

## DRAFT GAS BILL

**To establish a national regulatory framework for the midstream and downstream gas industry; establish a licensing system for gas undertakings; ensure safety, efficiency and environmental responsibility; make provision for safety and technical standards for gas infrastructure; enable third party access to certain gas pipeline services; provide for the powers and obligations of licensees; regulate tariffs; and provide for incidental matters.**

*(Introduced by the Minister of Mines and Energy)*

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**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

CHAPTER 1  
PRELIMINARY

**Definitions**

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

“Authority” means the Namibia Energy Regulatory Authority established by section 3 of NERA Act;

“code” means a code issued by the Authority under section 39;

“consumer” means an end user of gas who consumes the gas as a commodity;

“customer” means a person purchasing gas or gas services, and includes a consumer;

“day” means any day other than a Saturday, Sunday or public holiday specified in, or declared as such under, the Public Holidays Act, 1990 (Act No. 26 of 1990);

“downstream gas activities” mean -<sup>1</sup>

- (a) the marketing of gas;
- (b) the trading of gas;
- (c) the distribution of gas to customers;

“decommissioning” means the recovery, removal or disposal or, if applicable, re-deployment, of gas undertaking related infrastructure, facilities or plant or any other relevant assets and includes cleaning up of the licensed area, restoration of land, resealing of wells and safety clearance of the licensed area;

“directive” means a directive issued by the Authority under section 23 of the NERA Act;

“distribution” means the distribution of bulk gas and the transportation thereof by pipelines and related infrastructure for delivering of gas to customers, facilities and plant and in this regard the Authority may determine a maximum operating pressure;

“facility”, with regard to a gas undertaking, means the infrastructure, buildings, plant and other stationary equipment located on the licensed area for purpose of executing that gas undertaking, and includes any vessel, vehicle or craft used by a licensee in connection with its gas undertaking;

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<sup>1</sup> Based on ISO 14224 definitions amongst others.

“gas”<sup>2</sup> means -

- (a) natural gas;
- (b) liquefied, compressed and regasified natural gas;
- (c) artificial gas;
- (d) synthetic gas;
- (e) hydrogen and hydrogen rich gas;
- (f) biomethane;
- (g) methane and synthetic methane;
- (h) a gas allocated or included in section 2(2);

“gas activity” means any activity related to gas envisaged by this Act, whether licensed or not;

“gas advisory forum” means the gas advisory forum referred to in section 7;

“gas agreement” includes a gas purchase agreement, a transmission or distribution agreement, a connection agreement, an agreement where gas services or activities are subcontracted or assigned, a gas related supply agreement and any other relevant gas related agreement;

“gas service” means any gas service rendered with regard to midstream and downstream gas activities and includes, without limiting the foregoing, transmission, distribution, liquefaction, regasification, trading, storage, marketing, import and export of gas;

“gas undertaking” means a licensed undertaking as referred to in section 8;

“environment” means the environment as defined in section 1 of the Environmental Management Act;

“Environmental Management Act” means the Environmental Management Act, 2007 (Act No. 7 of 2007);

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<sup>2</sup> The Ministry has expressed an intention to regulate LPG (as currently imported into Namibia for commercial and residential use), the cylinders and other activities and operators associated therewith, under the Petroleum Products and Energy Act, 1990. Under that Act, LPG falls within the scope of the definition of petroleum product. Note that this definition of “gas” is wide and inclusive of natural and synthetic gas – MME will render final decision whether (green) hydrogen and synthetic gas will be included in the ambit of this Bill.

“Executive Director” means an Executive Director as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

“High Court” means the High Court of Namibia as defined in section 1 of the High Court Act, 1990 (Act No. 16 of 1990);

“licence” means a licence contemplated in section 8;

“licensee” means the holder of a licence;

“Local Authorities Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992);

“local authority council” means a local authority council as defined in section 1 of the Local Authorities Act;

“liquefaction” means converting gas from a gaseous state to a liquid state at a facility designed and constructed for that purpose;

“marketing” means the methods and processes used to raise awareness of the gas supply activities of a licensee, the establishment of the branding thereof and the capturing of customers;

“midstream gas activities” mean those gas activities regarding processing, storage and transportation of gas and includes, without limiting the foregoing -<sup>3</sup>

- (a) gas processing, refining and treatment including separation of hydrocarbons;
- (b) gas transportation;
- (c) gas liquefaction and regasification;
- (d) gas storage;
- (e) marketing of gas;

“Minister” means the Minister responsible for energy;

“Ministry” means the Ministry administering matters relating to energy;

“NERA Act” means the Namibian Energy Regulatory Authority Act, 2024 (Act No. .... of 2024);

“prescribed” means prescribed by regulation, rule or code made or issued under this Act;

“previously disadvantaged person” means -

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<sup>3</sup> Based on ISO 14224 definitions amongst others.

- (a) racially disadvantaged persons;
- (b) women; or
- (c) persons with any disabilities, as defined in section 1 of the National Disability Council Act, 2004 (Act No 26 of 2004);

“processing” means a range of industrial processes designed to purify natural gas by the removal of solids, water and condensate, carbon dioxide, hydrogen sulphide, mercury and higher mass hydrocarbons and other impurities or to odourise or otherwise prepare gas for transportation, shipping or liquefaction;

“prudent gas practice” means a practice, method or procedure conforming to safety and legal requirements which is attained by exercising the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a licensee, customer or other person engaged in the same type of activity or practice;

“racially disadvantaged persons” means a person who belong to a racial or ethnic group which was or is, directly or indirectly, disadvantaged as a consequence of social, economic or educational imbalances arising out of racially discriminatory laws or practices before the independence of Namibia;

“regional council” means a regional council established by section 2 of the Regional Councils Act;

“Regional Councils Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regasification” means converting liquefied gas to a gaseous state at a facility designed and constructed for that purpose;

“regulation” means a regulation made under section 38;

“repealed Act” means the Electricity Act, 2007 (Act No. 4 of 2007), as repealed by the NERA Act;

“rule” means a rule issued under section 39;

“standard” means any provision occurring in any specification, rule, code, directive or other instrument under this Act having standardisation as its aim and issued by an institution or organisation, including the Authority, inside or outside Namibia which, whether generally or with regard to any particular article or matter and whether internationally or in any particular country, including Namibia, seeks to promote standardisation;

“storage” means the keeping of gas in a storage facility;

“this Act” includes the regulations, rules, codes and standards;

“trading” means the purchase and sale or sale of gas as a commodity by any person to a customer and any gas service associated therewith and “selling” has a similar meaning;

“transmission” means the bulk transportation of gas, whether by pipeline, shipping or other means, between a source of supply and a distributor, a person undertaking storage services or a customer;

“Tribunal” means the Energy Tribunal established by section 30 of the NERA Act; and

“upstream gas activities” means those gas activities involving reconnaissance, exploration and production operations, as set out in the Petroleum (Exploration and Production) Act, 1991 (Act No. 2 of 1991), and includes, without limiting the foregoing -<sup>4</sup>

- (a) the exploration for gas;
- (b) seismic surveys;
- (c) the discovery and appraisal of gas;
- (d) the drilling of exploratory and appraisal wells and the operation thereof; and
- (e) gas extraction.

### **Application of Act**

**2.** (1) This Act does not apply to upstream gas activities as envisaged in the Petroleum (Exploration and Production) Act, 1991 (Act No. 2 of 1991).

(2) The Minister may, after consultation with relevant stakeholders, by notice in the Gazette, allocate any gas, not listed in this Act or excluded from this Act, to be regulated by the Authority under this Act.

(3) For avoidance of doubt, this Act applies to the territorial sea, the exclusive economic zone and the continental shelf of Namibia as set out in the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990).

(4) As regards the requirements, qualifications, registration and accreditation of persons working with gas and gas facilities, equipment and infrastructure, including health and safety aspects –

- (a) these matters are to be regulated under this Act; and
- (b) in the event of a conflict between this Act or a rule or code made under this Act and the Labour Act, 2007 (Act No. 11 of 2007), or regulations made under the Labour Act, 2007, this Act and a rule or code made under this Act, take precedence.

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<sup>4</sup> Based on ISO 14224 definitions amongst others.

- (5) This Act binds the State.

### **Objects of Act**

3. The objects of this Act are -
- (a) to achieve the efficient, reliable, sustainable and orderly development and operation of midstream and downstream gas activities and gas infrastructure in Namibia;
  - (b) to ensure that the interests and needs of present and future customers are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the midstream and downstream gas activities within the broader context of economic energy regulation in Namibia;
  - (c) to promote efficient investment in, and the efficient operation and use of, midstream and downstream gas activities and related infrastructure especially as regards price, quality, safety, reliability and security of supply;
  - (d) to ensure the safe, efficient, economical and environmentally responsible provision of midstream and downstream gas services;
  - (e) to promote the participation of previously disadvantaged persons in the gas industry and promote local content, employment equity and skills development;
  - (f) to contribute to the Namibian targets set for reducing greenhouse gas emissions and contribute to the reduction thereof;
  - (g) to facilitate third party access to gas infrastructure;
  - (h) to promote the use of diverse energy sources and energy efficiency;
  - (i) to promote sound, efficient and appropriate proven and new energy provision and other energy related technologies; and
  - (i) to facilitate a fair balance between the interests of customers, licensees, investors, buyers, suppliers and the general public.

### **Powers and functions of Authority**

4. The powers and functions of the Authority are -



- (a) to regulate licensees and other persons involved in, or affected by, gas activities<sup>5</sup> in a manner that maintains and improves efficiency, economy and reliability in the supply of gas but having regard to the needs of licensees to be able to finance licensed activities;
- (b) to act in a manner that is predictable, consistent, transparent and fair and ensures that the independence of the Authority is maintained in line with good regulatory practices;
- (c) to issue, renew, transfer, amend, suspend or cancel licences in the manner provided for by this Act;
- (d) to set, enforce and review technical, environmental, health, safety and quality standards for the midstream and downstream gas industry;
- (e) to make or review the rules and codes for the midstream and downstream gas industry and enforce compliance with this Act;
- (f) to make determinations and issue directives under this Act and the NERA Act and enforce the determination or directive in order to ensure compliance with this Act and conditions of licences issued under this Act;
- (g) to set, review and adjust gas tariffs and tariff structures and investigate tariffs;
- (h) to exercise regulatory oversight over gas agreements as provided for in or under this Act;
- (i) to investigate complaints or disputes between parties on any matter regulated under this Act and to mediate disputes in terms of the NERA Act;
- (j) to raise a regulatory levy under the NERA Act to defray the regulatory costs of regulation of the mid- and downstream gas sectors;
- (k) to advise the Minister on any matter relating to the gas industry;
- (l) to promote competition in the midstream and downstream gas industry and ensure the optimal use of available gas resources;
- (m) to refer any matter or dispute to the Tribunal as contemplated in this Act or the NERA Act; and

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<sup>5</sup> Note that the following distinctions are made:

- 1. Gas activities - this is any activity related to gas whether licensed or not;
- 2. Gas services - these are specific services rendered relating to gas undertakings but they are not necessarily all licensed;
- 3. Gas undertakings - these are gas activities for which a licence is required.

- (n) to perform such other functions as are assigned to the Authority by or under this Act or any other law.

### **Suspension of powers, duties or functions**

**5.** (1) Subject to subsection (2), the Minister may, after consultation with the Authority and relevant stakeholders, by notice in the *Gazette*, suspend any power, duty or function applicable to the Minister, the Authority or any other person to whom this Act applies, including the power to grant and issue licences, , for such period and subject to such conditions as the Minister may impose.

(2) The Minister may only act under subsection (1) if the Minister considers such suspension to be in the public interest and the interest of the gas industry.

(3) In the event of an emergency or in the interest of national safety and security, the Minister must consult with the Authority but may dispense with the requirement to consult with relevant stakeholders as contemplated in subsection (1).

(4) The notice referred to in subsection (1) must specify -

- (a) the reasons for the suspension;
- (b) the date on which the suspension becomes effective and the date on which the suspension terminates;
- (c) the exact nature of the power, duty or function being suspended and any other relevant details pertaining to the suspension; and
- (d) any other information considered relevant by the Minister.

(5) The Minister may, after consultation with the Authority, establish an emergency preparedness, prevention and management plan to co-ordinate response to emergencies, accidents and other disasters that may occur within the midstream or downstream gas industry.

### **National gas policies**

**6.** (1) The Minister, after consultation with relevant stakeholders, is responsible for ensuring the preparation and implementation of the -

- (a) national gas policy, which may form part of the national energy policy; and
- (b) such additional national policies on the Namibian gas industry as the Minister may deem necessary.

(2) The Minister may, after consultation with the relevant stakeholders, review and revise these policies.

(3) In giving effect to this Act the Authority is bound to act in accordance with these applicable policies.

### **Gas advisory forum**

7. (1) The Minister may establish a gas advisory forum selected from such persons and representatives of stakeholders in the gas industry as the Minister considers appropriate.

(2) The Minister may establish the gas advisory forum as a standing forum or may establish an *ad hoc* gas advisory forum as the Minister considers appropriate.

(3) The gas advisory forum -

(a) advises the Minister on any matter relating to gas; and

(b) is subject to such procedural and other requirements as the Minister may from time to time determine.

(4) The Executive Director of the Ministry may designate staff members in the Ministry as may be necessary to assist the gas advisory forum in the performance of its functions.

## CHAPTER 2 GAS LICENCES AND TARIFFS

### Part 1 Licences and tariffs

#### **Duty to obtain licence and exempted gas activities**

8. (1) Despite any law to the contrary, but subject to the provisions of this Act, a person may not carry out the following undertakings without a licence:

(a) processing of gas;

(b) transmission of gas;

(c) storage of gas;

(c) distribution of gas;

(d) liquefaction or regasification of gas;

- (e) trading of gas;<sup>6</sup>
- (g) importation of gas; or
- (h) exportation of gas.

(2) Unless otherwise decided by the Authority, a separate licence is required for each of the undertakings.

(3) The following gas activities are exempted from holding a licence:

- (a) any person engaged in the transmission or distribution of gas for that person's exclusive use;
- (b) small biomass projects in rural communities not connected to any gas grid;
- (c) small scale users of liquefied petroleum gas;<sup>7</sup>
- (d) if such activity is exempted from holding a licence under this Act.<sup>8</sup>

(4) A person contemplated in subsection 3(a) to (c) must register with the Authority in the form determined by the Authority and provide such information together with such registration as the Authority may require.

(5) If the Authority considers it to be in public interest and in the interest of the gas industry, the Authority may, in the manner it considers appropriate whether by means of a written determination or rules -

- (a) prohibit the contracting out or assigning by a licensee of any part of a gas undertaking to another person;
- (b) set out or prescribe the manner in, and the conditions under, which any existing or future contracting out or assigning by a licensee of any part of a gas undertaking to another person may take place; or
- (c) set out or prescribe the conditions or requirements which apply to a person to whom a licensee has contracted out or assigned to.

### **Exemption from obtaining licence**

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<sup>6</sup> With regard to the undertakings listed here, the Authority may, by means of licence conditions, place certain limitations on the activity – for example the manner of export or that trading only includes selling and not purchasing.

<sup>7</sup> See footnote 2 above as regards the possibility that LPG may be regulated under the Petroleum Products and Energy Act. However, under section 2 the Minister may then still allocate LPG to NERA should it be deemed fit for NERA to also regulate LPG.

<sup>8</sup> These exemptions are similar to SA Gas Act.

9. (1) Notwithstanding section 8, a person is not required to obtain a licence if exempted by the Authority in accordance with this section.

(2) A person not exempted under section 8 may in a manner determined by the rules apply to the Authority for an exemption from obtaining a licence for a gas service activity.

(3) The Authority may only grant an exemption referred to in subsection (2) with due compliance with -

- (a) rules, codes or standards made or a written determination given by the Authority with regard to -
  - (i) general conditions applicable to the exempted gas undertaking or categories of exempted gas undertakings;
  - (ii) gas tariffs to be applied;
  - (iii) the application of any right, duty, obligation or function attaching to the exempted gas undertakings;
  - (iv) any other matter considered relevant or which in the opinion of the Authority expedient in the public interest or gas industry interest; and
- (b) the requirements of any other law, including laws relating to health, safety and environmental standards.

(4) A person who makes an application for an exemption in terms of this section must advertise the application, at the expense of the applicant and in the manner determined by the rules which rules may include rules relating to objections and public hearings.

(5) The Authority may impose such conditions to an exemption which the Authority considers to be in the public interest and gas service industry interest, including conditions -

- (a) relating to charges for the gas undertaking; and
- (b) public health, public safety or the protection of the environment.

(6) If an application for an exemption is refused, the Authority must in writing inform the applicant of its decision and the reasons for the refusal.

(7) The Authority must issue an exemption in such form as the Authority determines.

#### **Application for issue, renewal, amendment or transfer of licence**

**10.** (1) An application for the issue, renewal, amendment or transfer of a licence must, in the manner and form determined by the rules -

- (a) be submitted to the Authority;
- (b) prior to submission, be advertised by, and at the expense of, the applicant;
- (c) contain such information as determined by the Authority;
- (d) be accompanied by proof of payment of application fee.

(2) An application for the transfer of a licence must be made by the licensee and the proposed transferee jointly, unless the Authority, on good cause shown, waives the requirement that both parties must make the application.

(3) An application for the renewal of a licence must be made within a period determined by the rules before the licence expires.

(4) A notification, discussion or request for further information by the Authority to any person on any matter relating to an application for the issue, renewal, amendment or transfer of a licence may not be construed as conferring any right or expectation to an applicant or other person.

### **Advertisement and objection to applications**

**11.** (1) An applicant must cause a notice of the intended application to be published in the *Gazette* and in a newspaper widely circulating in the intended area of operation of the applicant, inviting any interested person to make any objection to the application.

(2) Any objection to the application for the issue, renewal, amendment or transfer of a licence must be submitted to the Authority in the manner and within a period determined by the rules.

(3) The Authority must notify the applicant of any objection made under subsection (2) and may -

- (a) invite the person to reply to the objection within a period specified in the notification; or
- (b) arrange for a public hearing on the objection for the application for the issue, renewal, amendment or transfer of a licence, at a time and place determined by the Authority.

(4) The Authority must give the applicant, and every person who made an objection to the application for the issue, renewal, amendment or transfer of a licence a notice of not less than 10 days before the hearing envisaged in subsection (3) (b) in a manner considered appropriate by the Authority.

(5) At the public hearing, the applicant and the person who made an objection to the application for the issue, renewal, amendment or transfer of a licence may be represented by a person of the applicant's or person's choice and may lead evidence in support of the application or objection.

(6) Despite subsections (4) and (5), the Authority if deemed appropriate under the circumstances and in the public interest, may on its own arrange for a public hearing at a time and place determined by the Authority and the Authority must give the applicant and the public a notice of not less than 10 days before the hearing in a manner considered appropriate by the Authority.

### **Consideration of application for issue, renewal, amendment or transfer of licence**

**12.** (1) The Authority must consider the application for the issue, renewal, amendment or transfer of a licence and any objection made to the application.

(2) In considering the application referred to in subsection (1), the Authority must give due consideration to -

- (a) matters or activities which may adversely affect, or result in damage to, the rights of others or the environment and the requirements of the Environmental Management Act, having due regard to the environmental impact assessment and the environmental clearance certificate issued by the responsible authority in respect of the matters or activities for which the application is made, and weigh the matter or activities against the advantages in general that may be derived from the granting of the application;
- (b) the soundness, efficiency and appropriateness of technology involved in the application and whether such technology is new or proven technology;
- (c) whether the relevant gas activity or project involved is of a pilot, experimental or research and development nature;
- (d) the capacity or services being applied for and the need for such capacity or services in Namibia or in the licence area being applied for; and
- (e) such other matters as the Authority considers relevant.

(3) Without derogating from the generality of subsection (2), the Authority may -

- (a) request the applicant to submit -
  - (i) an environmental impact assessment study indicating -
    - (aa) the extent of any potential damage or pollution to the environment;

- (bb) the steps to be taken by the applicant to prevent or minimise the damage or pollution; and
- (cc) how the environment in terms of the applicable environmental laws is to be restored,

and if an environmental clearance certificate or other documents are required under the Environmental Management Act, the applicant must submit such certificate or other documents to the Authority; and

- (ii) details of the technical and economic financial resources available to the applicant to -
  - (aa) execute the work;
  - (bb) operate the licensed gas undertaking ; and
  - (cc) carry on the business,

to which the application or licence relates, substantiated by documentary proof, where applicable;

- (b) take into consideration -
  - (i) the extent to which the activities of the applicant may be detrimental to, or adversely affect -
    - (aa) the rights and operation of other licensees or customers; or
    - (bb) any other person undertaking a gas activity in the area of operation of the applicant;
  - (ii) the ability of the applicant to provide an effective gas service; and
  - (iii) whether the grant or refusal of the application in question is in the public interest.

**Granting or refusal of application for issue, renewal, amendment or transfer of licence**

- 13.** (1) After -
  - (a) considering the application for issue, renewal, amendment or transfer of licence;
  - (b) considering any objection and representation made on the application referred to in paragraph (a); and



- (c) giving due consideration of the matters contemplated in section 12,

the Authority must grant or refuse the application.

(2) The Authority must grant or refuse the application for the issue, renewal, amendment or transfer of licence -

- (a) not later than 20 days after conclusion of the public hearing referred to in section 11(3)(b); or
- (b) if no hearing was arranged, 20 days after the expiry of the period allowed for -
  - (i) the submission of objections in terms of section 11(2); or
  - (ii) the applicant to reply to the objection in terms of section 11(3)(a).

(3) If an application for the issue, renewal, amendment or transfer of licence is granted, the Authority -

- (a) must issue to the applicant the applicable licence in a form determined by the Authority, after the applicant has paid the relevant licence fee;
- (b) may in accordance with section 15 impose conditions to the licence as the Authority considers it appropriate; and
- (c) if applicable, must specify, in the schedule to the licence, the approved tariff to be charged by the licensee.
- (4) A licence must -
  - (a) specify the particular gas undertaking or undertakings authorised by the licence;
  - (b) define the area in respect of which the licence is issued;
  - (c) specify any conditions imposed on the licence; and
  - (d) contain a schedule specifying the approved tariffs that may be charged by the licensee for the gas undertakings, if applicable.

(6) If an application for the issue, renewal, amendment or transfer of licence is refused, the Authority must, in writing, inform the applicant of its decision and the reason for the refusal of the application, and if the Authority refuses to renew a licence of a licensee, the licensee must surrender the licence to the Authority.

**Granting of application for issue, renewal, amendment or transfer of licence in respect of incomplete information or premises**

**14.** (1) Subject to subsection (2) and if an applicant made an application for the issue, renewal, amendment or transfer of licence -

- (a) at a time when information required from the application is not available or an action required to be taken has not been taken; or
- (b) in respect of an application relating to a premises which still require work of a structural nature to be carried out, including the installation of plant, facilities and equipment,

before operation under the licence can commenced, the Authority may grant the application subject to such suspensive or other conditions as the Authority considers appropriate including conditions relating to the period within which the condition requirements must be met.

(2) For the purposes of subsection (1), the Authority may -

- (a) whether in general;
- (b) for each type of gas undertaking; or
- (c) for each application,

determine the -

- (d) minimum or specific information which must be submitted by the applicant;
- (e) minimum or specific action which must be taken by the applicant; and
- (f) timeframe within which information referred to in subparagraph (i) must be submitted or action referred to in subparagraph (ii) be completed.

(3) The Authority may, on written application of the licensee -

- (a) withdraw or amend any suspensive or other condition referred to in subsection (1);
- (b) extend the period contemplated in subsection (1), but the total period of an extension, or the cumulative periods if more than one extension has been granted, may not exceed five years from the date the application for the issue, renewal, amendment or transfer of the licence was granted subject to such suspensive or other conditions; or
- (c) approve an amended plan in respect of the premises referred to in subsection (1).

(4) Subject to subsection (3), a licence to which this section applies automatically lapses if the applicant fails to comply with the suspensive or other condition imposed under subsection (1) within the period stated in such condition, and the licensee must surrender the licence to the Authority.

(5) In the case of lapsing of a licence, an applicant must commence the application proceedings anew in accordance with section 10.

### **Conditions of licence**

**15.** (1) A licence is subject to such conditions as may be determined by the rules and such other conditions as the Authority may impose when granting an application for the issue, renewal, amendment or transfer of the licence.

(2) Without derogating from the generality of the power conferred by subsection (1), the conditions determined or imposed under that subsection may include -

- (a) the provision by a licensee of institutional support and local content, transfer of technology and the funding thereof by the licensee on a specified basis;
- (b) the obligations of the licensee, upon cessation of the activities carried on under the licence concerned, with regard to the decommissioning, destruction, dismantling or removal of any buildings, walls, installations, equipment, structures, waste dumps or other facilities erected or used for purposes of, or in connection with, those activities, whether on the premises of the licensee or elsewhere, and the restoration of any land disturbed by such activities and the furnishing by the licensee of acceptable security for compliance with any licence condition;
- (c) providing the Authority regular information on the commercial arrangements regarding the participation of previously disadvantaged Namibians and the inclusion of local content in the licensee's activities;
- (d) if applicable, requiring financial and commercial ringfencing between the various licensed gas undertakings undertaken by a licensee;
- (e) the prohibition or control of flaring and venting of gas;
- (f) requirements relating to the manner in which third parties may have access to a licensee's uncommitted capacity and the commercial and financial terms thereof; and
- (g) a licensee's obligation to maintain its gas infrastructure, facilities and plant in full functional and operative condition.

(3) The Authority may, if it considers it appropriate, include specific conditions to address any risk, challenge or particular circumstances or perceived risk, challenge or circumstances associated with -

- (a) new or insufficiently proven technologies; or
- (b) pilot, experimental or research and development undertakings with regard to which a licence is to be granted.

(4) If the Authority is satisfied that it would be in the public interest and gas industry to change any condition of a licence, the Authority may -

- (a) after the costs involved for the licensee and the general benefits and disadvantages that may result from the change have been taken into consideration; and
- (b) subject to any procedure the Authority may determine by the rules with regard to such change,

effect such changes to the licence conditions.

(5) The Authority may not change conditions of a licence as contemplated under subsection (4) unless the Authority has -

- (a) notified the licensee, in writing, of its intention to change the conditions and has informed the licensee of any relevant facts pertaining to the proposed change; and
- (b) afforded the licensee an opportunity to make representation on the matter within a period specified in the notice referred to in paragraph (a).

(6) For the purposes of subsection (5)(b), the licensee may be represented by a person of the licensee's choice and may lead evidence in support of the representation.

### **Decommissioning**

**16.** (1) A licensee must submit a decommissioning plan to the Authority prior to that installation and operation of gas infrastructure, facilities and plant.

(2) The plan must contain proposals for continued production or shut down of production, decommissioning of infrastructure, facilities and plant and any other prescribed information.

(3) The decommissioning referred to in subsection (2) may contemplate further use of the infrastructure, facilities and plant in the gas undertakings, other uses, complete or partial removal or disposal.

(4) The Authority may on receipt of the decommissioning plan require further information and evaluation, or may require a new or amended decommissioning plan.

(5) The licensee may from time to time, during the licensed period, out of own accord or as directed by the Authority, update the decommissioning plan.

(6) Where a licence has been cancelled or expired, the Authority, may by written notice served on the licensee, direct the licensee to remove, to the satisfaction of the Authority, from the licensed area all property brought into that area by any person engaged or concerned in the gas undertaking and take any action necessary for the reinstatement, conservation and protection of the natural resources and the environment in that area.

(7) A direction given under subsection (6) must be consistent with prudent gas practices.

(8) A person to whom this section applies or to whom directions are given under this section who refuses or fails to comply with this section or such directions, commits an offence and is liable to a fine not exceeding N\$ 100 000 or imprisonment for a term not exceeding two years or both.

### **Decommissioning fund and liability**

**17.** (1) The Authority may, in the manner prescribed by the rules, require a licensee to establish a decommissioning fund for any specific area or for gas infrastructure, facilities or plant operated under a licence for the purpose of costs related to the implementation of a decommissioning plan towards which the implementation of the decommissioning plan must be applied.

(2) Payments into the decommissioning fund must be done as prescribed by the rules.

(3) Where the decommissioning fund is not sufficient to cover the implementation of the decommissioning plan, the licensee, must cover the costs and expenses.

(4) Any amounts remaining in the decommissioning fund after the decommissioning plan has been implemented must be returned to the licensee.

(6) A licensee is liable for the cost of implementing the decommissioning plan as set out in section 16 and this section and for any losses or damages resulting therefrom.

(7) Where a licensee abandons gas infrastructure, facilities or plant, the licensee is liable for any damage or loss caused in connection with such abandonment and where there is more than one party liable, such parties are jointly and severally liable for all financial obligations, penalties or liabilities with regard to the decommissioning.

(8) The Authority may either by rules or as a licence condition require a licensee to provide security or a guarantee for its financial liabilities as regards the implementation of the decommissioning plan and any liabilities resulting therefrom.

### **Exclusivity and non-discrimination**

**18.** (1) The Authority may on good cause shown grant to a licensee exclusivity to a certain geographic area for such period and for such gas activities as the Authority deems fit but subject to such conditions as determined by the Authority.

(2) An exclusivity grant must be based, amongst others, on the licensee's ability to supply gas services to its customers;

(3) A licensee may not discriminate between customers or classes of customers regarding access, tariffs, conditions of service except for objectively justifiable and identifiable differences regarding such matters as quantity, transmission distance, length of contract, load profile, interruptible supply and any other relevant factor.

### **Duration of licence**

**19.** (1) Unless a licence is terminated earlier under this Act, it is valid for such period as may be determined by the Authority and specified on the licence, but such period may not exceed 50 years.

(2) A licensee may apply to have its licence renewed for a period not exceeding a further period of 50 years as from the date of the renewal of the licence.

(3) A licence may be transferred in accordance with the provisions of this Act but may not be assigned to another person.

### **Gas tariffs**

**20.** (1) The Authority, autonomously and without undue interference, determines the tariffs of licensees for regulated gas services.

(2) Subject to subsections (9) and (10), a licensee may not levy any charge in connection with a price regulated for a gas undertaking against any customer, other licensee or any other person other than in accordance with the tariffs specified in the schedule of approved tariffs contained in the licensee's licence.

(3) A tariff determination may regulate prices, conditions relating to tariffs or tariff-fixing factors for regulated gas services in any manner the Authority considers appropriate, including -

- (a) fixing a tariff or the rate of increase or decrease in a tariff;
- (b) fixing a maximum tariff or maximum rate of increase or minimum rate of decrease in a maximum tariff;
- (c) fixing an average tariff for specified regulated gas undertakings or an average rate of increase or decrease in an average tariff;
- (d) specifying tariff policies or principles;

- (e) specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
  - (f) specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of regulated gas undertakings;
  - (g) fixing a maximum average revenue, or maximum rate of increase or minimum rate of decrease in maximum average revenue, in relation to specified regulated gas services;
  - (h) monitoring the tariff levels of specified regulated gas services.
- (4) In making a tariff determination, the Authority must, in addition, have regard to -
- (a) the particular circumstances of the regulated gas service for which the determination is being made;
  - (b) the costs of making, producing or supplying the regulated gas service;
  - (c) the costs of complying with laws or regulatory requirements;
  - (d) the return on assets in the regulated gas service;
  - (e) any relevant regional and international benchmarks for prices, costs and return on assets in comparable gas industries;
  - (f) the financial implications of the determination;
  - (g) any other factors that the Authority considers relevant.
- (5) In making a tariff determination under this section, the Authority must ensure that -
- (a) wherever possible the costs of regulation do not exceed the benefits; and
  - (b) the decision takes into account and clearly articulates any trade-off between costs and service standards.
- (6) In this section tariff includes a tariff range.
- (7) The Authority may from time to time, upon application by a licensee, revise the schedule of approved tariffs of the licence concerned and may require the licensee to submit such information as the Authority may require for that purpose.
- (8) For purposes of an application for the approval or revision of a schedule of approved tariffs, the Authority may arrange for a public hearing at a suitable time and

place of which not less than 10 days' notice must be given to the applicant and to the public in the manner deemed fit and effective by the Authority.

(9) The Authority may, in specific circumstances and on good cause shown, in writing approve a deviation from a schedule of approved tariffs.

(10) The Authority may exempt any charge, cost or type of cost incurred in connection with the provision of gas services by a licensee from the requirements of subsection (2) subject to such conditions as the Authority may determine.

(11) Where a charge in a licensee's schedule of approved tariffs is such that it compromises the efficient provision of gas services, the Authority may, on its own accord, amend such schedule, after having considered –

- (a) the economic impact of the amendment on the licensee and the licensee's customers and other licensees;
- (b) the representations made by the licensee as contemplated in subsection (12); and
- (c) the general benefits and disadvantages that may result from the amendment,

and subject thereto that such amendment will ensure the licensee's tariffs being sustainable and affordable in line with prudent gas practices.

(12) The Authority may not act under subsection (11) unless it –

- (a) has notified the licensee in writing of its intention to act in terms of that subsection and has informed the licensee of all the relevant facts pertaining to the proposed change; and
- (b) has afforded the licensee the opportunity to make representations to it in respect of the proposed change within a reasonable time.

(13) For the purposes of subsection (12), the licensee may be represented by a person of the licensee's choice and may lead evidence in support of the representations.

(14) The Authority may –

- (a) publish in any national and a locally distributed newspaper or other type of media, at the applicant's cost, any application contemplated in subsection (3), including the tariffs applied for, or any approved schedule of tariffs or any other charge, levy, cost or type of cost to which this section relates; or
- (b) instruct a licensee to publish any national and a locally distributed newspaper or other type of media a tariff application by such licensee, including the tariffs applied for, or any approved schedule of tariffs or any



other charge, levy, cost or type of cost to which this section relates and to carry the cost of such publication.

(15) In the event where the Authority has incorrectly applied Government policies in determining a tariff, the Minister may issue a written directive to the Authority setting out the reasons as to why a tariff determination does not align with Government policy and directing the Authority to act in accordance with relevant policies.

## **Part 2**

### **Suspension, cancellation or revocation of licenses and notification of certain acts and decisions**

#### **Suspension or cancellation of a licence**

**21.** (1) If at any time it appears to the Authority that a licensee has contravened or failed to -

- (a) comply with any requirement of this Act;
- (b) comply with a regulation, rule, code, standard, determination or directive;
- (c) meet any obligation relating, or condition attached, to licence; or
- (d) comply with any other applicable law,

the Authority may issue to the licensee a directive in accordance with section 23 of the NERA Act.

(2) Despite any provision to the contrary in this Act and in addition to any other steps that may be taken against a licensee in terms of this Act or the NERA Act, the Authority may -

- (a) suspend the licence of a licensee on such conditions as the Authority determines; or
- (b) cancel the licence,

if the licensee fails to comply with the requirements of a directive.

(3) In addition to any other grounds as provided for in this Act, the Authority may -

- (a) suspend a licence on such conditions as the Authority may determine; or
- (b) cancel the licence,

if -

- (c) subsequent to the granting of an application for the issue, renewal, transfer or amendment of such licence it is discovered that information furnished in connection with the application was incorrect or incomplete in a material respect;
- (d) the licensee has ceased to conduct the licensed undertaking; or
- (e) subject to section 14, the licensee has not commenced licensed undertaking within 12 months after the issue, renewal, amendment or transfer of the licence or within such longer period as may, on application by the licensee, be granted by the Authority or stipulated in the licence conditions.

(4) The Authority must cancel a licence if requested by the licensee subject to such conditions as the Authority may give or impose.

(5) A person whose licence has been suspended or cancelled under this Act must surrender the suspended or cancelled licence to the Authority.

#### **Revocation of licence on application**

**22.** (1) The Authority may revoke a licence on the application of a licensee if -

- (a) the licensed undertaking is no longer required;
- (b) the licensed undertaking is not economically justifiable; or
- (c) another person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person.

(2) A licensee must give the Authority at least 12 months notice in writing of its intention to cease its activities relating to the licensed undertaking.

(4) The form and procedure to be followed in revoking a licence under this section is as determined by the Authority.

#### **Notification to Minister of certain acts or decisions**

**23.** (1) The Minister may in writing request the Authority to provide him or her with written notification of regulatory acts or decisions, the circumstances surrounding them and the reasons therefor.

(2) The Authority must provide such notification in such manner and format as the Minister may specify or prescribe by regulation.

### **Duty of licensee to supply gas services**

**24.** Subject to a licensee's ability to provide such gas services with regard to its licensed gas undertaking in an economically viable manner and such further circumstances as may be determined by the rules or codes or included in the conditions of a licence, a licensee who is licensed to distribute gas must supply gas or gas services within its licensed area to every person who -

- (a) applies to be so supplied; and
- (b) is capable of making satisfactory arrangement for payment of such supply of gas or gas services.

### **Infrastructure, facilities and plant for gas activities to comply with other laws**

**25.** (1) A licensee must ensure that infrastructure, facilities and plant for undertaking gas activities, including any alteration or extension thereto, and all other gas service practices and activities are constructed, operated and conducted with due diligence and in compliance with -

- (a) the requirements of applicable laws, in particular laws relating to health, safety and environmental standards; and
- (b) the requirements of rules, codes, standards of quality of gas supply and gas services and activities and prudent gas practices.

(2) If it comes to the attention of the Authority that a licensee contravenes or fails to comply with subsection (1), the Authority may, in accordance with section 23 of the NERA Act, issue a directive to the licensee in order to ensure compliance, and may take such further action as allowed under this Act or the NERA Act to ensure compliance.

### **Third party access rights**

**26.** (1) If relevant, a licensee must within its licensed area provide access to all existing and potential users of its infrastructure, facilities and plant against payment of compensation at a rate included in the schedule of approved tariffs and as set out in this section, unless the licensee's inability to provide such access is reasonably based on an insufficient technical availability of capacity.

(2) A licensee must allow interconnections with the facilities of potential users and qualifying customers, as long as the interconnection is technically feasible and the person requesting the interconnection bears the increased costs occasioned thereby, which must be taken into account when a licensee sets its access tariffs which tariffs are subject to approval by the Authority.

(3) Third parties must in the manner determined by the rules have access on commercially reasonable terms to uncommitted capacity in infrastructure.

(4) In the event of a dispute as to whether there is insufficiency of technical availability of capacity, such dispute must be referred to the Authority for its decision.

(5) The tariff principles, relating to the price of access to a gas service, and as to be applied by the Authority, are:

- (a) that regulated access tariffs must -
  - (i) be set so as to generate expected revenue for a regulated gas activity that is at least sufficient to meet the efficient costs of providing access thereto; and
  - (ii) include a return on investment commensurate with the regulatory and commercial risks involved; and
- (b) that the access tariff structures must -
  - (i) allow multi-part tariffs and tariff discrimination when it aids efficiency; and
  - (ii) not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is demonstrably, or on reasonable grounds, higher; and
- (c) that access tariff regimes must aim at providing incentives to reduce costs or otherwise improve productivity.

### **Ownership of gas infrastructure, facilities and plant on third party premises**

**27.** (1) For the purposes of this section, a licensee includes any person who provides gas services who is not required to be licensed under this Act.

(2) Any infrastructure, facility or plant belonging to a licensee and lawfully placed or installed in or on any premises for the purposes of rendering the licensed gas services, whether fixed or not fixed to any part of such premises -

- (a) remains the property of the licensee;
- (b) may be removed by the licensee;
- (b) is not subject to a landlord's hypothec for rent of such premises; and
- (c) is not 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.

### **Changes to licensed area**

**28.** Subject to subsection (2), if the Authority considers it to be in the public interest and in the interest of the gas industry, the Authority may at any time require a licensee -

- (a) to effect such changes or additions to the licensed area of the licensee as the Authority may determine; or
- (b) to give up or share the whole or any part of the licensed area to or with another licensee or prospective licensee as the Authority may determine, subject to an agreement between the licensee and another licensee or prospective licensee for the payment of just compensation to the licensee for the facilities and services given up or shared, on the basis and in the manner approved by the Authority,

and the Authority must make the necessary amendments to the licence of the licensee.

(2) The Authority must, prior to taking any steps under subsection (1), inform the relevant licensee or licensees thereof and the reasons therefor and provide the licensee or licensees with the opportunity to respond.

#### CHAPTER 4 PROVISION OF GAS BY REGIONAL COUNCILS AND LOCAL AUTHORITY COUNCILS

##### **Provision of gas by regional councils and local authority councils**

**29.** (1) The supply of gas by a regional council or local authority council must be done in accordance with this section.

(2) In the event of a conflict between this Act and the Regional Councils Act or the Local Authorities Act regarding the supply of gas, this Act prevails.

(3) Unless exempted under this Act, a regional council or local authority council must be licensed in accordance with this Act when carrying out a gas undertaking, and after being licensed, a regional council or local authority council has all the powers regarding the provision of gas which are given to it under its licence.

- (4) A regulation made -
  - (a) by a regional council under section 32(1)(a) of the Regional Councils Act;
  - (b) by a local authority council under section 94 of the Local Authorities Act; or
  - (c) by the Minister responsible for regional councils and local authority councils,

which relates to the carrying out a gas undertaking, is subject to this Act and any regulation, rule, code, standard or directive made or issued under this Act, and in the event

of conflict, this Act or regulation, rule, code, standard or directive made or issued under this Act, prevails.

- (5) Subject to subsection (6) -
  - (a) section 28(1)(nA) of the Regional Councils Act; and
  - (b) section 30(1)(u) of the Local Authorities Act,

do not apply to a charge, fee or other moneys payable in respect of the provision of gas or gas services, amenity or facility provided by a regional council or local authority council.

(6) For the purposes of subsection (5), a regional council or local authority council -

- (a) must ensure that the charge, fee or other moneys in respect of the supply of gas or gas services appear in a schedule of approved tariffs to the licence of a regional council or local authority council;
- (b) prior to the introduction of a new or amended charge, fee or other moneys, must announce the new or amended charge, fee or other moneys in at least one newspaper circulating in its area of jurisdiction;
- (c) display or make known the charge, fee or moneys in the manner determined by the rules or codes; and
- (d) provides the amount of the charge, fee or moneys to any person requesting it.

(7) If the Minister responsible for regional councils and local authority councils, under section 54A or 92 of the Local Authorities Act, divests a local authority council of a function relating to the supply of gas or gas services, that Minister may only do so after consultation with the Authority and subject to this Act.

(8) Section 55(1)(a) of the Local Authorities Act applies to a local authority council only in so far as such council has control in terms of this Act over gas provision within its area of jurisdiction and the provision of gas by a person contemplated in that section is subject to this Act.

(9) Section 55(1)(b) and (c) of the Local Authorities Act applies to a local authority council only with regard to gas assets under the control of the relevant local authority council.

(10) The power of a local authority council to enter immovable property or private land in terms of sections 90A and 91 of the Local Authorities Act for the performance of a function relating to gas services applies only -

- (a) in so far as the local authority council is licensed to provide gas services within the local authority area; or

- (b) if authorisation to enter has been given to the local authority council by the person so in control in terms of this Act or any other applicable law.

(11) Subsections (4), (5), (6), (7), (8), (9) and (9) apply with the necessary changes to the management and control by a regional council of gas services of a settlement area under sections 30(1)(f) and (u), 54A, 55(1)(a), (b) and (c), 91 and 94 of the Local Authorities Act by virtue of section 32 of the Regional Councils Act.

(12) The regulations relating to commercialisation and joint business venture issued under the Local Authorities Act do not apply to commercialisation and joint business venture relating solely to the supply of gas services of a regional council or local authority council.

- (13) Subsection (12) does not apply to a joint venture -

- (a) established under the regulations relating to joint business venture referred to in that subsection; and
- (b) concluded prior to the commencement of this Act.

## CHAPTER 5 EXPROPRIATION

### **Expropriation**

**30.** (1) For the purposes of this section, a licensee includes any other person who provides gas services and which person is unlicensed for whatever reason.

(2) Despite any law to the contrary but subject to Article 16 of the Namibian Constitution, a licensee may upon written application as set out in this section, have any property expropriated as the licensee may require in the public interest and for the provision of the licensed gas services.

(3) An application by the licensee pursuant to subsection (2) must be supported by the written recommendation of the Authority as contemplated in subsection (7).

(4) The Minister may grant approval to a licensee under subsection (2) to expropriate property subject to such conditions the Minister may determine, if the Minister is satisfied, after considering the report under subsection (2) and recommendation under subsection (7)(b) by the Authority -

- (a) that the licensee has been unable to acquire the property concerned, on reasonable terms, by agreement with the owner of the property;
- (b) that the property is reasonably required by the licensee for the purposes of the gas undertaking carried on or to be carried on by the licensee; and

- (c) that it is in the public interest and the interest of the gas industry that property be acquired by the licensee.
- (5) For the purposes of subsection (4), the Authority must -
  - (a) hold a public hearing to receive evidence and collect information relevant to the matter; and
  - (b) give at least 10 days' written notice of the hearing to the licensee and to the owner of the property.
- (6) At the hearing referred to in subsection (5), the owner may raise any objection against the expropriation and may be represented by any person of the owner's choice.
- (7) Subsequent to the hearing, the Authority must -
  - (a) consider any objection made by the owner and input received from the licensee and any other person who presented evidence at the hearing;
  - (b) make a written recommendation on the matter to the Minister.
- (8) Compensation payable by the licensee to the owner must be negotiated between the licensee and owner, but if the licensee and owner fails to reach an agreement on compensation, the compensation payable must be determined in accordance with the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978).
- (9) If the Minister under this section grants approval for the expropriation of property, the expropriation must be done in accordance with sections 5 to 18 of the Expropriation Ordinance, 1978.
- (10) For the purposes of subsection (9), any reference to -
  - (a) "the Executive Committee" and to "the Administration" are construed as a reference to the Minister; and
  - (b) "section 2" of that Ordinance is to be construed as a reference to this section.
- (11) For the purposes of this section a reference to "property" means property as defined in the Expropriation Ordinance, 1978.
- (12) The Minister may make regulations relating to -
  - (a) any procedural matter pertaining to expropriation procedures under this section;



- (b) any report, objection, input or other information to be provided under this section and the format in which such information is to be provided under this section;
- (c) additional conditions applying to a licensee to whom this section applies.

(13) To the extent that the provisions of this section interfere with the right to property of any person as contemplated in Article 16(1) of the Namibian Constitution or the right to practice any profession or carry on any occupation, trade or business as contemplated in Article 21(1)(j) of the Namibian Constitution, such interference is authorised on the grounds set out in Articles 16(2) and 21(2), respectively, of the Namibian Constitution.

## CHAPTER 6 POWER TO INVESTIGATE, REGULATORY OVERSIGHT OVER GAS AGREEMENTS, POWER OF LICENSEES AND RECORD KEEPING

### **Power of Authority to investigate tariffs by licensees**

**31.** (1) For the purposes of this Chapter, a licensee includes a person who provides gas services and which person is not required to be licensed under this Act.

- (2) The Authority may investigate -
  - (a) any tariff imposed by a licensee in connection with the supply of gas services, including the collection of tariffs; and
  - (b) the manner in which the licensee keeps or uses any income derived from the provision of gas services or collection of such tariffs,

in order to ensure, among others, that the licensee is imposing and collecting the income in a compliant and prudent manner and, if applicable, in accordance with any applicable tariff methodology.

(2) The Authority may issue any directive as it considers appropriate in order to ensure compliance with subsection (2).

### **Power of Authority to exercise regulatory oversight over gas agreements**

- 32.** (1) A gas agreement -
  - (a) may be entered into between parties and in such manner and subject to such terms and procedures as may be imposed on the agreement, by licence conditions or determined by the rules; and
  - (b) is subject to such regulatory oversight by the Authority and in the manner determined by licence conditions or determined by the rules.

(2) The Authority may, for such reasons as it may deem fit including, but not limited to, the fact that such agreement does not impact on any domestic customer or interest, by rules, exempt any person or category of persons or type of agreement from the requirements of subsection (1), which exemption may be specific or general.

(3) The Authority may request a party to an agreement referred to in subsection (1) to provide it with such records, documents or other information relating to the agreement as the Authority considers necessary in order to exercise regulatory oversight over the agreement.

(4) This section applies only to gas agreements entered into after the commencement of this Act.

### **Licensee's power to enter premises and remove infrastructure, facilities and plant**

**33.** (1) Subject to subsection (2), a licensee or any person authorised in writing by a licensee may at all reasonable times enter any premises in which gas infrastructure, facilities or plant is or has been constructed or supplied by the licensee for the purpose of -

- (a) inspecting, testing, repairing or maintaining such infrastructure, facilities or plant of the licensee which is on or in the premises;
- (c) removing any infrastructure, facilities or plant of the licensee.

(2) Despite subsection (1), any building or premises or any part of the building or premises used as a private home may only be entered if the –

- (a) owner of the private home has given consent to the entry; or
- (b) licensee or the person has complied with Article 13(2) of the Namibian Constitution.

(3) A person who intends to enter any premises or property in terms of subsection (1) or (2) -

- (a) except in a case of an emergency or if for other reasonable cause the person is unable to give prior notice, must -
  - (i) give reasonable notice to the owner or occupier of the premises of the licensee's intention to enter onto such premises;
  - (ii) in the notice specify the nature of the work to be carried out; and
  - (iii) make suitable arrangements with the owner or occupier of the premises for entry before entering the premises, if possible;
- (b) may be accompanied by any other person as may be reasonably required for carrying out the work;

- (c) at the request of any person in charge of the premises, must produce the written authorisation issued by the licensee to enter the premises;
- (d) must adhere to all reasonable security measures, if any, of the owner or occupier of the premises;
- (e) may take onto such premises such goods, equipment and materials as may be reasonably required for the purposes of carrying out the work;
- (f) may make such excavation or erect such equipment as may be reasonably required for the purposes of carrying out the work;
- (g) may require the owner or occupier of the premises to remove any tree, shrub, growth, any fence or other obstacle preventing or impeding any excavation to be made or equipment to be erected, and in the event of the owner or occupier refusing or failing to comply with the request reasonably made, the licensee or person may cause such obstacle to be removed in a manner as the licensee or person considers necessary or expedient.

(4) A licensee or person authorised by the licensee under this section must cause the work in question to be carried out in such a manner as to limit any damage to the premises or any fixtures to the premises and cause as little inconvenience as possible to the person occupying the premises.

(5) Unless otherwise prescribed by the rules or codes, the licensee is responsible for repairing or payment of compensation for any damage caused to the premises or any fixture to the premises in the carrying out of work in terms of this section.

(6) To the extent that this section interferes with the right to privacy of any person, such interference is authorised on the grounds of public safety and economic well-being as contemplated in Article 13(1) of the Namibian Constitution.

### **Keeping of records by licensees**

**34.** (1) A licensee must keep the financial and operational records relating to its gas undertaking for a period of at least five years.

(2) The Authority may require access to such records and give such directives or determine by rules as the Authority considers appropriate the manner in which a licensee must keep the financial, operational and other records, including the nature of such records.

## **CHAPTER 7 GENERAL PROVISIONS**

### **Non-disclosure**

**35.** (1) A person performing any function or exercising any power in terms of this Act may not disclose any information which he or she obtains in the performance of the function or exercise of the power, except -

- (a) to any person who of necessity requires the information for the performance of his or her functions in terms of this Act;
- (b) if he or she is a person who of necessity supplies the information in the performance of his or her functions in terms of this Act;
- (c) if the disclosure of such information is required by a court order or in terms of any law; or
- (d) to any competent authority which requires the information for an investigation relating to any criminal prosecution.

(2) Nothing in this Act compels the disclosure of information to which this Act relates which is classified as confidential or the disclosure of which may be injurious to the national security interest of Namibia or prejudicial to the conduct of international affairs, the administration of justice or constitute an invasion of personal privacy.

### **Limitation of liability**

**36.** The Minister, the Authority, a staff member of the Authority, a licensee, a staff member of a licensee, a person authorised by a licensee in terms of this Act or any other person performing a function or exercising a power under this Act is not personally liable in respect of anything done in good faith under any provision of this Act unless such thing is done or omitted to be done due to the gross negligence or unlawful conduct of the Minister, Authority, licensee, staff member or the person.

### **Offences**

- 37.** (1) A person who -
- (a) subject to subsection (4), contravenes or fails to comply with any provision of this Act applicable to such person, the contravention of or failure to comply with which is not elsewhere in this Act determined to be an offence;
  - (b) fails to comply with any condition of a licence or regulation, rule, code or standard; or
  - (c) hinders, obstructs or assaults a staff member of the Authority or a person performing a function or exercising a power in terms of this Act;
  - (d) provides false or misleading information under this Act,

commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

- (2) A person who without a lawful excuse -
  - (a) tampers with or damages a licensee's gas infrastructure, facilities or plant;
  - (b) takes gas knowing it to have been unlawfully abstracted or removed; or
  - (c) cuts off, damages or interferes with any apparatus for providing gas services;
  - (d) vents or flares gas in contravention with the provisions of this Act,

commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) In any prosecution for an offence in terms of subsection (2)(a) or (b), if it is proved that any gas has been abstracted or removed, it is presumed, in the absence of evidence to the contrary, that the -

- (a) owner of any premises within which the gas is abstracted or removed; or
- (b) occupier of the premises, if the owner does not occupy the premises,

abstracted or removed the gas.

(4) Unless the Authority considers it not practical under circumstances to do so or that the nature of, or the circumstances surrounding, the offence does not warrant to do so, in which case this requirement can be dispensed with, prior to any person or body charging a person under subsection (1)(a), the Authority must in writing notify such person that such person has committed an offence setting out in such notification the details of the offence and further specifying the period and manner within which such person must rectify such contravention or failure, which period, unless there is compelling reason for a shorter period, may not be less than five days.

(5) If a person referred to in subsection (4), rectifies the contravention or failure in the manner and within the time frame determined by the Authority, such person may not be charged with such offence as referred to in that subsection.

## **Regulations**

- 38.** The Minister may make regulations relating to -
  - (a) the establishment of an emergency preparedness, prevention and management plan and matters related thereto;

- (b) further functions, powers and duties of the Authority under this Act;
- (c) any matter which in terms of this Act is required or permitted to be prescribed by the Minister; or
- (d) generally, any other matter of an administrative or procedural nature which, in the opinion of the Minister, is necessary and expedient to achieve the efficient implementation and enforcement of this Act.

### **Rules and codes**

**39.** (1) Subject to this Act and after consultation with the Minister, the Authority may, by notice in the *Gazette*, make such rules and codes as the Authority considers necessary in order to further the objects of this Act.

(2) Without derogating from the generality of subsection (1), the rules and codes may include -

- (a) with due regard to any applicable Government policy on the Namibian gas industry, the inclusion or exclusion of any type of gas undertaking or party thereof or gas service from the ambit of this Act;
- (b) the issuing of a safety code, and any similar codes, which sets out the reciprocal obligations of a user of the gas networks or pipelines and the operation of the gas network system; and
- (c) with regard to the storage of gas -
  - (i) the requirements applicable to the storage of gas;
  - (ii) general conditions which, in addition to any conditions contained in a licence for the storage of gas; or
  - (iii) any other matter which, in the opinion of the Authority, is necessary or expedient to achieve or promote the storage of gas;
- (d) gas network security and safety;
- (e) gas metering and measurement;
- (f) specifications with regard to any gas undertaking, activity or service;
- (g) the form and manner in which an application or objection in terms of this Act must be made;
- (h) the fees payable in respect of an application for the issue, renewal, amendment or transfer of a licence, and annual licence fees;

- (i) the duties and obligations of licensees, customers and other relevant persons and the relationship between them;
- (j) the procedure to be adopted by a licensee and other persons requiring rights of way or water rights in connection with the undertaking of a licensee;
- (k) any inspection by the Authority and enquiry into the control and operation of an undertaking of a licensee;
- (l) the units or standards for the measurement of gas, the verification of meters, the fees to be charged for verification and the settlement of disputes as to the measurement of gas and limits of errors;
- (m) the regulation of gas flaring and venting as regards -
  - (i) the prohibition of venting and flaring and when venting and flaring of gas is authorised;
  - (ii) the conditions subject to which venting and flaring is allowed;
  - (iii) applications to the Authority with regard to the authorisation of venting and flaring and the consideration thereof by the Authority;
- (n) the quality of supply of gas and the quality of service and safety;
- (o) installment and implementation of new unproven gas technologies, the use thereof, including the placing of obligation on persons with regard thereto and the provision of gas services therefrom;
- (p) the breaking up and repair of roads and other public infrastructure by a licensee in its licensed area;
- (q) the inspection by a licensee and other persons of gas infrastructure, facilities and plant installed on third party premises;
- (r) grounds on which a licensee may -
  - (i) terminate a contract to supply gas services to a customer;
  - (ii) amend a contract or the licensee's gas supply conditions and the procedures applicable to the amendment;
- (s) good corporate governance principles and corporate structures to be complied with by an applicant for a licence and principles relating to objectivity, transparency and independency;
- (t) the circumstances in which any person may be permitted to depart or deviate from any standard;

- (u) the determination of the manner in, and intervals within, which a gas audit must be conducted, and the determination of, and procedures for, meeting of performance objectives and key performance indicators for licensees and other persons and the monitoring thereof;
  - (v) notwithstanding anything to the contrary under the Labour Act, 2007 (Act No. 11 of 2007), the requirements, qualifications, registration and accreditation of persons working with gas and gas facilities, equipment and infrastructure, including health and safety aspects;
  - (w) matters to be provided for in a gas agreement, the format of a gas agreement and the minimum terms to be included;
  - (x) the prohibition of certain practices in the gas industry;
  - (y) the reporting of accidents and incidents relating to the supply of gas and gas services;
  - (z) the manner in which a public hearing must be held, the procedures applicable to a public hearing, the powers and duties of the Authority relating to a public hearing and the rights and duties of parties to a public hearing;
  - (aa) the rehabilitation of land used in connection with the gas undertakings, the provision of security for rehabilitation purposes and the composition and amount of such security;
  - (bb) the rendering of information to the Authority;
  - (cc) the manner of dealing with, and the disposal of, waste, pollution or spills from any gas service activity regulated under this Act, but such rules or codes must be made in consultation with the Minister responsible for environment; or
  - (dd) any other matter which in terms of this Act is required or permitted to be prescribed by rules or codes or which is of an administrative or procedural nature which, in the opinion of the Authority, is necessary and expedient to achieve the efficient implementation and enforcement of this Act.
- (3) The rules and codes may -
- (a) require acts or things to be performed or done to the satisfaction of the Authority; or
  - (b) subject to section 23 of the NERA Act, empower the Authority to issue directives requiring an act or thing to be performed or done or prohibiting an act or thing from being performed or done,



and determine a period within which, or date before, such act or thing must be performed or done.

- (4) The rules and codes may -
  - (a) with regard to any person who contravenes or fails to comply with the rules and codes, prescribe that the person is liable to -
    - (i) a once-off penalty which may not exceed N\$100 000; or
    - (ii) a daily penalty which may not exceed N\$10 000 each day for which the contravention or failure continues,

for the benefit of the funds of the Authority or the relevant customer or other person negatively affected by the contravention or failure; or

- (b) provide for the creation of an offence and penalties on contravention of, or a failure to comply with, the rule or code not exceeding N\$100 000 or imprisonment for a period not exceeding two years or both such fine and such imprisonment.

(5) When prescribing a penalty under subsection (4)(a), the Authority must consider the extent and the gravity of the contravention or failure.

(6) Prior to consulting with the Minister under subsection (1) and the publishing of its rules or codes, the Authority must consult with the stakeholders in the gas industry with regard to the scope, content and implementation of such rules or codes in the manner which the Authority considers appropriate.

(7) The Authority must keep an updated copy of its rules and codes at its offices, which copy may be inspected by any interested person free of charge.

(8) A rule or code made under subsection (1) may, subject to section 37(4), prescribe penalties for contravention or failure to comply with the rule and code of a fine not exceeding N\$100 000 or imprisonment for a period not exceeding two years or both such fine and such imprisonment.

(9) A person who, subject to section 37(4), contravenes or fails to comply with any rule or code, the contravention of or failure to comply with which is not elsewhere in or under this Act determined to be an offence commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

### **Standards on quality of gas and gas services**

**40.** (1) The Authority, by notice in the *Gazette*, after consultation with the Minister and the Namibian Standards Institution as established under the Standards Act, 2008 (Act No. 18 of 2008), and such role players in the gas industry as it may determine, may-

- (a) set standards on quality of provision of gas and gas related services; or
- (b) with or without amendments incorporate any standards on quality of provision of gas and gas services in its rules or codes,

and must indicate whether such standards are compulsory or not.

(2) If the Authority considers it appropriate to depart or deviate from a standard, the Authority may, subject to such conditions as it may determine, authorise the departure or deviation if such departure or deviation is not in conflict with this Act.

(3) The Authority must keep in its offices a copy of the complete updated text of every standard set or incorporated under this section, and must at the request in writing of any interested person make such copy available free of charge to any such person for inspection.

(4) When setting or incorporating standards under this section, the Authority may differentiate between different licensees or different types of licensees.

(5) A compulsory standard may provide that a person who contravenes or fails to comply with the standard is liable to -

- (a) a once-off penalty which may not exceed N\$100 000; or
- (b) a daily penalty which may not exceed N\$10 000 each day for which the contravention or failure continues,

for the benefit of the funds of the Authority or the relevant customer or other person negatively affected by the contravention or failure.

(6) When determining a penalty under this subsection, the Authority must consider the extent and the gravity of the failure involved.

- (7) If in any judicial proceedings the question arises whether any writing -
  - (a) contains the text of any standard incorporated in the rules or codes under subsection (1) or any amendment or substitution of any such standard; or
  - (b) purporting to be a statement by a person who in that statement alleges that -
    - (i) he or she is a staff member of the Authority; and
    - (ii) a particular writing described in or attached to the statement contains the text referred to in paragraph (a), or an extract from that text,

is on its mere production at those proceedings by any person *prima facie* proof of the facts stated in that writing.

### **Documentary evidence**

- 41.** In any prosecution for any offence under this Act -
- (a) a document which purports to be a licence, order, determination, directive or authority issued or obtained under this Act;
  - (b) a regulation, rule or code made or issued under this Act; or
  - (c) a copy of the document referred to in paragraph (a) or (b) certified as a true copy by a person who purports to be a staff member of the Authority,

is, on its mere production, accepted as *prima facie* proof of the particulars mentioned in that document.

### **Jurisdiction of Tribunal**

**42.** (1) Subject to anything to the contrary in this Act, the Tribunal has the powers, functions and jurisdiction as set out under the NERA Act.

(2) The Tribunal has jurisdiction to consider, enquire into and decide on any matter raised under this Act, or review administrative decisions taken by the Authority under this Act, and submitted to the Tribunal in accordance with the NERA Act.

### **Savings and transitional provisions**

**43.** Any person operating a gas undertaking which is required to be licensed under this Act prior to the commencement of this Act must, within 12 months after the commencement of this Act, submit to the Authority its application for an appropriate licence under this Act.

### **Amendment of laws**

**44.** The laws set out in the Schedule are amended to the extent indicated in the Schedule.

### **Short title and commencement**

**45.** (1) This Act is called the Gas Act, 2025, and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

## **SCHEDULE**

AMENDMENT OF LAWS  
(Section 52)

**Environmental Management Act, 2007 (Act No. 7 of 2007)**

The Environmental Management Act, 2007 is amended by the addition of paragraph (i) of subsection (2) of section 27, after paragraph (h) with the remainder of the paragraphs being renumbered accordingly, of the following paragraph:

“(h) gas transmission, storage, processing, liquefaction, regasification and distribution, flaring and venting;”.

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