement of the work as the order may direct, to cause the tree or hedge to be lopped or cut, and may determine any question as to what compensation, if any, and expenses are to paid:

Provided that any party aggrieved by any decision of the Authority with regard to compensation may within thirty days after being notified of such decision appeal to the Tribunal.

(3) The licensee shall issue instructions to his servants and agents with a view to ensuring that trees and hedges shall be lopped or cut in a way that as little damage as possible is done to trees, fences, hedges and growing crops, and shall cause the boughs lopped to be removed in accordance with the directions of the owner or occupier, and shall make good any damage done to land.

(4) Any compensation or expenses payable to the owner or occupier by the licensee under this section shall be a civil debt recoverable summarily.

(5) Where it is necessary to fell any trees, this section shall apply to the felling of trees *mutatis mutandis* as it applies to the lopping of trees.

(6) This section shall apply to energy infrastructure owned or to be constructed by any licensee regardless of the type of licence held.

181. Declaration of energy resource areas

(1) The Cabinet Secretary may, subject to the provisions of subsection (3) and having taken into consideration the recommendations made by the relevant agencies that any area is suitable for the conservation and management of energy resource or is suitable for the promotion of energy development projects, by order published in the *Gazette*, declare such area as an energy resource area.

(2) The Cabinet Secretary shall, prior to the declaration of any area as an energy resource area under subsection (1), consult with the relevant County Government, local communities and any other relevant agency which the Cabinet Secretary considers necessary or appropriate to consult in the declaration of such area as an energy resource area.

(3) An Order made under subsection (1) declaring an area as an energy resource area, shall define that area by setting out the coordinates of such area.

(4) An Order made under subsection (1) shall restrict the use and transfer of any interest of that land, without prior approval from the Cabinet Secretary.

182. Implementing agency responsible for conserving energy resources within an area

(1) The implementing agency shall be responsible for conserving and managing all energy resource within an energy resource area and take all necessary measures to promote and develop such energy resources with a view to obtaining the maximum economic utilization of those resources.

(2) An implementing agency referred to in subsection (1) means an entity mandated to develop and utilize the energy resource in a particular energy resource are declared as such under section 181.

183. Owner or occupier prohibited from certain acts

Notwithstanding anything to the contrary contained in any written law, an owner or occupier of any land situated within an energy resource area shall not, except with the written approval of the implementing agency and subject to any terms and conditions that may be imposed by the implementing agency for that purpose, do any act or permit any other person to do any act, which may change the form of any energy resource situated within such energy resource area or cause the depletion of any such resource in such a manner or to such an extent, that the economic viability of developing that resource is substantially reduced.

184. Energy infrastructure and other apparatus are not fixtures

(1) Any energy infrastructure, meters, fittings, works or apparatus belonging to a licensee and lawfully placed or installed in or upon any premises not belonging to the licensee, whether or not fixed to any part of such premises shall—

(a) remain the property of and may be removed by the licensee;

(b) not be subject to the landlord's distress for rent in such premises; and

(c) not be liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises:

Provided that adequate indication is given on such premises that such licensee is the actual owner of such energy infrastructure.

(2) For the purposes of this section, lines, meters, fittings and apparatus let, rented or disposed of by the licensee on terms of payment by instalments shall, until such instalments have been paid, be deemed to belong to the licensee.

185. Hindering, obstructing or interfering with the exercise of licensee’s powers

A person who without reasonable cause hinders, obstructs or interferes with the exercise by a licensee with regard to an energy infrastructure, or by the servants or agents duly authorized in writing of any such licensee, of any right of entry upon land conferred by this Act for the purpose of laying and connecting, or repairing, inspecting or removing, an energy infrastructure commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings for each day or part thereof that the obstruction occurs or continues.

186. Decommissioning and abandonment

(1) At the conclusion of activities under this Act every person shall be required to remove all infrastructure they may have brought to the land for purposes of his or her operations, rehabilitate the land and carry out any other action that may be prescribed.

(2) All decommissioning activities undertaken pursuant to subsection (1) must meet such good practices as may be prescribed by the Cabinet Secretary in regulations.

Part VIII – ENERGY EFFICIENCY AND CONSERVATION

187. Energy efficiency and conservation programme

The Authority shall coordinate the development and implementation of a prudent national energy efficiency and conservation programme.

188. Designation of factories and buildings.

(1) Authority shall designate factories and buildings and energy appliances by types, quantities of energy use, or methods of energy utilization for purposes of energy efficiency and conservation.

(2) In the event that there is reasonable cause, the Authority may give instruction to the owner of any designated factory or building, to furnish factual information on energy utilization for the purpose of inspection and to assure that energy conservation measures are in accordance with the standards, criteria and procedures provided in regulations under this Act.

(3) An owner of the designated factory or building who does not comply within thirty days from the date of receipt of such instruction given under subsection (2), shall be deemed to have committed an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

(4) If the Authority determines that the owner of the building is not able to comply without financial or technical assistance and that the activities required to be in compliance may be eligible for assistance from an identified source, the Authority may decide to give additional grace period to allow the owner to access assistance from the identified source.

(5) The owner of the designated factory shall keep records of information required under regulations under this Act at the designated factory for a minimum of five years, and in default commits an offence and shall on conviction, be liable to a fine of not less than two hundred and fifty thousand shillings, or to a term of imprisonment of not less than nine months, or to both.

189. Energy conservation in factories and buildings

(1) The owner of a factory or building designated under section 188, shall conserve energy, audit and analyze energy consumption in his building in accordance with the standards, criteria, and procedures as prescribed by regulations.

(2) A person who fails to comply with this provision commits an offence and shall on conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term of not exceeding two years or to both.

Provisions relating to National Government

190. Power of Cabinet Secretary to enforce efficient use of energy and its conservation

The Cabinet Secretary may, upon recommendation by the Authority make regulations to—

(a) specify the norms for processes and energy consumption standards for any equipment, appliances which consumes, generates, transmits or supplies energy;

(b) specify equipment or appliance or class of equipment or appliances, as the case may be, for the purposes of this Act;

(c) prohibit manufacture or sale or purchase or import of equipment or appliance specified under paragraph (b) unless such equipment or appliances conform to minimum energy efficiency performance standards;

Provided that no notification prohibiting manufacture or sale or purchase or import of equipment or appliance shall be issued within a period of six months from the date of notification issued under paragraph (a):

Provided further that the Cabinet Secretary may, having regard to the market share and the technological development having impact on equipment or appliance, and for reasons to be recorded in writing, extend the said period of six months referred to in the first proviso by a further period not exceeding six months;

(d) direct display of such particulars of label on equipment or on appliance specified under paragraph (b) and in such manner as may be specified by regulations;

(e) specify and update, any user or class of users of energy in the energy intensive industries and other establishments having regard to—

(i) the intensity or quantity of energy consumed;

(ii) the amount of investment required for switching over to energy efficient equipment and capacity of industry to invest in it; and

(iii) availability of the energy efficient machinery and equipment required by the industry;

(f) establish and prescribe such energy consumption norms and standards for designated consumers as it may consider necessary:

Provided that the Cabinet Secretary may, upon recommendation by the Authority, prescribe different norms and standards for different designated consumers having regard to such factors as may be prescribed;

(g) direct, having regard to quantity of energy consumed or the norms and standards of energy consumption specified under paragraph (a) the energy intensive industries specified in regulations to get energy audit conducted by an accredited energy auditor in such manner and intervals of time as may be specified by regulations;

(h) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer to get energy audit conducted by an accredited energy auditor;

(i) direct any designated consumer to furnish to the Authority, in such form and manner and within such period, as may be prescribed, the information with regard to the energy consumed and action taken on the recommendation of the accredited energy auditor;

(j) direct any designated consumer to designate or appoint energy manager or energy auditors in charge of activities for efficient use of energy and its conservation and submit a report, in the form and manner as may be prescribed, on the status of energy consumption at the end of the every financial year to the Authority;

(k) prescribe minimum qualification for energy auditors and energy managers to be designated or appointed under paragraph (j);

(l) direct every designated consumer to comply with energy consumption norms and standards;

(m) direct any designated consumer, who does not fulfill the energy consumption norms and standards prescribed under paragraph (f), to prepare a scheme for efficient use of energy and its conservation and implement such scheme keeping in view of the economic viability of the investment in such form, the time within which and the manner as may be prescribed;

(n) prescribe energy efficiency and conservation building codes for efficient use of energy and its conservation in the building or building complex;

(o) amend, in consultation with other statutory authorities, the energy efficiency and conservation building codes to suit the regional and local climatic conditions;

Provided that the powers under this paragraph shall be exercised in consultation with the concerned County.

(p) direct every owner or occupier of the building or building complex, being a designated consumer to comply with the provisions of energy efficiency and conservation building codes for efficient use of energy and its conservation;

(q) direct, any designated consumer referred to in paragraph (l), if considered necessary, for efficient use of energy and its conservation in his building to get energy audit conducted in respect of such building by an accredited energy auditor in such manner and intervals of time as may be specified by regulations; and

(r) specify energy intensive industries.

191. Authority to issue energy savings certificate

(1) The Authority may issue the energy savings certificate to the designated consumer whose energy consumption is less than the prescribed norms and standards in accordance with the procedure as may be prescribed.

(2) The designated consumer whose energy consumption is more than the prescribed norms and standards shall be entitled to purchase the energy savings certificate to comply with the prescribed norms and standards.

192. Power of Cabinet Secretary to specify value of energy

The Cabinet Secretary may, upon recommendation by the Authority, prescribe the value of per metric ton of oil equivalent of energy consumed for the purposes of this Act.

Provisions relating to County Governments

193. Power of County Governments to ensure efficient use of energy and its conservation

A County Government may—

(a) with the approval of the Authority, amend the energy conservation building codes to suit the local climatic conditions and may, by rules made by it, specify and notify energy efficiency and conservation building codes with respect to use of energy in the buildings;

(b) direct every owner or occupier of a building or building complex, being a designated consumer, to comply with the provisions of the energy efficiency and conservation building codes;

(c) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer referred to in paragraph (b) to get energy audit conducted by an accredited energy auditor in such manner and at such intervals of time as may be specified by regulations;

(d) take all measures necessary to create awareness and disseminate information for efficient use of energy and its conservation;

(e) train personnel and specialists in the techniques for efficient use of energy and its conservation;

(f) take steps to encourage preferential treatment for use of energy efficient equipment or appliances;

(g) direct any designated consumer to furnish to the Authority, in such form and manner and within such period as may be specified by rules made by it, information with regard to the energy consumed by such consumer; and

(h) specify the matters to be included for the purposes of inspection.

194. Establishment of a Fund by County Government

(1) A County Government shall establish a fund for the purposes of promotion of efficient use of energy and its conservation within the County.

(2) To the Fund shall be credited all grants and loans that may be made by the County Government or National Government or any other organization or individual for the purposes of this Act.

(3) The Fund shall be applied for meeting the expenses incurred for implementing the provisions of this Act.

(4) The Fund created under subsection (1) shall be administered by such persons or such authority and in such manner as may be specified in the rules made by the County Government.

195. Power of inspection

(1) The County Government may appoint as many inspecting officers as may be necessary for the purpose of ensuring compliance with minimum energy efficiency performance standard specified under section 190 or ensure display of particulars on label on equipment or appliances specified under section 190 or for the purpose of performing such other functions as may be assigned to them.

(2) Subject to any rules made under this Act, an inspecting officer shall have power to—

(a) inspect any operation carried on or in connection with the equipment or appliance specified under section 190 or in respect of which energy standards under section 190 have been specified;

(b) enter any place occupied by the designated consumer at which the energy is used for any activity and may require any proprietor, employee, director, manager or secretary or any other person therein to grant access:

(i) to afford the inspector necessary facility to inspect—

(A) any equipment or appliance as the inspector may require and which may be available at such place;

(B) any production process to ascertain the energy consumption norms and standards;

(ii) to make an inventory of stock of any equipment or appliance checked or verified by the inspector; or

(iii) to record the statement of any person which may be useful for, or relevant to, for efficient use of energy and its conservation under this Act.

(3) An inspecting officer acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any equipment or appliance or books of accounts or other documents.

196. Power of County Government to issue directions

(1) The County Government may, in the exercise of its powers and performance of its functions under this Act and for efficient use of energy and its conservation, issue such directions in writing as it deems fit for the purposes of this Act to any person, officer, authority or any designated consumer and such person, officer or authority or any designated consumer shall be bound to comply with such directions.

(2) For the avoidance of doubt, the power to issue directions under this section includes the power to enforce—

(a) regulations of norms for process and energy consumption standards in any industry or building or building complex; or

(b) regulations of the energy consumption standards for equipment and appliances.

Penalties and adjudication under energy efficiency and conservation

197. Appeal to Tribunal

A person who is aggrieved by an order made by an adjudicating officer, the National Government, the County Government or any other authority under this Act, may prefer an appeal to the Tribunal.

198. Power of Cabinet Secretary to make regulations

(1) The Cabinet Secretary upon recommendation by the Authority may, make regulations for carrying out the provisions of this Act by notification, in the *Gazette*.

(2) In particular, and without prejudice to the generality of the foregoing, such regulations may provide for all or any of the following matters—

(a) the qualifications, criteria and conditions subject to which a person may be accredited as energy auditors and energy managers and the procedure for such accreditation;

(b) the energy consumption norms and standards for designated consumers;

(c) different norms and standards for different designated consumers;

(d) the form and manner and the time within which information with regard to energy consumed and the action taken on the recommendations of the accredited energy auditor be furnished;

(e) the manner and the intervals or time in which the energy audit shall be conducted;

(f) the particulars required to be displayed on labels and the manner of their display;

(g) the manner and the intervals of time for conducting energy audit by an accredited energy auditor;

(h) the form and manner in which the status of energy consumption be submitted;

(i) the form and manner for preparation of the scheme and its implementation;

(j) energy efficiency and conservation building codes;

(k) prescribing the procedure for issuing the energy savings certificate;

(l) the value per metric ton of oil equivalent of energy consumed;

(m) matters relating to inspection;

(n) the manner of holding inquiry;

(o) the form of and fee for filing such appeal;

(p) the publication of energy statistics or information;

(q) the type, manner and form of energy data and information that must be published;

(r) the minimum levels of energy efficiency in each sector of the economy;

(s) the steps and procedures necessary for the application of energy-efficient technologies and procedures;

(t) the labelling for energy efficiency purposes of household appliances, devices and motor vehicles;

(u) the prohibition of the manufacture, or importation or sale of electrical and electronic products and fuel burning appliances for reasons of poor energy efficiency;

(v) standards and specifications for energy carriers;

(w) energy efficiency standards for specific technologies, processes, appliances, devices, motor vehicles and buildings;

(x) energy conservation measures to be used during energy shortage, which may include but not limited to the amount of energy to be saved, the duration for such measures and penalties associated with non-compliance to such measures;

(y) penalties and sanctions to be imposed by the Authority; and

(z) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, or may be made by rules.

199. Power of County Government to make rules

(1) A County Government may, by notification in the, make rules for carrying out the provisions of this Act and not inconsistent with the rules and regulations, if any, made by the National Government.

(2) In particular, and without prejudice to the generality of the foregoing, such rules may provide for all or any of the following matters—

(a) energy efficiency and conservation building codes;

(b) the form, the manner and the period within which information with regard to energy consumption shall be furnished;

(c) the person or any authority who shall administer the Fund and the manner in which the Fund shall be administered;

(d) the matters to be included for the purpose of inspection;

(e) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, or may be made, by rules.

200. Energy efficiency and conservation programmes

(1) The Authority shall be responsible for the adoption and implementation of measures to conserve energy and improve efficiency in harnessing, processing, conversion, transportation, storage of energy, cogeneration, heat recovery and in the use of energy in all consumer sectors.

(2) For the purpose of carrying out its responsibilities under subsection (1), the Authority shall—

(a) identify, analyze, develop and recommend policy measures to the Cabinet Secretary which can be implemented by all categories of consumers, to prevent wastage of energy used by them in their various activities;

(b) promote and facilitate the implementation of energy efficiency and energy conservation policy measures, by organizing seminars, workshops and courses in energy efficiency, demand management or conservation;

(c) educate and provide information to the public regarding energy demand management and conservation;

(d) improve any or all aspects of energy demand management which promotes rational use of energy and reduces the use of non-renewable energy sources in Kenya;

(e) identify the available technologies and facilitate deployment of such technologies for improving efficiency in the harnessing of energy, processing, conversion, transportation, storage and use of energy;

(f) implement energy labeling programs for appliances and devices and establish benchmarks;

(g) specify and enforce standards, norms, codes, measurement and verification protocols and building codes, for the efficient use of energy and for reduction of wastage of energy in buildings; and

(h) initiate, promote, conduct and co-ordinate research, surveys and investigations in regard to specific aspects of energy efficiency, conservation and demand management.

201. Establishment of energy consumption benchmarks

(1) The Authority may from time to time, through regulations made in that respect, establish specific energy consumption benchmarks to be complied with by all energy consumers.

(2) For the purpose of ensuring that the benchmarks established under subsection (1) are being complied with, the Authority may, where it considers it necessary—

(a) enter and inspect any premises, compound or facility, collect information, verification of information and conduct any other investigations;

(b) direct any person to furnish information relating to energy utilization, production, procurement and sales;

(c) monitor energy consumption in buildings and industrial premises and monitor fuel efficiency of land vehicles, ships and aircrafts, in association with relevant agencies;

(d) specify in association with relevant agencies, energy consumption limits and energy performance standards of appliances and direct the display of such particulars on labels attached to appliances, in such manner as may be prescribed from time to time;

(e) prohibit in association with the relevant agencies the manufacture, import, sale or purchase of appliances which do not conform to the specifications prescribed under paragraph (d);

(f) in association with relevant agencies, enforce limits and codes of practice for existing and proposed buildings, industrial and commercial premises, land vehicles, ships and aircraft; and

(g) in consultation with stakeholders, develop educational material and recommend educational curricula, on efficient and rational use of energy and conservation of energy.

202. Consumption of energy beyond acceptable limits

(1) Where the Authority is of the view that any person, including any public body is consuming unacceptable levels of energy in their respective premises or installations, over and above the benchmarks established by the Authority under this Act, such person shall be called upon to submit to the Authority a detailed audit report compiled by an accredited energy auditor and a detailed remedial plan of action proposing measures to be taken by such person to reduce the energy consumption to acceptable levels.

(2) The failure to submit a detailed audit report and a detailed remedial plan of action when called upon to do so by the Authority under subsection (1) and the failure to implement such plan on approval by the Authority shall be an offence under this Act.

203. Accreditation of energy matters, energy auditors, *etc.*

(1) The Authority shall appoint and rank persons having such qualifications as prescribed, to be—

(a) energy managers, who shall assist in promoting practices relating to efficient energy management;

(b) energy auditors, who shall be qualified to conduct energy audits;

(c) energy service providers; and

(d) issue to those appointed, certificates of accreditation.

(2) Every person who is issued with a certificate under subsection (1) shall be required to sit for such examinations at such periods as the Authority may prescribe and where the Authority so requests, submit performance reviews at such intervals as specified by the Authority.

(3) The Authority shall maintain a register of all accredited energy managers, energy auditors and energy service providers, appointed by it and the register shall be availed to the members of the public.

204. Conduct of energy audits

(1) The Authority shall from time to time by rules made in that respect, specify—

(a) the persons including public bodies, who shall be required to have an energy audit carried out in their respective installations or premises; and

(b) the manner and the periods during which an energy audit shall be required to be carried out.

(2) An energy audit shall be conducted by a certified energy auditor, who shall be required to submit a report to the Authority on the result of the energy audit carried out by such auditor.

205. Annual report on energy consumption

(1) The Authority shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving full account of its activities during the previous financial year, and submit the same to the Cabinet Secretary.

(2) In the preparation of its annual report under subsection (1), the Authority shall obtain the services of accredited persons under this Act.

Part IX – MISCELLANEOUS PROVISIONS

206. Local content requirements

(1) Every person carrying out any undertaking or works under this Act shall comply with local content requirements in all of its operations.

(2) For the purpose of subsection (1) the person shall prepare and submit an annual and long term local content plan which corresponds with the work program to the Authority for approval.

(3) The local content plan submitted to the Authority shall ensure that—

(a) first consideration is given to services provided within the County and goods manufactured in the country where the goods meet the relevant specifications as prescribed by the Kenya Bureau of Standards or in absence of a Kenyan standard any other internationally acceptable standards;

(b) qualified and skilled Kenyans are given first consideration with respect to employment at all levels of the value chain; and

(c) adequate provision is made for the training of Kenyans on the job.

(4) Without limiting the generality of subsection (3), the local content plan shall include sub-plans on the following—

(a) employment and training;

(b) research and development;

(c) technology transfer;

(d) industrial attachment and apprenticeship;

(e) legal services;

(f) financial services;

(g) insurance services

(h) consultancy services;

(i) construction services;

(j) hospitality services;

(k) transport services;

(l) security services;

(m) clearing and forwarding services; or

(n) inspection services.

207. Monitoring and enforcement of local content

(1) The Authority shall monitor and enforce local content in all energy undertakings and works.

(2) Without limiting the generality of subsection (1), the Authority shall—

(a) oversee, co-ordinate, and manage the development of local content;

(b) prepare guidelines, to include targets and formats for local content plans and reporting;

(c) make appropriate recommendations to the Cabinet Secretary for the formulation of local content regulations;

(d) set minimum requirements for local content in local content plans;

(e) public education and sensitization;

(f) undertake local content monitoring, audit and enforcement; and

(g) perform any other functions as may be prescribed in regulations.

208. Cabinet Secretary may make regulations generally

(1) The Cabinet Secretary may, on the recommendation of the Authority and subject to section 167, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations to be made under this Act may be formulated by the Authority on its own motion or may be proposed to the Authority by any licensee or person.

(3) Before making recommendation of any regulations to the Cabinet Secretary under this Act, the Authority shall publish the proposed regulations for purposes of inviting proposals from the public, in such manner as it may deem fit, at least thirty days before the regulations are submitted to the Cabinet Secretary.

(4) The regulations made by the Cabinet Secretary in accordance with this section may, impose conditions, requiring acts or things to be performed or done to the satisfaction of the Authority, prohibiting acts or things from being performed or done and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or within which such conditions shall be fulfilled.

(5) The regulations made under this Act may be made for a limited period or without limit of period, and may be made subject to such conditions as the Cabinet Secretary deems fit, and may contain such supplemental and consequential provisions as the Cabinet Secretary considers necessary for giving full effect to the regulations.

209. Licence to furnish information

It shall be the duty of every licensee to furnish to the licensing authority at such times and in such form and manner, such information as the licensing authority may, in writing, require.

210. False information

A person who makes a false statement or a statement which he has reason to believe is untrue, to the Cabinet Secretary, or to the Authority, committee, agent or an officer acting on behalf of the Authority, as required under this Act, commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding five years or to both.

211. Secrecy of information

Information obtained under section 209 relating to any matter shall not be published or otherwise disclosed to a third party without prior consent in writing from the person from whom the information was obtained—

Provided that nothing in this section shall restrict—

(a) the disclosure of such information—

(i) to the Cabinet Secretary for the time being responsible for energy;

(ii) to any officer or authority having functions in relation to energy, policy development or economic planning of petroleum business in Kenya; and

(iii) in furtherance of a right to a person as provided for under the Constitution;

(b) the use of such information in any manner, which the Authority deems necessary or expedient in connection with the objects of this Act.

212. Standardisation

A person shall not use or employ for or in connection with any of the purposes of producing, generating, transforming, transmitting, distributing, supplying, or importing, exporting, transporting, refining, storing, selling or using, any form of energy, any mode, material or apparatus other than that which complies with the specification or standard of the Kenya Bureau of Standards or where no such standard exists, any international standard approved by the Kenya Bureau of Standards.

213. Licensing authorities not to discriminate

While discharging its functions and exercising its powers under the Act, a licensing authority shall ensure that no particular person is given undue preference or subjected to any undue disadvantage.

214. Reporting of accidents and incidents

(1) A person engaged in any undertaking or activity pursuant to a licence under this Act shall notify the respective licensing authority and the Authority within forty eight hours in writing, in the form and manner prescribed by the Authority, of any accident or incident causing loss of life, personal injury, explosion, oil spill, fire or any other accident or incident causing harm or damage to the environment or property which has arisen in Kenya or within Kenya's Exclusive Economic Zone or Outer Continental Shelf.

(2) The licensing authority or the Authority may direct an investigation to be carried out into any accident or incident under subsection (1) and take such action as it deems necessary.

215. Recovery and application of licence fees and penalties

A penalty, fine, fee, expense or other monies recoverable under this Act or a licence, the recovery of which is not otherwise specifically provided for, shall be a civil debt recoverable summarily.

216. Consolidated Energy Fund

(1) The Cabinet Secretary shall establish the Consolidated Energy Fund to cater for—

(a) energy sector disaster mitigation and response;

(b) hydro risk mitigation;

(c) operations of the Agency;

(d) promotion of renewable energy initiatives;

(e) construction of appropriate energy infrastructure;

(f) decommissioning of energy infrastructure;

(g) energy efficiency and conservation;

(h) applied research, technology development and innovation allied to energy sector including technology needs assessment, deployment and scaling up.

(2) The sources of funds shall be—

(a) appropriations from Parliament;

(b) contributions from the energy sector players;

(c) Government securities and corporate bonds;

(d) recovered assets from proceeds of crime in the energy sector;

(e) grants, gifts and donations; and

(f) monetary sanctions imposed by the Authority.

(3) For the avoidance of doubt, the fund shall be managed in accordance with the Public Finance Management Act (Cap. 412A).

(4) The Cabinet Secretary may prescribe regulations for the management of the Fund.

217. Access to services

(1) Every institution in the energy sector as listed in the Third Schedule, shall establish such offices as shall be necessary so as to ensure its services are easily accessible by Kenyans in accordance with Article 6(3) of the Constitution.

(2) The Cabinet Secretary may amend the Schedule to include any such other institutions as may be established.

218. Offences by bodies corporate or their employees

An employer or principal shall be liable for an offence committed by an employee or agent under this Act, unless the employer or principal proves that the offence was committed against the employer's or principal's express or standing directions.

219. Penalties not to affect other liabilities

The penalties imposed under this Act shall be in addition to and not in derogation of any liabilities in respect of payment of compensation or in the case of a licensee, the revocation of the licence.

220. Prosecution of offences

The Director Public Prosecutions shall, on the request of the Authority, appoint any officer of the Authority or an advocate of the High Court to be a public prosecutor for the purposes of prosecuting offences under this Act.

221. General penalty

Where any default in or contravention of any of the provisions of this Act is made for which no fine or penalty is expressly stated, the person so defaulting or contravening shall, on conviction, be liable to a fine not less than one hundred thousand shillings.

222. Powers and functions of the National and County Governments

The powers and functions of the National and County Governments are as set out in the Fifth Schedule.

223. Levies on Energy Infrastructure

No public body shall charge levies on public energy infrastructure without the consent of the Cabinet Secretary in writing.

Part X – REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

224. Repeals and savings

(1) Subject to the provisions of subsection (2), the Energy Act (No. 12 of 2006)(Repealed), the Kenya Nuclear Electricity Board Order (L.N. 131/2012) and the Geothermal Resources Act (No. 12 of 1982) are repealed.

(2) Notwithstanding the provisions of subsection (1)—

(a) anything done under the provisions of the Energy Act, or by the Minister or by the Cabinet Secretary under the provisions of the Energy Act (No. 12 of 2006)(Repealed), the Kenya Nuclear Electricity Board Order (L.N. 131/2012) and the Geothermal Resources Act (No. 12 of 1982) (Repealed) before the commencement of this Act shall be deemed to have been done under the provisions of this Act;

(b) any statutory instruments issued by the Commission, or by the Cabinet Secretary under the provisions of the Energy Act (No. 12 of 2006) (Repealed), the Kenya Nuclear Electricity Board Order (L.N. 131/2012) and the Geothermal Resources Act (No. 12 of 1982)(Repealed), before the commencement of this Act shall be deemed to be statutory instruments granted by the Authority under the provisions of this Act and shall remain in force until specifically revoked under this Act;

(c) any revocation of a licence under this Act shall not indemnify the licensee from any liabilities to which the person may have become liable under the Act before such revocation;

(d) the tariffs existing at the commencement of this Act shall continue being in place until new tariffs are gazetted under this Act; and

(e) any subsidiary legislation issued before the commencement of this Act shall, as long it is not inconsistent with this Act, remain in force until repealed or revoked by subsidiary legislation

under the provisions of this Act and shall, for all purposes, be deemed to have been made under this Act.

225. Transitional provisions

The provisions of the Fourth Schedule shall apply.

FIRST SCHEDULE [s. 14, 47, 62]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE ENERGY AND PETROLEUM REGULATORY AUTHORITY , RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION AND NUCLEAR POWER AND ENERGY AGENCY

1. Board to meet at least four times in a year

   The Board, as the case may be, shall meet as often as necessary for the transaction of business but shall meet not less than four times every financial year and not more than four months shall elapse between the date of one meeting and the next.

2. The Chairperson to preside all meetings

   (1) The Chairperson shall preside at every meeting of the Board at which the Chairperson is present but in the absence of the Chairperson, the members of the Board present shall appoint a member from among their number to preside at that meeting.

   (2) The Chairperson or, in the absence of the Chairperson or member of the Board appointed by the Board, as the case may be, to act in the place of the Chairperson, may at any time call a special meeting upon a written request by a majority of the members of the Board.

3. Notice of meeting

   Unless five members of the Board otherwise agree, at least seven days' written notice of every meeting of the Board shall be given to every member of the Board.

4. Decision of the Board to be by majority

   Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members of the Board present, as the case may be, and in the case of an equality of votes, the Chairperson presiding shall have a casting vote.

5. A member of the Board is entitled to have opinion recorded

   Any member of the Board present at a meeting of the Board or a Committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Board or the Committee, as the case may be, passes a resolution, which in the opinion of that member is contrary to his advice or to law.

6. Member of the Board to disclose interest

   A member of the Board who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as possible after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board and shall not be present during any deliberations on the matter.

7. The Board to cause minutes to be recorded and kept

   The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by theBoard at the next meeting of the Board and signed by the Chairperson or the member presiding at the meeting.

8. Quorum

(1) Subject to subsection (2), five members of the Board shall constitute a quorum for the conduct of business at any meeting of the Board.

(2) When there is no quorum at or for the continuation of a meeting of the Board only because of the exclusion of a member of the Board under paragraph 6, the other members present may, if they deem it expedient so to do—

(a) postpone the consideration of that matter until there is a quorum; or

(b) proceed to consider and decide the matter as if there was quorum.

SECOND SCHEDULE [s. 15, 31, 48, 63]

PROVISIONS AS TO THE TERMS OF OFFICE, VACANCY OF AND REMOVAL FROM OFFICE, COMMON SEAL, FINANCIAL YEAR, ANNUAL ESTIMATES AND BOOKS OF ACCOUNTS, RECORDS, AUDIT AND REPORTS AND OTHERS OF ENERGY AND PETROLEUM REGULATORY AUTHORITY, ENERGY AND PETROLEUM TRIBUNAL, RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION AND NUCLEAR POWER AND ENERGY AGENCY

1. Term of office

(1) A member of the Authority, Tribunal, Corporation or Agency as the case may be, shall hold office, in the case of—

(a) the Chairperson and Vice-Chairperson, for a period of four years; and

(b) a member, for a period of three years.

(2) The Chairperson, Vice-Chairperson and members shall be eligible for re-appointment for one further term.

(3) The Chairperson, Vice-Chairperson, and members shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

2. Gender balance and regional and ethnic balance

Appointments under this Act shall take into account the principle that the composition of the Authority, Tribunal, Corporation or Agency as the case may be taken as a whole, shall reflect gender balance as well as regional and ethnic diversity of the people of Kenya.

3. Vacancy of office of Chairperson, vice-Chairperson, or members

(1) The office of the Chairperson, vice-Chairperson or member, as the case may be, shall become vacant if the holder—

(a) dies;

(b) by notice in writing addressed to the President or the Cabinet Secretary, as the case may be, resigns from office; and

(c) is removed from office under any of the circumstances specified in paragraph 4 of this schedule.

(2) The President or the Cabinet Secretary, as the case may be, shall notify every resignation, vacancy or termination in the *Gazette* within fourteen days.

4. Removal of Chairperson, vice-Chairperson and members

A Chairperson, vice-Chairperson, or member (other than an *ex officio* member), may be removed from office on account of any of the following—

(a) violation of the Constitution or any other law;

(b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;

(c) physical or mental incapacity to perform the functions of office;

(d) being absent from three consecutive meetings of the Authority, Tribunal or Board, as the case may be, without reasonable cause;

(e) failure to disclose to the Authority, Tribunal or Board any interest in any contract or matter before the Authority, Tribunal or Board;

(f) being convicted of a criminal offence;

(g) incompetence; or

(h) bankruptcy.

5. Removal from office

(1) The Director-General, the Chief Executive Officer, Executive Director, Managing Director, the Authority Secretary or Corporation Secretary as the case may be, may be removed from office by the appointing authority in accordance with the terms and conditions of service only for—

(a) inability to perform the functions of the office of their respective offices arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or neglect of duty;

(d) violation of the Constitution or any other law;

(e) bankruptcy; or

(f) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the Director General, the Chief Executive Officer or Executive Director, as the case may be, is removed under subparagraph (1), the Director-General, he or she shall be given—

(a) sufficient notice of the allegations made against him or her; and

(b) an opportunity to present his or her defence against the allegations.

6. Financial year

The financial year of the Authority, Tribunal, Corporation or Agency shall be the period of twelve months ending on the thirtieth day of June in each year.

7. Annual estimates

(1) At least three months before the commencement of each financial year, the Authority, Tribunal, Corporation or Agency, as the case may be, shall cause to be prepared estimates of the revenue and expenditure of the Authority, the Tribunal or the Agency for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Authority, the Tribunal, the Corporation or the Agency, as the case may be, for the financial year, and in particular but not limited to—

(a) the payment of salaries or allowances and other expenses in respect of the staff of the Authority, the Tribunal or the Agency and the members; and

(b) any other expenditure that may be necessary for the carrying out of their respective objects and functions under the Act.

(3) The annual estimates shall be approved by the Authority, Tribunal or Agency as the case may be, before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary who, after approving it, shall forward it to the Cabinet Secretary of the National Treasury.

(4) After the Cabinet Secretary's approval, the Authority, the Tribunal or the Agency, as the case may be, shall not increase the annual estimates without the consent of the Cabinet Secretary.

8. Books of accounts, records, audit and reports

(1) The Authority, Tribunal, Corporation or Agency as the case may be, shall keep or cause to be kept proper books of accounts recording all the income and liabilities, expenditure assets, undertakings, funds, activities, contracts, transactions and any other business of the Authority, the Tribunal, the Authority and the Agency respectively.

(2) The Authority, Tribunal, Corporation or Agency, as the case may be, shall ensure that all monies received are properly brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets and liabilities under this Act.

(3) Within a period of three months after the end of each financial year, the Authority, Tribunal, Corporation or Agency, as the case may be, shall prepare annual financial statements in accordance with the provisions of section 81 of the Public Financial Management Act (Cap. 412A), and submit them to the Auditor-General or to an auditor appointed under subparagraph (4), for audit.

(4) The auditor referred to in subparagraph (3) shall be appointed by the Authority, Tribunal, Corporation or Agency, as the case may be, with the written approval of the Auditor-General.

(5) The appointment of an auditor shall not be terminated by the Authority, Tribunal, Corporation or Agency, as the case may be, without the prior written consent of the Auditor-General.

(6) The Auditor-General may give general or special directions to an auditor appointed under subparagraph (4) and the auditor shall comply with those directions.

(7) An auditor appointed under subsection (4) shall report directly to the Auditor-General on any matter relating to the directions given under subparagraph (6).

(8) Within a period of six months after the end of the financial year, the Auditor-General shall report on the examination and audit of the accounts of the Authority, Tribunal, Corporation or Agency, as the case may be, to the Authority, Tribunal, Corporation or Agency as the case may be, and to the Cabinet Secretary, and in the case of an auditor appointed under subparagraph (4), the auditor shall submit a copy of the report to the Auditor-General.

(9) Nothing in this Act shall be construed to prohibit the Auditor-General from carrying out an inspection of the Authority, the Tribunal's, the Corporation's or the Agency's, as the case may be, accounts or records whenever it appears to him to be desirable and the Auditor-General shall carry out such inspection at least once every six months.

(10) Notwithstanding anything in this Act, the Auditor- General may submit to the Cabinet Secretary a special report on any matter incidental to his or her powers under this Act, and the provisions of the

Public Financial Management Act (Cap. 412A), on the same issue shall apply *mutatis mutandis* to any report made under this section.

(11) The Cabinet Secretary shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him or her under this section.

(12) The fee for any auditor, not being a public officer, shall be determined and paid by the Authority, Tribunal, Corporation or Agency, as the case may be.

(13) The Authority, Tribunal, Corporation or Agency, as the case may be, shall prepare a report for each quarter not later than fifteen days after the end of each quarter and submit it to the Cabinet Secretary who shall, upon approving it, forward a copy to the Cabinet Secretary of the National Treasury.

(14) The Authority, Tribunal, Corporation or Agency, as the case may be, shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Public Sector Accounting Standards Board from time to time.

9. The common seal

(1) The common seal of the Authority, Tribunal, Corporation or Agency, as the case may be, shall be kept in such custody as the Authority, the Tribunal or the Board, as the case may be, may direct and shall not be used except on the order of the Authority, the Tribunal or the Board respectively.

(2) The common seal of the Authority, Tribunal, Corporation or Agency, as the case may be, when affixed on a document and duly authenticated shall be judicially and officially noticed unless and until the contrary is proved any necessary order or authorization by the Authority, the Tribunal or the Board, as the case may be, under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the Authority, Tribunal, Corporation or Agency, as the case may be, shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Authority, the Tribunal or Board, as the case may be, may be authenticated by the signature of the Chairperson or the Chief Executive Officer:

Provided that the Authority, the Tribunal or the Board, as the case may be, shall, in the absence of either the Chairperson or the Chief Executive Officer nominate one member to authenticate the seal on behalf of the Chairperson or the Chief Executive Officer.

THIRD SCHEDULE [s. 217]

ENERGY SECTOR ENTITIES

1. Energy and Petroleum Regulatory Authority;
2. Energy and Petroleum Tribunal;
3. Rural Electrification and Renewable Energy Corporation;
4. Nuclear Power and Energy Agency;
5. Kenya Power and Lighting Company;
6. Kenya Electricity Generating Company;
7. Geothermal Development Company;
8. Kenya Electricity Transmission Company;
9. National Oil Corporation of Kenya;
10. Kenya Pipeline Company; and

11. Kenya Petroleum Refinery Limited.

FOURTH SCHEDULE [s. 225]

TRANSITIONAL PROVISIONS

1. ENERGY AND PETROLEUM REGULATORY AUTHORITY

Re-establishment of the Energy Regulatory Commission

(a) The Energy and Petroleum Regulatory Authority established under section 9 shall be the successor to the Energy Regulatory Commission established by the Energy Act (now repealed) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Energy Regulatory Commission existing at the commencement of this Act shall be automatically and fully transferred to the Energy and Petroleum Regulatory Authority and any reference to the Energy Regulatory Commission in any contract or document shall, for all purposes, be deemed to be a reference to the Energy and Petroleum Regulatory Authority established under section 9.

(b) The persons who at the commencement of this Act are the Chairperson and Commissioners of the Energy Regulatory Commission shall become Chairperson and members of the Board respectively, as the case may be, of the Authority for the remainder of their tenure in accordance with their appointment under the repealed Act.

(c) For the greater certainty and subject to subparagraph (b), such persons shall have and may exercise and perform all the powers and functions of Chairperson or members of the Board, as the case may be, as if they were appointed under section 12.

(d) Every person who at the commencement of this Act is an employee of the Energy Regulatory Commission, not then being under notice of dismissal or resignation shall, on that day and subject to this Act, become an employee of the Energy and Petroleum Regulatory Authority on the same terms and conditions.

2. THE ENERGY AND PETROLEUM TRIBUNAL

(a) The Energy and Petroleum Tribunal established under section 25 shall be the successor to the Energy Tribunal established by the Energy Act (Repealed) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Energy Tribunal existing at the commencement of this Act shall be automatically and fully transferred to the Energy and Petroleum Tribunal and any reference to the Energy Tribunal in any contract or document shall, for all purposes, be deemed to be a reference to the Energy and Petroleum Tribunal established under section 25.

Preservation of judgements and rulings

(b) The judgements, rulings or orders made by the Energy Tribunal established by the Energy Act (Repealed) are preserved.

(c) The persons who at the commencement of this Act are the Chairperson and members of the Energy Tribunal shall become the Chairperson and members of the Energy and Petroleum Tribunal respectively, as the case may be, for the remainder of their tenure in accordance with their appointment under the repealed Act.

(d) For greater certainty and subject to paragraph (c), such persons shall have and may exercise and perform all the powers and functions of Chairperson or members of the Energy and Petroleum Tribunal as the case may be, as if they were appointed under section 26.

(e) Every person who at the commencement of this Act is an employee of the Energy Tribunal, not then being under notice of dismissal or resignation shall, on that day and subject to this Act, become an employee of the Energy and Petroleum Tribunal on the same terms and conditions.

3. RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION

Rural Electrification and Renewable Energy Corporation to be successor of Rural Electrification Authority

(1) The Corporation shall be the successor to the Rural Electrification Authority established under section 66 of the Energy Act No. 12 of 2006 (Repealed) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Rural Electrification Authority existing at the commencement of this Act shall be automatically and fully transferred to the Corporation and any reference to the Rural Electrification Authority in any contract or document shall, for all purposes, be deemed to be a reference to the Corporation established under section 43.

(2) The persons who at the commencement of this Act are the Chairperson and Board members of the Rural Electrification Authority shall become Chairperson and members of the Board respectively, as the case may be, of the Corporation for the remainder of their tenure in accordance with their appointment under the repealed Act.

(3) For greater certainty and subject to subsection (2), such persons shall have and may exercise and perform all the powers and functions of Chairperson or members of the Board, as the case may be, as if they were appointed under section 45.

(4) Every person who at the commencement of this Act is an employee of the Rural Electrification Authority (not then being under notice of dismissal or resignation) shall, on that day and subject to this Act, become an employee of the Corporation on the same terms and conditions.

4. THE NUCLEAR POWER AND ENERGY AGENCY

Nuclear Power and Energy Agency to be the successor to Kenya Nuclear Electricity Board

(1) The Agency shall be the successor to the Kenya Nuclear Electricity Board under the Kenya Electricity Board Order, 2012 and subject to this Act, all rights, duties, obligations, assets and liabilities of the Kenya Nuclear Electricity Board at the commencement of this Act, shall be automatically and fully transferred to the Nuclear Power and Energy Agency and any reference to the Kenya Nuclear Electricity Board shall for all purposes, be deemed to be a reference to the Nuclear Power and Energy Agency established under section 54.

(2) The persons who at the commencement of this Act are the Chairperson and Board Members of the Kenya Nuclear Electricity Board shall become Chairperson and Directors of the Board respectively, as the case may be, of the Agency for the remainder of their tenure in accordance with their appointment under the repealed Order.

(3) For greater certainty and subject to subsection (2), such persons shall have and may exercise and perform all the powers and functions of Chairperson or Directors of the Board, as the case may be, as if they were appointed under section 58.

(4) Every person who at the commencement of this Act is an employee of the Kenya Nuclear Electricity Board, not then being under notice of dismissal or resignation shall, on that day and subject to this Act, become an employee of the Nuclear Power, and Energy Agency.

5. ONGOING PROJECTS

(1) The Cabinet Secretary shall continue to manage ongoing upstream coal activities including exploration and extraction and the Cabinet Secretary responsible for mining shall issue permits and licences for the activities under the relevant mining laws.

(2) The activities referred to in paragraph (1) are as follows—

(a) Mui Basin Coal Block "A" Concession;

(b) Mui Basin Coal Block "B" Concession;

(c) Mui Basin Coal Block "C" Concession;

(d) Mui Basin Coal Block "D" Concession;

(e) Mui Basin South Coal Block "19" Concession;

(f) Mui Basin South Coal Block "20" Concession;

(g) Exploratory Coal and Coal Bed Methane drilling services in Kitui, Kwale, Kilifi and Taita Taveta Counties.

FIFTH SCHEDULE [s. 222]

DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY GOVERNMENTS

A. FUNCTIONS OF THE NATIONAL GOVERNMENT

1. Policy Formulation and Integrated National Energy Planning

(a) Formulation of the National Energy Policy.

(b) Preparation of Integrated National Energy Plan, incorporating fossil fuel, renewable energy and electricity master plans.

(c) Provision of land and rights of way for energy infrastructure.

2. Energy Regulation

(a) Regulation and licensing of importation, refining, exportation, transportation, storage and bulk sales of petroleum and their derivatives.

(b) Regulation and licensing of production, conversion, distribution, supply, marketing and use of renewable energy.

(c) Regulation and licensing of generation, importation, exportation, transmission, distribution, retail and use of electrical energy.

(d) Approval of energy purchase agreements, network service contracts as well contracts for common user facilities.

(e) Protection of consumer, investor and other stakeholder interests.

(f) Preparation and enforcement of regulations and standards.

(g) Formulation of National codes for energy efficiency and conservation in buildings.

(h) Issuance of energy saving certificates to enhance energy efficiency and conservation.

(i) Setting, review and adjustment of energy tariffs and tariff structures;

(j) Resolution of complaints and disputes between parties over any matter in the energy and petroleum sector.

(k) Prosecution of offences created under the Energy Act;

(l) Certification of petroleum tanker drivers, electrical workers and contractors, solar system installation technicians and contractors.

3. Operations and development

(a) Exploration and production of geothermal and other energy based natural resources.

(b) Importation, exportation, and refining or processing of petroleum and its derivatives;

(c) Transportation, storage and bulk sales of petroleum, coal and their derivatives.

(d) Generation, transmission, distribution (including reticulation) and retail supply of electricity.

(e) Collect and maintain energy data.

(f) Implementation of the Rural Electrification Programme and management of the Rural Electrification Programme Fund.

(g) Undertake feasibility studies and maintain data with a view to availing the same to developers of energy resources and infrastructure.

(h) Provide technical and other capacity building support to County Governments.

(i) Administration and management of the Consolidated Energy Fund and the National Energy Conservation Fund.

(j) Protection of energy infrastructure including pipelines and storage depots, refineries, power plants, control centres, electric supply lines and substations.

B. FUNCTIONS OF THE COUNTY GOVERNMENTS

1. County Energy Planning

(a) Preparation of County energy plans, incorporating petroleum, renewable energy and electricity master plans.

(b) Physical planning relating to energy resource areas such as dams, solar and wind farms, municipal waste dumpsites, agricultural and animal waste, ocean energy, woodlots and plantations for production bio energy feedstock.

(c) Provision of land and rights of way for energy infrastructure.

(d) Facilitation of energy demand by planning for industrial parks and other energy consuming activities.

(e) Preparation and implementation of disaster management plans.

2. County Energy Regulation

(a) Regulation and licensing of retail petroleum service stations.

(b) Regulation and licensing of County gas reticulation systems.

(c) Regulation and licensing and supply of retail coal products for domestic use.

(d) Regulation and licensing of designated parking for petroleum tankers.

(e) Regulation and licensing of biomass production, transport and distribution.

(f) Regulation and licensing of biogas systems.

(g) Regulation and licensing of charcoal production, transportation and distribution.

(h) Customize National codes for energy efficiency and conservation in buildings to local conditions.

3. County operations and development

(a) Electricity and gas reticulation.

(b) Provide and maintain adequate street lighting.

(c) Provision of designated parking for petroleum tankers.

(d) Collect and maintain energy data.

(e) Implementation of County electrification projects.

(f) Undertake feasibility studies and maintain data with a view to availing the same to developers of energy resources and infrastructure.

(g) Establishment of energy centres for promotion of renewable energy technologies, energy efficiency and conservation.

(h) Protection of energy infrastructure including oil and gas fields and pipelines, refineries, power plants, control centres, electric supply lines, substations and depot.

(i) Undertake energy efficiency and conservation within the County.