THE ENERGY BILL, 2014

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THE ENERGY BILL, 2014

A Bill for

AN ACT of Parliament to amend and consolidate the laws relating to energy, to provide for national and county government functions in relation to energy, to provide for the establishment, powers and functions of the energy sector entities, promotion of renewable energy and for connected purposes,

ENACTED by the Parliament of Kenya, as follows—

PART I

PRELIMINARY

1. This Act may be cited as the Energy Act, and shall come into operation upon assent by the President.

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

   “act of vandalism” means any wilful, negligent, reckless or malicious act aimed at destroying or damaging an apparatus;

   “adulterated petroleum” means any wilfully mixed refined petroleum products that alters product specifications detailed in the Kenya Standards;

   “agent” means a person appointed in writing by the Commission to perform any of its functions;

   “apparatus” means mechanical or electrical apparatus, and includes all vehicles, aircrafts, vessels, pipelines, electrical plants and equipment;

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

   “ancillary services” means services that are essential to the management of power system security, facilitate orderly trading in electricity and ensure that electricity supplies are of acceptable quality and, without limitation, may include—

   (a) the provision of sufficient regulating capability to meet fluctuations in load occurring within a scheduling interval;

   (b) the provision of sufficient contingency capacity reserve to maintain power system frequency in the event of network or generation outages;

   (c) the provision of reactive power support to guard against power system failure through voltage collapse; and
(d) the provision of black start capability to allow restoration of power system operation after a complete failure of the power system or part of the power system;

“Authority” means the National Electrification and Renewable Energy Authority established under section 44;

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

“Board” means the Board of Directors of the various institutions under the Act;

“building” has the meaning assigned to it under the Physical Planning Act;

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

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for energy and petroleum;

“coal” means anthracite, bituminous coal, sub-bituminous coal, lignite, and peat;

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

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

“Commission” means the Energy Regulatory Commission established under section 11;

“Commissioner” means a person appointed under section 14;

“company” means a company within the meaning of the Companies Act;

“compulsory acquisition” means acquisition as provided for under the Land Act;

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

“consumer” means any person supplied or entitled to be supplied with electrical energy or petroleum, but does not include a person supplied with electrical energy or petroleum for delivery or supply to another person;
“danger” means risk to the environment, health, life, person or property of anyone from shock, from fire or otherwise arising from the importation, exportation, generation, transmission, distribution, supply and use of electrical energy or from the importation, exportation, transportation, refining, storage and sale of petroleum, or from the production, storage, distribution and supply of any other form of energy;

“digression rate” means a yearly percentage reduction in tariff to prompt and take into account the technological development;

“Director General” means the Director General appointed under section 15;

distributed generation” means a system of small generation entities supplying directly to the distribution grid, any one of which shall not exceed one thousand kilowatts in capacity;

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

“distribution licensee” means a licensee authorised to operate and maintain a distribution system for supplying energy to the consumers in its area of supply;

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

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

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

electric cooperatives” means a body licensed under this Act supplying or empowered to supply electrical energy under this Act;

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

electrical construction work” means the laying, alteration, or repair, wholly or partially of any electric supply line and electrical plant;
“electrical energy” means energy involving the use of electric current which may be produced either by mechanical, chemical, photovoltaic or any other means;

“electrical installation licence”, means a licence authorizing a person to carry out electrical installation work either individually or as a body corporate or incorporate for voluntary, business, training, or teaching purposes either for gain or reward or for no charge at all;

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

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

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

(a) an electric supply line; or
(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
(c) an electrical equipment, apparatus or appliance under the control of a consumer;

“electrical worker” means a person who carries out in whole or in part electrical installation work specified in the certificate issued to him under section 245;

“electricity” means electrical energy generated, transmitted, supplied or traded for any purpose or used for any purpose except for the transmission of a message;

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

“energy” means any source of electrical, mechanical, hydraulic, pneumatic, chemical, nuclear, or thermal power for any use; and includes electricity, petroleum and other fossil fuels, geothermal fluid, biomass and all its derivatives, municipal waste, solar, wind and tidal wave power;
“energy audit” means the verification, monitoring and analysis of use of energy including submission of technical report containing recommendations for improving energy efficiency with cost benefit analysis and an action plan to reduce energy consumption;

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

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

“energy minerals” means all geological resources used for purposes of generation of energy by fission, fusion (nuclear energy) or combustion including but not limited to the energy minerals listed in the Fifth Schedule.

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

“exclusive economic zone” has the meaning assigned to it in the Maritime Zones Act;

“factory” has the meaning assigned to it under the Occupational Safety and Health Act;

“factory owner” includes a person responsible for the management of the factory;

“feed-in tariff system” means a system that promotes generation of electricity from renewable energy source;

“fossil fuels” means combustible or explosive hydrocarbons formed from the remains of prehistoric animals or plants and includes petroleum, coal, oil shale, peat, natural gas or any other bituminous substance;

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

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

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

“generating licence” means a licence authorising a person to generate electrical energy;
“generating station” means any station for generating electricity, including any buildings and plant used for the purpose, and the site thereof, but does not include any station for transforming (other than generator transformers), converting or distributing electrical energy;

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

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

“Institute” means the National Energy Institute established under section 57;

“Kenya Standard” means a specification or code of practice declared by the Council under the Standards Act;

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

“licence” means any document or instrument in writing granted under this Act, to any person authorizing the exploration, production, importation, exportation, refining, storage and sale of petroleum or authorizing the importation, exportation, generation, transmission, distribution and supply of electrical energy or exploration and production of coal, in the manner described in such document or instrument;

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

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

“liquefied petroleum gas” means commercial propane, commercial butane, commercial pentane and mixture thereof as specified in the relevant Kenya standard;

“local community” means a sub-county or sub-counties in which an energy resource is exploited;

“local content” means

“meter” means any and every kind of machine, device or instrument used for the measurement of the quantity of electrical energy, and includes such auxiliary appliances as resistors, shunts, reactance’s, current transformers, voltage transformers and time switches, external and necessary to the meter;

“minimum operational stocks” means the amounts of petroleum prescribed by the Cabinet Secretary in consultation with the Commission under section 185;
“natural gas” means hydrocarbons that are in a gaseous phase at atmospheric conditions of temperature and pressure, including wet mineral gas, dry mineral gas, casing head gas and residue gas remaining after the extraction or separation of liquid hydrocarbons from wet gas and non-hydrocarbon gas produced in association with liquid or gaseous hydrocarbons;

“net-metering system agreement” means an agreement entered into in accordance with section 236 by a distribution licensee or retailer and a renewable energy generator of capacity not exceeding twenty kilowatts or such other limit as may be prescribed by the Cabinet Secretary;

“net-metering system” means a system that operates in parallel with the electrical distribution facilities of a distribution licensee and that measures, by means of one or more meters, the amount of electrical energy that is supplied—

(a) by the distribution licensee or retailer to a consumer who owns the renewable energy generator, and

(b) by the consumer who owns the renewable energy generator to the distribution licensee or retailer.

“oil spill” means spillage of petroleum of at least five hundred litres;

“open access” means the non-discriminatory provision for the use of an electric transmission or distribution system or common user petroleum logistics facility by any licensee or consumer;

“open tendering system” means a system of competitive bidding as provided for in Part V of the Public Procurement and Disposal Act;

“outer continental shelf” means the outer continental shelf as defined in Article 76 Paragraph 1 of the United Nations Convention on the Law of the Sea or all submerged lands seaward and outside the area of lands beneath navigable waters;

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

“person” means any company or body corporate or association or public authority or county government or individual or body of individuals or artificial juridical person, whether incorporated or not;

“petroleum” includes petroleum crude natural gas and any liquid or gas made from petroleum crude, natural gas, coal, schist, shale, peat or any other bituminous substance or from any product of petroleum crude, natural gas and includes condensate;
“petroleum business” means a concern carrying on the importation, refining, storage, transportation, supply or sale of petroleum;

“pipeline” means a pipe or system of pipes that is used or to be used for the transportation of petroleum and any apparatus and works associated therewith, including –

(a) apparatus for inducing or facilitating the flow of petroleum through the pipe or system of pipes;

(b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of the pipe or system of pipes;

(c) apparatus for supplying energy for the operation of any such apparatus as is mentioned in paragraph (a) or of such works as are mentioned in paragraph (b);

(d) apparatus for the transmission of information for the operation of the pipe or system of pipes;

(e) apparatus for affording cathodic protection to the pipe or system of pipes;

(f) a structure for the exclusive support of a part of the pipe or system of pipes;

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

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

“premises” includes any land, land under water, building or structure;

“public authority” means the Government or any department or branch of the Government;

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

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“Public Sector Accounting Standards Board” means the Board established under the Public Financial Management Act;

“refine” means to process petroleum crude in a refinery in order to yield petroleum products;
“refined petroleum products” means the products yielded from the refining of petroleum;

“refinery” means a distillation plant for refining of petroleum crude to yield petroleum products;

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

“retail dispensing site” means premises where petroleum is stored in bulk in one or more tanks and dispensed to consumers for their own use and includes filling and service stations;

“retail” means,

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

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

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

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

“reticulation” means the planning and construction of the network used to supply energy to a consumer and in the case of;

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

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

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

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

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

“specification” has the meaning assigned to it in the Standards Act;

“storage depot” means premises consisting one or more tanks for storing petroleum or liquefied petroleum gas in transit or for sale;

“strategic stocks” means petroleum kept for purposes of ensuring security of supply;

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

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

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

“supply terminals” means the ends of the electrical supply lines upon any consumer’s premises at which the supply of electrical energy is delivered from the service line of the licensee, and is situated–

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

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

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

“system” means an electrical system or grid in which all the conductors and apparatus are electrically connected to (a) common source(s) of electrical energy;
“system operation” means performance of generation scheduling, commitment and dispatch, scheduling of transmission and ancillary services, and generation outage co-ordination, transmission congestion management and co-ordination, and such other activities as may be required for the reliable and efficient operation of the grid;

“tariff” means a set of prices, rates, charges, and any cost associated with capacity, supply and delivery of energy (which may vary by category of consumers, service voltage or time of use, and may include any adjustments or formulae therefore), as approved by the Commission;

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

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

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

“Tribunal” means the Energy Tribunal established under section 28;

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

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

(b) the production, importation, exportation, manufacture, refining, transportation, storage or supply of fossil fuels; or

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

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

“use of electrical energy” means the conversion of electrical energy into chemical energy, mechanical energy, sound, heat or light, or the use or application of electrical energy to or for any of the purposes for which it may be or become or be found to be adapted;
“vandalise” means to commit an act of vandalism;

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

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

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

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

“wheeling” means the operation whereby the transmission system, distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 256;

“works” means

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

(b) pipelines, machinery, lands, buildings, structures, earth works and water works, and includes any apparatus or things of whatsoever description, required for the production, importation, exportation, storage, refining, transportation, dispensing and supply of petroleum; or

(c) machinery, lands, buildings, structures, earth works and water works, and includes any apparatus or things of whatsoever description, required for the production, importation, exportation, storage, transportation, distribution and supply of any other energy form.
3. The provisions of this Act shall apply, as hereinafter specified, to every person or body of persons importing, exporting, generating, transmitting, distributing, supplying or using electrical energy; exploring, producing, importing, exporting, refining, transporting, storing and selling petroleum, petroleum products or gas; exploring, producing, transporting, distributing and supplying of any other form of energy, and to all works or apparatus for any or all of these purposes.

4. (1) If there is a conflict between this Act and any other Act, in matters relating to energy, this Act shall prevail.

   (2) For greater certainty, a provision of an Act that provides for a person or body to approve any work or authority to permit or deny any act or omission shall not be construed as giving that person or authority any power with respect to energy.

PART II

ENERGY POLICY AND INTEGRATED ENERGY PLAN

Energy Policy and Plan

5. (1) The Cabinet Secretary shall develop and publish a national energy policy which shall be reviewed every six years.

   (2) Objectives of the energy policy shall, without limitation, include:

   (a) affordable and sustainable energy supply, taking into account protection and conservation of the environment;

   (b) access to energy services and supply;

   (c) efficient functioning of energy markets;

   (d) fair competition in the energy sector;

   (e) secure and reliable supply of energy;

   (f) energy efficiency and conservation;

   (g) adequate attention to all forms of energy;

   (h) development of renewable and indigenous forms of energy;

   (i) targets for clean energy;

   (j) interconnection and integration of energy networks;

   (k) regional and international co-operation in energy trade, investments and development;
(l) enhance research, development and demonstration;

(m) facilitation of local manufacture of energy plant, equipment and appliances;

(o) protection of consumer interests;

(p) elaborate disaster response and management strategy;

(q) involvement of citizens, communities and county governments in policy formulation.

6. (1) The Cabinet Secretary shall develop and publish national energy plans in respect of fossil fuels, renewable energy and electricity, which shall be reviewed every three years.

(2) To the extent possible, the Cabinet Secretary shall consolidate the plans contemplated in subsection (1) into an integrated national energy plan.

(3) Each county government shall develop a county energy master plan that it shall submit to the Cabinet Secretary to be used in the formulation of the integrated national energy master plan for purposes of national energy planning.

(4) The plans contemplated in subsections (1), (2) and (3) shall deal with issues relating to the production, processing, storage, transportation, supply and use of energy in ways that take into account other sectors of the economy including but not limited to land, transport, forestry, water, housing, agriculture, trade and socio-economic development.

(5) The development of the energy plans shall take into account—

(a) sustainable development;

(b) optimal use of indigenous and regional energy resources:

(c) balance between supply and demand;

(d) economic viability;

(e) environmental, health, safety and socio-economic impacts;

(f) development in the Eastern African region; and

(g) the national energy policy.

(6) The integrated energy plan must have a planning horizon of no less than twenty years.

(7) The integrated energy plan must—
(a) serve as a guide for energy infrastructure investments;
(b) take into account all viable energy supply options; and
(c) guide the selection of the appropriate technology to meet energy demand.

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

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

Government obligations

8. (1) The Government shall endeavor to facilitate the provision of affordable energy services to all in all areas.

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

(3) In endeavouring to provide affordable energy services to all, the government shall support the development and use of modern and efficient emerging technologies.

(4) The government shall provide and facilitate the acquisition of necessary facilities for research and adoption of these new and emerging technologies.

(5) The powers and functions of the national and county governments are as set out in the Sixth Schedule.

9. The government shall take such measures as may be necessary to—

(a) provide for basic domestic energy needs by making available affordable energy services to all areas of the country which have no access or have limited access to modern and commercial energy services;

(b) prepare a long term plan for delivery of energy services, by identifying un-served areas, their energy needs and available resources and promoting suitable technologies; and
(c) develop a conducive environment for the promotion of investments on energy delivery, including the development of guidelines in collaboration with relevant county agencies on energy projects development and to disseminate them among prospective investors.

(d) provide land for energy infrastructure development.

10. (1) In its effort to provide energy services in all areas in accordance with section 8, the Government shall adopt measures that provide for access to appropriate forms of energy or energy services for all the people of Kenya at affordable prices.

(2) The measures contemplated in subsection (1) must take into account—

(a) the safety, health and environmental suitability of such energy;

(b) the availability of energy resources;

(c) the optimisation of existing energy infrastructure;

(d) the need for new infrastructure;

(e) the provision of information and training regarding energy and its optimal utilisation;

(f) the sustainability of the energy provision;

(g) affordability;

(h) cost-effectiveness;

(i) the appropriate Government’s commitment to provide basic electricity to poor households; and

(j) appropriate governance procedures for government sponsored programmes.

PART III

NATIONAL ENERGY ENTITIES

Energy Regulatory Commission

11. (1) There is established the Energy Regulatory Commission hereinafter referred to as the Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—
(a) suing and being sued;

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

(c) borrowing and lending money; and

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

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

12. The objects and functions of the Commission shall be to—

(a) regulate—

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

   (ii) exploration, production, importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products;

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

   (iv) exploration, production, processing, transportation, storage, exportation, importation and sale of coal and other energy minerals;

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

(c) certify energy managers and license energy auditors;

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

(e) collect and maintain energy data;

(f) perform any other function that is incidental or consequential to its functions under this Act or any other written law.
13. The Commission shall have all powers necessary or expedient for the performance of its functions under this Act and in particular, the Commission shall have the power to—

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

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

(c) monitor compliance of the provisions of petroleum and coal exploration and production contracts;

(d) make proposals to the Cabinet Secretary, of regulations which may be necessary or expedient for the regulation of the energy sector or for carrying out the objects and purposes of this Act;

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

(f) develop guidelines on ratified or ascended treaties, conventions and protocols affecting the energy sector in consultation with other statutory authorities except those relating to nuclear energy.

(g) prescribe the form and manner in which any application for a licence or amendment thereof or objection thereto shall be made and the fees payable in respect of any such application;

(h) prescribe the form and manner in which any application for any authority, consent or approval under this Act shall be made;

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

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

(k) investigate complaints or disputes between parties over any matter under this Act;

(l) enter, inspect and search any premises at which any undertaking is carried out or an offence under this Act is being committed or is suspected to have been committed;

(m) make and enforce directions to ensure compliance with this Act and with the conditions of licenses issued under this Act;
(n) issue orders either verbally or in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled;

(o) impose such sanctions and civil fines, being not less than ten thousand shillings per violation per day, as may be prescribed in regulations to secure compliance with orders issued under this Act;

(p) prosecute offences created under this Act; and

(q) on application provide assistance to county governments.

(2) In exercising its powers or performing any of its functions the Commission shall ensure efficiency, effectiveness, inclusivity and participation of the people.

Commissioners.

14. (1) The management of the Commission shall vest in the Commissioners of the Commission consisting of—

(a) a Chairperson who shall be appointed by the President upon the recommendation of the Public Service Commission;

(b) the Principal Secretary in the Ministry of Energy and Petroleum or representative;

(c) the Director General; and

(d) five other commissioners appointed by the Cabinet Secretary to represent private sector.

(2) A person shall be qualified for appointment as a Chairperson under subsection (1) (a) or commissioner under subsection (1) (d) if such person—

(a) is a citizen of Kenya;

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

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

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.
15. (1) The Cabinet Secretary shall, on the recommendation of the Commission, appoint a Director General who shall be the chief executive of the Commission and shall, subject to the directions of the Commission, be responsible for the day to day management of the Commission.

(2) The Cabinet Secretary shall appoint the Director General mentioned in sub-section (1) from a list of three names of persons submitted by the Commission.

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

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

(a) is a citizen of Kenya;

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

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

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

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

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

16. (1) There shall be a Commission Secretary who shall be appointed on such terms and conditions as the Commission may determine.

(2) A person shall be qualified for appointment as a Commission Secretary if such person—

(a) is a citizen of Kenya;

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

(c) is a registered certified public secretary;

(d) has had at least seven years’ relevant professional experience; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.
(3) The appointment of the Commission Secretary under this section shall be through a competitive recruitment process.

(4) The Commission Secretary shall—

(a) be the secretary to the Commission;

(b) record and keep minutes and other records of the Commission;

(c) keep custody of the seal of the Commission; and

(d) carry out such other functions as the Commission or the Director General may, from time to time, assign.

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

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

19. The Commission may appoint such staff as it may require for the proper discharge of its functions under this Act, on such terms and conditions of service as the Commission may determine.

20. The Commission shall, in consultation with the Cabinet Secretary pay its members such remuneration, fees or allowances for expenses as it may determine from time to time.

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

22. The provisions of this Act shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to that person, that persons’ property or any of that persons’ interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

23. (1) The funds of the Commission shall consist of—

(a) levies not exceeding one half of a percent on the sales of electricity and petroleum products;
(b) such moneys or assets as may accrue to or vest in the Commission in the course of the exercise of its powers or the performance of its functions under this Act;

(c) such sums as may be payable to the Commission pursuant to this Act or any other written law, or pursuant to any gift or trust;

(d) such moneys as may be provided by Parliament for the purposes of the Commission;

(e) all moneys from any other source provided for or donated or lent to the Commission.

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

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

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

(3) Any instrument issued by the Commission under subsection (2) may be issued for a limited period or without limitation of period, and may be varied or revoked by the Commission at any time.

(4) The Commission shall pay such allowances and fees to the members of such committees or such agents as the Commission may determine.

25. (1) A committee, member, officer, employee or agent appointed under section 24 may, upon production of evidence of appointment to any person reasonably requiring it, for the purposes of this Act—

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

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

(c) be accompanied by a police officer(s) if there is a reason to believe that any serious obstruction may occur;
(d) require from any person the production of any book, notice, record, list or other document which appears to the committee, officer, employee or agent to have relevance to the inspection or inquiry, which is in the possession or custody or under the control of that person or of any other person on that committee’s or agent’s behalf;

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

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

(g) exercise such other powers as may be necessary in connection with the inspection or inquiry and other powers of his appointment under section 24.

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

(3) Where—

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

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

(c) entry thereon is refused or obstructed,

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

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

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

(ii) the premises shall be left by the committee, officer, employee or agent as effectively secured against trespassers as they were found.
(4) Where it is suspected that an undertaking is being carried contrary to any licence, permit or regulations issued under this Act, an officer or agent of the Commission may, in the course of his duty, lock up, seal, mark or otherwise secure—

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

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

(c) aircraft, vessels, vehicles or containers.

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

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

26. (1) The Commission shall, within sixty days, make its decision on any matter before it after obtaining all the documentations or representations that it requires.

(2) Decisions of the Commission shall be in writing and the order so given and reasons thereof shall be served upon all parties to the proceedings, and may be published in the Gazette as prescribed by regulations.

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

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

27. A person aggrieved by a decision of the Commission may appeal to the Tribunal within thirty days of receipt of the decision:

Provided that the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.
The Energy Tribunals

28. (1) For the purpose of hearing and determining disputes and appeals in accordance with this Act and of exercising any other power conferred on it by this Act, there is established the Energy Tribunal, hereinafter referred to as the Tribunal.

29. (1) The Tribunal shall consist of—

(a) a Chairperson and vice Chairperson appointed by the President from among persons qualified to be judges of the High Court;

(b) not more than seven other members who are persons possessing, expert knowledge of the matters likely to come before the Tribunal and who are not in the employment of the Government or any state corporation; and

(c) the members under paragraph (b) shall be appointed by the Cabinet Secretary.

Provided that where the members appointed under paragraph (b) exceed five, one of them shall be qualified to be a judge of the High Court

(2) A person shall be qualified for appointment as a member of the Tribunal if the person—

(a) is a citizen of Kenya;

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

(c) has had at least seven years’ relevant professional experience in matters related to energy engineering, finance, economics, or law;

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

(3) The appointment of members of the Tribunal under this section shall be through a competitive recruitment process.

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

Oath of office.

30. A person who is appointed a member of the Tribunal shall, before assuming the duties of the office take and subscribe to the oath of allegiance to the office.
31. Where a member of the Tribunal, as constituted for the purposes of a proceeding, has any interest, direct or indirect, that could conflict with the proper performance of the member’s functions, he or she shall disclose the interest to the parties to the proceeding and shall not be present during any deliberations on the matter by the Tribunal to take part in decision of the Tribunal on the matter.

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

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

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

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

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

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

(a) arrangement of the business of Tribunal;

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

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

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

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

35. (1) The Chairperson shall preside at all sittings of the Tribunal at which he is present and in the absence of the Chairperson, the Vice Chairperson or a nominee of the Chairperson who shall be member qualified to be a judge of the High Court shall preside.

(2) The quorum of the Tribunal shall be three members including the Chairperson, Vice chairperson or a member qualified to be a judge of the High Court nominated under subsection (1) as the case may be.

36. The Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings:
Provided that such persons shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.

37. (1) There shall be paid to the Chairperson, Vice Chairperson and members of the Tribunal such remuneration and allowance as the Cabinet Secretary may determine.

(2) Any person giving technical advice to the Tribunal shall be paid such allowance as may be determined by the Tribunal.

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

(2) For greater certainty, the jurisdiction of the Tribunal shall not include the trial of any criminal offence.

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

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

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

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

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

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

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

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

(5) Except in the case of an appeal under this section it shall not be lawful for any court or tribunal to entertain any action or proceeding of any nature for the purpose of questioning any judgement, finding, ruling, order or proceeding of the Tribunal.

40. (1) The Tribunal shall meet as and when there is need to exercise its jurisdiction under this Act.
(2) Unless a unanimous decision is reached, a decision on any matter before the Tribunal shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

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

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

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

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

(b) interest from bank deposits; and

(c) grants.

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

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

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

National Electrification and Renewable Energy Authority

44. (1) There is established the National Electrification and Renewable Energy Authority hereinafter referred to as the Authority.

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

(a) suing and being sued;

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

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

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

(a) implement the national electrification programme established under section 237;

(b) manage the national electrification programme fund established under section 238;

(c) source additional funds for the national electrification programme and renewable energy;

(d) develop and update the rural electrification master plans in consultation with county governments;

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

(f) supervise electric cooperatives;

(g) provide loans to entities, with preference to cooperatives for the construction or acquisition of generating, transmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service and thereafter to make loans for the restoration, improvement or enlargement of such facilities;

(h) offer financial, institutional and technical, support to electric cooperatives;

(i) establish and manage energy centres in all the counties;

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

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

(l) undertake feasibility studies and maintain data with a view to availing the same to developers of renewable energy resource;
(m) develop and promote, in collaboration with other agencies, the use of renewable energy and technologies, including but not limited to biomass, biodiesel, bio-ethanol, charcoal, fuel-wood, solar, wind, tidal waves, mini-hydropower, biogas, co-generation and municipal waste;

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

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

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

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

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

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

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

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

(v) provide technical and other capacity building support to county government in the discharge of the function of electricity reticulation;

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

(2) In developing the master plans contemplated under subsection (1) (d) and (e), the Authority shall take into account the provisions of Section 6(5) of this Act.
(3) In exercising its powers or performing any of its functions the Authority shall ensure efficiency, effectiveness, inclusivity and participation of the people.

46. (1) The management of the Authority shall vest in the Board of Directors of the Authority which shall consist of—

(a) a Chairperson appointed by the President;

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

(c) the principal Secretary in the National Treasury or representative; and

(d) the Chief Executive Officer; and

(e) six other members appointed by the Cabinet Secretary.

47. A person shall be qualified for appointment as a Chairperson or member of the Board under section 46 (a) and (e) respectively if such person—

(a) is a citizen of Kenya;

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

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

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

48. (1) The Cabinet Secretary shall, on the recommendation of the Board, appoint a Chief Executive Officer who shall be the chief executive of the Authority and shall, subject to the directions of the Board, be responsible for the day to day management of the Authority.

(2) The Cabinet Secretary shall appoint the Chief Executive Officer mentioned in sub-section (1) from a list of three names of persons submitted by the Board provided that the Board obtains the names through a competitive selection process.

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

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

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

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

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

49. (1) There shall be an Authority Secretary who shall be appointed on such terms and conditions as the Board may determine.

(2) A person shall be qualified for appointment as a Authority Secretary if such person—

(a) is a citizen of Kenya;

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

(c) is a registered certified public secretary;

(d) has had at least seven years’ relevant professional experience; and

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

(3) The Authority Secretary shall—

(a) be the secretary to the Board;

(b) record and keep minutes and other records of the Board;

(c) keep custody of the seal of the Authority; and

(d) carry out such other functions as the Board or the Chief Executive Officer may, from time to time, assign.

(4) The appointment of the Authority Secretary under this section shall be through a competitive recruitment process.

50. The conduct and regulation of the business of the Board shall be as provided in the First Schedule, but subject thereto, the Board shall regulate its own procedure and the procedure of any committee thereof.
The Energy Bill, 2013

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

52. The Authority may appoint such staff as it may require for the proper discharge of the functions of the Authority under this Act, on such terms and conditions of service as the Board may determine.

53. The Authority shall pay its members such allowances as it shall determine in consultation with the Cabinet Secretary.

54. No matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

55. The provisions of section 54 shall not relieve the Authority of the liability to pay compensation or damages to any person for an injury to that person, that person’s property or any of the persons’ interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

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

(a) moneys from the National Electrification Programme Fund;

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

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

(d) interest from bank deposits; and

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

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

The National Energy Institute

57. (1) There is established the National Energy Institute hereinafter referred to as the Institute.
(2) The Institute shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

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

(c) borrowing and lending money; and

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

58. (1) The Institute shall carry out research, development and dissemination activities in the energy sector and in particular—

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

(b) put in place mechanisms to attract private sector funding in research and human resource development;

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

(d) promote local production of energy technologies;

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

(f) enhance research linkages between industry and academia;

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

(h) develop appropriate training curriculum targeting key areas in the energy sector.

(2) Without limiting the generality of subsection (1), the Institute shall—

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

(b) promote energy research and technology innovation;

(c) provide for—
(i) training and development in the field of energy, research and technology development;

(ii) establishment and expansion of industries in the field of energy; and

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

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

(e) issue licences to other persons for the use of its patents and intellectual property;

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

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

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

(i) collaborate with relevant training centres to ensure synergy;

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

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

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

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

(n) advise the Cabinet Secretary on research in the field of energy technology.

59. The management of the Institute shall vest in the Board of Directors of the Institute which shall consist of—

(a) a Chairperson appointed by the President;
(b) the Principal Secretary or representative in each of the Ministries responsible for—

(i) energy;

(ii) finance; and

(iii) higher Education;

(c) the Executive Director;

(d) a nominee appointed by the Cabinet Secretary to represent each of the following of subsectors—

(i) fossil fuels;

(ii) electricity;

(iii) renewable energy.

(e) one nominee to represent Geological Society of Kenya; and

(f) one nominee to represent the Institution of Engineers of Kenya.

60. (1) A person shall be qualified for appointment under Section 59 as a Chairperson if the person is a holder of a doctorate degree or as a member if such person is a holder of a postgraduate degree recognized in Kenya both in the fields of engineering, physical sciences, law, finance, economics or energy.

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

(a) be a citizen of Kenya;

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

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

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

61. (1) The Cabinet Secretary shall, on the recommendation of the Board, appoint an Executive Director who shall be the chief executive of the Institute and shall, subject to the directions of the Board, be responsible for the day to day management of the Institute.
(2) The Cabinet Secretary shall appoint the Executive Director mentioned in sub-section (1) from a list of three names of persons submitted by the Board provided that the Board obtains the names through a competitive recruiting process.

(3) A person shall be qualified for appointment as an Executive Director if such person—

(a) is a citizen of Kenya;

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

(c) has had at least seven years’ relevant professional experience in the energy sector;

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

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

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

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

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

64. The Institute may appoint such staff as it may require for the proper discharge of the functions of the Institute under this Act, on such terms and conditions of service as the Institute may determine.

65. The Institute shall pay its members such allowances as it shall determine in consultation with the Cabinet Secretary.

66. No matter or thing done by a member of the Board or any officer, employee or agent of the Institute shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Institute, render the member, officer, employee or agent, any other person acting on those directions personally liable to any action, claim or demand whatsoever.
67. The provisions of section 66 shall not relieve the Institute of the liability to pay compensation or damages to any person for an injury to that person, that persons’ property or any of the persons’ interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

68. The funds of the Institute shall consist of—

(a) monies appropriated by Parliament;

(b) funds from the Consolidated Energy Fund;

(c) interest from bank deposits;

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

(e) money received from any other appropriate source.

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

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

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

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

shall vest in the Institute.

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

(3) In respect of the rights in any discovery, invention or improvement that are contemplated in subsection (1) the Institute may award to the person responsible for the discovery, invention or improvement such bonus as it deems fit, or make provision for financial participation by him or her in the profit derived from such discovery, invention or improvement to such extent as the Cabinet Secretary may determine in consultation with the Cabinet Secretary of the National Treasury.
(4) The Institute may apply for a patent in respect of any discovery, invention or improvement contemplated in subsection (1), and shall for the purposes of the Industrial Property Act, be regarded as the assignee of the discoverer or inventor in question.

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

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

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

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

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

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

*Energy Efficiency and Conservation Agency*

70. (1) There is established the Energy Efficiency and Conservation Agency hereinafter referred to as the Agency.

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

(a) suing and being sued;

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

(c) borrowing and lending money; and

(d) doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.
71. (1) The Agency shall effectively co-ordinate with designated consumers and other agencies, recognize and utilize the existing resources and infrastructure, in performing the functions assigned to it by or under this Act.

(2) The Agency shall perform such functions and exercise such powers as may be assigned to it by or under this Act and in particular to—

(a) coordinate the development of and updating of the national energy efficiency and conservation action plan biennially with relevant stakeholders and statutory authorities;

(b) make, in consultation with the Kenya Bureau of Standards and other statutory authorities requirements for the minimum energy efficiency performance standards and energy rating labels to be displayed on equipment or on appliances;

(c) develop testing and certification procedures in conjunction with the Kenya Bureau of Standards and promote testing facilities for certification and testing for energy consumption of equipment and appliances;

(d) take all measures necessary to create awareness and dissemination of information for efficient use of energy and its conservation;

(e) make it mandatory, in collaboration with Kenya Bureau of Standards, importation of energy efficient but cost effective technologies;

(f) promote use of energy efficient processes, equipment, devices and systems;

(g) formulate and facilitate implementation of pilot projects and demonstration of projects for promotion of efficient use of energy and its conservation;

(h) prepare educational curriculum on efficient use of energy and its conservation for educational institutions, boards, universities or autonomous bodies and coordinate with them for inclusion of such curriculum in their syllabus;

(i) implement international co-operation programmes relating to efficient use of energy and its conservation as may be assigned to it by the Cabinet Secretary;

(j) recommend to the Cabinet Secretary the norms for processes and energy consumption standards required to be notified under paragraph (a) of section 281;
(k) recommend to the Cabinet Secretary for issuing of the energy savings certificate under section 282;

(l) recommend to the Cabinet Secretary the particulars required to be displayed on label on equipment or on appliances and manner of their display under paragraph (d) of section 281;

(m) recommend to the Cabinet Secretary for notifying any user or class of users of energy as a designated consumer under paragraph (e) of section 281;

(n) take suitable steps to prescribe guidelines for energy conservation building codes under paragraph (p) of section 281;

(o) take all measures necessary to create awareness and disseminate information for efficient use of energy and its conservation;

(p) arrange and organize training of personnel and specialists in the techniques for efficient use of energy and its conservation;

(q) promote research and development in the field of energy efficiency and conservation;

(r) promote innovative financing of energy efficiency projects;

(s) levy fees, as may be determined by regulations, for services provided for promoting efficient use of energy and its conservation;

(t) specify the manner and intervals of time in which the energy audit shall be conducted;

(u) maintain a list of accredited energy auditors as may be specified by regulations;

(v) strengthen consultancy services in the field of energy efficiency and conservation;

(w) give financial assistance to institutions for promoting efficient use of energy and its conservation;

(x) give financial incentives for any investment made to replace or install additional capital investments to improve energy efficiency;

(y) take all measures necessary to create awareness and disseminate information for efficient use of energy and its conservation;

(z) arrange and organise training of personnel and specialists in the techniques for efficient use of energy and its conservation;
(aa) take steps to encourage preferential treatment for use of energy efficient equipment or appliances;

(bb) develop a framework for recognizing and adopting energy progress as a high priority energy resource;

(cc) promote the establishment of laboratories for energy efficiency;

(dd) impose such sanctions and civil fines as may be prescribed in regulations to secure compliance with orders issued under this Act; and

(ee) perform such other functions as may be directed by the Cabinet Secretary.

72. (1) The general superintendence, direction and management of the affairs of the Agency shall vest in its Board of Directors.

(2) The Board of directors shall be composed of the following members—

(a) A chairperson appointed by the President;

(b) Principal Secretary or representative in each of the Ministries responsible for—

(i) energy;

(ii) environment;

(iii) infrastructure and transport;

(iv) devolution;

(v) finance.

(c) representative of the Architectural Association of Kenya;

(d) representative of the Institution of Engineers of Kenya;

(e) the executive director appointed under section 75.

(3) The Chairperson shall hold office for a term of four years and maybe re-appointed for one further term.

(4) A person shall be qualified for appointment as a Chairperson or a member of the Board if such person—

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

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

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

73. (1) The Board of Directors shall meet at least four times annually and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum of such meetings) as may be provided by regulations.

(2) The Chairperson shall preside over the meetings of the Board and in the absence of the Chairperson, the Board may, in its sitting, appoint one of their own to preside over such meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority vote of the members present and voting and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

74. (1) Subject to any regulations made in this respect, the Agency shall constitute such Committees as may be necessary for the efficient discharge of its functions.

(2) Each Committee shall consist of a convener and such other members as may be determined by the Board.

(3) Without prejudice to the powers contained in sub-section (1), the Board may constitute, such number of technical committees of experts as they may deem necessary for the proper discharge of its functions under this Act.

75. (1) The Cabinet Secretary shall, on the recommendation of the Board, appoint a Director who shall be the chief executive of the Agency and shall, subject to the directions of the Board, be responsible for the day to day management of the Agency.

(2) The person appointed under subsection (1) shall—

(a) be a citizen of Kenya;

(b) a holder of a degree from a university recognized in Kenya or its equivalent in the fields of engineering, physical sciences, law, finance, economics or energy;
(c) have had at least seven years’ relevant professional experience in matters relating to energy production, supply and energy management, standardization and efficient use of energy and its conservation; and

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

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

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

76. All orders and decisions of the Agency shall be authenticated by the signature of the Director or any other officer of the Agency authorized by the Director in this behalf.

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

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

79. The Agency may appoint such staff as it may require for the proper discharge of the functions of the Agency under this Act, on such terms and conditions of service as the Board may determine.

80. The Agency shall pay its members such allowances as it shall determine in consultation with the Cabinet Secretary.

81. No matter or thing done by a member of the Board or any officer, employee or agent of the Agency shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Agency, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

82. The provisions of section 81 shall not relieve the Agency of the liability to pay compensation or damages to any person for an injury to that person, that person’s property or any of the persons’ interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

83. (1) The funds of the Agency shall consist of—
(a) such moneys as may, from time to time, be appropriated by Parliament for that purpose;

(b) money’s allocated from the consolidated energy fund for energy efficiency and conservation;

(c) interest from bank deposits; and

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

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

Nuclear Electricity Corporation

84. (1) There is established the Nuclear Electricity Corporation hereinafter referred to as the Corporation.

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

(a) suing and being sued;

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

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

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

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

86. (1) The Corporation shall promote and fast track the development of nuclear electricity generation in Kenya.

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

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

(b) undertake extensive public education and awareness on Kenya’s nuclear power programme;
(c) identify, prepare and facilitate implementation of an approved roadmap for a nuclear power programme;

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

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

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

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

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

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

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

Powers of the Corporation.

87. (1) In the execution of its mandate the Corporation may—

(a) create, develop, apply for and hold intellectual property rights and enter into agreements for their commercial exploitation or otherwise as it may consider appropriate;

(b) make proposals to the Cabinet Secretary for Energy and Petroleum, of policies which may be necessary for the direction and regulation of nuclear energy sub-sector;

(c) formulate and review environmental, health, safety and quality standards for the nuclear energy sub-sector, in coordination with other statutory authorities;

(d) control, supervise and administer assets of the Corporation in such manner as best promotes the purposes for which the Board is established;

(e) receive any grants, gifts, donations or endowments on behalf of the Corporation and make legitimate disbursements therefrom;
(f) enter into agreements with such other bodies or organizations within or outside Kenya as the Corporation may consider desirable or appropriate and in furtherance of the purposes for which the Corporation is established; and

(i) perform any other thing which is necessary or convenient to be done in connection with or incidental to its functions.

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

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

(b) the Principal Secretary in the ministry for the time being responsible for energy and petroleum or his representative;

(c) the Principal Secretary, ministry responsible for science and technology or his representative;

(d) the Principal Secretary to the Treasury or his representative;

(e) the Director General;

(f) not more than five other members, not being employees of the state corporation, appointed by the Cabinet Secretary, of whom—

(i) one shall hold a minimum of a degree of laws from a recognized university;

(ii) one shall hold a minimum of a degree in engineering from a recognised university;

(iii) shall hold a minimum of a degree in nuclear related sciences from a recognized university;

(iv) one shall hold a minimum of a degree in the area of either environment, health and/or public safety; and

(v) one shall hold a minimum of a degree from a recognized university and also have at least 10 years experience in training at university, tertiary or technical institution.

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

(a) manage, supervise and administer the assets of the Corporation in such a manner as best promotes the purpose for which it is established;
(b) determine the provisions to be made for capital, recurrent expenditure and reserves of the Corporation;

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

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

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

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

Director General.

90. (1) The Cabinet Secretary shall, on the recommendation of the Board, appoint a Director General who shall be the chief executive of the Corporation and shall, subject to the directions of the Board, be responsible for the day to day management of the Corporation.

(2) The Cabinet Secretary shall appoint the Director General mentioned in sub-section (1) from a list of three names of persons submitted by the Board.

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

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

(a) is a citizen of Kenya;

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

(e) has had at least seven years’ relevant professional experience; and

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

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

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

91. (1) There shall be a Corporation Secretary who shall be appointed on such terms and conditions as the Board may determine.
(2) A person shall be qualified for appointment as a Corporation Secretary if such person—

(a) is a citizen of Kenya;

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

(c) is a registered certified public secretary;

(d) has had at least seven years’ relevant professional experience; and

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

(3) The appointment of the Corporation Secretary under this section shall be through a competitive recruitment process.

(4) The Corporation Secretary shall—

(a) be the secretary to the Corporation;

(b) record and keep minutes and other records of the Corporation;

(c) keep custody of the seal of the Corporation; and

(d) carry out such other functions as the Board or the Managing Director may, from time to time, assign.

(5) The secretary shall perform functions as assigned by the Managing Director or the Board.

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

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

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

(2) The Board may from time to time co-opt into its membership one or more persons to assist it in any particular matter for the time being before the Board but shall have no voting rights.
95. The Board may, by resolution either generally or in any particular case delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions or duties.

96. The Corporation may appoint such staff as it may require for the proper discharge of the functions of the Corporation under this Act, on such terms and conditions of service as the Corporation may determine.

97. Members shall be paid such allowances as the Corporation may determine, with the approval of the Cabinet Secretary.

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

99. (1) The funds of the Corporation shall comprise-

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

(b) such monies as may accrue to or vest in the Corporation in the course of the exercise of its powers or the performance of its functions under this part or under any other written law; and

(c) all monies from any other source provided for or donated or lent to the Corporation.

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

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

PART IV

RENEWABLE ENERGY

101. All unexploited renewable energy resources under or in any land vests in the national Government subject to any rights which, by or under any written law, have been or are granted or recognized as being vested in any other person.
102. (1) The Cabinet Secretary shall, within twelve months of coming into force of this Act, commence a countrywide survey and a resource assessment of all renewable energy resources, excluding large hydros and geothermal resources.

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

(3) In preparing the renewable energy resource map and the renewable energy resource inventory under subsections (1) and (2), the Cabinet Secretary shall have regard to relevant data, information, maps, documents or reports.

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

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

(a) Cabinet Secretary or representative in the Ministry of Energy and Petroleum who shall be the Chairperson;

(b) Managing Director or representative, Geothermal Development Company who shall be the Secretary;

(c) Managing Director or representative, National Electrification and Renewable Energy Authority who shall be the Secretary;

(d) Attorney General or representative;

(e) Cabinet Secretary of the National Treasury or representative;

(f) Cabinet Secretary responsible for matters relating to natural resources or representative;

(g) Chief Geologist in the Ministry of Energy and Petroleum or representative;

(h) Director General, National Environmental Management Authority or representative;

(i) Chairperson of the National Land Commission or representative;

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

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

(a) criteria for allocation of renewable energy resource;
(b) licensing of renewable energy resource areas;

(c) management of water towers and catchment areas;

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

(e) management and development of other energy resources such as agricultural and municipal waste, forests and areas with good wind regimes, tidal and wave energy.

**Geothermal Resources**

104. All un-extracted geothermal resources under or in any land shall vest in the Government subject to any rights which, by or under any written law, have been or are granted or recognized as being vested in any other person.

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

106. (1) For the purposes of and subject to this Act, the Cabinet Secretary may authorize any person in writing, to make surveys, investigations, tests and measurements in search of geothermal resources and for that purpose the authorized person may—

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

(b) sink any well on the land;

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

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

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

(3) Every authority granted under this section shall be subject to—
(a) the condition that every well made pursuant to the authority shall be—

(i) kept under close supervision;

(ii) maintained in a safe condition; and

(iii) finally left in a condition of lasting safety;

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

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

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

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

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

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

107. (1) The Cabinet Secretary may, on receiving an application in respect of any land, grant a licence over part or the whole of a geothermal resources area under such terms and conditions as the Cabinet Secretary may determine.

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

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

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

108. (1) Without prejudice to the provisions of Part VII, a licence issued under section 107 shall, subject to this Act, confer upon the licensee the right—
(a) to enter upon the land being the subject of the licence to sink a
well and to extract geothermal resources and to do all such things
as are reasonably necessary for the conduct of those operations;

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

(i) drill and construct all necessary wells;

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

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

(iv) utilize the geothermal resources;

(v) subject to the Water Act, to reclaim and utilize any water; and

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

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

(2) Where any by-product obtained in the production of geothermal
resources may be reclaimed for further use or sale and is a mineral within the
meaning of the Mining Act, the licensee shall exploit the same without requiring
an additional licence notwithstanding the provisions of any other Act.

(3) Any other natural resource discovered in the course of exploration and
production of geothermal, the licensee shall inform the Cabinet Secretary of such
discovery and the licensee shall have the first right of refusal in the exploration
and exploitation of that resource.

109. The Cabinet Secretary may—

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

(b) wholly or partly remit all or any of the terms and conditions
contained in any licence where, owing to special circumstances,
in his opinion, compliance therewith would be impossible or great
hardship would be inflicted upon the licensee;
(c) extend time to the licensee for complying with the terms and conditions of any licence upon such terms and conditions as he may deem fit; or

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

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

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

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

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

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

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

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

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

112. (1) The licensee shall in respect of the licensee’s licence pay a royalty on the value at the wellhead of the geothermal resources extracted, of—

(a) not less than one per centum and not more than two and half per centum of the value of geothermal energy produced from such resources during the first ten years of production under the licence;
(b) not less than two per centum and not more than five per centum of the value of the geothermal energy produced from such resources during each year after such ten year period; but

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

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

(3) Royalties received by the national Government from fluid produced under this section shall be paid into the Treasury of the national Government and apportioned between the national Government, county government and the local community as follows—

(a) five per centum shall be paid to the local community through the county government within the boundaries of which the licensed areas or geothermal resources are or were exploited;

(b) twenty per centum shall be paid to the County within the boundaries of which the licensed areas or geothermal resources are or were exploited; and

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

Provided that where the resource is being exploited in one or more counties the Cabinet Secretary shall, in consultation with the Commission for Revenue Allocation, determine the rate of apportionment of the county share between the counties concerned based on the extent of the investment in each county.

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

113. (1) Any licensee whose licence has expired or has been surrendered or forfeited may, within ninety days of the date of the expiry, surrender or forfeiture, apply to the Cabinet Secretary to enter the land which was comprised in the licence to remove the plant, machinery, engines or tools installed or erected on the land.
(2) The Cabinet Secretary may require the licensee to remove the plant, machinery, engines or tools within a reasonable time, and if the plant, machinery, engines or tools are not removed within a reasonable time they may be sold by auction at the cost of the licensee.

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

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

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

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

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

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

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

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

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

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

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

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

(c) the owner of the land if that owner permitted the well to be drilled without the authority of the Cabinet Secretary.
The Energy Bill, 2013

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

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

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

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

(2) A person who removes, damages, destroys or otherwise interferes with any survey pegs or beacons placed on the ground in connection with any survey lawfully carried on under this Act commits an offence and shall on conviction, be liable to a fine of not less than five hundred thousand shillings and if the offence is of a continuing nature, to a further fine of not less than fifty and a jail term of not less than six months.

(3) A person who removes, damages, destroys or otherwise interferes with any valve or instrument being used in connection with any such survey or with any well, or any geothermal generation power plant or steam highways commits an offence and shall on conviction, be liable to a fine of not less than five hundred thousand shillings and if the offence is of a continuing nature, to a further fine of not less than one million shillings or a jail term of not less than twelve months or both.

Renewable Energy Feed-in Tariff System

118. (1) There is established a renewable energy feed-in-tariff system to provide for—

(a) the connection to the grid to enable sale and purchase of electrical energy generated by licensees using renewable energy sources;

(b) the priority of purchase by distribution licensees of electrical energy generated using renewable energy sources; and
(c) the feed-in-tariff to be paid by distribution licensees to licensees under feed-in-tariff system.

(2) The feed-in-tariff system shall be administered and implemented by the Commission upon the advice of the feed-in-tariff committee in accordance with the provisions of this Part.

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

(a) the objective of this Part;

(b) the energy policies of the government;

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

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

119. The objectives of feed-in-tariff system are to—

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

(b) encourage local distributed generation thereby reducing demand on the network and technical losses associated with transmission of electricity from centralised generators;

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

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

120. (1) The Cabinet Secretary shall establish a feed-in-tariff committee comprising representatives from—

(a) the Ministry of Energy and Petroleum;

(b) the Commission;

(c) National Electrification and Renewable Energy Authority;

(d) Geothermal Development Company;

(e) Kenya Electricity Transmission Company;

(f) the National Energy Institute; and
(g) a person nominated to represent a public electricity supplier.

(2) The mandate of the feed-in-tariff committee is to—

(a) approve feed-in-tariff applications;

(b) review, vary or impose reasonable conditions on approved feed-in-tariff applications;

(c) develop and review the feed-in-tariff policy once every two years; and

(d) advise the Cabinet Secretary on matters relating to feed-in-tariff.

121. A person shall be eligible to apply for a feed-in-tariff approval allowing the person to participate in the feed-in tariff system if—

(a) the person proposes to generate electrical energy from a renewable energy installation having an installed capacity as may be prescribed in the feed-in-tariff policy; and

(b) the person meets such other criteria as may be prescribed by feed-in-tariff committee.

122. (1) An eligible producer may apply to the feed-in-tariff committee for a feed-in-tariff approval under section 124 submitting a written expression of interest in such form and accompanied by such fees as may be prescribed by feed-in-tariff committee.

(2) An application under this section may be withdrawn at any time before it is approved or rejected.

(3) An application under subsection (1) may be submitted by way of an electronic medium or by way of an electronic transmission.

(4) For the purpose of subsection (3), the conditions and specifications under which an application is to be furnished shall be as determined by the feed-in-tariff committee.

123. (1) The feed-in-tariff committee may, at any time after the receipt of an application for a feed-in-tariff approval under Section 122, request the eligible producer to give to the feed-in-tariff committee, within the period specified in the request, additional information or documents relating to the application.

(2) If any additional information or document required under subsection (1) is not provided by the eligible producer within the period specified in the request or any extended time granted by the feed-in-tariff committee, the application shall be deemed to have been withdrawn and shall not be further proceeded with, but without affecting the right of the eligible producer to make a fresh application.
124. (1) The feed-in-tariff committee may, after considering an application for a feed-in approval under section 122 and the additional information or documents provided under section 123, approve with or without conditions or refuse the application.

(2) The feed-in-tariff committee shall communicate its decision under subsection (1) to the eligible producer and the relevant distribution licensee by written notice within one week after the decision has been made.

(3) The written notice by the feed-in-tariff committee under subsection (2) shall specify—

(a) in the case where the application is approved, the fact of such approval and the condition imposed under section 123; and

(b) in the case where the application is rejected, the fact of such rejection and the reason for the rejection.

(4) The approval of a feed-in-tariff application under this section shall be personal to the licensee under feed-in-tariff system and that approval shall not be assigned or transferred to any other person.

125. Any person who is aggrieved by the decision of the feed-in-tariff committee in rejecting an application for approval under feed-in-tariff system under section 124 may, within thirty days of notification of decision, appeal to the Tribunal in the prescribed manner.

Connection, Purchase and Distribution of Renewable Energy

126. (1) Upon receipt of the written notice by the distribution licensee/s under subsection (2) of section 124 that an application from a licensee under feed-in-tariff system has been approved, the distribution licensee shall, within such periods as may be prescribed by the Commission, enter into a renewable energy power purchase agreement with a licensee under the feed-in-tariff system.

(2) Notwithstanding subsection (1), the distribution licensee or the Commission may apply to the feed-in-tariff committee for review of a feed-in-tariff approval where a distribution licensee or the Commission is of the opinion that there has been a change of circumstances such that the licensee under feed-in-tariff system would no longer be entitled to be granted a feed-in-tariff approval under this Act.

(3) The renewable energy power purchase agreement shall take the form as may be prescribed by the Commission and any deviation from such shall require the prior written approval of the Commission.
(4) The Commission may prescribe different models of power purchase agreements having regard to the renewable energy resource to be used and the capacity of the proposed renewable energy installation.

(5) The Commission may take such necessary action on a distribution licensee who contravenes subsection (1).

127. (1) Where the renewable energy power purchase agreement has been concluded under section 126, a licensee under feed-in-tariff system may apply to a either a distribution licensee or a transmission licensee for connection of its renewable energy installation to the grid in such manner as may be prescribed by the Commission.

(2) Upon receiving the application under subsection (1), the network service provider shall connect the renewable energy installation to the grid within such period as may be prescribed by the Commission.

(3) The location of the applicable supply line connection point shall be determined by the network service provider, without prejudice to section 129.

(4) A network service provider who contravenes subsection (2) commits an offence and shall on conviction, be liable to a fine of not less than one million shillings.

128. (1) All electricity generated from the renewable energy resources and connected to the grid in accordance to section 127 shall be purchased on a priority basis.

(2) A person who contravenes subsection (1) commits an offence and shall on conviction, be liable to a fine of not less than one million shillings.

129. The Commission shall, in conjunction with the feed-in-tariff committee, prescribe rules governing technical and operational requirements to be complied with by network service provider and licensees under feed-in-tariff system in the implementation of this Part, including—

(a) the respective duties and responsibilities of network service provider and licensees under feed-in-tariff system in respect of such requirements;

(b) the time periods within which such requirements are to be complied with;

(c) the apportionment of costs incurred in relation to such requirements; and

(d) the procedures and manner in which the plans, specifications and other documents are to be submitted.
130. The duration for the feed-in-tariff approval shall be twenty years.

131. (1) The feed-in-tariff committee shall review the digression rates in respect of any category of renewable energy installation at least once every two years after the commencement date of this Act for the purposes of improving the overall performance of the feed-in-tariff system to better achieve the objective of this Act.

(2) In carrying out the review under subsection (1), the feed-in-tariff Committee shall have regard to—

(a) the ability of the licensee to recover their initial investment on their renewable energy installations and receive satisfactory returns within reasonable time;

(b) the prevailing cost of equipping, constructing, operating and maintaining renewable energy installations utilizing each particular renewable resource;

(c) the efficiency of renewable energy installations utilizing each particular renewable resource based on the prevailing technology; and

(d) any other factor deemed relevant by the feed in tariff committee.

(3) Upon completion of the review under subsection (1), the feed-in-tariff committee shall submit a report of review to the Cabinet Secretary with or without recommendations for adjustments to the digression rates.

(4) The Cabinet Secretary may, after considering the recommendations for adjustment to the digression rates made by the feed-in-tariff committee under subsection (3) approve or refuse such recommendations.

(5) If the Cabinet Secretary approves the recommendations made by the feed in tariff committee under subsection (4), the Cabinet Secretary shall as soon as practicable, cause the feed in tariff committee to revise the digression rates.

(6) The revised digression rates shall not apply to licensees under feed-in-tariff system existing before the revised digression rates come into effect.

Regulations under this Part

132. (1) The Cabinet Secretary may upon recommendation of the Commission make regulations necessary for carrying into effect the provisions of this Part.
(2) Regulations may be made under this section for the following purposes—

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

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

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

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

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

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

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

(h) preventing or abating nuisances in or about well and industries using geothermal resources;

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

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

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

(l) regulating the cessation of drilling operations and the abandonment and closing of wells and prescribing precautions against loosening the earth in the vicinity of any well;
(m) providing for wells to be made with due diligence and by safe and satisfactory methods;

(n) generally regulating the drilling of wells;

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

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

(r) providing guidelines on direct uses of geothermal energy.

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

**PART V**

**FOSSIL FUELS (PETROLEUM AND COAL)**

*Petroleum upstream*

133. All petroleum existing in its natural condition in strata lying within Kenya and the continental shelf is vested in the national Government in trust for the people of Kenya, subject to any rights in respect thereof which, by or under any other written law, have been or are granted or recognized as being vested, in any other person.

134. (1) All petroleum resources shall be managed in accordance with the provisions of the Constitution and this Act.

(2) The Cabinet secretary may adopt acceptable international standards in the management of resources provided that such standards are not inconsistent with this Act.

135. (1) The proceeds raised from the exploitation of petroleum resource shall be shared out between the national Government, the county government and the local community.

(2) The county government’s share shall be equivalent to twenty percent of the government share of the profit oil.

Provided that the amount allocated in accordance to this sub-section shall not exceed the amount allocated to the county government by the Commission for Revenue Allocation in the financial year under consideration.
(3) The local community shall receive an amount equivalent to one quarter of the amount due to the county government, which shall be paid through the county government.

136. (1) There is established a Sovereign Fund into which shall be paid such sums of revenue as shall be received from proceeds of petroleum and managed by the national government.

(2) The purpose of the fund shall be to—

(a) provide an endowment to support development in future generations when petroleum reserves may have been depleted;

(b) to cushion the impact on or sustain public expenditure capacity during periods of unanticipated petroleum revenue shortfalls;

(c) build a savings base for the Kenyan people;

(d) enhance the development of Kenyan infrastructure; and

(e) provide stabilization support in times of economic stress;

(3) The Cabinet Secretary of the National Treasury, shall determine, with the approval of parliament,—

(a) the amounts payable into the Fund;

(b) the asset manager to manage the Fund; and

(c) the withdrawals to be made from the Fund.

provided that the amount payable into the fund shall be at least five per centum of the government share of proceeds.

(4) The asset manager appointed under subsection (3) shall, among other functions,—

(a) receive funds paid to the Fund;

(b) develop an investment plan;

(c) implement, supervise and monitor the investments made from the Fund;

(d) manage, control and administer the assets of the Fund in such manner and for such purpose as best promotes the objects for which the Fund is established.

(5) The Cabinet Secretary of the National Treasury shall make regulations relating to the qualifications, appointment and dismissal of the fund manager.
The Energy Bill, 2013

137. (1) A person shall not engage in any petroleum upstream operations except under and in accordance with, a production sharing contract or licence issued under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall on conviction, be liable to a fine of not less than fifty million shillings or imprisonment for a term not less than three years or to both.

(3) Subject to Article 71 of the Constitution, the National Government may conduct petroleum operations either—

(a) through an oil company established by the National Government to conduct those operations;

(b) through contractors in accordance with applicable national laws and the petroleum agreements; or

(c) in such other manner as may be necessary or appropriate.

(4) Subject to this Act the Government may authorize a contractor to engage in Petroleum operations within a specified area, in accordance with the terms and conditions set out in the petroleum agreement and this Act.

(5) Notwithstanding the provisions of this section, the Government may grant to any person, other than the contractor, a permit for the prospecting and mining of minerals or other natural resources other than petroleum or the conduct of operations other than petroleum operations within an area which is the subject of a petroleum agreement, provided that the prospecting, mining and the other operations shall not interfere with Petroleum operations.

(6) A contractor who conducts petroleum operations shall ensure local content participation in all of its operations.

138. (1) There is established an inter-ministerial Committee to be known as the National Fossil Fuels Advisory Committee (“hereinafter referred to as “advisory committee”.

(2) The National Fossil Fuels Advisory Committee is composed of—

(a) Principal Secretary or representative in the Ministry of Energy and Petroleum who shall be the Chairperson;

(b) Managing Director or representative, National Oil Corporation of Kenya who shall be the Secretary;

(c) Attorney General or representative;

(d) Principal Secretary of the National Treasury
(e) Commissioner of Petroleum Energy in the Ministry of Energy and Petroleum or representative;

(f) Chief Geologist in the Ministry of Energy and Petroleum or representative;

(g) Director General, National Environmental Management Authority or representative;

(h) Commissioner General, Kenya Revenue Authority or representative;

(i) Commissioner of Mines & Geology or representative;

(3) The National Fossil Fuels Advisory Committee may co-opt such other members as they deem necessary but in any case not more than four members shall be co-opted.

139. The functions of the National Fossil Fuels Advisory Committee shall be to—

(a) negotiate with a qualified potential contractor on the terms of the petroleum and coal agreements on behalf of the Government, so as to secure the most favourable conditions for Government;

(b) submit a report to the Cabinet Secretary on the terms negotiated with a contractor;

(c) advise the Cabinet Secretary on all petroleum and coal operations;

(d) evaluate all the applications by contractors;

(e) conduct all due diligence and investigate all the affairs of contractors prior to entering into petroleum agreements; and

(f) coordinate petroleum infrastructure development;

(g) coordination of capacity building in petroleum and coal development

(f) perform such other functions and duties as may be provided under this Act.

140. (1) The Cabinet Secretary upon receipt of the report provided by section 139 and upon approval by the Cabinet shall, subject to ratification by parliament in accordance with the constitution, enter into petroleum agreements with a contractor.
(2) For the purpose of obtaining geological information, the Cabinet Secretary may upon advice from advisory committee, grant non-exclusive exploration permits, in respect of areas specified therein, under which a person may enter upon an area and prospect and carry out geological, geochemical and geophysical surveys.

(3) The Cabinet Secretary—

(a) shall make available model petroleum agreements to potential contractors as a basis for the negotiation for petroleum agreements;

(b) shall cause any investigations, due diligence or consultations to be made or carried out as he considers necessary before entering into a petroleum agreement and may upon advice from the National Fossil Fuels Advisory Committee reject any application made by a potential contractor if satisfied that the rejection is in the best interest of the country;

(c) shall supervise petroleum operations carried out under a petroleum agreement; and

(d) may take any action, decision, or give any permission or consent or exercise any other control as may be necessary or desirable for the purposes of this Act or the regulations made thereunder.

(4) The power of the Cabinet Secretary under this Act to sign or revoke a petroleum agreement shall be exercised by the Cabinet Secretary or a person duly authorized by the Cabinet Secretary in writing.

(5) Where Cabinet Secretary rejects any advice given under Section 139, the reasons for the rejection shall be communicated to the Advisory Committee in writing.

141. (1) For the purposes of this Act, the Cabinet Secretary may, by notice in the Gazette, zone Kenya and the continental shelf into numbered areas, and each area shall be described as a “block”.

(2) The Cabinet Secretary may reserve blocks to be exploited by the Government.

(3) The Cabinet Secretary may require a contractor to relinquish portions of a block to which a petroleum agreement relates in the manner specified in the agreement.

142. The Government shall enter into petroleum agreements only with contractors who have the financial ability, technical competence and professional skills necessary to fulfill the obligations under the petroleum agreement.
143. (1) Notwithstanding any other written law and subject to this Act, there shall be implied in every petroleum agreement an obligation on the contractor to—

(a) perform certain minimum work and incur certain minimum expenditure during the course of exploration operations;

(b) report the discovery of the existence of any petroleum or any other resource within 48 hours to the Cabinet Secretary before making any public disclosure;

(c) present to the Cabinet Secretary a development plan in respect of any commercial field and promptly take all steps that are reasonable to develop that field for production;

(d) present to the Cabinet Secretary a work programme and budget for each year of operations;

(e) keep accurate books of accounts and records of petroleum operations;

(f) conduct petroleum operations in accordance with sound professional and technical skills and adopt measures necessary for the conservation of petroleum and other resources and the protection of the environment;

(g) give preference to the use of locally available raw materials, products, equipment, manpower and services;

(h) continuously develop capacity of the locally available manpower;

(i) indemnify the Government against all claims made by third parties, in respect of any injury, damage or loss caused by, or resulting from, the conduct of any operations carried out by the contractor or subcontractors pursuant to the provisions of any petroleum agreement; and

(j) provide such other information, data, reports and samples concerning petroleum operations as the Cabinet Secretary may require.

(2) A contractor makes a public disclosure of the discovery referred to in subsection (1) (b) without having reported the discovery to the Cabinet Secretary within the period specified therein shall be liable to a penalty of not less than ten million shillings.
144. (1) A contractor shall carry out petroleum operations in the block in a proper and safe manner and in accordance with good oil field practices and take all reasonable steps necessary to secure the safety, health and welfare of persons engaged in those operations in or about the block and the contractor shall, in particular, but without prejudice to the generality of the foregoing—

(a) control the flow and prevent the waste or escape in the block of petroleum, gas (not being petroleum) or water;

(b) prevent the escape in the block of any mixture of water or drilling fluid and petroleum or any other matter;

(c) prevent damage to petroleum bearing strata in any area in respect of which the licence is not in force;

(d) keep separate, in such manner as the Cabinet Secretary may by notice in writing served on the contractor direct—

(i) each petroleum reservoir discovered in the block; and

(ii) any sources of water discovered in the block;

(e) prevent water or any other matter entering any petroleum reservoir through the wells in the exploration or development area, except when required by, and in accordance with, good oil field practices;

(f) prevent the pollution of any water well, spring, stream, river, lake, reservoir, estuary or harbor by the escape of petroleum, salt water, drilling fluid, chemical additive, gas (not being petroleum) or any other waste product or effluent;

(g) where pollution occurs, treat or disperse it in an environmentally acceptable manner; and

(h) furnish to the Cabinet Secretary, prior to the drilling of any well, a detailed report on the technique to be employed, an estimate of the time to be taken, the material to be used and the safety measures to be employed, in the drilling of the well.

(i) subject to sub-section (2) a contractor shall desist from flaring of natural gas by taking all reasonable steps including harnessing or re-injecting the gas.
(2) In circumstances where flaring cannot be avoided such as during facilities or well testing, emergencies or safety reasons the contractor shall seek and obtain the consent of the Cabinet Secretary to flare the gas in accordance with the terms and conditions contained in the instrument of consent and regulations.

(3) In considering the application under subsection (2) the Cabinet Secretary shall be satisfied that an emergency exists and flaring is required to safeguard the health and safety of persons in the block or to prevent damage to the property of any person in the exploration area.

(4) A contractor shall furnish to the Cabinet Secretary reasonable notice of the contractor’s intention to abandon any well; and the closure or plugging of any well shall be carried out only with the prior consent in writing of the Cabinet Secretary and in the manner approved by the Cabinet Secretary.

(5) A contractor who contravenes or fails or neglects to comply with a requirement of this section commits an offence and shall on conviction, be liable to a fine of not less than one hundred million shillings or a jail term of not less than five years or both.

145. (1) It shall be a mandatory condition of a petroleum agreement that the contractor shall carry out work in the licence area in accordance with a work program approved by the Cabinet Secretary.

(2) A proposed work program shall be submitted for the Cabinet Secretary’s approval with an application for the grant or renewal of an exploration licence.

(3) The Cabinet Secretary may approve the proposed work program with or without variation.

(4) The Cabinet Secretary may upon advice by the National Fossil Fuels Advisory Committee approve deferment, variation or reduction of the work to be carried out under an approved work program.

Provided that such deferral, variation, or reduction of the work to be carried out under the approved work plan shall only be approved under such exceptional circumstances as shall be provided in regulations.

146. (1) A contractor shall—

(a) maintain in good condition and repair, all structures, equipment and other property in the area subject to the petroleum agreement and used in connection with the operations in which the contractor is engaged;
(b) remove from that area all structures, equipment and other property that are not either being used or intended to be used in connection with those operations; and

(d) take reasonable steps to warn persons who may from time to time be in the vicinity of any such structure, equipment or other property of the presence of the structure, equipment or other property and the possible hazards resulting therefrom.

(2) Subsection (1) shall not apply in relation to any structure, equipment or other property that was not brought into the area subject to the petroleum agreement by or with the authority of the contractor.

(3) A contractor who contravenes subsection (1) commits an offence and shall:

(b) on conviction, be liable to a fine of not less than one million shillings or to a jail term of not less than two years or both.

147. (1) The contractor shall pay to the Government an annual charge calculated in such manner as may be prescribed by the Cabinet Secretary in the regulations.

(2) The annual charge payable pursuant to subsection (1) shall be payable on the grant of a licence and thereafter annually on the anniversary of the grant until the termination of the licence.

148. (1) Subject to this Act, a contractor shall pay royalty in accordance with the petroleum agreement and this Act.

149. In the event that the contractor fails to pay, on or before the due date or during any extension of period allowed by the Cabinet Secretary, any royalty payable, the Cabinet Secretary may, by order served on the contractor, prohibit the removal of, or any dealings in or with, any petroleum from the block concerned, or from any other block subject to a licence held by the contractor, or from both, until all outstanding royalty has been paid or until an arrangement has been made and accepted by the Cabinet Secretary for the payment of the royalty.

150. (1) Royalty that remains unpaid in accordance with section 149 is a civil debt due to the Government and may be recovered in a court of competent jurisdiction.
Security for compliance.

151. A petroleum agreement shall require a contractor to provide the Cabinet Secretary, prior to signing the petroleum agreement, performance bond issued in the form of an irrevocable bank guarantee by a reputable bank acceptable to the Cabinet Secretary, for one hundred per centum of the full financial obligations to be fulfilled by the contractor and for full observance of other obligations. The full terms of the performance security shall be determined by regulations.

Suspension or cancellation of a licence.

152. (1) Subject to this section, where a contractor is in default, the Cabinet Secretary may, by notice in writing served on the contractor, suspend or terminate the agreement and recall the bank guarantee forthwith.

(2) For the purposes of subsection (1), the contractor shall not be treated as in default unless the Cabinet Secretary has served on the contractor a notice in writing giving the particulars of any default complained of and the contractor has not within seven days from the date of the notice remedied the default, or where the default cannot be remedied, offered to the Cabinet Secretary in respect of the default adequate compensation.

Directions by the Cabinet Secretary.

153. (1) The Cabinet Secretary may, by notice in writing served on a contractor, give directions to the contractor, consistent with best oil field practices, as to any matter with respect to which regulations may be made under section 162.

(2) A contractor who fails or neglects to comply with a direction given under subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than ten million shillings or a jail term of not less than three years or both.

Compliance with directions.

154. Where a contractor fails or neglects to comply with a directive of the Cabinet Secretary in accordance with section 153 the Cabinet Secretary may cause to be done all or any of the things required by the direction to be done, and the costs and expenses incurred in doing so are a civil debt due to the Government and at the first instance shall be recovered from the bank guarantee and any outstanding amounts through a court of competent jurisdiction, notwithstanding that the contractor may have been convicted of an offence under section 153.

Information required by the Cabinet Secretary.

155. (1) Where the Cabinet Secretary has reason to believe that a person is in possession of any information or data relating to exploration or development operations or to petroleum obtained or the value thereof, the Cabinet Secretary may, by notice in writing, require that person to—

(a) furnish to the Cabinet Secretary that information or data within the period and in the manner specified in the notice;
(b) attend before the Cabinet Secretary or a person identified in the notice at such time and place as may be specified and there to answer questions relating to those operations or petroleum obtained or the value thereof, or

(c) furnish to a person identified in the notice at such time and place as is so specified the information or data in his or her custody or power relating to those operations or petroleum obtained or the value thereof.

(2) A person shall not be excused from furnishing information or data, or answering a question when required to do so under this section on the ground that the information or data so furnished or the answer to the question might tend to incriminate him or her to make him or her liable to a penalty, but the information or data so furnished or his or her answer to the question shall not be admissible in evidence against him or her in any proceedings other than proceedings for an offence against this section.

(3) Where any data is furnished pursuant to a requirement under subsection (1) (c), the person to whom it is made available may make copies or take extracts from the data.

(4) Any person who—

(a) refuses or fails to comply with the requirement in a notice under subsection (1) to the extent to which he or she is capable of complying with it; or

(b) in purported compliance with any requirement referred to in subsection (1), knowingly or recklessly makes a statement or furnishes any information or data that is false or misleading in a material particular;

commits an offence and shall on conviction, be liable to a fine of not less than ten million shillings or to imprisonment for a term not less than two years or to both.

Powers of the Cabinet Secretary and authorized officers.

156. (1) For the purposes of this Act, the Cabinet Secretary or an authorized officer may, at all reasonable times—

(a) enter any area, structure, vehicle, vessel, aircraft or building that, in his or her opinion, has been, is being or is to be used in connection with exploration or development operations;

(b) inspect and test any machinery or equipment that, in his or her opinion, has been, is being or is to be used in connection with exploration or development operations;
(c) take or remove for the purpose of analysis or testing or for use in evidence in connection with an offence under this Act, samples of petroleum or other substances from any area where any exploration or development operations are being carried on;

(d) inspect, take extracts from, and make copies of, any document relating to any exploration or development operations;

(e) with respect to the health and safety of persons employed by a licensee in or in connection with any exploration or development operations, issue directions to and impose restrictions on the licensee or any persons so employed, by instrument in writing;

(f) order, by instrument in writing—

(i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connection with any exploration or development operations; or

(ii) the discontinuance of the use of any machinery or equipment, which he or she considers unsafe, until such action as is necessary for safety and specified in the instrument is taken and completed; and

(g) makes such examinations and inquiries as may be necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed or orders made under this Act, are being complied with.

(2) In the exercise of his or her powers under subsection (1), the Cabinet Secretary or authorized officer may be accompanied by any person who the Cabinet Secretary or the authorized officer, as the case may be, believes has special or expert knowledge of any matter being inspected, tested or examined.

(3) A person who is an occupier of or is in charge of any building, structure or place, or a person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1) shall provide the Cabinet Secretary or an authorized officer with all reasonable facilities and assistance, including the provision of the necessary means of transport, for the effective exercise of the Cabinet Secretary’s or authorized officer’s powers under this section.

(4) Any person who—

(a) without reasonable excuse, obstructs or hinders the Cabinet Secretary or an authorized officer in the exercise of the Cabinet Secretary’s powers under this section; or
(b) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the Cabinet Secretary or an authorized officer engaged in carrying out his duties and functions under this Act;

commits an offence and shall on conviction, be liable to a fine of not less than ten million shillings or to imprisonment for a term not less than two years but not exceeding ten years or to both.

157. (1) Where the liability of a person under this Act or under a licence to pay an amount is not discharged on or before the time when the amount is payable, there shall be payable by that person an additional amount calculated at the rate of one percent per day upon so much of that amount as from time to time remains unpaid, to be computed from the time that the amount became payable until it is paid.

158. Any person who, without reasonable excuse, obstructs, hinders or prevents a contractor from the doing of any act which the contractor is authorized to do by this Act or under the petroleum agreement commits an offence and shall, on conviction, be liable to a fine of not less than fifty thousand shillings or to imprisonment for a term not less than three months or to both.

159. (1) Petroleum shall not be removed from the area from which it has been obtained to any other area, or disposal of in any manner, except-

(a) by a licensee, with the written consent of the Cabinet Secretary, for the purpose of sampling or analysis;

(b) by a contractor in accordance with the conditions of the petroleum agreement; or

(c) as otherwise permitted by this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than one hundred million shillings or to imprisonment for a term of not less than ten years or to both.

160. (1) Where a person is convicted of an offence under this Act, a court of competent jurisdiction may, in addition to any other penalty imposed, make an order—

(a) for the forfeiture of any vehicle, aircraft, vessel or equipment used in the commission of the offence;

(b) for the forfeiture of petroleum recovered in the course of the commission of the offence;
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(c) for the payment by that person to the Government of an amount equal to the proceeds of the sale of the petroleum so received; or

(d) for the payment by that person to the Government of the value at the wellhead, assessed by the court in respect of the quantity recovered or for the payment of such a part of that amount as the court, having regard to all the circumstances, deems fit.

161. A Contractor under a petroleum agreement shall keep the Government indemnified against all actions, claims and demands that may be brought or made against the Government by reason of anything done by the contractor in the exercise of the rights under the petroleum agreement.

162. A licensee under this part or any other person who engages in importation of oil or who by nature of work transports oil through the Ocean, Sea lake or mass of water, or conducts exploration and production of petroleum shall be required to comply with, the Merchant Shipping Act, the Environmental Management and Coordination Act, regulations there under and all international maritime conventions ratified by Kenya relating to prevention of pollution of the environment, dumping of waste, safety, liability and compensation for pollution damage.

163. (1) Subject to this Act, the Cabinet Secretary may upon recommendation of the commission make regulations for or with respect to—

(a) the opening of areas for petroleum operations;

(b) the terms and conditions applicable to the grant of exploration permits under section 143;

(c) the procedure, manner and form in which applications may be made for petroleum agreements;

(d) the periods of time for exploration and production;

(e) the minimum exploration work and expenditure obligations to be fulfilled by a contractor;

(f) the fees including and not limited to surface fees training fees and signature bonus, royalties or any other payments to be made by the contractor under a petroleum agreement;

(g) the procedure, conditions and terms for the assignment or transfer of rights and obligations of a contractor under petroleum agreements;

(h) the registration of contractors;
(i) the manner in which reports, data, information and accounts shall be submitted by the contractor;

(j) the procedures of inspection and control of a contractor’s operations;

(k) the conduct of petroleum operations, conservation of petroleum resources and measures relating to safety, environmental protection and the avoidance of waste, pollution and accidents;

(l) procedures regarding the revocation or termination of petroleum agreements and decommissioning, abandonment and site rehabilitation;

(m) the procedures, terms and conditions regarding access to data held at the national energy data centre;

(n) the criteria for the evaluation of the petroleum agreement applications and approval requests for extensions of petroleum agreements;

(o) the terms and conditions for the exploration, productions, development, allocation and sharing of petroleum including terms and conditions for flaring of natural gas during facilities testing, emergencies or safety reasons;

(p) the contractor’s obligations to the county government;

(q) the employment and training of the citizens of Kenya by the contractor;

(r) the procurement of goods and services locally available in Kenya;

(s) the conservation and prevention of the waste of natural resources, whether petroleum or otherwise, and the carrying out of environmental impact studies for that purpose;

(t) the construction, erection, maintenance, operation or use of installations or equipment;

(u) the prevention of the escape of water or drilling fluid or a mixture of water and drilling fluid or any other substance;

(v) the prevention and control of and the liability for petroleum pollution;
(w) the removal of structures, equipment and other property brought into Kenya in connection with the exploration for or the production or conveyance of petroleum that are not used or intended to be used in connection with that exploration, production or conveyance;

(x) the pressure maintenance in, or the re-pressuring of a petroleum reservoir and recycling of petroleum;

(y) the secondary or tertiary recovery of petroleum from a petroleum reservoir and the methods to be used in such recovery;

(z) the use of wells and the use of the subsurface for the disposal of petroleum, water and other substances produced in association with the exploration for or the recovery of petroleum;

(aa) the rates, or the method of setting the rates, at which petroleum and water may be recovered from any well or petroleum reservoir;

(bb) the methods to be used for the measurements of petroleum, water and other substances from a well;

(cc) the taking, preserving and furnishing to the Cabinet Secretary the samples of petroleum and water;

(dd) the production to the Cabinet Secretary of reports, returns and other information;

(ee) the taking of logs or directional surveys or making other down-hole investigations;

(ff) the annual charges payable under this Act;

(gg) the fees to be paid in respect of any matter or thing done under this Act;

(ii) on compensation to the local community affected by environmental pollution;

(jj) preservation of cultural and religious sites; and

(kk) safety, emergency preparedness, safety zones and suspension of petroleum activities.

164. The Cabinet Secretary shall establish a national data centre and laboratory for primary data acquisition, analysis and interpretation in open petroleum blocks.
Petroleum Midstream and Downstream

Licensing

165. (1) A licence, permit or certificate as the case may be, is required by a person who wishes to carry out the business of refining, importing, exporting, storing, transporting and selling of petroleum crude and products.

(2) A person who wishes to:

(a) undertake refining, importation, export, bulk storage or transportation of petroleum crude or products must have a valid licence issued by the Commission;

(b) sell petroleum in bulk to another person for the purpose of export or for retail sale in Kenya must have a valid licence issued by the Commission;

(c) use a vehicle for the purpose of transporting petroleum in bulk must have a valid petroleum permit in respect of that vehicle issued by the Commission; and

(d) drive a vehicle, or engage a driver, for the purpose of transporting petroleum in bulk by tanker must ensure that such driver is certified for that purpose by the Commission.

(3) A person who wishes to carry out the supply of petroleum products by means of a retail dispensing station, or of gas through a centralised reticulation system, shall apply for and obtain a licence from the county government.

Provided that the retail dispensing station or gas reticulation system comply with section 178 on construction permits and are operated as per national guidelines published by Commission.

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

(a) ten million shillings, or to imprisonment for a term of not less than three years, or to both if the contravention relates to sub-section (2) (a);

(b) one million shillings, or to imprisonment for a term of not less than three years, or to both if the contravention relates to sub-sections (2) (b) and (c) as well as (3);

(c) two hundred and fifty thousand shillings, or to imprisonment for a term of not less than three years, or to both if the contravention relates to sub-section (2) (d).
(4) A county government may request the Commission in writing to issue licenses on its behalf for the period that will be specified in the request.

Provided that the revenue collected on behalf of the assignee county government shall be transferred to that county by the Commission.

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

(2) The licensing authority may, within thirty days—

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

(b) refuse to grant such licence.

(3) Where the licensing authority—

(a) refuses to grant a licence; or

(b) imposes conditions on a licence,

the licensing authority shall give to the applicant, the reasons in writing for the action.

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

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

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

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

(8) A licence shall specify the nature of petroleum business and the premises at which the licensee may conduct his business and where a petroleum business is conducted at more than one premise, a separate licence shall be required for each of such premises.
167. (1) Subject to the provisions of this Act, a person may make an application in the prescribed manner for amendment of the licence, and the licensing authority may, upon payment of the prescribed fee, amend the licence and endorse it accordingly.

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

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

168. A licence for a petroleum undertaking shall be issued for a term of not less than—

(a) twenty years for refining of petroleum crude;
(b) twenty five years for oil and gas pipeline;
(c) fifteen years for bulk storage facilities;
(d) five years for retail dispensing sites;
(e) ten years for centralised gas reticulation systems;
(f) three years for designated petroleum tanker parking.

Provided that a licence may be issued for a shorter term at the applicant’s request.

169. (1) The licensing authority shall, in granting or rejecting an application for a licence, take into consideration—

(a) the impact of the undertaking on the social, cultural or recreational life of the community;
(b) the need to protect the environment and to conserve the natural resources in accordance with the Environmental Management and Coordination Act, Kenya Maritime Authority Act, Merchant Shipping Act and international maritime treaties ratified by Kenya and other guidelines developed by the Commission;
(c) compliance with Occupational Safety and Health Act or other safety and health standards recommended by the Commission in consultation with the relevant statutory body;
(d) compliance with section 189 of the Act and the relevant Kenyan Standard and in the absence of such standard, any international standard recommended by the Commission in consultation with the Kenya Bureau of Standards;

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

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

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

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

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

(j) where applicable the proposed tariff offered; and

(k) any other matter that the licensing authority may consider likely to have a bearing on the undertaking.

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

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

(a) the provisions for tariffs or charges for the pipeline transport, common user import handling facilities/jetties and storage;

(b) the duration of the licence;

(c) the maximum capacity, whether of import handling, storage, or transport;

(d) the market area segments; and

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

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

(a) a requirement that the licensee shall comply with all applicable environmental, health and safety laws;
(b) a stipulation that the licensee is subject to liability under tort and the contract laws; and

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

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

172. (1) Every licence, or a certified copy thereof, shall, except when lodged with the licensing authority for any of the purposes of this Act, be displayed in a prominent position on the premises in respect of which it is issued.

(5) A licensee who contravenes the provisions of sub-section (1) commits an offence and shall on conviction be liable to a fine of not less than ten thousand shillings for each day or part thereof that the licence is not displayed.

173. (1) The licensing authority may suspend or revoke a licence where—

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

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

(c) the licensee is adjudged bankrupt.

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

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

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

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

(c) be served upon the licensee at the licenses’ principal place of business and shall take effect from the date of service.
(4) The licensing authority shall determine the matter within thirty days from the expiry of the notice.

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

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

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

(2) The licensing authority may, on application by any of the following persons, transfer a licence—

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

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

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

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

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

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

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

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

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

(a) the particulars required under sections 166 and 179;
(b) particulars of any duplicate issued or any amendment of the licence made under sections 167 and 174;

(c) particulars of any suspension or revocation of the licence under section 173 and 181; and

(d) such other particulars as may be prescribed.

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

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

(a) a member of the Kenya police service or a public officer acting in the course of his duty; or

(b) an employee of the licensing authority or person authorised in writing by the Commission,

may inspect the register without payment of any fee.

**177.** A person aggrieved by the action of the licensing authority in—

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

(b) imposing conditions on a licence; or

(c) refusing to replace or amend a licence,

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

**178.** (1) A person who intends to construct a pipeline, refinery, bulk storage facility, retail dispensing site, centralized gas reticulation system or designated parking place for petroleum tankers shall, before commencing such construction, apply in writing to the licensing authority for a permit to do so.

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

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

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

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

(d) in the case of a pipeline—
(i) specify the points, between which the proposed pipeline is to run;

(ii) state what products are to be transported by the proposed pipeline.

(e) in the case of a refinery, bulk liquefied petroleum gas, or natural gas facility specify the location, type and capacity;

(f) be accompanied by an environment and social impact assessment licence; and

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

(3) The licensing authority shall consider every application received under this section and shall, if satisfied that the applicant meets the prescribed requirements, grant to the applicant, within forty five days, the permit to construct a pipeline, refinery, bulk storage facility, bulk liquefied petroleum gas facility, natural gas facility, retail dispensing site, centralised gas reticulation system or designated parking, as the case may be.

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

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

179. (1) The licensing authority shall, before issuing a permit under section 166, take into account all relevant factors, including but not limited to—

(a) the relevant Government policies;

(b) compliance with the Environmental Management and Co-ordination Act, the Occupational Safety and Health Act, the Physical Planning Act, the Urban Areas and Cities Act, the County Government Act and any other relevant legislation or guidelines;

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

(d) the technical and financial capability of the applicant and methods of financing the proposed pipeline, refinery, bulk storage facility, or retail dispensing site; and

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

(2) A permit shall contain such terms and conditions as the licensing authority may deem appropriate, including but not limited to the—
(a) duration of the permit;
(b) person authorised to execute the works;
(c) area in which the works shall be executed; and
(d) conditions to be satisfied before any works authorised by the permit are used, which may include a requirement for the execution of further works.

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

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

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

180. Notwithstanding any other provision of this Act—

(a) emergency works for the construction of a pipeline, may be executed without any authorisation by the licensing authority:

Provided that as soon as is reasonably practicable and in any event not later than sixty days after the works have commenced or have been executed, the owner of the petroleum logistics facility shall inform the licensing authority in writing of the works executed attaching copies of detailed construction drawings of such construction works and the route taken or intended to be taken by the petroleum logistic facility;

(b) no permit shall be required for the construction of a pipeline within a storage depot, a pipeline facility or refinery.

181. (1) Subject to subsection (2), the licensing authority may, by notice in the Gazette, suspend or revoke a construction permit if any term or condition thereof has not been complied with within the prescribed period.
(2) Where the licensing authority intends to revoke or suspend a permit under this section, it may, at least twenty-one days before the date of the intended revocation or suspension, notify the holder of the permit of such intention, specifying the reasons thereof, and shall take every precaution to ensure fairness in the exercise of this power.

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

182. If, after a permit to construct a pipeline, a refinery, a bulk storage facility or a retail dispensing site has been granted, the execution of the works has not commenced at the expiry of twelve months from the date on which the permit was granted, or at the expiration of any extended period which the licensing authority may allow, the permit shall cease to have effect.

183. (1) Where a pipeline, refinery, bulk storage facility, retail dispensing site or centralized gas reticulation system is constructed without a permit, the licensing authority may give the owner or occupier of such facility twenty one days notice in writing to either obtain the requisite permits and if such permit is not obtained within the said period, stop the construction and immediately decommission the works.

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

184. (1) Petroleum imported or produced locally for use in Kenya, petroleum products, equipment, facilities and installations shall conform to the relevant Kenya Standard:

Provided that where no such standard exists, the relevant international standards approved by the Kenya Bureau of Standards shall apply.

(2) A person who offers for sale in Kenya or transports or stores petroleum meant for use in Kenya shall ensure that the specifications of such petroleum is in accordance with subsection (1):

Provided that no person diverts for sale in Kenya, goods destined for other markets.

(3) A person who—

(a) sells or offers for sale petroleum or petroleum products not conforming to the relevant Kenya Standard or any other standard approved by the Kenya Bureau of Standards; or
(b) stores, transports, or sells or offers for sale adulterated petroleum or petroleum products, or commits an offence and shall on conviction, be liable to a fine of not less than five million shillings, or to a term of imprisonment of not less than two years, or to both.

(4) A person who diverts with intent to sell in Kenya petroleum products destined for other markets commits an offence and shall on conviction, be liable to a fine of not less than ten million shillings, or to a term of imprisonment of not less than five years, or to both.

185. It shall be the duty of a person licensed to import petroleum to maintain such quantities of petroleum and at such locations as may be prescribed by the Cabinet Secretary in consultation with the Commission.

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

(2) A licensee shall promptly evacuate its petroleum products held by a common user logistic facility in accordance with the Act.

(3) Where any licensee wilfully delays to comply with the terms of the contract pursuant to sub-section (1), the commission may compel the licensee to evacuate petroleum products when appropriate and in the event of the licensee failing to comply with such direction the Commission may order disposal of such products held by a common user logistic facility and/or impose such penalties and fines as may be prescribed in regulations.

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

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

(a) limitation of liability of the licensee;
(b) termination and suspension provisions;
(c) account and meter deposits;
(d) metering; and
(e) complaint handling and dispute resolution.
188. The Cabinet Secretary may undertake in whole or in part, the provision of financing, procurement, storage, maintenance and management of petroleum strategic stocks.

189. (1) A person engaged in petroleum business shall comply with the relevant environmental, health and safety regulations or guidelines issued by National Environmental Management Authority.

(2) In the event of a fire, explosion, oil spill, injury or fatality occurring in the course of operating a petroleum logistics facility or transportation of petroleum, either by accident or through negligence, the operator or person transporting petroleum shall forthwith clean up the polluted or damaged environment, at the operator’s own expense, to the satisfaction of the licensing authority and any other relevant authority:

    Provided that any person engaged in the storage or transportation of petroleum and petroleum products shall have an oil clean-up plan in compliance with the national oil spill policy, relevant environmental health and safety regulations or guidelines.

(3) If the operator or person transporting petroleum fails, or unreasonably delays, to carry out the work referred to in subsection (2), the licensing authority may cause any work not carried out to be executed at the expense of the said operator or person transporting petroleum.

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

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

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

190. (1) It shall be the duty of every county government to designate or provide a place or places exclusively reserved for parking of petroleum tankers.

(2) A person who is in charge of or in control of any petroleum tanker and parks it outside a designated parking area for petroleum tankers commits an offence and shall on conviction, be liable to a fine not exceeding one hundred thousand shillings or to a term of imprisonment of six months or to both.

Offences
191. (1) A person who—

(a) contravenes any provisions of section 185 on maintenance of minimum operational stock of petroleum;

(b) being the owner or operator of a refinery, pipeline, bulk liquefied petroleum gas or natural gas facility, service station, filling station or storage depot or transporter of petroleum, fails to institute appropriate environmental, health or safety control measures;

(c) being the owner of a pipeline, refinery or bulk liquefied petroleum gas or natural gas facility, contravenes the provisions of this Act or any regulations made thereunder relating to the construction or operation of a pipeline, refinery or bulk liquefied petroleum gas or natural gas facility or regulations thereof;

(d) not being the owner of the pipeline or his agent, vandalises, destroys, or interferes in any manner or illegally interconnects with such pipeline;

(e) who not being an owner of any petroleum stocks illegally acquires, handles or is in possession of any petroleum products;

(f) driven by economic gain maliciously misinforms the public leading to economic sabotage;

(g) who not being an owner of any petroleum pipeline plant equipment or auxiliaries illegally acquires, handles or is in possession of any petroleum pipeline plant, equipment auxiliaries;

(h) who trespasses or encroaches on to any petroleum pipeline wayleaves or installations;

(i) who illegally acquires any interest in public land set aside for petroleum infrastructure projects;

(j) being the owner of a retail dispensing site or storage depot, contravenes the provisions of this Act relating to the construction or operation of a retail dispensing or site storage depot;

(k) being the owner or operator of a bulk storage facility for petroleum products, service station or storage depot, or being the owner of any petroleum stocks, hoards petroleum products;

(l) owns or operates an unlicensed petroleum or gas storage, filling or handling facility;
(m) refills, replenishes or otherwise deals with liquefied petroleum gas cylinders of another licensee for gain without the said licensees prior written consent;

(n) being the owner of a retail dispensing site, under dispenses or sells above any price that may be recommended by licensing authority from time to time;

(o) constructs any facility defined in Section 178 without obtaining a construction permit;

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

(a) one million shillings, or a term of imprisonment of not less than one year, or to both; if the offence relates to sub-sections (1)(a), (h) and (k), or

(b) ten million shillings, or a term of imprisonment of not less than five years, or to, if the offence relates to sub-sections (1)(b), (c), (d) (e), (f), (g), (i), (j), (l), (m), (n) and (o).

192. A person who attempts to do any such thing as mentioned in section 191 commits an offence and shall on conviction, be liable to a fine of not less than:

(a) five hundred thousand shillings or a term of imprisonment of not less than six months or to both if the offence relates to sub-section (1) (h); and

(b) five million shillings or a term of imprisonment of not less than three years or to both if the offence relates to sub-sections (1) (d) (e), (f), (i), (j), and (m).

193. (1) The owner or master of any ship carrying cargo, any part of which consists of petroleum, who fails to give notice to the port authorities upon entering a port, as may be required by regulations made under this Act shall, on conviction, be liable to a fine of not less than ten million shillings, or to a term of imprisonment of not less than two years, or to both.

(2) In the event of the contravention of any regulations made under this Act relating to precautions to be observed with respect to ships carrying petroleum within a port, the owner and the master of the ship in relation to which the contravention occurs shall, on conviction, be liable to a fine of not less than ten million shillings, or to a term of imprisonment of not less than two years, or to both.

(3) A person who, while within Kenya’s Exclusive Economic Zone and Outer Continental Shelf, discharges or allows to escape into the water—
(a) petroleum or water mixed with petroleum; or
(b) water from bilges or tanks; or
(c) water used for flushing pipes and connections; or
(d) sand used to absorb petroleum,

commits an offence and shall:

(a) on conviction, be liable to a fine of not less than ten million shillings, or to a term of imprisonment of not less than five years, or to both, and

(b) be responsible, at his or her own cost, for cleaning the water and restoring it to its original status.

194. Without limiting the generality of section 163 and in accordance with section 297, the Cabinet Secretary may, on the recommendation of the Commission, make regulations—

(a) defining the kind of petroleum to which the regulations shall apply, and dividing petroleum into classes or categories and making different provisions with regard to such classes or categories;

(b) providing for the importation, refining, exportation, landing, loading, shipping, transportation, storage, wholesale and retail of petroleum and prescribing a system of licensing for the purposes aforesaid, the manner in which application for any such licence shall be made, the conditions of licence, the authorities which may grant such licences, the fees which may be charged and any other matters incidental thereto;

(c) providing for exemption to the armed forces from the requirement of licences;

(d) providing for importation of petroleum through open tendering system and the manner in which such system shall operate;

(e) providing for maintenance of minimum operational stocks of petroleum and procedures thereof;

(f) providing for maintenance of strategic stocks of petroleum and procedures thereof;

(g) providing for the mode of sale, metering, documentation and display of prices of petroleum in retail dispensing sites and depots;
(h) providing for environmental, health and safety standards associated with the handling, storage and use of petroleum;

(i) providing for notice to be given by the owner or master of any ship entering a port with petroleum, and for ascertaining the quantity and specification of any petroleum on board any such ship;

(j) determining the places at which, and the conditions on and subject to which, petroleum may be imported, offloaded, landed, stored, loaded or transhipped;

(k) providing for the delivery to such officer as may be specified, samples of petroleum landed or intended to be landed and for the testing of such sample;

(l) providing for the type and location of the premises in respect of which licences to possess petroleum may be granted, the inspection of premises so licensed and the taking of samples and the testing of petroleum found thereon;

(m) governing the design, construction and operation of pipelines, refineries, bulk liquefied petroleum gas facilities, retail dispensing sites, storage depots and providing for the protection of property and the environment and the safety of the public in the construction and operation thereof;

(n) governing the design and construction of vehicles to be used in the transportation of petroleum by road, rail, inland or coastal waters;

(o) prohibiting or restricting the carriage of goods and passengers in vessels carrying petroleum;

(p) prescribing the quantity of petroleum that may be conveyed at any one time or in any one vehicle;

(q) prescribing the precautions to be observed in the transportation of petroleum, in the manner of packing and the mode and time of transit and in the loading and unloading of vessels used for such transportation;

(r) in consultation with the body responsible for standards, prescribing apparatus for testing petroleum, the tests to be applied and the manner in which tests are to be made;

(s) in consultation with the body responsible for standards, appointing inspectors and agents for the testing and examination of petroleum and prescribing their powers and duties;
(t) prescribing the marking of fuels and categories of the petroleum in which such marking shall be carried out;

(u) prescribing for the provision of petroleum data and information to the Commission;

(v) providing for the development and coordination of a national oil spill response plan including measures to prevent oil spills and a mechanism for compensation in the event of an oil spill;

(w) setting, reviewing and adjusting tariffs and charges for common user storage facilities and refining of petroleum;

(x) reviewing and approval of contracts on third party access to midstream petroleum infrastructure on reasonable terms and conditions;

(y) reviewing and approval of contracts on the use and access of petroleum logistic facilities;

(z) determining the maximum wholesale and retail prices of petroleum and petroleum products;

(aa) guidelines and standards to be applied by all licensing authorities to ensure uniform standards of operation in the sector; and

(bb) governing the qualification and certification of petroleum road tanker drivers.

(cc) handling of petroleum products in aviation;

(dd) joint procurement of petroleum products;

(ee) requirements for undertaking with business dealing with lubricants; and

(ff) generally for the better carrying out of the objects and purposes of this Act.

Coal exploration and development

Coal resources. 195. All coal existing in its natural condition in strata lying within Kenya and the continental shelf is vested in the national Government, subject to any rights in respect thereof which, by or under any other written law, have been or are granted or recognized as being vested, in any other person.

(2) A person shall not undertake the exploration and exploitation of coal unless in accordance with a valid licence issued under the Act.
(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than ten million shillings or imprisonment of a term of not less than five years or both.

196. (1) Coal resources shall be managed in accordance with the provisions of this Act and the Constitution.

(2) The Cabinet Secretary may adopt acceptable international standards in the management of coal resources provided that such standards are not inconsistent with the laws of Kenya.

197. (1) The proceeds raised from the exploitation of coal resources shall be shared out between the national Government, the county government and the local community.

(2) The county government’s share shall be equivalent to twenty percent of the government share.

Provided that the amount allocated in accordance to this sub-section shall not exceed the amount allocated to the county government by the Commission for Revenue Allocation in the financial year under consideration.

(3) The local community shall receive an amount equivalent to one quarter of the amount due to the county government, which shall be paid through the county government.

198. (1) A person wishing to undertake exploration and exploitation of coal shall make an application to the cabinet secretary in the prescribed form and manner for either—

(a) an exploration and appraisal licence; or

(b) production and development license.

(2) The Cabinet Secretary after receipt of an application envisaged in subsection (1) shall refer it to the National Fossil Fuels Advisory Committee for consideration.

(3) National Fossil Fuels Advisory Committee in consideration of such application shall—

(a) negotiate with a potential investor on the terms of the coal agreement on behalf of the Government so as to secure the most favourable conditions for the Government;

(b) submit a report to the Cabinet Secretary on the terms negotiated with the investor;
(c) advise the Cabinet Secretary on all matters relating to coal operations; and

(d) perform such other functions and duties as may be provided under this Act.

199. (1) The Cabinet Secretary upon receipt of the report provided under section 198 and upon approval by the Cabinet and ratification by Parliament in accordance with the Constitution may, on behalf of the Government, enter into and sign coal agreements with a contractor and the coal agreements shall, subject to the provisions of this Act, be in the prescribed form.

(2) For the purpose of obtaining geological information, the Cabinet Secretary may upon advice from the National Fossil Fuels Advisory Committee, grant non-exclusive exploration permits, in respect of areas specified therein, under which a person may enter upon an area and prospect and carry out geological and geophysical surveys.

(3) The Cabinet Secretary—

(a) shall request for a proposal to potential contractors as a basis for the negotiation for coal block concessions;

(b) shall cause any investigations, due diligence or consultations to be made or carried out as he considers necessary before entering into a coal agreement and may upon advise from National Fossil Fuels Advisory Committee reject any application made by a potential investor if satisfied that the rejection is in the best interest of Government;

(c) shall supervise coal operations carried out under a coal concession; and

(d) may take any action, decision, or give any permission or consent or exercise any other control as may be necessary or desirable for the purposes of this Act or the regulations made thereunder.

(4) The power of the Cabinet Secretary under this Act to sign or revoke a coal agreement shall be exercised by him or a person specially authorized by him in writing.

200. An exploration, appraisal, production and development license is valid for a term of twenty one years from the date of its issue and may be renewed for another term.
201. (1) If a licensee complies during the term of the licence with every provision of this Act and the conditions of licence, the Cabinet Secretary may, on application by the licensee under this section and with the approval of parliament, extend the term of the licence for such period as the Cabinet Secretary may determine.

(2) The application for extension in the prescribed form must be made at least twelve months before the licence expires.

(3) If an application is made under subsection (2) and the licensee satisfies the Cabinet Secretary that it is impracticable to file the information and data required, the Cabinet Secretary may allow the licensee to file the information and data during a period not exceeding ninety days from the date of the application.

202. If a licensee has not applied to extend the term of the licence in accordance with section 200, the licensee may, not more than thirty days after the date the licence expires and on payment of the prescribed late application fee, apply to extend the term of the licence.

203. The Government may conduct coal operations either through contractors in accordance with coal agreements or in such other manner as it shall deem appropriate.

204. (1) For the purposes of exploration and production of coal, the Cabinet Secretary may, by notice in the *Gazette*, zone Kenya into numbered areas, and each area shall be described as a “block”.

(2) The Cabinet Secretary may reserve blocks to be exploited by the Government.

(3) The Cabinet Secretary may require a contractor to relinquish portions of a block to which a coal agreement relates in the manner specified in the agreement.

205. The Government shall enter into coal agreements only with contractors who have the financial ability, technical competence and professional skills necessary to fulfill the obligations under the coal agreement.

206. (1) Notwithstanding any other written law and subject to this Act, there shall be implied in every coal agreement an obligation on the contractor to—

(a) perform certain minimum work and incur certain minimum expenditure during the course of exploration operations;

(b) report the discovery of the existence of any coal or coal bed methane to the Cabinet Secretary;
(c) present to the Cabinet Secretary a development plan in respect of any commercial discovery and promptly take all steps that are reasonable to develop that coal field;

(d) present to the Cabinet Secretary a work programme and budget for each year of operations;

(e) keep accurate books of accounts and records of coal operations;

(f) conduct coal operations in accordance with sound professional and technical skills and adopt measures necessary for the conservation of coal and other resources and the protection of the environment;

(g) conduct coal operations in accordance with international best practice;

(h) adopt clean coal technologies in the exploitation of coal;

(i) give preference to the use of locally available raw materials, products, equipment, manpower and services;

(j) continuously develop capacity of the locally available manpower;

(k) indemnify the Government against all claims made by third parties, in respect of any injury, damage or loss caused by, or resulting from, the conduct of any operations carried out by the contractor or subcontractors pursuant to the provisions of any coal agreement;

(l) furnish such other information, reports and samples concerning coal operations as the Cabinet Secretary may require.

207. Where a contractor intends to enter upon any private land for the purposes of conducting coal operations, the contractor shall comply with Part VII of this Act.

208. The commission shall provide and review the framework for coal pricing and structure and investigate that framework whether or not a specific application has been made for the framework, pricing or structure.
PART – VI

ELECTRICAL ENERGY

Licensing

209. A person who wishes to carry out the generation, transmission, distribution and retail supply of electricity must apply for a licence as the case may be to the Commission in accordance with the provisions of this Act:

Provided that a person shall not require any authorization to generate electrical energy of a capacity not exceeding one megawatt.

210. A person who carries out any electricity undertaking without a licence commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or to a term of imprisonment not less than one year or to both.

211. A licence for an electricity undertaking shall be issued for a term of not less than—

(a) fifteen years for electricity generation;

(b) thirty years for electricity transmission or distribution;

(c) five years for retail supply of electricity.

Provided that a licence may be issued for a shorter term at the applicants request.

212. (1) An application for a licence, (including an application for amendment, transfer or renewal), shall be made to the Commission in the form and manner prescribed by regulations made under this Act.

(2) The Commission may, through a fair, open and competitive process in accordance with procedures prescribed by the Cabinet Secretary by regulations, invite applications for a licence under this Act.

(3) Before making any application for a licence, the intending applicant shall give fifteen days notice, by public advertisement, in at least two national newspapers of nationwide circulation.
(4) Every notice under subsection (3) shall state that any person or body of persons desirous of making any representation on or objection to the application or to the grant of the licence shall do so by letter addressed to the Commission and marked on the outside of the cover enclosing it “Electric Power Licence Objection”, on or before the expiration of thirty days from the date of the application as stated in the notice and that a copy of such representation or objection shall be forwarded to the applicant.

(5) The Commission shall, within fifteen days after receipt of the application, inform the applicant in writing whether the application is complete.

213. The Commission may hear any objections in public, at a time and place of which not less than fifteen days notice shall be given to the applicant and to every objector and the Commission shall make known its decision regarding any objection within thirty days after the hearing.

214. (1) The Commission shall, in granting or rejecting an application for a licence, take into consideration—

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

(b) the need to protect the environment and to conserve the natural resources in accordance with the Environmental Management and Coordination Act;

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

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

(e) the economic and energy policies in place from time to time;

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

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

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

(i) any representations or objections made under sub-section (4) of section 213;

(j) the proposed tariff offered; and
(k) any other matter that the Commission may consider likely to have a bearing on the undertaking.

(2) The Commission shall process all applications for a licence within sixty days after the Commission confirms to the applicant, in writing, that the application is complete.

(3) The Commission shall, where it refuses to grant a licence, give the applicant a statement of its reasons for the refusal within seven days of the refusal.

(4) An aggrieved party shall have right of appeal to the Tribunal within thirty days of the decision of the Commission.

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

(a) the provisions for bulk and retail tariffs or charges for electrical energy and capacity for different types of licensees and classes of consumers;

(b) charges for transmission and distribution network services;

(c) the term of the licence;

(d) the maximum capacity of supply of the undertaking;

(e) the area of supply of the undertaking; and

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

(2) All licences and permits issued by the Commission shall include the following conditions—

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

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

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

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

(4) An undertaking operating pursuant to a licence granted under this Act shall—
(a) in any case where conveyance of electrical energy to or from a transmission or distribution network is possible, meet the minimum requirements of the operator of the transmission or distribution network as approved by the Commission, and the operator of such undertaking shall inform the network operator of all connected load and generation equipment that might have material effect on the network; and

(b) be subject to such other conditions as may be specified by the Commission.

216. (1) A licensee shall not purchase or acquire any undertaking or associate with any public authority, company, person or body of persons supplying electrical energy under any licence, except with the consent of the Commission, which consent shall not be unreasonably withheld.

(2) A licensee who contravenes the provision of subsection (1) shall be liable to the revocation of his licence, in addition to such other action as the Commission may deem fit.

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

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

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

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

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

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

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

and a licence so transferred shall, notwithstanding any other provision of this Act, continue to retain an expiry date existing prior to the transfer of the licence.
(3) The Commission shall satisfy itself of the legal, technical and financial competence of the transferee to carry out the undertaking.

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

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

(6) In this section—

“transfer of licence” includes the acquisition of a controlling interest directly or indirectly in the licensee; and

“controlling interest” as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that person, whether through the ownership of shares, voting, securities, partnerships or other ownership interests, agreements or otherwise.

218. (1) If a licensee fails to meet his obligations under this Act, the Commission shall serve upon him a notice in writing to meet those obligations within fourteen days or such longer period but not exceeding sixty days as the Commission may determine.

(2) Subject to subsection (3), if a licensee fails to comply with the requirements of the notice, the Commission may, in consultation with the Cabinet Secretary or the Governor, as the case maybe, appoint a statutory manager to operate the undertaking for and on account of the licensee and at the risk and expense of the licensee, remitting the balance, if any, of the net income derived from the undertaking to the licensee.

(3) Notwithstanding subsection (2), the Commission may, at any time, revoke the licence of a licensee who contravenes subsection (1).

(4) For the purposes of subsection (2)—

(a) the entry and taking of possession by the statutory manager shall not prejudice the security of any debenture-holder or mortgagee of his right of enforcing such security;

(b) the statutory manager shall only restore possession of the undertaking at such time when the Cabinet Secretary or the Governor, in consultation with the Commission, is satisfied that the circumstances on account of which the entry was made no longer exists or will no longer hinder the proper functioning of the undertaking and that the licensee has satisfied its obligations under this Act and the conditions of the licence.
(5) The application of subsection (2) or (3) shall not prejudice any claims which any consumer or other person may have against the licensee arising from the failure to fulfil its obligations in terms of the conditions of the licence.

(6) A person obstructing or causing obstruction to the statutory manager or a person authorized by the statutory manager in the execution of the duties under this section, commits an offence and shall, on conviction, be liable to a fine of not less than one hundred thousand shillings for each day or part thereof during which the offence continues.

**219. (1)** The Commission may suspend or revoke a licence where—

(a) the undertaking or the execution of the works related thereto has not commenced at the expiry of twenty-four months from the date on which the licence was granted, or at the expiry of any extended period which the Commission may allow;

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

(c) the licensee is adjudged bankrupt; or

(d) the licensee, at any time after commencement of the licence, makes representation to the Commission that the undertaking cannot be carried on with profit, and ought to be abandoned, and, upon inquiry the Commission is satisfied that the representation is true.

(2) Before suspending or revoking a licence under this section, the Commission may give a licensee twenty one days notice in writing to show cause why the licence should not be suspended or revoked.

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

(a) set out the relevant condition of the licence, or the requirement of the Act to which the breach is related;

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

(c) be served at the principal office of the licensee and shall take effect from the date of service.
(4) The Commission shall determine the matter within thirty days from the expiry of the notice.

(5) Where a licence is suspended or revoked, the Commission shall, in consultation with the Cabinet Secretary or Governor, take such action as is necessary to ensure that the supply of electrical energy to consumers is not unduly interrupted as a result of the revocation:

Provided that the revocation and suspension of licences and permits is not in contravention of any written law.

(6) A suspension or revocation of a licence under this section shall not indemnify the holder against any penalties for which such person may have become liable under the Act.

220. (1) Where the suspension of a licence under this Act is likely to interrupt or affect the generation, transmission, distribution or supply of electricity to the consumers, the Cabinet Secretary or Governor may, after due consultation with the owners of the undertaking and upon information to the Commission that suspended or revoked the licence declare that the undertaking shall continue.

(2) The continuation of the undertaking envisaged in sub section (1) shall be for a period of not more than six months and may be renewed for a further period of six months after which the suspension or revocation, as the case may be, shall take effect.

(3) Where a licence of an undertaking is revoked under this Act, the Cabinet Secretary or Governor shall, after due consultation with the Commission, appoint a statutory manager to run the undertaking.

(4) Where, the Cabinet Secretary or Governor declares that an undertaking shall continue in accordance with the provisions of subsection (1), the owners shall, within a reasonable time, either −

(a) sell the undertaking; or

(b) transfer the undertaking to a person or persons with the technical, economic, financial and organizational capabilities to operate the undertaking until such time that the suspension is lifted by the Commission:

Provided that the sale or transfer amount shall be as agreed by the owners and the purchasers or transferees.
(5) If the owner of the undertaking declines to sell or transfer the undertaking in accordance with the order of the Cabinet Secretary or Governor given under subsection (3), or is unable to get a buyer the Cabinet Secretary or Governor may appoint a statutory manager to run the undertaking.

(6) The statutory manager shall advise the Cabinet Secretary or Governor when the undertaking is able to meet its obligations and the Cabinet Secretary or Governor may, after receiving the report proceed to sell the undertaking through an open tendering system.

(7) All proceeds of the sale of the undertaking under subsection (6) shall be remitted to the owner minus any reasonable costs incurred by the Cabinet Secretary or County Governor or his authorized representative in the process of revival.

(8) The provisions of subsection (1) and (2) shall not prejudice the rights and interest of any debenture holder or secured creditors of the owner of the undertaking.

(9) A person who, without lawful or justifiable cause, obstructs the Cabinet Secretary or County Governor or any person authorized by him in the carrying out of the sale or in operating the undertaking, authorized by this section, commits an offence and shall, on conviction, be liable to a fine of not less than one hundred thousand shillings for each day or part thereof that the obstruction occurs or continues.

(10) A person aggrieved by the order of the Cabinet Secretary or Governor or who disputes the value of the undertaking may refer the matter for determination to the Tribunal within thirty days of receipt of the order of the Cabinet Secretary or Governor or the valuation report.

221. (1) Where, upon application, it is shown to the satisfaction of the Commission that a licence has been lost, destroyed or defaced, the Commission shall issue a duplicate licence.

(2) Upon application for replacement of a licence under subsection (1) there shall be such fees as the Cabinet Secretary may, from time to time by regulations, prescribe.

222. (1) The Commission shall maintain a register, in such form as it may determine, in which it shall enter the provisions, subject to subsection (2), of—

(a) every licence, permit or approval granted;

(b) every modification or revocation of such licence, permit or approval;

(c) every direction or consent given or determination made with respect to such licence, permit or approval;

Replacement of a licence.

Keeping of register of licences, permits and approvals.
(d) every order or revocation of such order and every notice, as appropriate; and

(e) such other information as the Commission may deem necessary.

(2) In entering any provision in the register, the Commission shall have regard to the need for excluding, so far as is practicable—

(a) any matter which relates to the affairs of any person, where publication of that matter would or might, in the opinion of the Commission, be prejudicial to the interests of that person; and

(b) any matter that would appear to the Commission to be against the public interest or the commercial interests of any person.

(3) The contents of the register shall be available for inspection by the public, during such hours and subject to the payment of such fee as may be prescribed by the Commission.

(4) A person may, on the payment of such fee as may be prescribed, require the Commission to supply him with a copy of, or extract of, any part of the register, being a copy or extract which is certified by the Commission to be a true copy or extract.

223. (1) For the purposes of this Act, where a person holds a licence or licences, the accounts of each undertaking under each licence shall, unless specifically exempted by the Commission, be subject to the provisions of this Act, and be kept separate and distinct and in the manner and form prescribed by the Commission:

Provided that—

(a) the Commission may direct that the operations of a licensee holding more than one licence in respect of separate or contiguous areas of supply may be treated as a single undertaking for the purposes of this section;

(b) a licensee holding two or more licences, the operations under which are not to be treated as a single undertaking under paragraph (a), or conducting any business or operations independent of his licence or licences, shall be required nevertheless to keep in the prescribed form additional or alternative sets of accounts, to be termed the head office accounts, in respect of all such items as, in the opinion of the auditor appointed under subsection (2), cannot properly or reasonably be attributed or allocated to, and included in, the accounts of the undertaking of any one of such licences exclusively.
(2) A licensee shall, at his own cost, cause the annual accounts to be examined and audited by independent auditors and submit the audited accounts to the Commission within three months after the end of each financial year.

(3) A licensee shall, at the request of the Commission and at his own cost, provide all available information about the technical, financial, hydrological or environmental issues and any other relevant information relating to the operations of the licensee.

(4) The Commission may exempt a licensee from the requirements of subsection (1) where—

(a) it is satisfied with the form and manner in which the records and accounts of the licensee are kept and audited; or

(b) such exemption is provided for in the licence.

224. (1) The Commission or any person authorized by the Commission in writing may—

(a) at all reasonable times, enter upon the premises of a licensee and inspect or investigate any plant, machinery, books, accounts and other documents found thereat and take copies thereof;

(b) require a licensee to furnish to the Commission, books, accounts, records and other documents in such form as the Commission may demand.

(2) The Commission may require that the accuracy of any documents or particulars be verified.

(3) A person authorized by the Commission under subsection (1), shall produce proof of such authorization at the request of any person affected by that person’s activities.

(4) A person who refuses to allow an inspection under subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than twenty five thousand shillings for each day or part thereof that the obstruction occurs or continues.

225. (1) The Commission shall in consultation with the Cabinet Secretary review the electricity market on a regular basis with a view to enhancing competition, improving efficiency, increasing reliability and security of supply and improving the quality of service by all licensees.

Provided that the first review of the electricity market shall be performed within three years from the day when this Act comes into force and not more than five years shall elapse between one review and the next.
(2) The Cabinet Secretary shall on the recommendation of the Commission publish regulations for operations of the electricity market.

Electricity generation

226. (1) A generation licence authorizes the licensee—

(a) to operate the generating station or plant stated in the licence and connect to a distribution or transmission network; and

(b) if stated in the licence to establish and operate tie-lines, substations and dedicated transmission or distribution lines connected therewith in accordance with the provisions of this Act or the regulations made thereunder.

(2) A generation licence does not relieve the licensee or anyone else from complying with laws applying to the development, building, operation or maintenance of the undertaking.

(3) A generating entity may supply electrical energy to—

(a) another licensee in accordance with this Act and the regulations made thereunder; and

(b) any consumer subject to the regulations made under section 256.

(4) Every licensee shall—

(a) submit technical details regarding its generating stations to the Commission;

(b) co-ordinate with the transmission or distribution network operator for conveyance of electrical energy produced by it from its generating station or plant; and

(c) comply with the instructions, if any, of the system operator.

Hydro-electric generation.

227. (1) Any person applying for a hydro-electric power generating licence shall submit a detailed project proposal to the Commission for its consideration.

(2) The Commission shall before issuing any hydro-electric power generation licence have particular regard to, whether or not in its opinion—
(a) the proposed river-works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood-control, or other public purposes, and for this purpose the licensing authority shall satisfy itself, after consultation with such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;

(b) the proposed project meets the prescribed standards regarding dam design and safety.

(3) Where a multi-purpose scheme for the development of any river in any area is in operation, the licensee shall co-ordinate its activities with the activities of the person responsible for such scheme in so far as they are inter-related.

228. (1) The Cabinet Secretary may direct that any generating plant shall, in extraordinary circumstances, be operated and maintained in accordance with those directions.

(2) For the purposes of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the state, public order or a natural calamity or such other circumstances arising in the public interest.

(3) The relevant licensing authority may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating plant in such manner as it considers appropriate.

(4) The power of the Cabinet Secretary under subsection (1) together with any direction thereon shall be effective only—

(a) prospectively; and

(b) for not longer than thirty days of the date of that Order unless the Cabinet resolves to extend it and any such extension shall not be more than thirty days at a time.

Transmission of electrical energy

229. (1) A transmission licence authorizes the licensee to—

(a) operate the transmission network stated in the licence; and
(b) connect its transmission network, if stated in the licence, to another transmission or distribution network within or outside Kenya.

(2) A transmission licence does not relieve the licensee or anyone else from complying with laws applying to the development, building, operation or maintenance of a transmission grid.

230. (1) It shall be the duty of a transmission licensee to—

(a) build, maintain and operate an efficient, co-ordinated and economical transmission system;

(b) comply with the directions of the system operator; and

(c) provide non-discriminatory open access to its transmission system for use by any licensee or eligible consumer on payment of fair and reasonable transmission or wheeling charges as shall be prescribed in regulations made under this Act;

(d) provide such information as may be prescribed in regulations made under this Act to enable the Commission approve the fees, charges and requirements under subsection (c).

(2) Unless otherwise provided in its licence, the licensee shall ensure, as far as technically and economically practicable, that the transmission system is operated with enough capacity (and, if necessary, augmented or extended to provide enough capacity) to provide network services to persons authorized to connect to the grid or take electrical energy from the grid.

(3) A transmission licensee shall—

(a) operate, maintain (including repair and replace if necessary) and protect its transmission grid to ensure the adequate, economic, reliable and safe transmission of electricity;

(b) operate its network in coordination with the transmission or distribution networks to which it is connected directly or indirectly.

231. The licensee shall collect, analyse and maintain such data, information and statistics relating to his undertaking to enable him monitor and report on the quality of supply and service, including key performance indicators, as shall be prescribed in regulations made under this Act.
System operator.

232. (1) There shall be a system operator who shall be responsible for matching consumer requirements or demand with electrical energy availability or supply, maintaining electric power system security and arranging for the dispatch process.

(2) Without limiting the generality of sub-section (1) the functions of the system operator shall include—

(a) managing and operating the national control centre and other infrastructure established by the national Government for the purpose of carrying out system operations;

(b) giving directions, exercising supervision and control as may be required for ensuring stability of network operations and for achieving the maximum economy and efficiency in the operation of the electric power system;

(c) optimal scheduling and dispatch of electrical energy throughout the country;

(d) keeping records of the quantity and quality of electrical energy supply on the national grid; and

(e) coordinating with system operators of the countries whose electric power systems are interconnected with the Kenyan system so as to ensure efficient operations.

(3) The system operator may levy and collect such fees and charges as may be prescribed by regulations made under this Act from the generating companies or any licensee engaged in electricity undertakings.

(4) Every licensee, operator of a generating plant, substation, transmission or distribution system and any other person connected with the operation of the electric power system shall comply with the direction issued by the system operator under sub-section (2).

(5) All directions issued by the system operator to the operator of a generating plant, substation, transmission or distribution system shall be issued through the designated control centres of the respective licensees.

(6) If any dispute arises from any matter in relation to this section, it shall be referred to the Commission for decision:

Provided that pending the decision of the Commission, the directions of the system operator shall be complied with by the licensee, generating company or operator of a generating plant, substation, transmission and distribution system as the case may be.
(7) If any licensee, generating entity or any other person fails to comply with the directions issued under sub-section (2), he or she shall be liable to a penalty not exceeding one hundred thousand shillings for every breach.

(8) The system operator shall not be involved in the direct or indirect buying or selling of electrical energy.

(9) The cabinet secretary shall upon recommendation by Commission designate one transmission licensee to carry out the functions of the system operator set out in sub-sections (1) and (2).

(10) The licensee carrying the functions of system operations prior to the commencement of this Act shall not be in breach of this section by reason only of non-compliance with sub-section (9).

Distribution of electrical energy

233. (1) A distribution licence authorizes the licensee to plan, build, operate and maintain the distribution network necessary for the conveyance of electrical energy from generating stations or plants either directly or through the transmission network for purposes of enabling supply to consumers as stated in the licence.

(2) The distribution network in sub-section (1) shall consist of the reticulation system and may include high voltage electric supply lines as appropriate.

Provided that the reticulation may consist of the network planned and build by the Authority or county government pursuant to section 8(2), in addition to those planned and build by the licensee.

(3) A distribution licence does not relieve the licensee or anyone else from complying with laws applying to the development, building, operation or maintenance of a distribution network.

234. (1) It shall be the duty of a distribution licensee to—

(a) build, maintain, and keep in good state of repair suitable and sufficient electric supply lines for purposes of enabling supply to be given in the area of supply specified in that behalf in the licence;

(b) operate an efficient, safe, co-ordinated and economical distribution system;

(c) where applicable, comply with the directions of the system operator;
(d) provide non-discriminatory open access to its distribution system for use by any licensee, retailer or eligible consumer upon—

(i) payment of use of system charges as shall be prescribed in regulations made under this Act and such other fees; and

(ii) compliance with such minimum requirements of the distribution licensee;

(e) provide such information as may be prescribed in regulations made under this Act to enable the Commission approve the fees, charges and requirements under subsection (d); and

(f) collect, analyse and maintain such data, information and statistics relating to his undertaking to enable him monitor and report on the quality of supply and service including key performance indicators.

(2) Unless otherwise provided in his licence, the distribution licensee shall ensure, as far as technically and economically practicable, that the distribution system is operated with enough capacity (and, if necessary, augmented or extended to provide enough capacity) to provide network services to persons authorized to connect to the network.

235. (1) It shall be the duty of a distribution licensee to plan and construct the requisite electric supply lines to enable any person in the licensee’s area of supply receive a supply of electrical energy either directly from the licensee or from a duly authorized electricity retailer as the case may be.

(2) A person requiring a supply of electrical energy shall apply to the duly authorized retailer, but where there is no such retailer, to the distribution licensee:

Provided that where the supply is to be provided at medium or high voltage the retailer may advise the applicant to apply directly to the distribution licensee.

(3) A person making application under sub-section (2) shall specify the premises in respect of which the supply is required and the maximum power required to be supplied, and a reasonable date when the supply is required to commence.

(4) Upon receipt of the application made under sub-section (2) the retailer or the distribution licensee, as the case may be, shall within the period specified in the licence and any regulations made under this Act, notify the person by whom the application is made, of the terms and conditions, which may include payments of whatever nature, to be complied with by the applicant before the supply is provided.

(5) Notwithstanding any payments made in accordance with subsection (3)—
(a) all electric supply lines shall be the property of the distribution licensee and may be used to supply other persons provided that such use does not prejudicially affect the supply of electrical energy to the person who first required such electric supply lines to be laid down or erected;

(b) such person shall be entitled to reimbursement by the licensee of a fair and just proportion of the cost originally paid by such person from payment made by each person subsequently connected to such electric supply lines provided that a claim for such reimbursement shall be made within six years; and

(c) the licensee shall determine the fair and just proportion of the cost to be reimbursed in accordance with regulations made under this Act.

(6) If any difference arises under this section as to the amount to be reimbursed by any person, that difference shall, upon the application of any person, be determined by the Commission.

(7) A licensee shall keep at its office forms of requisition, embodying a suitable note drawing attention to the provisions of this section, and a copy shall, on application, be supplied free of charge to any person within the area of supply, and any requisition so supplied shall be deemed valid in point of form.

236. (1) A consumer who owns an energy generator of a capacity not exceeding one megawatt or such other limit as may be prescribed by the Cabinet Secretary may apply to enter into a net-metering system agreement to operate a net-metering system with a distribution licensee or retailer, if that consumer has an energy generation facility that is located in the service area of the distribution licensee or retailer.

(2) Each distribution licensee or retailer shall, upon application, make available net metering service to any electric consumer that the licensee serves as prescribed in regulations.

(3) “Net” as used in this section means what remains after deduction of energy outflows from metered energy inflows.

National electrification

237. There is established a national electrification programme with the objectives of—

(a) accelerating electricity infrastructure in the country; and
(b) facilitating the achievement of the government’s development goals on universal access to electricity.

238. (1) The national Government shall provide, from time to time, after due appropriation made by Parliament by law, funds for the national electrification programme established under section 237.

(2) To give effect to the provisions of subsection (1), the Cabinet Secretary shall establish a fund to be known as the National Electrification Programme Fund.

(3) The national electrification programme fund consists of—

(a) the electricity sales levy as provided under section 239;

(b) funds allocated for electrification of marginalised areas from the equalisation fund established under Article 204 of the Constitution;

(c) fees and other charges levied by the Commission under this Act;

(d) such moneys as may be appropriated by Parliament for that purpose;

(e) donations, grants and loans;

(f) interests from bank deposits; and

(g) all other moneys lawfully received or made available for the national electrification programme as the Cabinet Secretary may approve.

239. The Cabinet Secretary may impose a levy of up to five percent on all electricity consumed in the country, the proceeds of which shall go into the national electrification programme fund, set up under section 238.

Retail supply of electricity

240. (1) A retail licence authorizes a person to supply electricity to consumers through a series of commercial activities including procuring the energy from other licensees, inspection of premises, metering, selling, billing and collecting revenue.

(2) The Commission shall specify the minimum technical as well as capital adequacy requirements and credit worthiness necessary for a person to be issued with a retail licence.

(3) A person issued with a retail licence shall discharge such duties, in relation to the supply and trade in electrical energy as may be specified by the Commission.
241. (1) A retail licence may be issued for a particular area or areas stated in the licence.

(2) The area of supply under a retail licence may consist of—

(a) one or more distinct geographical areas; or

(b) particular premises.

(3) A retail licence stating an area consisting of particular premises may describe the premises in the way the licensing authority considers appropriate including, for example, the street address or metering identifier for the premises.

242. Unless otherwise provided for under this Act, a retail licence or permit authorizes the licensee to provide retail services to a customer in the area specified in the licence.

243. (1) Every retail licensee shall use a form of contract approved by the Commission which shall set out the rights and responsibilities of the reticulation licensee and consumers, as the case may be.

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

(a) limitation of liability of the licensee;

(b) termination and suspension provisions;

(c) account and meter deposits;

(d) metering; and

(e) complaint handling and dispute resolution.

244. (1) A person who wishes to carry out electrical installation work must be licensed as an electrical contractor by the Commission.

(2) To be licensed as an electrical contractor, a person must—

(a) be a certified electrical worker; or

(b) have in his employment a certified electrical worker.

245. (1) A person who wishes to be certified as an electrical worker in accordance with section 244 shall make an application to the Commission in the form and manner prescribed.
(2) The Commission shall, within sixty days from the date of the application, and after administering such tests or examination—

(a) grant the certificate with or without conditions, or

(b) refuse to grant the certificate, giving reasons thereof.

(3) A licence for electrical installation work shall be issued for a term of three years and may be renewed for a similar term upon expiry, subject to the holder satisfying such continuing technical trainings as may be prescribed.

(4) An applicant whose application is rejected shall have a right of appeal to the Tribunal within thirty days of receipt of the decision.

246. (1) A person who wishes to be licensed as an electrical contractor shall make an application to the Commission in the form and manner prescribed.

(2) The Commission shall, within thirty days from the date of the application—

(a) grant the licence with or without conditions; or

(b) refuse to grant the licence, giving reasons thereof.

(3) A licence for electrical installation work shall be issued for a term of three years and may be renewed for a similar term upon expiry.

(4) An applicant whose application is rejected shall have a right of appeal to the Tribunal within thirty days of receipt of the decision.

247. (1) It shall be the duty of any person planning, building, operating or maintaining any electricity reticulation system pursuant to section 233 to ensure that such works are carried out only by electrical contractors and electrical workers duly authorized by the Commission.

(2) It shall be the duty of the owner or occupier of any premises to ensure, in accordance with regulations issued under this Act, that the electrical installation in the subject premises is—

(a) carried out only by a duly authorized electrical contractor and appropriate certificates detailing particulars of the installation submitted to the reticulation licensee, before initial connection to a supply of electricity;

(b) tested and inspected periodically, any defects being remedied, and appropriate certificates detailing particulars of the installation issued and displayed at the point of supply.
(3) Where the electrical installation does not meet the conditions set out in sub-section (1), the reticulation licensee shall decline to connect supply, or if the supply is connected, the supply may be discontinued until such time the defects are remedied.

(3) A person who—

(a) not being duly authorised as an electrical worker or contractor, carries out any electrical installation work;

(b) being a consumer, licensee or Authority, permits a person who is not duly authorised as an electrical worker or contractor to carry out electrical installation work on his behalf:

commits an offence and shall on conviction, be liable to a fine of not less than fifty thousand shillings or to a term of imprisonment of not less than three months or to both.

**Metering of electrical energy**

248. (1) The amount of electrical energy supplied to the consumer or the number of hours during which the supply is given, or the maximum demand taken by the consumer, or any other quantity or time connected with the supply shall be ascertained by meters of a type approved by the Kenya Bureau of Standards, or determined in a manner agreed upon by the retailer and the consumer.

(2) The retailer shall supply and fix meters upon the premises of the consumer and connect the supply system therewith:

Provided that the licensee shall allow the consumer, if the consumer so wishes, to supply the meter or meters for the purpose of determining the quantity of the supply.

(3) The meters shall be sealed by the licensee with an approved seal bearing the licensee’s distinguishing brand or mark impressed thereon.

(4) The licensee may, in order to protect any meter or meters or any other apparatus belonging to him, install suitable cut-outs or such other apparatus on a consumer’s premises on the supply side of any such meter or other apparatus, and seal such cut-outs or other apparatus with an approved seal bearing the licensee’s distinguishing brand or mark impressed thereon.

(5) Where any seal or other apparatus affixed under subsections (3) or (4) is broken or tampered with without the authority of the licensee, the consumer upon whose premises the seal or other apparatus was placed commits an offence and shall, on conviction, be liable to a fine of not less than two hundred thousand shillings or to a term of imprisonment of not less than one year or to both:
Provided that, where it can be proved that the offence was committed by some person other than the consumer, that person shall be punishable as if the said person were the consumer upon whose premises the breach occurred.

(6) Where a consumer who is supplied with electrical energy by the licensee has provided a meter for the purpose of ascertaining the quantity of electrical energy supplied and the licensee changes the method of charging for electrical energy, the licensee shall either pay to that person the reasonable expenses which the person may have incurred in providing a new meter for the purpose of ascertaining the quantity of electrical energy supplied according to the new method of charging, or provide such consumer with a new meter.

(7) A consumer shall be entitled to install in the consumer’s premises a check meter or meters for the purpose of checking the quantity of electrical energy supplied but the registrations of such check meter shall not be taken into account in determining the quantity of electrical energy supplied and no such check meter shall be fixed and connected with the supply system except in such manner and subject to such conditions as the licensee may approve.

(8) The licensee shall not connect or disconnect any meter to be used for ascertaining the quantity of electrical energy supplied, or a consumer’s check meter, unless the licensee has obtained the written consent of that person, or alternatively unless the licensee has given to that person not less than forty eight hours’ written notice of intention to do so.

(9) The licensee shall not make any alteration, adjustment or readjustment in any meter being used for ascertaining the quantity of electrical energy supplied, as to affect the functioning of such meter unless the licensee has given to the consumer not less than forty eight hours’ written notice of the intention to do so or unless otherwise mutually arranged.

(10) The consumer shall, at all times and at the consumer’s own expense, keep all meters belonging to the consumer and used for ascertaining the quantity of electrical energy supplied, in proper order for correctly registering that quantity, and, in default, the licensee may cease to supply electrical energy through the meter until the defect is rectified.

(11) The licensee shall, subject to the provisions of section 265, for the purposes of this section, have access to, and be at liberty to remove, test, inspect and replace any meters installed by the consumer for the purpose of ascertaining the quantity of electrical energy supplied at all reasonable times.

(12) A person who contravenes the provisions of sub-sections (8) and (9) commits an offence and shall, on conviction, be liable to a fine of not less than one hundred thousand shillings, or to a term of imprisonment of not less than six months, or to both.
(13) In order to ensure accuracy the Commission shall examine and approve meters used or intended to be used for ascertaining the quantity of energy.

(14) The Commission shall prescribe the requirements for accreditation of persons with appropriate skills to check accuracy of energy meters installed in residential, commercial or industrial premises.

249. (1) Where a meter used to register the quantity of electrical energy supplied by a licensee to any consumer is found to be defective through no fault of the licensee or the consumer, the licensee may, in consultation with the consumer, determine the reasonable quantity of electrical energy supplied and recalculate the charges due to or from the consumer as appropriate for up to a maximum period of six months from the date the meter is established to be defective:

Provided that if the consumer had reported any suspected defect in the meter and the licensee did not within thirty days examine the meter, the licensee shall not be entitled to recover from the consumer any charges for more than thirty days from the date the meter was established to be defective.

(2) Where any meter used to register the quantity of electrical energy supplied by any licensee to any consumer is found to be defective through interference by the consumer, the licensee may determine the reasonable quantity of electrical energy supplied and recalculate the charges due from consumer as appropriate from the date the licensee determines the meter to have been interfered with:

Provided that if the subject meter is no longer suitable for ascertaining the quantity of electrical energy supplied, the licensee shall be entitled to repair or replace the meter at the cost of the consumer who interfered with it.

(3) If any dispute arises under this section as to recalculation of electrical energy consumed by consumer or as to interference with any meter, such dispute shall be referred to the Commission for determination.

(4) Where any dispute referred to in subsection (3) has been referred to the Commission, or has otherwise been taken to court before a notice of disconnection has been given by the licensee, the licensee shall not exercise any of the powers conferred by this section until final determination of the dispute:

Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Commission, in addition and without prejudice to any other deposit the licensee is entitled to require, or the amount of the charge or other sum in dispute, and the consumer has failed to comply with the request within forty-eight hours of the request having been made.
Provided further that the consumer shall pay for the power that may be consumed subsequent to the dispute.

250. (1) A licensee shall not, except for reasons beyond the licensee’s control, reduce, discontinue or refuse the supply of electrical energy to any consumer, unless—

(a) the consumer has failed to pay charges for consumption of electrical energy, whether such charges are due to the licensee for the supply of electrical energy to premises in respect of which such supply is demanded or in respect of other premises:

Provided that—

(i) such charges have not been referred to the licensee by the consumer for resolution in accordance with the licensee’s complaint handling and dispute resolution procedures approved by the Commission; and

(ii) the consumer has failed to pay the charges of energy consumption due to the licensee for the supply of electrical energy to the specific premises in respect of which supply is demanded and not in respect of any other premise;

(b) the consumer fails or neglects to make good any defects in his installation:

Provided that those defects and the period within which such defects are to be rectified, have been communicated to the consumer in writing;

(c) the consumer uses or permits to be used such supply for any purpose or deals with or permits such supply to be dealt with in any manner so as to interfere unduly or improperly with the efficient supply of electrical energy by the licensee to any person, or endangers public safety;

(d) the consumer denies the licensee access to the electric supply lines or any meters on the premises under the control of the consumer;

(e) the premises or part thereof is the subject of an order for demolition made at the instance of a public or County; or

(f) the supply of electrical energy is prohibited by law to such premises or part thereof.
(2) Where a person has given a licensee a deposit as security for payment for the supply of electrical energy, the licensee may, at any time, while any such charge or other sum remains unpaid and after giving that person not less than fourteen days notice in writing—

(a) discontinue the supply of electrical energy to such person; or

(b) apply the deposit for the electrical energy consumed and if any part of such charge or other sum remains unpaid thereafter, discontinue the supply of electrical energy to such person, until such charge or other sum together with any expenses incurred in disconnecting such supply and any lawful charges for or incidental to the reconnection thereof have been paid.

(3) If any dispute arises as to—

(a) any charges;

(b) the application of any deposit;

(c) any illegal or improper use of electrical energy;

(d) any alleged defects in any apparatus or protective devices; or

(e) any unsuitable apparatus or protective devices;

it shall be referred to the Commission.

251. A distribution licensee which has outstanding uncollected billings attributable to the national government, county government or any government agency shall report such billings to Energy Regulatory Commission which shall, in turn, report the same to the Controller of Budget and the commissioner for revenue allocation for collection.

252. Subject to any agreement which may be entered into between a licensee and a consumer as provided for under this Act, whenever the licensee makes default in supplying electrical energy to any consumer, the licensee shall be liable in respect of each default to a penalty as prescribed by regulations in that behalf.

**Tariffs and contracts for electrical energy and network services**

253. (1) All contracts for the sale of electrical energy as well as provision of transmission and distribution network services, between and among licensees, and between licensees and retailers and eligible consumers shall be submitted to the Commission for approval before execution.
(2) Every electricity supply agreement between a retailer and another licensee for the procurement of electrical energy by a retailer for resale to consumers shall be submitted to the Commission before execution and shall include provisions on:

(a) rights and obligations of the retailer and the licensee;

(b) schedule of tariffs and charges;

(c) processing of applications by consumers for connection to supply;

(d) responsibilities and procedures for handling interruptions of supply;

(e) metering;

(f) complaint handling and dispute resolution; and

(g) termination and suspension.

(3) An application for approval of a contract under subsection (1) shall be in such form and submitted to the Commission in such manner, as the Cabinet Secretary may, in regulations prescribe.

(4) In considering a contract under subsection (1), the Commission shall—

(a) ensure that the rates or tariffs established in the contract are just and reasonable;

(b) satisfy itself that the application meets the minimum requirements as prescribed by the Cabinet Secretary in the regulations under this Act; and

(c) take into account any other issues which may have a bearing on the operations of the undertakings.

(5) In this section, a just and reasonable tariff shall mean a rate that enables a licensee to, inter alia—

(a) maintain its financial integrity;

(b) attract capital;

(c) operate efficiently; and

(d) compensate investors for the risks assumed.
Provided that in as far as possible the tariff shall take into account the interest of the consumer.

254. (1) The tariff structure and terms for the supply of electrical energy to consumers shall be in accordance with principles prescribed by the Commission.

(2) All tariffs charged for electrical energy supplied shall be just and reasonable.

(3) Any application for the review of tariffs shall be filed with the Commission for approval not later than forty-five days before the proposed effective date:

Provided that the Commission may, at its discretion, suspend a schedule of tariffs increase for up to five months.

(4) An application under subsection (3) shall be in the form prescribed by the Commission.

(5) A licensee may require a consumer to make such account deposit, commensurate with the consumer’s estimated electrical energy consumption, before electrical energy is supplied to him, which deposit may, from time to time, be revised by the licensee in order to take account of both the level of consumption and of any changes in electrical energy tariffs.

(6) The charges for electrical energy to be supplied may, subject to agreement between the parties, be paid in advance.

255. (1) The Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely—

(a) the principles and methodologies specified by the Commission for determination of the tariff applicable to generation, transmission and distribution licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers’ interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi-year tariff principles;
(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be specified by the Commission;

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the national energy policy; and

(j) the electricity tariff policy.

256. (1) The Commission shall determine the tariff in accordance with the provisions of this Act for—

(a) supply of electricity by a generating entity to a distribution licensee:

Provided that the Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating entity and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) distribution of electricity;

(d) wheeling charges;

(e) use of distribution system; and

(f) retail of electricity:

Provided that in case of retail of electricity in the same area by two or more retailers, the Commission may, for purposes of promoting competition among retailers, fix only maximum ceiling of tariff for retail of electricity.

(2) The Commission may require a licensee, generating entity or retailer to furnish separate details, as may be specified in respect of generation, transmission, distribution and retail for determination of tariff.

(3) The Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer’s load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.
(4) The Commission may require a licensee, generating entity or retailer to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(5) If any licensee, generating entity or retailer recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the Central Bank rate without prejudice to any other liability incurred by the licensee, generating entity or retailer.

257. Notwithstanding anything contained in section 256, the Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Cabinet Secretary.

258. (1) An application for determination of tariff under section 256 shall be made by a generating entity or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such form and manner, as may be specified by the Commission.

(3) The Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public—

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Commission shall, within seven days of making the order, send a copy of the order to the County government, the licensees and any concerned person.

Regulations under this part

259. (1) Without limiting the generality of sections 12 and 13 and in accordance with section 297, the Cabinet Secretary may upon recommendation of the commission make such regulations as may be necessary or expedient for the achievement of the objectives and purposes of this Act and in particular, for all or
any of the following purposes—

(a) prescribing the form and manner in which any application for review or adjustment of tariffs is to be made and the procedure for the review or adjustments of tariffs;

(b) providing the procedure for application and transfer of licences;

(c) prescribing generally the duties and obligations of licensees, undertakers and consumers;

(d) prescribing the form and manner in which every licensee and permit holder shall keep his accounts and records of income and expenditure for the purposes of this Act;

(e) providing for securing the safety of the public from danger, personal injury or damage to property arising from the generation, transmission, distribution, retail or use of electrical energy

(f) providing for the reporting of accidents to the Commission which have resulted in the loss of life, personal injury or damage to property;

(g) providing for the inspection of an enquiry into the operation of undertakings;

(h) providing for the measurement of electrical energy and the settlement of disputes as to measurements of electrical energy;

(i) providing for the conditions on which new electricity connections may be made to any premises;

(j) providing for guidelines, timelines and standard form agreements for negotiation of contracts for electrical energy;

(k) prescribing the conditions on which electrical energy supplied to a person may be resold to another person;

(l) prescribing standards with regard to the quality, safety and reliability of supply of electrical energy and related installations;

(m) prescribing the procedures for hearings, settlement of disputes and any proceedings before the Commission;

(n) retail of electrical energy;

(o) carrying out electrical installation work by an electrician and an electrical contractor;
(p) collection, analyses and maintenance of data, information and statistics relating to electrical energy including the quality of supply, service and key performance indicators;

(q) appointment of special prosecutors to prosecute energy sector cases.

**Offences and penalties under this part**

260. (1) A person who—

(a) contravenes any of the conditions of a licence granted to him under this Act;

(b) without lawful right (the proof of which shall be upon him) abstracts, branches off or diverts or causes to be abstracted, branched off or diverted any electrical energy, or consumes or uses any such electrical energy which has been wrongfully or unlawfully abstracted, branched off or diverted, knowing it to have been wrongfully or unlawfully abstracted, branched off or diverted; or

(c) lays, erects or installs, or permits to be laid, erected or installed, any conductor or apparatus and connects it, or permits it to be connected, with any electric supply line through which electrical energy is supplied by a licensee, without the consent of the licensee; or

(d) disconnects, or permits to be disconnected, any conductor or apparatus from any electric supply line belonging to a licensee, without the consent of the licensee; or

(e) makes or permits to be made any alteration in his permanent installation without the prior approval of the licensee; or

(f) in any case where the quantity of the supply of electrical energy is not ascertained by meter, uses any apparatus or device other than what he has contracted to pay for or uses such apparatus or device at any other time than the time specified and for which he has contracted to pay; or

(g) uses the electrical energy supplied to him for other purposes other than the purposes for which it is supplied for; or
(h) supplies any other person with any part of the electrical energy supplied to him by the licensee or the permit holder, without the consent of the licensee or the permit holder,

commits an offence and shall on conviction, be liable to a fine of not less than one million shillings, or to a term of imprisonment of not less than one year, or to both.

(2) In any case where the person who commits an offence under subsection (1) is the consumer, the licensee may also discontinue the supply of electrical energy to the premises of such consumer or abstain from resuming such supply, if already discontinued, for such period as the Commission may direct, notwithstanding any contract which may have been previously entered into.

(3) The existence of artificial or unlawful means for making—

(a) connection or disconnection as is referred to in paragraphs (c), (d) and (f) of subsection (1);

(b) making such alteration as is referred to in paragraph (e) of subsection (1); or

(c) facilitating such use or supply as referred to in paragraphs (g), and (h) of that subsection (1);

shall, where the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, be prima facie evidence that such connection or disconnection, alteration, improper use or supply, as the case may be, has been fraudulently, knowingly and wilfully caused or permitted by the consumer.

(4) A person who wilfully or with intent to interfere with the management or operation of the apparatus of a licensee—

(a) extinguishes or causes to be extinguished, any public lamps;

(b) vandalises or damages any works of or under the control of a licensee;

(c) steals or with intent to steal, breaks, throws down or damages any works of or under the control of a licensee; or

(d) steals, illegally trades or improperly uses any of the electrical energy supplied by a licensee;

commits an offence and shall on conviction, be liable to a fine of not less than five million shillings, or to a term of imprisonment of not less than five years, or to both.
261. (1) A person who willfully—

(a) encroaches, illegally acquires or deals in public land set aside for energy infrastructure projects;

(b) vandalises or attempts to vandalise energy installations and infrastructure;

(c) steals or attempts to steal energy sector property or handles energy sector property if (otherwise than in the course of stealing) knowing or having reason to believe them to be stolen energy sector property he dishonestly receives or retains the goods, or dishonestly undertakes, or assists in their retention, removal, disposal or realization by or for the benefit of himself or another person or if he arranges to do so;

(d) destroys or damages energy infrastructure; or

(e) maliciously misinforms the public on matters of energy with criminal intent or driven by gain leading to economic sabotage;

commits an offence which is deemed to be an economic crime and shall on conviction, be liable to a fine of not less than five million shillings, or to a term of imprisonment of life, or to both.

(2) Any vessel used to convey either the vandalised equipment or in attempted vandalism in subsection (1) shall be forfeited to the state.

(3) Civil recovery may also be instituted to make good the loss suffered.

PART VII

RIGHTS OF WAY, WAYLEAVES AND USE OF LAND FOR ENERGY RESOURCES AND INFRASTRUCTURE

262. A person may develop energy infrastructure, including but not limited to electric supply lines, petroleum or gas pipelines, or geothermal, coal, oil wells on, through, over or under any public, community or private land but may not in so doing interfere with any existing building subject to the provisions of the Land Act.

263. (1) A person who wishes to enter upon any land, other than his own to—
(a) undertake exploratory activities relating to exploitation of energy resources and development of energy infrastructure, including but not limited to laying or connecting electric supply lines, petroleum or gas pipelines, or drilling exploratory wells;

(b) carry out a survey of the land for the purposes of paragraph (a);

shall seek the prior consent of the owner of such land, which consent shall not be unreasonably withheld.

Provided that where the owner cannot be traced, the applicant shall give fifteen days notice, by public advertisement, in at least two national newspapers of nationwide circulation.

(2) The National Land Commission shall prescribe the forms and procedures for seeking and granting of the consent.

264. The National land commission may authorize in writing, any person to enter upon any land specified in section 263(1) and inspect the land and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose:

Provided that if there is any damage resulting from such entry the applicant shall pay in full, just compensation as is payable under the Land Act.

265. (1) An owner, after receipt of a request for consent under section 263, may consent in writing to the development of energy infrastructure, upon agreement being reached with the applicant as to the amount of compensation payable, if any and any consent so given shall be binding on all parties having an interest in the land, subject to the following provisions—

(a) that any compensation to be paid by the licensee giving notice to the owner, in cases where the owner is under incapacity or has no power to consent to the application except under this Act, shall be paid to the legal representative of the owner;

(b) that an occupier or person other than the owner interested in the land shall be entitled to compensation for any loss or damage he may sustain by the development of energy infrastructure, including but not limited to laying or connecting electric supply lines, petroleum or gas pipelines, or drilling geothermal, coal or oil wells so long as the claim is made within three months after the development.

(2) No consent expressed in writing in accordance with subsection (1) shall be void by reason only of non-compliance with any statutory requirements as to registration.
266. (1) Any person who objects to a proposal to develop energy infrastructure, including but not limited to laying or connecting electric supply lines, petroleum or gas pipelines, or drilling geothermal, coal or oil wells on his land shall raise his objection in accordance with the provisions of section 112 of the Land Act.

267. If any difficulty or question arises as to the person entitled to compensation payable under this Act, the determination on entitlement shall be made in accordance with the provisions of the Land Act.

268. (1) After energy infrastructure has been laid in accordance with this Act, the licensee or any person authorized by the licensee may, from time to time as it becomes necessary, enter the land on which the energy infrastructure is laid with such assistance as may be necessary, for the purpose of operating, inspecting or repairing the infrastructure, or removing such infrastructure in case where the infrastructure is no longer required.

(2) Where energy infrastructure is removed, the surface of the land shall forthwith be restored to its former condition as far as possible and in default thereof restoration may be carried out by the owner of the land, and the costs thereof shall be recoverable from the licensee.

269. The provisions of this Act shall not relieve a licensee of the liability to make compensation to the owner or occupier of any land or the agents, workmen or servants of the owner or occupier of any land which is the subject of the provisions of this Act, for damage or loss caused by the exercise or use of any power or authority conferred by this Act or by any irregularity, trespass or other wrongful proceeding in the execution of this Act, or by the loss or damage or breaking of any energy infrastructure, or by reason of any defect in such infrastructure.

270. (1) For the purpose of the production, conveyance and supply of energy, a licensee may erect, fix, install or lay any electric supply lines, oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbour or Government property, including forests, national parks, reserves and heritage sites, in the manner and on the conditions as provided in this Act.

(2) Notwithstanding the provisions of any other written law, but subject to the provisions of this section, a licensee may break up any street within his area of operation, and may erect energy infrastructure along, under or over any such street, and may, from time to time, operate, repair, alter or remove any such infrastructure so erected, laid or constructed:
Provided that the person having the control of such street road, railway, tramway, river, canal, harbour or Government property shall have a prior right to break up and repair such street with reasonable despatch upon payment to him of a reasonable charge by the licensee.

(3) A licensee shall, not less than thirty days before exercising any power conferred upon him by this section, give notice in writing to the person concerned of the intention to do so, except in a case of emergency and in such case the licensee shall notify the person concerned as soon as possible after the emergency has arisen.

(4) The powers conferred upon a licensee by this section shall, except in a case of emergency, be exercised only under the superintendence of the person concerned and according to a plan showing the location or route and in terms of specifications approved by the person concerned, or, if any dispute arises in respect of such plan, route or specifications, as may be approved by the licensing authority.

Provided that if the said person concerned fails to exercise the powers of superintendence conferred by this section the licensee may, after giving notice, exercise those powers without such superintendence.

(5) Whenever a licensee carries out any work authorized by this section, he shall comply with the legislation, if any, of the County government concerned and shall complete that work with reasonable despatch and reinstate the street broken up and remove any debris or rubbish occasioned thereby and shall, while the street is broken up or obstructed, cause the works to be, at all times, fenced and guarded and during the night, adequately lit.

(6) If the licensee fails or unreasonably delays in carrying out the work referred to in subsection (5), the County government concerned may cause the work to be executed at the expense of the said licensee.

(7) A licensee shall pay to the said county government the costs reasonably and necessarily incurred by it in executing such work.

(8) Nothing in this section shall be construed as relieving a licensee of any liability in respect of any loss or damage caused by his negligence in carrying out such work or by his failure to comply with the provisions of this section.

271. If the Cabinet Secretary is satisfied that the holder of a license under this Act-

272. (a) reasonably requires land for purposes of constructing, modifying or operating an energy infrastructure or for incidental purposes; and

273. (b) has failed to acquire the land by agreement after making reasonable attempts to do so,
274. The Cabinet secretary may proceed to acquire the land compulsorily under the Land Act

275. (1) Where any tree or hedge obstructs or interferes with the construction by a licensee of any energy infrastructure, or interferes or is likely to interfere with the maintenance or working of any such infrastructure, owned by any licensee, such licensee shall give a seven days notice to the owner or occupier of the land on which the tree or hedge is growing, requiring the person to lop or cut it so as to prevent the obstruction or interference of the infrastructure, subject to the payment by such licensee of the expenses reasonably incurred by the owner or occupier of the land in complying with the notice:

Provided that in any case where such a notice is served upon an occupier who is not the owner of the land on which the tree or hedge is growing, a copy of the notice shall also be served upon the owner thereof, if his address is known.

(2) If within fourteen days from the date of giving such notice the owner or occupier of the land on which the tree or hedge is growing gives a counter-notice to the licensee objecting to the requirements of the notice, the matter shall, unless the counter-notice is withdrawn following consultations between the licensee and the owner or occupier, be referred to the Commission for determination and the Commission may, after giving the parties an opportunity to be heard, make such orders as it thinks just, and any such order may empower the licensee, after giving a seven day prior notice to any such person by whom the counter-notice was given of the commencement of the work as the order may direct, to cause the tree or hedge to be lopped or cut, and may determine any question as to what compensation, if any, and expenses are to paid:

Provided that any party aggrieved by any decision of the Commission with regard to compensation may within thirty days after being notified of such decision appeal to the Tribunal.

(3) The licensee shall issue instructions to his servants and agents with a view to ensuring that trees and hedges shall be lopped or cut in a way that as little damage as possible is done to trees, fences, hedges and growing crops, and shall cause the boughs lopped to be removed in accordance with the directions of the owner or occupier, and shall make good any damage done to land.

(4) Any compensation or expenses payable to the owner or occupier by the licensee under this section shall be a civil debt recoverable summarily.

(5) Where it is necessary to fell any trees, this section shall apply to the felling of trees mutatis mutandis as it applies to the lopping of trees.

(6) This section shall apply to energy infrastructure owned or to be constructed by any licensee regardless of the type of licence held.
276. (1) Any energy infrastructure, meters, fittings, works or apparatus belonging to a licensee and lawfully placed or installed in or upon any premises not belonging to the licensee, whether or not fixed to any part of such premises shall—

(a) remain the property of and may be removed by the licensee;
(b) not be subject to the landlord’s distress for rent in such premises; and
(c) not be liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises:

Provided that adequate indication is given on such premises that such licensee is the actual owner of such energy infrastructure.

(2) For the purposes of this section, lines, meters, fittings and apparatus let, rented or disposed of by the licensee on terms of payment by instalments shall, until such instalments have been paid, be deemed to belong to the licensee.

277. A person hindering, obstructing or interfering with the exercise by a licensee with regard to an energy infrastructure, or by the servants or agents duly authorized in writing of any such licensee, of any right of entry upon land conferred by this Act for the purpose of laying and connecting, or repairing, inspecting or removing, an energy infrastructure commits an offence and shall, on conviction, be liable to a fine of not less than fifty thousand shillings for each day or part thereof that the obstruction occurs or continues.

PART VIII

ENERGY EFFICIENCY AND CONSERVATION

278. The Cabinet Secretary shall, on recommendation of the Agency, develop and manage a prudent national energy efficiency and conservation programme.

279. (1) The Agency shall, in consultation with the Cabinet Secretary, designate factories and buildings and energy appliances by types, quantities of energy use, or methods of energy utilization for purposes of energy efficiency and conservation.

(2) In the event that there is reasonable cause, the Agency may give instruction to the owner of any designated factory or building, to furnish factual information on energy utilization for the purpose of inspection and to assure that energy conservation measures are in accordance with the standard, criteria and procedures provided in regulations under this Act.
(3) An owner of the designated factory or building who does not comply within thirty days from the date of receipt of such instruction given under subsection (2), shall be deemed to have committed an offence and shall, on conviction, be liable to a fine of not less than two hundred and fifty thousand shillings, or to a term of imprisonment of not less than nine months, or to both.

(4) If the Agency determines that the owner of the building is not able to comply without financial or technical assistance and that the activities required to be in compliance may be eligible for assistance from an identified source, the Agency may decide to give additional grace period to allow the owner to access assistance from the identified source.

(5) The owner of the designated factory shall keep records of information required under regulations under this Act at the designated factory for a minimum of five years, and in default commits an offence and shall on conviction, be liable to a fine of not less than two hundred and fifty thousand shillings, or to a term of imprisonment of not less than nine months, or to both.

280. (1) The owner of a factory or building designated under section 279, shall conserve energy, audit and analyze energy consumption in his building in accordance with the standards, criteria, and procedures as prescribed by regulations.

(2) A person who fails to comply with this provision commits an offence and shall on conviction, be liable to a fine of not less than one hundred thousand shillings, or to a term of imprisonment of not less than six months, or to both.

Provisions relating to national Government

281. The Cabinet Secretary may, by regulations, in consultation with the Agency,—

(a) specify the norms for processes and energy consumption standards for any equipment, appliances which consumes, generates, transmits or supplies energy;

(b) specify equipment or appliance or class of equipments or appliances, as the case may be, for the purposes of this Act;

(c) prohibit manufacture or sale or purchase or import of equipment or appliance specified under paragraph (b) unless such equipment or appliances conform to minimum energy efficiency performance standards;

Provided that no notification prohibiting manufacture or sale or purchase or import of equipment or appliance shall be issued within a period of six months from the date of notification issued under paragraph (a) of this section:
Provided further that the Cabinet Secretary may, having regard to the market share and the technological development having impact on equipment or appliance, and for reasons to be recorded in writing, extend the said period of six months referred to in the first proviso by a further period not exceeding six months;

(d) direct display of such particulars of label on equipment or on appliance specified under paragraph (b) and in such manner as may be specified by regulations;

(e) specify and update, any user or class of users of energy in the energy intensive industries and other establishments having regard to:

(i) the intensity or quantity of energy consumed;

(ii) the amount of investment required for switching over to energy efficient equipments and capacity of industry to invest in it; and

(iii) availability of the energy efficient machinery and equipment required by the industry;

(f) establish and prescribe such energy consumption norms and standards for designated consumers as it may consider necessary:

Provided that the Cabinet Secretary may prescribe different norms and standards for different designated consumers having regard to such factors as may be prescribed;

(g) direct, having regard to quantity of energy consumed or the norms and standards of energy consumption specified under paragraph (a) the energy intensive industries specified in regulations to get energy audit conducted by an accredited energy auditor in such manner and intervals of time as may be specified by regulations;

(h) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer to get energy audit conducted by an accredited energy auditor;

(i) specify the matters to be included for the purposes of inspection under section 71;
(j) direct any designated consumer to furnish to the Commission, in such form and manner and within such period, as may be prescribed, the information with regard to the energy consumed and action taken on the recommendation of the accredited energy auditor;

(k) direct any designated consumer to designate or appoint energy manager or energy auditors in charge of activities for efficient use of energy and its conservation and submit a report, in the form and manner as may be prescribed, on the status of energy consumption at the end of the every financial year to the Commission;

(l) prescribe minimum qualification for energy auditors and energy managers to be designated or appointed under subsection (k);

(m) direct every designated consumer to comply with energy consumption norms and standards;

(n) direct any designated consumer, who does not fulfill the energy consumption norms and standards prescribed under paragraph (f), to prepare a scheme for efficient use of energy and its conservation and implement such scheme keeping in view of the economic viability of the investment in such form, the time within which and the manner as may be prescribed;

(o) prescribe energy efficiency and conservation building codes for efficient use of energy and its conservation in the building or building complex;

(p) amend, in consultation with other statutory authorities, the energy efficiency and conservation building codes to suit the regional and local climatic conditions;

(q) direct every owner or occupier of the building or building complex, being a designated consumer to comply with the provisions of energy efficiency and conservation building codes for efficient use of energy and its conservation;

(r) direct, any designated consumer referred to in paragraph (n), if considered necessary, for efficient use of energy and its conservation in his building to get energy audit conducted in respect of such building by an accredited energy auditor in such manner and intervals of time as may be specified by regulations; and

(s) specify energy intensive industries:
Provided that the powers under paragraphs (p) shall be exercised in consultation with the concerned county.

282. (1) The Cabinet Secretary may issue the energy savings certificate to the designated consumer whose energy consumption is less than the prescribed norms and standards in accordance with the procedure as may be prescribed.

(2) The designated consumer whose energy consumption is more than the prescribed norms and standards shall be entitled to purchase the energy savings certificate to comply with the prescribed norms and standards.

283. The Cabinet Secretary may, in consultation with the Agency, prescribe the value of per metric ton of oil equivalent of energy consumed for the purposes of this Act.

Provisions relating to county government

284. A county governor may legislate on the following—

(a) amend the energy conservation building codes to suit the local climatic conditions and may, by rules made by it, specify and notify energy efficiency and conservation building codes with respect to use of energy in the buildings;

(b) direct every owner or occupier of a building or building complex being a designated consumer to comply with the provisions of the energy efficiency and conservation building codes;

(c) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer referred to in paragraph (b) to get energy audit conducted by an accredited energy auditor in such manner and at such intervals of time as may be specified by regulations;

(d) take all measures necessary to create awareness and disseminate information for efficient use of energy and its conservation;

(e) train personnel and specialists in the techniques for efficient use of energy and its conservation;

(f) take steps to encourage preferential treatment for use of energy efficient equipment or appliances;
(g) direct, any designated consumer to furnish to the Agency, in such form and manner and within such period as may be specified by rules made by it, information with regard to the energy consumed by such consumer;

(h) specify the matters to be included for the purposes of inspection under of section 71;

285. (1) A county government may establish a fund for the purposes of promotion of efficient use of energy and its conservation within the county.

(2) To the Fund shall be credited all grants and loans that may be made by the County government or, national government or any other organization or individual for the purposes of this Act.

(3) The Fund shall be applied for meeting the expenses incurred for implementing the provisions of this Act.

(4) The Fund created under sub-section (l) shall be administered by such persons or such authority and in such manner as may be specified in the rules made by the County government.

286. (1) The county government may appoint as many inspecting officers as may be necessary for the purpose of ensuring compliance with minimum energy efficiency performance standard specified under paragraph (j) of section 71 or ensure display of particulars on label on equipment or appliances specified under paragraph (b) of section 71 or for the purpose of performing such other functions as may be assigned to them.

(2) Subject to any rules made under this Act, an inspecting officer shall have power to—

(a) inspect any operation carried on or in connection with the equipment or appliance specified under paragraph (b) of section 71 or in respect of which energy standards under paragraph (j) of section 71 have been specified;

(b) enter any place of designated consumer at which the energy is used for any activity and may require any proprietor, employee, director, manager or secretary or any other person therein to grant access:

(i) to afford the inspector necessary facility to inspect—

(A) any equipment or appliance as the inspector may require and which may be available at such place;

(B) any production process to ascertain the energy consumption norms and standards;
(ii) to make an inventory of stock of any equipment or appliance checked or verified by the inspector;

(iii) to record the statement of any person which may be useful for, or relevant to, for efficient use of energy and its conservation under this Act.

(3) An inspecting officer acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any equipment or appliance or books of accounts or other documents.

287. (1) The County government may, in the exercise of its powers and performance of its functions under this Act and for efficient use of energy and its conservation, issue such directions in writing as it deems fit for the purposes of this Act to any person, officer, authority or any designated consumer and such person, officer or authority or any designated consumer shall be bound to comply with such directions.

(2) For the avoidance of doubt, the power to issue directions under this section includes the power to enforce—

(a) regulation of norms for process and energy consumption standards in any industry or building or building complex; or

(b) regulation of the energy consumption standards for equipment and appliances.

Penalties and adjudication under energy efficiency and conservation

288. (1) A person who is aggrieved, by an order made by an adjudicating officer or the national government or the county government or any other authority under this Act, may prefer an appeal to the Tribunal.

289. (1) The Cabinet Secretary upon recommendation by the Agency may, make regulations for carrying out the provisions of this Act by notification, in the Gazette.

(2) In particular, and without prejudice to the generality of the foregoing, such rules may provide for all or any of the following matters—

(a) the levy of fee for services provided for promoting efficient use of energy and its conservation;

(b) the list of accredited energy auditors;

(c) the qualifications, criteria and conditions subject to which a person may be accredited as an energy auditor and the procedure for such accreditation;
(d) the energy consumption norms and standards for designated consumers;

(e) different norms and standards for different designated consumers;

(f) the form and manner and the time within which information with regard to energy consumed and the action taken on the recommendations of the accredited energy auditor be furnished;

(g) the manner and the intervals or time in which the energy audit shall be conducted;

(h) certification procedure for energy auditors and energy managers;

(i) particulars required to be displayed on label and the manner of their display;

(j) the manner and the intervals of time for conducting energy audit by an accredited energy auditor;

(k) any other matter which is required to be, or may be, specified;

(l) the form and manner in which the status of energy consumption be submitted;

(m) minimum qualification for energy auditors and energy managers;

(n) form and manner for preparation of the scheme and its implementation;

(o) energy efficiency and conservation building codes;

(p) prescribing the procedure for issuing the energy savings certificate;

(q) value of per metric ton of oil equivalent of energy consumed;

(r) matters relating to inspection;

(s) manner of holding inquiry;

(t) form of and fee for filing such appeal;

(u) publication of energy statistics or information;

(v) the type, manner and form of energy data and information that must be published;

(w) minimum levels of energy efficiency in each sector of the economy;
(x) steps and procedures necessary for the application of energy efficient technologies and procedures;

(y) labelling for energy efficiency purposes of household appliances, devices and motor vehicles;

(z) prohibition of the manufacture, or importation or sale of electrical and electronic products and fuel burning appliances for reasons of poor energy efficiency;

(aa) standards and specifications for energy carriers;

(bb) energy efficiency standards for specific technologies, processes, appliances, devices, motor vehicles and buildings;

(cc) energy conservation measures to be used during energy shortage, which may include but not limited to the amount of energy to be saved, the duration for such measures and penalties associated with non-compliance to such measures;

(dd) penalties and sanctions to be imposed by the Agency; and

(ee) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, or may be made by rules.

290. (1) The county government in consultation with the Cabinet Secretary may, by notification in the Gazette, make rules for carrying out the provisions of this Act and not inconsistent with the rules and regulations, if any, made by the national Government.

(2) In particular, and without prejudice to the generality of the foregoing, such rules may provide for all or any of the following matters—

(a) energy efficiency and conservation building codes;

(b) the form, the manner and the period within which information with regard to energy consumption shall be furnished;

(c) the person or any authority who shall administer the Fund and the manner in which the Fund shall be administered;

(d) the matters to be included for the purpose of inspection;

(e) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, or may be made, by rules.
291. (1) The Agency shall be responsible for the adoption and implementation of measures to conserve energy and improve efficiency in harnessing, processing, conversion, transportation, storage of energy, co-generation and heat recovery techniques, in the use of energy in all consumer sectors.

(2) For the purpose of carrying out its responsibilities under subsection (1), the Agency shall—

(a) identify, analyse, develop and recommend policy measures to the Cabinet Secretary which can be implemented by all categories of consumers, to prevent wastage of energy used by them in their various activities;

(b) promote and facilitate the implementation of energy efficiency and energy conservation policy measures, by organizing seminars, workshops and courses in energy efficiency, demand management or conservation;

(c) educate and provide information to the public regarding energy demand management and conservation;

(d) improve any or all aspects of energy demand management which promotes rational use of energy and reduces the use of non-renewable energy sources in Kenya;

(e) identify the available technologies and facilitate deployment of such technologies for improving efficiency in the harnessing of energy, processing, conversion, transportation, storage and use of energy;

(f) implement energy labeling programs for appliances and devices and establish benchmarks;

(g) specify and enforce standards, norms, codes, measurement and verification protocols and building codes, for the efficient use of energy and for reduction of wastage of energy in buildings; and

(h) initiate, promote, conduct and co-ordinate research, surveys and investigations in regard to specific aspects of energy efficiency, conservation and demand management.

292. (1) The Agency may from time to time, through Regulations made in that respect, establish specific energy consumption benchmarks to be complied with by all energy consumers.

(2) For the purpose of ensuring that the benchmarks established under subsection (1) are being complied with, the Agency may, where it considers it necessary—
(a) enter and inspect, any premises, compound or facility, collect information, verification of information and conduct any other investigations;

(b) direct any person to furnish information relating to energy utilization, production, procurement and sales;

(c) monitor energy consumption in buildings and industrial premises and monitor fuel efficiency of land vehicles, ships and aircrafts, in association with relevant agencies;

(d) specify in association with relevant agencies, energy consumption limits and energy performance standards of appliances and direct the display of such particulars on labels attached to appliances, in such manner as may be prescribed from time to time;

(e) prohibit in association with the relevant agencies the manufacture, import, sale or purchase of appliances which do not conform to the specifications prescribed under paragraph (d);

(f) in association with relevant agencies enforce limits and codes of practice for existing and proposed buildings, industrial and commercial premises, land vehicles, ships and aircrafts; and

(g) in consultation with stakeholders develop educational material and recommend educational curricula, on efficient and rational use of energy and conservation of energy.

293. (1) Where the Agency is of the view that any person including any public body is consuming unacceptable levels of energy in their respective premises or installations, over and above the benchmarks established by the Agency under section 71 of this Act, such person shall be called upon to submit to the Agency a detailed audit report compiled by an accredited energy auditor and a detailed remedial plan of action proposing measures to be taken by such person to reduce the energy consumption to acceptable levels.

(2) The failure to submit a detailed audit report and a detailed remedial plan of action when called upon to do so by the Agency under subsection (1) and the failure to implement such plan on approval by the Agency shall be an offence under this Act.

294. (1) The Agency shall appoint and rank persons having such qualifications as prescribed, to be—

(a) energy managers, who shall assist in promoting practices relating to efficient energy management;
(b) energy auditors, who shall be qualified to conduct energy audits; and

(c) energy service providers,

and issue to those appointed, certificates of accreditation.

(2) Every person who is issued with a certificate under subsection (1) shall be required to sit for such examinations periodically held by the Agency from time to time and where the Agency so requests, submit performance reviews at such intervals as specified by the Agency.

(3) The Agency shall maintain a register of all accredited energy managers, energy auditors and energy service providers, appointed by it and the register shall be availed to the members of the public.

295. (1) The Agency shall from time to time by rules made in that respect, specify—

(a) the persons including public bodies, who shall be required to have an energy audit carried out in their respective installations or premises; and

(b) the manner and the periods during which an energy audit shall be required to be carried out.

(2) An energy audit shall be conducted by an accredited energy auditor, who shall be required to submit a report to the Agency on the result of the energy audit carried out by such auditor.

296. (1) The Agency shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving full account of its activities during the previous financial year, and submit the same to the Cabinet Secretary.

(2) In the preparation of its annual report under subsection (1), the agency shall obtain the services of accredited persons under this Act.

PART IX

MISCELLANEOUS PROVISIONS

297. (1) The Cabinet Secretary may, on the recommendation of the Commission and subject to sections 163, 194 and 258, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act.
(2) The regulations to be made under this Act may be formulated by the Commission on its own motion or may be proposed to the Commission by any licensee or person.

(3) Before making recommendation of any regulations to the Cabinet Secretary under this Act, the Commission shall publish the proposed regulations for purposes of inviting proposals from the public, in such manner as it may deem fit, at least thirty days before the regulations are submitted to the Cabinet Secretary.

(4) The regulations made by the Cabinet Secretary in accordance with this section may, impose conditions, requiring acts or things to be performed or done to the satisfaction of the Commission, prohibiting acts or things from being performed or done and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or within which such conditions shall be fulfilled.

(5) The regulations made under this Act may be made for a limited period or without limit of period, and may be made subject to such conditions as the Cabinet Secretary deems fit, and may contain such supplemental and consequential provisions as the Cabinet Secretary considers necessary for giving full effect to the regulations.

298. (1) The Cabinet Secretary shall be responsible for—

   (a) formulation and regular review of sector policy as well as the integrated national energy plans;

   (b) formulation of local content regulations for all energy sources;

   (c) formulation and co-ordination of a disaster preparedness and recovery plan for the energy sector; and

   (d) the performance of such other functions as are provided under this Act or any other written law.

(2) On the occurrence of an emergency the Cabinet Secretary may, in consultation with the Commission, exercise such authority and give such directions as may be necessary in the public interest for the proper continuance or resumption of the production or supply of energy.

(3) The Cabinet Secretary may, from time to time, give directions in writing to the Commission with respect to the policy to be observed and implemented by the Commission.

299. The Cabinet Secretary may establish such committees as he may deem fit.
300. The Cabinet Secretary may establish such directorate offices within the Ministry of Energy and Petroleum as may be necessary for the efficient running of the Ministry.

301. (1) The Cabinet Secretary may, subject to the provisions of subsection (3) and having taken into consideration the recommendations made by the implementing agencies that any area is suitable for the conservation and management of energy resource or is suitable for the promotion of energy development projects, by order published in the Gazette, declare such area as an energy resource area.

(2) The Cabinet Secretary shall, prior to the declaration of any area as an energy resource area under sub-section (1), consult such Cabinet Secretary or Cabinet Secretary’s or a Governor, whom the Cabinet Secretary considers necessary or appropriate to consult in the declaration of such area as an energy resource area.

(3) An Order made under subsection (1) declaring an area as an energy resource area, shall define that area by setting out the coordinates of such area.

(4) An order made under subsection (1) shall restrict the use and transfer of any interest of that land, without prior approval from the Cabinet Secretary.

302. (1) The implementing agency shall be responsible for conserving and managing all energy resource within an energy resource area and take all necessary measures to promote and develop such energy resources with a view to obtaining the maximum economic utilization of those resources.

(2) An implementing agency referred to in subsection (1) means an entity mandated to develop and utilize the energy resource in a particular energy resource area declared as such under section 301.

303. Notwithstanding anything to the contrary contained in any written law, an owner or occupier of any land situated within an energy resource area shall not, except with the written approval of the implementing agency and subject to any terms and conditions that may be imposed by the implementing agency for that purpose, do any act or permit any other person to do any act, which may change the form of any energy resource situated within such energy resource area or cause the depletion of any such resource in such a manner or to such an extent, that the economic viability of developing that resource is substantially reduced.

304. It shall be the duty of every licensee to furnish to the licensing authority at such times and in such form and manner, such information as the licensing authority may, in writing, require.
False information.  

305. A person who makes a false statement or a statement which he has reason to believe is untrue, to the Cabinet Secretary, or to the Commission, committee, agent or an officer acting on behalf of the Commission, as required under this Act, commits an offence and shall, on conviction, be liable to a fine of not less than one hundred thousand shillings or to a term of imprisonment of not less than six months or to both.

Secrecy of information.  

306. Information obtained under section 304 relating to any matter shall not be published or otherwise disclosed to a third party without prior consent in writing from the person from whom the information was obtained—

Provided that nothing in this section shall restrict—

(a) the disclosure of such information—

(i) to the Cabinet Secretary for the time being responsible for energy and petroleum;

(ii) to any officer or authority having functions in relation to energy, policy development or economic planning of petroleum business in Kenya; and

(iii) in furtherance of a right to a person as provided for under the Constitution;

(b) the use of such information in any manner, which the Commission deems necessary or expedient in connection with the objects of this Act.

Standardisation.  

307. A person shall not use or employ for or in connection with any of the purposes of producing, generating, transforming, transmitting, distributing, supplying, or importing, exporting, transporting, refining, storing, selling or using, any form of energy, any mode, material or apparatus other than that which complies with the specification or standard of the Kenya Bureau of Standards or where no such standard exists, any international standard approved by the Kenya Bureau of Standards.

Licensing authorities not to discriminate.  

308. While discharging its functions and exercising its powers under the Act, the licensing authorities shall ensure that no particular person is given undue preference or subjected to any undue disadvantage.

Reporting of accidents and incidents.  

309. (1) A person engaged in any undertaking or activity pursuant to a licence under this Act shall notify the respective licensing authority and the Commission in writing, in the form and manner prescribed by the Commission, of any accident or incident causing loss of life, personal injury, explosion, oil spill, fire or any other accident or incident causing harm or damage to the environment or property which has arisen in Kenya or within Kenya’s Exclusive
Economic Zone or Outer Continental Shelf.

(2) The licensing authority or the Commission may direct an investigation to be carried out into any accident or incident under subsection (1) and take such action as it deems necessary.

310. A penalty, fine, fee, expense or other moneys recoverable under this Act or a licence, the recovery of which is not otherwise specifically provided for, shall be a civil debt recoverable summarily.

311. (1) The Cabinet Secretary shall establish a fund to be known as the Consolidated Energy Fund to cater for—

(a) strategic petroleum reserve;
(b) energy sector disaster mitigation and response;
(c) hydro risk mitigation;
(d) operations of the institute;
(e) promotion of renewable energy initiatives; and
(f) construction of appropriate energy infrastructure;

(2) The sources of funds shall be—

(a) appropriations from parliament;
(b) contributions from the energy sector players;
(c) Government securities and corporate bonds;
(d) recovered assets from proceeds of crime in the energy sector;
(e) grants, gifts and donations; and
(f) monetary sanctions imposed by the Commission.

312. (1) The Cabinet Secretary shall, within one year of coming into force of this Act, in consultation with the Cabinet Secretary in charge of finance, establish an energy finance company.

(2) The energy finance company envisaged in sub section (1) shall be charged with—

(i) sourcing for funds to finance energy sector investments;
(ii) providing loans and grants to institutions within the energy sector and any other person or company investing in the energy sector.
(iii) management of the Consolidated Energy Fund

(3) The corporation contemplated under this section shall be a company formed under the companies Act and registered as a financial institution under the Banking Act.

313. (1) The provisions of chapter four and chapter six of the Constitution shall apply to the institutions in the energy sector as listed in the Third Schedule.

(2) The Cabinet Secretary shall add into the schedule such other institutions as may be established.

314. The institutions operating under this Act, shall establish such offices in each county as shall be necessary so as to ensure its services are accessible by Kenyans in accordance with Article 6(3) of the Constitution.

315. An employer or principal shall be liable for an offence committed by an employee or agent under this Act, unless the employer or principal proves that the offence was committed against the employer’s or principal’s express or standing directions.

316. The penalties imposed under this Act shall be in addition to and not in derogation of any liabilities in respect of payment of compensation or in the case of a licensee, the revocation of the licence.

317. The Director Public Prosecutions may, on the request of the Commission, appoint any officer of the Commission or an advocate of the High Court to be a public prosecutor for the purposes of prosecuting offences under this Act.

318. Where any default in or contravention of any of the provisions of this Act is made for which no fine or penalty is expressly stated, the person so defaulting or contravening shall, on conviction, be liable to a fine of not less than one million shillings.

319. The Cabinet Secretary may, by notice in the Gazette, amend the amount referred to in this Act.

320. (1) All energy minerals shall be extracted, exploited, managed and regulated in accordance with the provisions of this Act.

(2) The Cabinet Secretary may by regulation provide guidelines for the extraction, exploitation, management and regulation of energy minerals under this Act.

321. There is established a disaster response unit under the management of the Commission to handle disasters and other emergencies that may occur within the energy sector.
PART X

REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

322. (1) Subject to the provisions of subsection (2), the Energy Act, the Geothermal Resources Act and the Petroleum (Exploration and Production) Act, are repealed.

(2) Notwithstanding the provisions of sub-section(1)—

(a) anything done under the provisions of the Energy Act, or the Cabinet Secretary under the provisions of the Energy Act, the Geothermal Resources Act and the Petroleum (Exploration and Production) Act before the commencement of this Act shall be deemed to have been done under the provisions of this Act;

(b) any statutory instruments issued by the Commission, the Authority, or the Cabinet Secretary under the provisions of the Energy Act, the Geothermal Resources Act, and the Petroleum (Exploration and Production) Act, before the commencement of this Act shall be deemed to be statutory instruments granted by the Commission under the provisions of this Act and shall remain in force until specifically revoked under this Act;

(c) any revocation of a licence under this Act shall not indemnify the licensee from any liabilities to which the person may have become liable under the Act before such revocation;

(d) the tariffs existing at the commencement of this Act shall continue being in place until new tariffs are gazetted under this Act; and

(e) any subsidiary legislation issued before the commencement of this Act shall, as long it is not inconsistent with this Act, remain in force until repealed or revoked by subsidiary legislation under the provisions of this Act and shall, for all purposes, be deemed to have been made under this Act.

323. The provisions of the Fourth Schedule shall apply.
FIRST SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF—

(1) THE ENERGY REGULATORY COMMISSION (s. 17)

(2) THE BOARD OF THE NATIONAL ELECTRIFICATION AND RENEWABLE ENERGY AUTHORITY (s 50)

(3) THE BOARD OF THE NATIONAL ENERGY INSTITUTE (s. 62),

(4) THE BOARD OF THE NATIONAL ENERGY EFFICIENCY AND CONSERVATION AGENCY (s. 78)

(5) THE BOARD OF THE NUCLEARELECTRICITY CORPORATION (s. 92)

1. The Commissioners or the Board, as the case may be, shall meet as often as necessary for the transaction of business but shall meet not less than four times every financial year and not more than four months shall elapse between the date of one meeting and the next.

2. (1) The Chairperson shall preside at every meeting of the Commission or Board at which the chairperson is present but in the absence of the chairperson, the commissioners or members of the Board present shall appoint a commissioner or member from among their number to preside at that meeting.

2. (2) The Chairperson or, in the absence of the chairperson a commissioner or member of the Board appointed by the Commission or Board, as the case may be, to act in the place of the chairperson, may at any time call a special meeting upon a written request by a majority of the commissioners or members.

3. Unless five commissioners or members otherwise agree, at least seven days’ written notice of every meeting of the Commission or Board shall be given to every commissioner or member of the Board.

4. Unless a unanimous decision is reached, a decision on any matter before the Commission or Board shall be by a majority of votes of the commissioners or members of the Board present, as the case may be, and in the case of an equality of votes, the Chairperson or the commissioner presiding shall have a casting vote.

5. Any commissioner or member of the Board present at a meeting of the Commission or Board or a Committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Commission or Board or the Committee, as the case may be, passes a resolution, which in the opinion of that commissioner or member is contrary to his advice or to law.
6. A commissioner or member of the Board who has a direct or indirect interest in a matter being considered or to be considered by the Commission or Board shall, as soon as possible after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Commission or Board and shall not be present during any deliberations on the matter.

7. The Commission or Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Commission or Board at the next meeting of the Commission or Board and signed by the Chairperson or the commissioner or member presiding at the meeting.

8. (1) Subject to subsection (2), five commissioners or members of the Board shall constitute a quorum for the conduct of business at any meeting of the Commission or Board.

(2) When there is no quorum at or for the continuation of a meeting of the Commission or Board only because of the exclusion of a commissioner or a member of the Board under paragraph 6, the other commissioners or members present may, if they deem it expedient so to do -

(a) postpone the consideration of that matter until there is a quorum; or

(b) proceed to consider and decide the matter as if there was quorum.
SECOND SCHEDULE

TERM OF OFFICE, VACANCY OF OFFICE, REMOVAL FROM OFFICE, BOOKS OF ACCOUNTS OF THE COMMISSIONERS AND MEMBERS OF THE BOARD, THE COMMON SEAL, FINANCIAL YEAR, ANNUAL ESTIMATES AND BOOKS OF ACCOUNTS, RECORDS, AUDIT AND REPORTS AND OTHERS

OF

(1) THE ENERGY REGULATORY COMMISSION (s. 18)

(2) THE ENERGY TRIBUNAL (s. 33)

(2) THE NATIONAL ELECTRIFICATION AND RENEWABLE ENERGY AUTHORITY (s. 51.)

(3) THE NATIONAL ENERGY INSTITUTE (s. 63),

(4) THE NATIONAL ENERGY EFFICIENCY AND CONSERVATION AGENCY (s. 79)

(4) NUCLEAR ELECTRICITY CORPORATION (s. 93)

1. (1) A member of the Commission, Tribunal, Corporation, Institute, Authority or Agency as the case may be, shall hold office, in the case of—

(a) the Chairperson and Vice Chairperson, for a period of four years; and

(b) a commissioner or a member for a period of three years.

(2) The chairperson, vice chairperson and commissioners and members shall be eligible for re-appointment for one further term.

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

2. Appointments under this Act shall take into account the principle that the composition of the Commission, Tribunal, Corporation, Institute, Authority or Agency as the case may be taken as a whole, shall reflect gender balance as well as regional and ethnic diversity of the people of Kenya.

3. (1) The office of the chairperson, vice chairperson and commissioner or member, as the case may be, shall become vacant if the holder—

(a) dies;

(b) by notice in writing addressed to the President or the Cabinet Secretary, as the case may be, resigns from office; and
(c) is removed from office under any of the circumstances specified in clause 4 of this schedule.

(2) The President or the Cabinet Secretary, as the case may be, shall notify every resignation, vacancy or termination in the Gazette within fourteen days.

4. (1) A chairperson, vice chairperson, commissioner or member (other than an ex officio member), may be removed from office on account of any of the following—

(a) violation of the Constitution or any other law;

(b) gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise;

(c) physical or mental incapacity to perform the functions of office;

(d) being absent from three consecutive meetings of the Commission, Tribunal or Board, as the case may be, without reasonable cause;

(e) failure to disclose to the Commission, Tribunal or Board any interest in any contract or matter before the Commission, Tribunal or Board;

(f) being convicted of a criminal offence;

(g) incompetence; or

(h) bankruptcy.

5. (1) The Director General, the Chief Executive Officer, Executive Director, Managing Director, the Commission Secretary, Authority Secretary or Corporation Secretary as the case may be, may be removed from office by the appointing authority in accordance with the terms and conditions of service only for—

(a) inability to perform the functions of the office of their respective offices arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or neglect of duty;

(d) violation of the Constitution;

(e) bankruptcy; or

(f) any other ground that would justify removal from office under the terms and conditions of service.
(2) Before the Director General, the Commission Secretary, the Chief Executive Officer, Executive Director or the Authority Secretary, as the case may be, is removed under subsection (1), the Director General, the Commission Secretary, the Chief Executive Officer, Executive Director or the Authority Secretary shall be given—

(a) sufficient notice of the allegations made against him or her; and

(b) an opportunity to present his or her defence against the allegations.

6. The financial year of the Commission, Tribunal, Corporation, Institute, Authority or Agency shall be the period of twelve months ending on the thirtieth day of June in each year.

7. (1) At least three months before the commencement of each financial year, the Commission, the Tribunal, the Authority and the Institute, as the case may be, shall cause to be prepared estimates of the revenue and expenditure of the Commission, the Tribunal, the Authority or the Institute for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission, the Tribunal, the Authority and the Institute, as the case may be, for the financial year, and in particular but not limited to—

(a) the payment of salaries or allowances and other charges in respect of the staff of the Commission, the Tribunal, the Authority or the Institute and the commissioners or members; and

(b) any other expenditure that may be necessary for the carrying out of their respective objects and functions under the Act.

(3) The annual estimates shall be approved by the Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be, before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary who, after approving it, shall forward it to the Cabinet Secretary of the National Treasury.

(4) After the Cabinet Secretary’s approval, the Commission, the Tribunal, the Authority or the Institute, as the case may be, shall not increase the annual estimates without the consent of the Cabinet Secretary.

8. (1) The Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be, shall keep or cause to be kept proper books of accounts recording all the income and liabilities, expenditure assets, undertakings, funds, activities, contracts, transactions and any other business of the Commission, the Tribunal, the Authority and the Institute respectively.
(2) The Commission, the Tribunal, the Authority and the Institute, as the case may be, shall ensure that all moneys received are properly brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets and liabilities under this Act.

(3) Within a period of three months after the end of each financial year, the Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be, shall prepare annual financial statements in accordance with the provisions of Section 81 of the Public Financial Management Act and submit them to the Controller of Budget and the Auditor-General or to an auditor appointed under subsection (4), for audit.

(4) The auditor referred to in subsection (3) shall be appointed by the Commission, the Tribunal, the Authority or the Institute, as the case may be, with the written approval of the Auditor-General.

(5) The appointment of an auditor shall not be terminated by the Commission, the Tribunal, the Authority or the Institute, as the case may be, without the prior written consent of the Auditor-General.

(6) The Auditor-General may give general or special directions to an auditor appointed under subsection (4) and the auditor shall comply with those directions.

(7) An auditor appointed under subsection (4) shall report directly to the Auditor-General on any matter relating to the directions given under subsection (6).

(8) Within a period of six months after the end of the financial year, the Auditor-General shall report on the examination and audit of the accounts of the Commission, the Tribunal, the Authority or the Institute, as the case may be, to the Commission, the Tribunal, the Authority or the Institute, as the case may be, and to the Cabinet Secretary, and in the case of an auditor appointed under subsection (4), the auditor shall submit a copy of the report to the Auditor-General.

(9) Nothing in this Act shall be construed to prohibit the Auditor-General from carrying out an inspection of the Commission’s, the Tribunal’s, the Authority’s or the Institute’s, as the case may be, accounts or records whenever it appears to him to be desirable and the Auditor-General shall carry out such inspection at least once every six months.

(10) Notwithstanding anything in this Act, the Auditor-General may submit to the Cabinet Secretary a special report on any matter incidental to his or her powers under this Act, and the provisions of the Public Financial Management Act on the same issue shall apply *mutatis mutandis* to any report made under this section.
(11) The Cabinet Secretary shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him or her under this section.

(12) The fee for any auditor, not being a public officer, shall be determined and paid by the Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be.

(13) The Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be, shall prepare a report for each quarter not later than fifteen days after the end of each quarter and submit it to the Cabinet Secretary who shall, upon approving it, forward a copy to the Cabinet Secretary of the National Treasury.

(14) The Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be, shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Public Sector Accounting Standards Board from time to time.

9. (1) The common seal of the Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be, shall be kept in such custody as the Commission, the Tribunal or the Board, as the case may be, may direct and shall not be used except on the order of the Commission, the Tribunal or the Board respectively.

(2) The common seal of the Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be, when affixed on a document and duly authenticated shall be judicially and officially noticed unless and until the contrary is proved any necessary order or authorization by the Commission, the Tribunal or the Board, as the case may be, under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the Commission, Tribunal, Corporation, Institute, Authority or Agency, as the case may be, shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Commission, the Tribunal or Board, as the case may be, may be authenticated by the signature of the Chairperson or the Chief Executive Officer:

Provided that the Commission, the Tribunal or the Board, as the case may be, shall, in the absence of either the Chairperson or the Chief Executive Officer nominate one member to authenticate the seal on behalf of the Chairperson or the Chief Executive Officer.
THIRD SCHEDULE (s. 313)

ENERGY SECTOR ENTITIES

1. Energy Regulatory Commission;
2. Energy Tribunal;
3. National Electrification and Renewable Energy Authority;
4. Kenya Nuclear Electricity Corporation;
5. National Energy Institute;
7. Kenya Power and Lighting Company;
8. Kenya Electricity Generating Company;
9. Geothermal Development Company;
10. Kenya Electricity Transmission Company;
11. National Oil Corporation of Kenya;
12. Kenya Pipeline Company; and
FOURTH SCHEDULE (s. 323)
TRANSITIONAL PROVISIONS

1. ENERGY REGULATORY COMMISSION

(a) The Energy Regulatory Commission established under section 17 shall be the successor to the Energy Regulatory Commission established by the Energy Act (now repealed) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Energy Regulatory Commission existing at the commencement of this Act shall be automatically and fully transferred to the Energy Regulatory Commission and any reference to the Energy Regulatory Commission in any contract or document shall, for all purposes, be deemed to be a reference to the Energy Regulatory Commission established under section 17.

(b) The persons who at the commencement of this Act are the Chairperson and Board members of the Energy Regulatory Commission shall become Chairperson and Commissioners respectively, as the case may be, of the Commission for the remainder of their tenure in accordance with their appointment under the repealed Act.

(c) For the greater certainty and subject to subsection (2), such persons shall have and may exercise and perform all the powers and functions of Chairperson or Commissioners, as the case may be, as if they were appointed under Section 14.

(d) Every person who at the commencement of this Act is an employee of the Electricity Regulatory Commission (not then being under notice of dismissal or resignation) shall, on that day and subject to this Act, become an employee of the Energy Regulatory Commission on the same terms and conditions.

The contractual obligations existing with the licensees are preserved.

2. THE ENERGY TRIBUNAL

(a) The Energy Tribunal established under section 28 shall be the successor to the Energy Tribunal established by the Energy Act (now repealed) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Energy Tribunal existing at the commencement of this Act shall be automatically and fully transferred to the Energy Tribunal and any reference to the Energy Tribunal in any contract or document shall, for all purposes, be deemed to be a reference to the Energy Tribunal established under section 28.

(b) The judgements, rulings or orders made by the Energy Tribunal established by the Energy Act (now repealed) are preserved.

3. NATIONAL ELECTRIFICATION AND RENEWABLE ENERGY AUTHORITY
1. (1) The National Electrification and Renewable Energy Authority shall be the successor to the Rural Electrification Authority established under section 66 of the Energy Act No. 12 of 2006 (now repealed) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Rural Electrification Authority existing at the commencement of this Act shall be automatically and fully transferred to the National Electrification and Renewable Energy Authority and any reference to the Rural Electrification Authority in any contract or document shall, for all purposes, be deemed to be a reference to the National Electrification and Renewable Energy Authority established under section 44.

(2) The persons who at the commencement of this Act are the Chairperson and Board members of the Rural Electrification Authority shall become Chairperson and Commissioners respectively, as the case may be, of the National Electrification and Renewable Energy Authority for the remainder of their tenure in accordance with their appointment under the repealed Act.

(3) For the greater certainty and subject to subsection (2), such persons shall have and may exercise and perform all the powers and functions of Chairperson or Board members, as the case may be, as if they were appointed under Section 46.

(4) Every person who at the commencement of this Act is an employee of the Rural Electrification Authority (not then being under notice of dismissal or resignation) shall, on that day and subject to this Act, become an employee of the National Electrification and Renewable Energy Authority on the same terms and conditions.

3. NUCLEAR ELECTRICITY CORPORATION

(1) The responsibilities and functions hitherto carried out by the Kenya Nuclear Electricity Board established under KNEB Board Order, 2013 pursuant to the State Corporations Act, Chapter 446 of the Laws of Kenya on the 16th November 2012, shall be assumed by the Nuclear Electricity Corporation.

(2) Unless otherwise directed, committee and secretariat staff of the Kenya Nuclear Electricity Board shall continue to be in the membership and staff of the Nuclear Electricity Corporation for the period of their appointments.
FIFTH SCHEDULE (s. 313)

ENERGY MINERALS

1. Oil;
2. Natural gas;
3. Shale gas;
4. Coal bed methane gas;
5. Coal including Peat, Lignite, Sub-bituminous, Bituminous and Anthracite; and
6. Nuclear based minerals including uranium, plutonium or thorium.
DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY GOVERNMENT [s. 8 (5)]

A. FUNCTIONS OF THE NATIONAL GOVERNMENT

1. Policy Formulation and Integrated National Energy Planning
   a) Formulation of the National Energy Policy.
   c) Provision of land and rights of way for energy infrastructure.

2. Energy Regulation
   a) Regulation and licensing of exploration, production, importation, refining, exportation, transportation, storage and bulk sales of fossil fuels and their derivatives.
   b) Regulation and licensing of production, conversion, distribution, supply, marketing and use of renewable energy.
   c) Regulation and licensing of generation, importation, exportation, transmission, distribution, retail and use of electrical energy.
   d) Approval of energy purchase agreements as well as network service and common user contractors.
   e) Protection of consumer, investor and other stakeholder interests
   f) Preparation and enforcement of regulations and standards
   g) Formulation of national codes for energy efficiency and conservation in buildings.
   h) Issuance of energy saving certificates to enhance energy efficiency and conservation.
   i) Setting, review and adjustment of energy tariffs and tariff structures
   j) Resolution of complaints and disputes between parties over any matter in the energy and petroleum sector.
   k) Prosecution of offences created under the Energy Act
   l) Certification of petroleum tanker drivers, electrical workers and contractors, solar system installation technicians and contractors.

3. Operations and development
   a) Exploration, production, importation, exportation, and refining or processing of fossil fuels, geothermal and other energy based natural resources.
   b) Transportation, storage and bulk sales of fossil fuels and their derivatives.
c) Generation, transmission, distribution (including reticulation) and retail of electrical energy

d) Collect and maintain energy data.

e) Implementation of the national electrification programme and management of the national electrification programme fund.

f) Undertake feasibility studies and maintain data with a view to availing the same to developers of energy resources and infrastructure.

g) Provide technical and other capacity building support to county governments.

h) Administration and management of the Sovereign Wealth Fund, the Consolidated Energy Fund and the National Energy Conservation Fund.

i) Protection of energy infrastructure including oil and gas fields, pipelines and storage depots, refineries, power plants, control centres, electric supply lines and substations.

B. FUNCTIONS OF THE COUNTY GOVERNMENTS

1. County Energy Planning
   a) Preparation of county energy plans, incorporating fossil fuels, renewable energy and electricity master plans.

   b) Physical planning relating to energy resource areas such as dams, solar and wind farms, municipal waste dumpsites, agricultural and animal waste, ocean energy, woodlots and plantations for production bioenergy feedstock’s

   c) Provision of land and rights of way for energy infrastructure.

   d) Facilitation of energy demand by planning for industrial parks and other energy consuming activities.

   e) Preparation and implementation of disaster management plans.

2. County Energy Regulation
   a) Regulation and licensing of retail supply of petroleum, gas and coal products.

   b) Regulation and licensing of designated parking for petroleum tankers.

   c) Regulation and licensing of biomass and charcoal producers, transporters and distributors.

   d) Customize national codes for energy efficiency and conservation in buildings to local conditions.
3. County operations and development
   a) Electricity and gas reticulation.
   b) Provide and maintain adequate street lighting.
   c) Provision of designated parking for petroleum tankers.
   d) Collect and maintain energy data.
   e) Implementation of county electrification projects.
   f) Undertake feasibility studies and maintain data with a view to availing the same to developers of energy resources and infrastructure.
   g) Establishment of energy centres for promotion of renewable energy technologies, energy efficiency and conservation.
   h) Protection of energy infrastructure including oil and gas fields and pipelines, refineries, power plants, control centres, electric supply lines, substations and depot.
MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to consolidate the laws relating to energy into one Act of Parliament. The Bill proposes to repeal the Energy Act No. 12 of 2006, the Geothermal Resources Act No. 12 of 1982 and the Petroleum (Exploration and production) Act Chapter 308 of the Laws of Kenya. The Bill also seeks to align the legal and regulatory framework of the energy sector with the Constitution of Kenya, 2010.

**Part I** deals with Preliminary issues such as definition of terms as used in the Act, commencement, application and supremacy of the Act on matters relating to energy.

**Part II** deals with Energy policy and integrated Energy Plan. This is in line with the constitutional mandate given to the national Government of policy making and implementation being given to counties and implementing agencies. This is also to entrench policy making and implementation by way of master plans in law so that obligations are placed and timelines determined to ensure that the same are done and done on time. This part also places certain obligations on the government to ensure that services are availed to the people of Kenya as guaranteed by the Constitution.

**Part III** deals with national energy entities. This part establishes the following entities:

1. Energy Regulatory Commission;
2. Energy Tribunal;
3. National Electrification and Renewable Energy Authority;
5. Energy Efficiency and Conservation Agency; and

**Part IV** deals with renewable energy. The Act defines renewable energy as non-fossil energy generated from natural non-depleting resources including but not limited to solar energy, wind energy, biomass energy, biological waste energy, hydro energy, geothermal energy and ocean and tidal energy.

Part IV also provides for ownership of renewable energy resources, preparation of resource maps and resource inventory. This is will enable investment in the sector by availing the said information to potential investors who would have otherwise spent a lot of time undertaking feasibility studies.

Established under this part is the Renewable Energy Resource Advisory Committee (RERAC) to advise the Cabinet Secretary on the criteria for allocation of renewable energy resource areas and licensing of these areas to investors. The part also provides for the Feed-in-Tariff (FiT) system, including obligations of licensees to connect and purchase electrical energy generated from renewable energy resources.

**Part V** deals with Fossil fuels. Fossil fuels have been defined to mean combustible or explosive hydrocarbons formed from the remains of prehistoric animals or plants and include petroleum, coal, oil shale, peat, natural gas or any other bituminous substance.
It contains provisions on petroleum upstream, petroleum downstream, coal and gas as well as offences in Fossil fuels sub-sector. Further this part provides for sharing of fossil fuel resources between the national, county and local community. The part also provides for the establishment of the Sovereign Fund and National Fossil Fuels Advisory Committee.

**Part VI** deals with electrical energy. This part provides for licensing in general and more specifically it has provisions relating to electricity generation, transmission and distribution of electrical energy; national electrification; retail supply of electrical energy, electrical installation work; metering of electrical energy; tariffs and contracts for electrical energy and network services; regulations to be made and offences and penalties under this part.

Offences in this Act have been enhanced and categorized as economic crimes to deter and minimize the rampant vandalism that has bedevilled the sector for many years.

**Part VII** deals with rights of way, way-leaves and use of land for energy resources and infrastructure. The proposals are meant to streamline and provide a one stop shop for issues of wayleaves and right of way in the energy sector.

**Part VIII** deals with energy efficiency and conservation. This part contains provisions relating to the roles of the national and county government in energy efficiency and conservation. It also prescribes penalties and provides adjudication mechanisms. It further provides for establishment of two funds for energy conservation; at the national level and at the county level.

**Part IX** deals with miscellaneous provisions. This part also has provisions for establishment of directorates within the ministry for the time being responsible for energy and petroleum, declaration of energy resource areas, delivery of energy services, establishment of the Consolidated Energy Fund, Compliance with constitutional provisions and access to services.

**Part X** deals with Repeals, Savings and Transitional provisions.