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The Fuel and Service Control Act 1983

Act No. 23 of 1983

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[Date of Assent: 31.8.83]
[Commencement: See Section 1]

ACT

To exercise control over fuel and services involving the use of fuel and to provide for matters incidental thereto. L.N. 89/84

Enacted by the assembly.

Short title and commencement

1. This Act may be cited as the Fuel and Services Control Act, 1983, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires,

"Director" means a person appointed under section 4 to act as Director of Energy Affairs;

"Excess money" means, in the case of the sale of fuel in excess of the prescribed price, the difference between the prescribed price and the price at which the fuel is actually sold and, in the case of fuel sold after the prescribed hours, all the money collected after the prescribed selling hours;

"fuel" means any solid, liquid or gaseous substance whatsoever of any mixture or combination of such substances capable of being used for the production of energy or electricity howsoever produced;

'inspector" means a person appointed to be an inspector under section 4;

"Minister" means the Minister responsible for water, energy and mining;

"outlet", in relation to fuel, means any place where any fuel is sold or is offered for sale to consumers; and

"service" means a service involving the use of fuel.

Powers Minister

3. (1) The Minister may, by notice published in the *Gazette*,

(a) for the purpose of ensuring a saving of fuel, regulate or prohibit,

(i) the use of fuel for the purpose specified in the notice or for the performance of any act so specified in a manner so specified; or

(ii) the purchase, sale, supply, acquisition, possession, disposal, storage, transportation or the recovery and re-refinement of any fuel so specified; or

(b) for the purposes of ensuring an economy in the cost of distribution of fuel or the rendering of a service of a particular kind or of services of a particular standard regulate in such manner as he may deem fit, or prohibit,

(i) the supply to any person of any equipment intended for the dispensing of any fuel;

(ii) the establishment of an outlet for the sale of any fuel;

(iii) the transfer from one place to another of any business or undertaking conducted at an outlet;

(iv) the change of supplies of fuel to any business or undertaking conducted at any outlet;

v) the rendering of any service; or

(vi) the supply of fuel to any business or undertaking conducted at any outlet at which any service of a particular kind or service of a particular standard is not available to the Public;

(c) prescribe the price and time at which by any person; fuel may be sold

(d) impose on and collect a levy on fuel;

(e) control the quantity of fuel which may be sold; or

(f) issue permits for the sale of fuel in excess of the prescribed amounts or outside the prescribed hours.

(2) Different notices may be issued under subsection (1) in respect of different classes of fuel or services of .different persons or categories or groups of persons.

Appointment of Director, Inspector etc.

4. (1) The Minister may,

(a) subject to the laws governing the public service, ap- point any person in 1the public service as Director of Energy Affairs in respect of fuel or services specified in a notice issued under section 5(b); and

(b) on such conditions and at such remuneration as he may determine, constitute such bodies and, subject to the laws governing the public service, appoint such officials and inspectors as he may deem necessary to assist him in the exercise of his powers and the performance of his functions under this Act.

(2) Subject to this Act, the Director and an inspector may,

(a) assist the Minister in the exercise of his powers and the performance of his functions under this Act; or

(b) gather such information in connection with the operation or administration of this Act, as the Minister may desire and investigate any offence relating to this Act.

(3) The Minister shall, subject to this Act, determine the powers, and duties of -the Director and the inspector and different powers and duties may thus be determined in respect of different persons or categories of persons appointed or authorized under subsection (1).

(4) A document in the form determined by the Minister certifying that any person has 0been appointed or authorized to act as Director or as inspector under this Act, and purporting to have been signed 'by a person designated for the ·purpose by

the Minister, shall be prima fade proof of such appointment or authorization.

Minister's powers in regard to hiring or supply of fuel or services

5. Notwithstanding section 3 or anything to the contrary in any other law contained, whenever the Minister deems it necessary or expedient for good order or the security of the State, he may,

(a) in consultation with the Minister responsible for internal security, in such manner and upon such conditions as he deems fit,

(i) acquire or hire in or outside Lesotho any fuel or services for the State or on behalf of any other person, or direct any person so to acquire or hire any fuel or service;

(ii) supply in or outside Lesotho any fuel or services to any person or direct any person so to supply any fuel .or services;

(iii) import fuel for the State or on behalf of any person or direct any person so to import any fuel; or

(iv) make arrangements in connection with the supply, storage, insurance, sale, disposal and distribution of fuel acquired, hired or imported in terms of this paragraph, or direct any person to make such arrangements;

(b) by notice in the *Gazette* or by notice in writing to the person concerned,

(i) prohibit the acquisition, disposal or use of any fuel or the supply or use of any service specified in that notice, either generally or subject to such conditions as may be specified; or

(ii) order any person who comes into possession of any fuel specified in that notice to store or otherwise deal with that fuel in such manner as may be specified in that notice; or

(c) issue orders regulating the acquisition, disposal or use of any fuel or the supply or use of any service in such manner as he may think fit.

Minister or Director may demand fuel or services

6. (1) Whenever the Minister deems it necessary or expedient for good order and the security of Lesotho, he may, in consultation with the Minister responsible for internal security, by notice in the *Gazette* or thy notice in writing to the person concerned, order any person who,

(a) is capable of supplying any fuel or services; or

(b) is the owner or has the power to dispose of or has in his possession or under his control any fuel, or is a supplier of any service,

to supply or deliver or sell such fuel or a specified quantity thereof, or to supply such service to the Minister or a specified person.

(2) Any person who receives an order under subsection (1) shall be deemed to be capable of performin g the act which he is

ordered to perform, unless he proves that he is not so capable.

(3) In respect of any fuel supplied, delivered or sold, of any service supplied pursuant to this section, the person concerned shall, when called upon to do so, declare and certify the cost to him of every item invoiced, in addition to stating the selling price, in the case of fuel, and the amount of the compensation, in the case of a service, claimed by him.

(4) The Minister may institute, through any person designated by him for that purpose, a cost investigation in connection with any fuel or service in respect of which an order has been issued in terms of this section.

(5) In every contract resulting from an order issued under this section or from the acceptance, by or on behalf of the Minister, of an offer for the supply of any fuel or for the supply of any service, there shall be deemed to be incorporated a condition that the price or compensation stipulated by the seller or supplier concerned shall be subject to confirmation or an adjustment by the Minister.

(6) Any person who supplies any service or supplies, delivers or sells any fuel in accordance with an order issued under this section shall, in the absence of agreement, be paid by the Minister or the person concerned, as the case may be, compensation or a price equal to the amount of the cost to him of the supply of the service or fuel in question, plus a percentage of such cost or an amount fixed in the relevant notice or, where the Minister has instituted a cost investigation under subsection (4), the compensation or price determine by the Minister.

Seizure of fuel and use of certain facilities and property

7. If any person willfully refuses or fails to comply with any order issued in terms of section 6(1) the Minister, or Director, acting subject to the directions of the Minister, may without legal process, seize the fuel in question or make use of any facilities or property at the disposal of the person concerned for supplying the service in question, and in such case a compensation shall be payable on the basis provided for in section 6(6).

Confiscation of illegally acquired fuel and suspension of certain services

8. (1) The Minister, or the Director acting subject to the directions of the Minister, may, without legal process, confiscate any fuel which, in his opinion, has been acquired in contravention of the provisions of a notice issued under section 5 (b), or order that any service which, in his opinion, is being supplied in contravention of those provisions be suspended, and, unless the owner of that fuel or the person in whose position it has been found, or the supplier or the person who controls the supply of such service within fourteen days after such confiscation or such order proves to be satisfaction of the Minister that that fuel has been acquired or such service is being lawfully supplied, such fuel or any facility or property used for supplying such service may be dealt with at the absolute direction of the Minister without payment or any compensation.

incurred in respect of the fuel or service in question.

Obtaining of information

9. (1) The Minister or the Director may, for the purposes of this Act, and by notice in the *Gazette* or by written notice to the person concerned -

(a) order any person who deals or has dealt in any fuel specified in the notice, or who, in the ordinary course of his business or trade, handles or has handled such fuel, or who supplies or has supplied or controls or has controlled the supply of a service so specified, to furnish the Minister or the Director, as the case may be, within the time and in the form specified in the notice, with such information and returns as are so specified and relating to his business or trade or to any such fuel which he or his agent has or has had any control, or relating to any such service;

(b) order any person owning or having power to dispose of or being in possession or control of fuel specified in the notice, to furnish the Minister or Director, as the case may be, within the time and in the form so specified, with such returns and other information relating to the said fuel and to the business, if any, of that person as are so specified;

(c) order any person referred to in paragraph (a) to keep such records relating to any fuel or service referred to in that paragraph, and to his business, as may be specified in the notice.

(2) Any person referred to in subsection (1) shall, at the request of an inspector, forthwith produce to such inspector any book or document at his disposal which relates to any fuel or service referred to in the said subsection, and permit the inspector to take an extract therefrom or to make a copy thereof, and shall furnish the inspector with such other information at his disposal relating to such fuel or service as the inspector may demand from him;

(3) Any person who,

(a) refuses or fails to comply forthwith with an order made in terms of subsection (1);

(b) refuses or fails to comply forthwith with a request or demand referred to in subsection (2); or

(c) knowingly or negligently furnishes to the Minister, Director, or an inspector information for the purposes of subsection (1) or (2) which is incorrect, or in any return or record furnished or kept for the purposes of subsection (1) makes any entry which is incorrect,

commits an offence and is liable on conviction to the penalties prescribed in section 17

Right of entry

10. For the purpose of obtaining or ascertaining the correctness of any information whatsoever required by the Minister or Director for the purposes of this Act, any inspector may

at all reasonable times, without prior notice, enter any premises whatsoever, make such examination and enquiry therein or thereupon as he may deem necessary and, against the issue of a receipt, take samples of any fuel found therein or thereon.

(2) Any person in connection with whose business any premises are occupied or used for the purposes of storing, supplying or disposing of any fuel or of supplying any service in terms of an order issued under section 6, and every person employed by him, shall at all reasonable times furnish to an inspector such facilities as are required by him for entering those premises and exercising his powers under subsection (1) in respect thereof.

Secrecy

11. Any person who discloses, except to a person whose duty it is to deal with the subject matter of the disclosure, or when required to do so as a witness in a court of law, or of the purposes of this Act, any information in relation to any person or business acquired in the performance of his duties or in the exercise of his powers under this Act, commits an offence and is liable on conviction to the penalties prescribed in section 18.

Imposition of fees in respect of appliications for certain authorizations and permits

12. The Minister may, by notice in the *Gazette,* impose in respect of every application for an authorization provided for by virtue of this Act, such fee in respect of such quantity of fuel or such services and payable in such manner and at such time as may be specified in the said notice.

Financial arrangements

13. The Minister, or any person authorized by him to exercise any of the powers or to perform any of the functions conferred upon or assigned by him by this Act may,

(a) incur liabilities for expenditure under this Act and shall, subject to this Act, finance such expenditure in the manner determined by him; or

(b) make arrangements for the recovery of such payments as are required to be made to or through him under this Act.

Delegation of powers

14. The Minister may, subject to such conditions as he may deem fit, authorize any person to exercise on his behalf any of the powers conferred upon him by this Act.

Evidence

15. (1) A certificate purporting to be issued by the Minister or any person authorized by the Minister and setting forth the price at which it would have been permissible for any particular person to sell on any particular date or during any particular period any fuel specified in the certificate, shall, on its mere production by any person in any criminal proceedings be *prima facie* evidence of such price.

(2) Any statement or entry contained in any book or document kept by any person or his Manager, agent or employee, shall be admissible against such person in any criminal proceedings under this Act as an admission of the facts set forth in such

statement or entry, unless it is proved that the statement or entry was not made by such person or his Manager, agent or employee.

(3) If it is alleged in a charge in any criminal proceedings under this Act,

(a) that any fuel alleged to have been sold or purchased, or supplied or acquired, is fuel of a particular class or kind; or

(b) that any fuel or service is fuel or service of a kind to which any provision of this Act applies,

such allegation shall be deemed to constitute sufficient proof of the matter alleged until the contrary is proved.

(4) If in any prosecution for a contravention of a prohibition imposed under section 3 (1) (a) relating to the use of any fuel specified in the charge, it is proved that the accused performed an act which would have constituted the contravention if only such fuel had been used for the performance of that act, it shall be presumed that only such fuel was used for the performance of that act, unless it is proved that other factors contributed to the performance of that act to the extent that the absence thereof that act would not have been performed.

Liability of employer or principal

16. (1) An act or omission of an employee, Manager or agent which constitutes an offence under this Act, shall be deemed to be the act or omission of his employer or principal, and such employer or principal may be convicted and sentenced in respect thereof unless he proves,

(a) that he did not permit or connive at such act or omission;

(b) that he took all reasonable measures to prevent an act or omission of the nature in question; and

(c) that an act or omission, whether legal or illegal, of the nature in question did not under any condition or in any circumstances fall within the course of employment or the scope of the authority of the employee, Manager or agent concerned.

(2) For the purposes of paragraph (1) (b) the fact that an employer or principal forbade an act or omission of the nature in question shall not by itself be regarded as sufficient proof that he took all reasonable measures to prevent such an act or omission.

(3) Subsection (1) shall not relieve the employee, Manager or agent concerned of liability to be convicted and sentenced in respect of the act or omission in question.

Offences and penalties

17. (1) Any person who contravenes or fails to comply with any of the provisions of this Act or contravenes or refuses or fails to comply forthwith with any notice, order or prohibition under this Act, and such contravention, failure or refusal is not elsewhere in this Act declared to be an offence, or hinders any other person in the exercise of his powers or the performance of

his duties under this Act, commits an offence and is liable on conviction to a fine not exceeding M2,000 or to imprisonment for a period not exceeding 2 years or both.

(2) Any person who sells fuel at a price in excess of the price, or at a time other than the time prescribed by a notice under section 3(1) commits an offence.

(3) Any person convicted of,

(a) a first offence under subsection (2) is liable to a fine of M500 and confiscation of all excess money;

(b) a second offence under subsection (2) is liable to a fine of Ml,000 and confiscation of all excess money; and

(c) a third offence under subsection (2) is liable to a fine of M2,000 and confiscation of all excess money and in addition to a cancellation of his licence.

Repeal and Saving

18. (1) The Fuel and Services Control Act, 1973, is repealed.

(2) Notwithstanding the repeal effected by subsection (1);

(a) any statutory instrument made under the Act repealed by this Act and in force immediately before the commencement of this Act shall continue in force and be deemed to have been made under this Act until it is revoked; and

(b) any orders, directions and other acts lawfully made under the Act repealed by this Act in force immediately
before the coming into force of this Act, shall be deemed to have been made under the corresponding provisions of this Act and shall continue to have effect until revoked.