

PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) ACT, 2004

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THE GAMBIA

NO. 7 OF 2004.

Assented to by The President,
this 26th day of April, 2004.



YAHYA A.J.J JAMMEH
President.

AN ACT to make provisions with respect to exploring for, developing and producing petroleum and for other matters connected therewith.

[26th April, 2004]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. This Act may be cited as the Petroleum (Exploration, Development and Production) Act 2004.

2. (1) In this Act, unless the context otherwise requires-

"applicable laws" include all statutes, regulations, by-laws, codes, ordinances, decrees, rules, and all judgments, orders, decisions, rulings, awards, policies, voluntary restraints, guidelines, standards, criteria, interim directives, general bulletins, or any provisions of the foregoing of the Government, and all principles of common law and equity;

"authorized officer" means a person appointed under section 4(1) or acting under the Commissioner's authority under section 4(2);

"best industry practice" means the best practices prevailing in the modern international petroleum industry, including-

- (a) conducting petroleum operations and performing all obligations under the licence or permit expeditiously, efficiently, and in a workman-like manner using sound engineering and technical practices with the diligence and prudence exercised by experienced parties engaged in a similar activity under similar circumstances and conditions;
- (b) conducting petroleum operations so as to maximise the ultimate recovery of petroleum from a petroleum field through the most rapid and economically viable development that is consistent with prudent reservoir management;

Short title

Interpretation

- (c) ensuring that all equipment, facilities, materials, supplies, plants and installations used are of appropriately advanced technology and otherwise comply with generally accepted international standards and are of proper construction and kept in safe and good working order;
- (d) taking all reasonable steps to protect and rehabilitate the environment and to prevent the release into the environment of any hazardous substances from petroleum operations;
- (e) providing acceptable working conditions, living accommodation and access to medical care for all personnel engaged in petroleum operations;
- (f) conducting petroleum operations in accordance with this Act, the terms of any applicable licence or permit, regulations made under this Act, and any other applicable law;

"Block" means an area identified as a "Block" pursuant to section 10, and includes a part of that area;

"closure certificate" means a certificate issued pursuant to section 51;

"Commissioner" means the person appointed pursuant to section 4(1);

"confidential information"-

(a) means the terms of the licence or permit, any associated record, plan, map, sample, seismic information or data relating to petroleum operations or reports and associated work product produced from them, or other information which is either marked "confidential" or is by its nature intended to be for the knowledge of the recipient or any person to whom the information is disclosed pursuant to section 38 (5); but

(b) excludes any information that has entered the public domain, other than through a breach of this Act;

"continental shelf" means that part of the seabed and subsoil of the submarine areas adjacent to the coast of The Gambia over which the Republic of The Gambia is entitled, by international law, to exercise sovereign rights for the purposes of exploring and exploiting natural resources;

"crude oil" means any hydrocarbon which is in a liquid state at the wellhead or gas/oil separator or which is extracted from natural gas in a plant, including distillate and condensate;

"Department" means the Department of State responsible for petroleum;

"development" includes the building and installation of facilities for the production of petroleum and the drilling of development wells;

"discovery" means petroleum not previously known to have existed and recovered at the surface in a flow measurable by conventional industry testing methods;

"environment" means the components of the earth and includes-

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c).

"environmental impact assessment" means an environmental impact assessment required to be prepared pursuant to section 49;

"exploration" means reconnaissance operations and the drilling of exploration wells, including appraisal wells, and activities connected therewith;

"financial guarantee" means the insurance, bank guarantee, letter of credit, or parent guarantee that a licensee or permit holder must provide in favour of the Secretary of State pursuant to section 59;

"Government" means the Government of The Gambia;

"hazardous substance" includes a substance which is or may be, alone or in any combination, hazardous, dangerous, harmful, toxic, radioactive, a pollutant, a deleterious substance, a hazardous waste, a contaminant or a source of pollution or contamination under any health, safety or environment law, and any substance which may have an adverse effect if released into the environment, including petroleum products, pesticides, herbicides and insecticides and any waste associated with them;

"health, safety and environment laws" includes-

- (a) the Environmental Protection (Prevention of Dumping) Act, the National Environmental Management Act, 1994 and any other applicable law;
- (b) any provision or condition of a permit, licence; and
- (c) any approval or other operating authorization relating to the protection or rehabilitation of the environment, health safety or natural resources, including those relating to the manufacture, use, handling, transportation, sale, treatment, storage, disposal, release, emission or discharge of hazardous substances and occupational health and safety;

"licence" means an agreement relating to the exploration, development or production of petroleum entered into between a person and the Secretary of State;

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"licensee" means a person who has entered into a licence with the Secretary of State under this Act;

"natural gas" means hydrocarbons which are gaseous under normal atmospheric conditions and includes wet gas, dry gas and residue gas remaining after the extraction of liquid hydrocarbons from wet gas;

"permit" means an agreement relating to reconnaissance operations entered into between a person and the Secretary of State;

"permit holder" means a person who has entered into a permit with the Secretary of State under this Act;

"petroleum" means crude oil or natural gas or a combination of both;

"petroleum operations" means the exploration, development and production of petroleum and includes any activity relating to the rehabilitation of the environment pursuant to this Act;

"petroleum product" means any product derived from petroleum by a refining or treatment process;

"President" means the President of the Republic of The Gambia;

"production" means the extraction and disposal of petroleum, including development operations and all other works and services connected with them;

"reconnaissance operations" means operations carried out for, or in connection with the search for petroleum by geological, geophysical or photo-geological surveys and includes remote sensing techniques;

"regulations" means regulations made pursuant to this Act;

"Secretary of State" means the Secretary of State responsible for petroleum;

"subcontract" means any contract between a licensee or a permit holder and another person for the provision of labour, services or material in connection with petroleum operations;

"subcontractor" means any person with whom a licensee or permit holder has entered into a subcontract; and

"substance" means any substance, waste, liquid, gaseous or solid matter, fuel, micro-organism, sound, vibration, heat, odour, radiation and any organic or inorganic matters.

(2) In this Act, a reference to –

(a) "The Gambia" is a reference to all the lands and waters of The Gambia, including those of the continental shelf;

(b) the word "including" shall be construed to mean "including, without limitation."

PART II - ADMINISTRATION

Functions of
Secretary of
State

3. (1) The Secretary of State shall monitor and regulate the petroleum industry in The Gambia.

(2) The Secretary of State or such other person as may be authorized by the President, shall represent the Government in negotiations with interested parties in respect of licences and permits.

(3) Without prejudice to the generality of subsections (1) and (2), the functions of the Secretary of State include-

- (a) taking appropriate action on reports on petroleum operations in The Gambia required to be furnished by licensees, permit holders or subcontractors;
- (b) responding in an appropriate manner to any option to acquire physical assets used for petroleum operations given by a licensee after the termination of petroleum operations in any area;
- (c) responding to any application by a licensee or permit holder for the written consent of the Secretary of State to assign the licensee's or permit holder's rights or obligations under a licence or permit;
- (d) ensuring that petroleum operations in The Gambia are conducted in accordance with best industry practice;

- (e) the recovery of costs and expenses for remedial work done on behalf of the Secretary of State under this Act;
- (f) appointing auditors and other inspectors to inspect, test or audit, as appropriate, the works, equipment, operations and financial books of account, records and registers relating to petroleum operations carried out by licensees, permit holders or subcontractors under this Act;
- (g) ensuring that the financial guarantee is maintained in an adequate amount; and
- (h) doing all such things as will, in his or her opinion, contribute to the attainment of the objectives of subsection (1).

Appointment of
Commissioner
and other staff

4. (1) The President shall appoint a Commissioner for Petroleum Exploration, Development and Production.

(2) The Public Service Commission shall employ for, or post to the Department, such public officers as may be required to assist the Commissioner and the Department in the performance of their functions under this Act.

(3) The Commissioner may delegate to any public officer employed for or on behalf of the Department all or any of his or her powers and duties under this Act.

Responsibilities
of the
Commissioner

(4) A delegation by the Commissioner of a power or duty under subsection (3) does not preclude the Commissioner from exercising or performing the power or duty so delegated.

5. Subject to this Act, the Commissioner is responsible to the Secretary of State for-

- (a) the day-to-day administration of the implementation of this Act, the regulations, licences and permits;
- (b) receiving applications from owners or occupiers of land claiming compensation from licensees, permit holders or subcontractors pursuant to section 18, and arranging for the payment of the compensation;
- (c) the supervision of the other staff employed pursuant to this Act;
- (d) preparing an annual report on the activities of the Department in relation to the implementation of this Act and any licences and permits for the approval of the Secretary of State; and
- (e) performing such other functions as are assigned by this Act or as directed by the Secretary of State.

Liability of public
officers

6. No action shall lie against the Secretary of State, the Commissioner, an authorized officer or any other staff of the Department in respect of any thing done or not done in good faith in the performance of any function under this Act.

PART III - PETROLEUM RIGHTSOwnership of
petroleum

7. (1) Subject to the rights conferred by this Act, all rights in relation to the ownership, exploration, development, production and disposal of petroleum existing in its natural state in The Gambia are vested in the State.

(2) Subsection (1) has effect notwithstanding any right of ownership or otherwise that a person may possess in and to the soil in which petroleum is found or situated.

No petroleum
operations
except by
licence or permit

8. Except in accordance with a licence or a permit, no person, other than the Government, shall engage in petroleum operations.

Best industry
practice in
petroleum
operations

9. (1) A licensee, permit holder and subcontractor shall carry out all petroleum operations in accordance with best industry practice.

(2) Without prejudice to a right to cancel a licence or permit on account of non-compliance with the licence or permit, a person who does not comply with this section commits an offence punishable under section 57 (1).

Reference map
of Blocks

10. The Commissioner shall prepare a reference map within the jurisdiction of The Gambia divided into numbered areas, each of which shall be described as a "Block".

Number of Blocks

11. A licence or permit may be entered into in respect of such number of Blocks or portions of a Block or of different Blocks as may be specified in the licence or permit.

Determination of Blocks

12. The Secretary of State may, from time to time, decide to close or redefine the boundaries of an existing Block which is not covered by a licence or permit and may open a new Block after due notice has been published in the *Gazette*.

Change of Blocks

13. A decision of the Secretary of State to close or redefine the boundaries of an existing Block does not become operative until the expiration of ninety days after the closure or redefinition of the boundaries has been notified in the *Gazette*.

Representation to Commissioner

14. Within the period of ninety days referred to in section 13, all parties with an interest in the licence or permit concerned may make representations to the Secretary of State regarding the decision to close or redefine the Block.

Right to enter land

15. (1) A licensee, permit holder or subcontractor has the right to enter any land to carry out petroleum operations, except land described in subsection (4) or (5).

(2) Subject to section 17, a licensee, permit holder or subcontractor is not required to pay compensation to the owner or occupier of any land for the right to enter upon that land to carry out petroleum operations.

(3) The Commissioner shall provide such assistance as the licensee, permit holder or subcontractor reasonably requires in entering any land to carry out petroleum operations.

(4) No licensee, permit holder or subcontractor shall, without the prior written consent of the Commissioner, enter or carry out petroleum operations on any land that is, as of the effective date of the licence or permit-

- (a) dedicated or set apart for a public purpose;
- (b) dedicated as a place of burial;
- (c) the site of a historical monument;
- (d) habitually used or occupied for sacred or ceremonial purposes;
- (e) inside a local sanctuary, national park, national reserve, or protected area as defined in the Biodiversity and Wildlife Act, 2003; or
- (f) in or within two hundred metres of any street, road, highway, public place or airport landing site.

(5) Subject to subsection (6), no licensee, permit holder or subcontractor shall, without the prior written consent of the lawful owner or occupier of the land, enter or carry out petroleum operations on any land-

- (a) that is, on the effective date of the licence or permit, the site of, or within two hundred metres of, any inhabited or permanently occupied house or building;
- (b) that is, on the effective date of the licence or permit, within fifty metres of any land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of agricultural crops or on which agricultural crops are growing;
- (c) from which, during the year immediately preceding the effective date of the licence or permit, agricultural crops have been reaped; or
- (d) that is, on the effective date of the licence or permit, the site of or is within hundred metres of any cattle dip, tank, dam, reservoir or water used by mankind or cattle.

(6) Where the consent of the lawful owner or occupier is unreasonably withheld under subsection (5), the Commissioner may authorize the licensee, permit holder or subcontractor to enter or carry out petroleum operations on the land.

Notice to Secretary of State and Commissioner regarding the commencement and cessation of petroleum operations

16. (1) A licensee, permit holder or subcontractor shall, before entering any land for the purpose of carrying out petroleum operations, use reasonable efforts to give at least thirty days prior notice to the Secretary of State, the Commissioner and to every person holding title to or an interest in that land.

(2) The notice under subsection (1) shall state the purpose, nature and location of the proposed petroleum operations.

(3) A licensee, permit holder or subcontractor shall, before ceasing to carry out petroleum operations on any land, use reasonable efforts to give notice of the estimated date of cessation to the Secretary of State, the Commissioner and to every person holding title to or an interest in that land.

Right to adequate compensation for damage to land pursuant to petroleum operations

17. (1) The owner or occupier of a land on which a licensee, permit holder or subcontractor has entered and carried out petroleum operations is entitled to adequate compensation from the licensee, permit holder or subcontractor for-

(a) any disturbance or loss of the owner's or occupier's surface rights; and

(b) any damage to the surface of the land, building, work or improvement or to livestock, crop and tree directly attributable to the petroleum operations.

(2) A person seeking adequate compensation under subsection (1) or section 18 (1) shall give notice to the Commissioner not later than thirty days after the estimated date of cessation of petroleum operations set out in the notice given under subsection 16 (2).

(3) The Commissioner shall, on receipt of a notice given under subsection (2), immediately notify the relevant licensee, permit holder or subcontractor.

Amount of
compensation

18. (1) If -

(a) a licensee, permit holder or subcontractor and the owner or occupier of any land referred to in section 17, are unable to reach an agreement as to adequate compensation within thirty days of the commencement of discussions in relation to the compensation; or

(b) discussions have failed to commence within thirty days after receiving the Commissioner's notification under section 17 (3),

the matter may be referred to the Commissioner who shall, within ninety days thereafter, determine the amount payable and the time within which the amount should be paid.

(2) In determining the adequate compensation payable, the Commissioner may consider any factor that he or she considers proper under the circumstances.

(3) A person who is dissatisfied with the decision of the Commissioner made pursuant to subsection (1) may, within sixty days of the decision, appeal in writing to the Secretary of State, who shall, within ninety days thereafter, hear and dispose of the appeal.

PART IV - EXPLORATION AND DISCOVERY OF PETROLEUM

Notification of
Commissioner
of petroleum
discovery

19. (1) A licensee who makes a petroleum discovery as a result of any exploration shall-

(a) within thirty days after the discovery, notify the Commissioner of the discovery; and

(b) as soon as practicable after the discovery, furnish the Commissioner, in writing, with full particulars of the discovery.

(2) The Commissioner shall, on receiving the particulars under subsection (1), determine whether the discovery merits appraisal or not.

Submission of
work
programme

20. Where the Commissioner determines that the discovery merits appraisal, the licensee shall prepare and submit to the Commissioner, in accordance with the licence, a programme for carrying out an adequate and effective appraisal of the discovery to enable the Commissioner to determine, as promptly as possible, whether the discovery is commercial.

Development of
commercial
discovery

21. Where it is determined that a discovery is commercial in accordance with the licence, the licensee shall promptly develop the discovery in accordance with best industry practice and the terms of the licence in order to ensure the most efficient, beneficial and timely use of the petroleum resources concerned.

PART V – PERMITS

Non-exclusive
rights of permit
holders

22. (1) A permit holder has the non-exclusive right to carry out reconnaissance operations in the Block or Blocks specified in the permit.

(2) A permit does not give the permit holder the right to a licence in respect of the area that is subject to the permit.

Applications for
permits

23. (1) An application for a permit shall be addressed to the Commissioner and be in such form, and be accompanied by such fees and information, as may be prescribed by regulations.

(2) Any information furnished to the Commissioner in an application for a permit shall be treated as confidential.

Issuance of
permit

24. (1) In determining whether to issue a permit the Secretary of State shall consider-

- (a) the proposed programme for and scope of the reconnaissance operations;
- (b) the proposed expenditure for the reconnaissance operations;

- (c) whether the technical and financial resources of the applicant are sufficient for the proposed reconnaissance operations;
- (d) the probable effect the reconnaissance operations will have on the environment; and
- (e) such other matters as the Secretary of State deems relevant.

(2) The Secretary of State shall not issue a permit-

- (a) to an individual who is not a citizen of The Gambia;
- (b) to a body corporate incorporated outside The Gambia, unless it has established a place of business in The Gambia and is registered as a foreign company in accordance with the Companies Act; or
- (c) in respect of an area that is subject to a licence.

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Period of validity
of a permit

25. A permit is valid for a period not exceeding one year from its date of issuance and is not renewable, but the Secretary of State may, on a case-to-case basis if the circumstances so require, renew a permit for a period not exceeding six months.

Terms of permit

26. Unless the parties otherwise agree, a permit shall incorporate the clauses of the model reconnaissance permit prescribed by regulations.

PART VI – LICENCESExclusive rights
of licensee

27. Subject to this Act, a licensee has the exclusive right to carry out petroleum operations and execute such works, as may be necessary or expedient in relation to the petroleum operations in the area allocated under a licence.

Application for
licence

28. (1) Subject to subsection (2), an application for a licence shall be addressed to the Secretary of State and be in such form, and be accompanied by such fees and information, as may be prescribed by regulations.

(2) The Secretary of State may decide that applications for a licence in respect of one or more Blocks should be subject to a competitive bidding process.

(3) Any information furnished to the Secretary of State in an application for a licence shall be treated as confidential.

Issuance of
licences

29. (1) In determining whether to issue a licence, the Secretary of State shall consider-

- (a) any conditions for the issuance of licences that may be prescribed in the regulations; and
- (b) any conditions for the issuance of licences that may be prescribed for an applicable competitive bidding process.

(2) The Secretary of State shall not issue a licence to-

- (a) an individual who is not a citizen of The Gambia; or
- (b) a body corporate incorporated outside of The Gambia, unless it has established a place of business in The Gambia and is registered as a foreign company in accordance with The Companies Act.

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Period of validity
of licence

30. A licence under this Act shall be valid for a total period not exceeding thirty years, which shall be divided into such phases as the Secretary of State may determine.

Terms of licence

31. Unless the parties otherwise agree, a licence shall incorporate the clauses of the model petroleum exploration, development and production licence prescribed by regulations made pursuant to this Act.

Relinquishment
of area

32. A licence shall provide for the relinquishment in a phased manner of portions of the area to which the licence relates after the expiration of the initial exploration period specified in the licence or after any extension of that period.

Size of
relinquishment

33. An area relinquished in accordance with the terms of a licence shall, as far as possible, be contiguous and compact and of such size and shape as will permit the effective carrying out of petroleum operations in the relinquished area.

Minimum work obligations

34. A licence shall provide for the minimum work obligations to be fulfilled by a licensee during the initial exploration period and each subsequent extension of the period.

PART VII – TAXES, ROYALTIES AND OTHER LEVIES

Taxes, royalties and other levies

35. (1) A licensee or permit holder is exempt from the payment of all taxes, duties, charges or levies, including sales tax under the National Sales Tax Act or any other Act replacing that Act, arising out of or in connection with petroleum operations and payable to the Government, other than-

- (a) royalties in accordance with the licence;
- (b) rentals in accordance with the licence;
- (c) income tax pursuant to the Income Tax Act, subject to such modifications as the Secretary of State may, with the approval of Cabinet by an Order published in the *Gazette*, specify.
- (d) additional profits tax calculated in accordance with a licence;
- (e) pay roll tax under the Pay Roll Tax Act, to the extent specified in a licence or permit;
- (f) the national development levy under the National Development Levy Act, to the extent specified in the licence or permit;
- (g) stamp duties, registration fees, licence fees, and any other levy of a minor nature specified in the licence or permit;

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- (h) import duties and taxes to the extent specified in the licence or permit;
- (i) taxes and other levies imposed by local authorities which are not calculated by reference to net income and are not in excess of those applied generally to all industries and enterprises in The Gambia; and
- (j) environment tax.

PART VIII – GENERAL RIGHTS AND OBLIGATIONS OF LICENSEES AND PERMIT HOLDERS

Assignment of licence or permit to be approved

36. Subject to section 37 and the terms of the relevant licence or permit, a licensee or permit holder shall not assign or transfer his or her rights and obligations under a licence or permit, in whole or in part, to another person without the prior written consent of the Secretary of State.

Subcontracts

37. (1) Without prejudice to the licensee's or permit holder's liability for the performance of his or her obligations under this Act, the licensee or permit holder may enter into subcontracts that require the subcontractor to-

- (a) act in accordance with the best industry practice; and
- (b) comply with any additional obligations imposed in relation to subcontractors under the relevant licence or permit.

(2) A licensee or permit holder is liable to the Secretary of State and third parties for all acts and omissions of the subcontractor.

Confidential
information

38. (1) Subject to subsection (2), any confidential information acquired in connection with petroleum operations and any confidential information released to the licensee, permit holder or subcontractor by the Government is the property of the Government.

(2) A licensee, permit holder or subcontractor may-

(a) retain copies or samples of a material comprising confidential information, or originals of the material, with the written consent of the Commissioner; and

(b) make use of the confidential information, free of cost, for the purposes of petroleum operations.

(3) Where an area has been relinquished pursuant to the terms of a licence, or otherwise ceases to be subject to a licence or permit, the licensee or permit holder shall return all originals and copies of the related confidential information to the Commissioner as soon as is reasonably practicable and, in any event, within six months after the relinquishment or cessation.

(4) A licensee, permit holder or subcontractor shall-

(a) keep confidential, any confidential information acquired in connection with petroleum operations and any confidential information released to him or her by the Government; and

(b) not disclose the confidential information to a third party without the permission of the Commissioner, unless otherwise provided in the licence or permit.

(5) Any confidential information which the licensee or permit holder is or may, from time to time, be required to furnish to the Government under the provisions of this Act shall be supplied at the expense of the licensee or permit holder, and the Government shall not disclose the information except-

(a) after the termination of the licence or permit;

(b) in the case of areas that are subject to the licence or permit, four years after the date on which the Government received the confidential information;

(c) in respect of areas that have been relinquished pursuant to the licence;

(d) in connection with the administration of this Act;

(e) in connection with any legal proceedings;

(f) as may be required pursuant to any applicable law;

(g) to any consultant engaged by the Government to advise the Government on matters relating to petroleum;

- (h) to a financial institution for or in connection with financial arrangements or advice in relation to petroleum operations; or
- (i) as specified in the licence or permit.

Maintenance of records

39. A licensee, permit holder or subcontractor shall maintain in The Gambia complete and accurate -

- (a) records of all petroleum operations carried out by him or her; and
- (b) books of account, records and registers relating to the petroleum operations.

Reports on petroleum operations

40. A licensee or permit holder shall furnish to the Secretary of State, at such regular intervals as may be prescribed by regulations, reports on petroleum operations being carried out in The Gambia.

Indemnity against claims

41. A licensee or permit holder shall at all times keep the Government indemnified against any and all claims by third parties arising from his or her operations or the operations of his or her subcontractors.

Employment of Gambians

42. A licensee, permit holder or subcontractor shall employ citizens of The Gambia who have the requisite expertise or qualifications in the various levels of the operations of the licensee, permit holder or subcontractor.

Goods and services from The Gambia

43. A licensee, permit holder or subcontractor shall use goods and services produced or provided in The Gambia for the petroleum operations, where the goods and services are competitive and in accordance with accepted international standards.

Insurance

44. (1) A licensee or permit holder shall maintain such insurance in respect of the petroleum operations as is required under the licence or permit or as would otherwise be required in accordance with the best industry practice.

(2) The insurance maintained pursuant to subsection (1) shall name the Government as an additional named insured.

Removal of petroleum generally

45. (1) A licensee, permit holder or subcontractor shall not remove petroleum from the area that is subject to the licence or permit to any other area, or dispose of it in any manner, except-

- (a) for the purposes of sampling or analysis, subject to receiving the prior written consent of the Commissioner; or
- (b) otherwise in accordance with the terms of the applicable licence or permit.

War or other emergencies

46. If there is a war or state of emergency, the Secretary of State may require a licensee to sell to the Government or any agency of the Government, at the prevailing market price, all or part of the quantity of petroleum produced by the licensee.

PART IX – HEALTH, SAFETY AND ENVIRONMENT

Compliance with health, safety and environment laws

47. Without prejudice to any other obligations of a licensee, permit holder or subcontractor under this Act, a licensee, permit holder or subcontractor carrying on petroleum operations shall-

- (a) ensure that the petroleum operations are carried out in accordance with all applicable health, safety and environmental laws; and
- (b) take all reasonable steps to prevent the release of any hazardous substances from their petroleum operations into the environment.

Responsibility of licensee, permit holder and subcontractor for any damage to environment from petroleum operations

48. (1) A licensee, permit holder and subcontractor is responsible and liable for any damage to the environment caused by their respective petroleum operations.

(2) If any hazardous substance is released into the environment as a result of the petroleum operations of a licensee, permit holder or subcontractor, he or she shall-

- (a) immediately notify the Secretary of State;
- (b) take all steps necessary to prevent any further release of the hazardous substance; and

(c) at his or her sole cost and expense, rehabilitate the environment to its natural state or a state acceptable to the National Environment Agency.

Environmental impact assessment

49. (1) The Secretary of State shall, before the issuance of a licence or permit, require the applicant to conduct an environmental impact assessment within one hundred and eighty days of the date on which he or she is notified by the Secretary of State to do so.

(2) The environmental impact assessment shall-

- (a) establish baseline information concerning the environment of the areas that are, or may be, affected by the petroleum operations to determine protection, remedial measures and environmental management objectives;
- (b) investigate, assess and evaluate the impact of petroleum operations on-
 - (i) the environment,
 - (ii) the socio-economic conditions of any person who might be directly affected by the petroleum operations, and
 - (iii) any area of national significance;
- (c) describe the manner in which the applicant intends to-

- (i) inform his or her employees and subcontractors of any risks to the environment which may result from the petroleum operations, and
- (ii) deal with the risks that must be dealt with in order to avoid damage to the environment; and
- (d) describe the manner in which the applicant intends to-
 - (i) modify, remedy, control or stop any action, activity or process which causes damage to the environment,
 - (ii) contain or remedy the cause of damage to the environment or the release of hazardous substances, and
 - (iii) carry out petroleum operations in accordance with this Act and all applicable health, safety and environment laws.
- (3) Subject to subsections (4), (5) and (6), the Secretary of State shall approve an environmental impact assessment within one hundred and twenty days of receiving it if-
 - (a) it complies with the requirements of subsection (2);

- (b) the applicant has complied with the financial guarantee provisions of this Act; and
- (c) the Secretary of State is satisfied that he or she does not require any further information or adjustments to the environmental impact assessment under subsection (4).
- (4) The Secretary of State may-
 - (a) within thirty days of receiving the environmental impact assessment, call for additional information from the applicant with respect to any information provided by the applicant pursuant to subsection (2); and
 - (b) direct that the environmental impact assessment in question be adjusted in the way the Secretary of State may require.
- (5) If the Secretary of State calls for additional information or directs adjustments to the environmental impact assessment pursuant to subsection (4), the applicant shall, within thirty days of receiving the call, furnish the additional information, or make the required changes.
- (6) If the Secretary of State calls for additional information, or directs adjustments to the environmental impact assessment pursuant to subsection (4), the time period specified in subsection (3) in which the Secretary of State must approve the environmental impact assessment is two hundred and ten days.

(7) The Secretary of State may, at any time after he or she has approved an environmental impact assessment and after consultation with the relevant person, approve an amended environmental impact assessment.

Rehabilitation of environment by licensee or permit holder on termination of petroleum operations and requirement for rehabilitation plan

50. (1) Before terminating petroleum operations in any area, the licensee, permit holder, or subcontractor shall, as far as it is reasonably practicable, at his or her sole cost and expense, rehabilitate the environment affected by the petroleum operations to its natural state, or to a state acceptable to the National Environment Agency.

(2) The rehabilitation of the environment under subsection (1) includes-

- (a) the removal of all facilities, materials and equipment brought into the affected area but no longer required for further petroleum operations;
- (b) the plugging and closing off of all abandoned wells; and
- (c) the taking of other measures for the conservation and protection of natural resources,

in the area concerned in any manner provided for under this Act and any applicable health, safety and environment laws.

(3) Before commencing rehabilitation under subsection (1), the licensee or permit holder shall, by thirty days prior written notice, give to the Secretary of State the option to take possession of and title to the affected facilities, materials, equipment and wells, without payment of any consideration, and the Secretary of State may also take possession of and title to some or all of the affected facilities, materials, equipment and wells, without payment of any compensation.

(4) The Secretary of State shall, within thirty days of receiving the notice, respond in writing, stating whether or not he or she desires to take possession of and title to the affected facilities, materials, equipment and wells as specified in the notice.

(5) The licensee or permit holder is deemed to have discharged his or her obligations under this Act in respect of any facility, material, equipment or well that the Secretary of State elects to acquire pursuant to subsection (3).

(6) The Secretary of State may, on receiving a notice pursuant to section 16(2) of the proposed termination of petroleum operations in an area, require the licensee or permit holder concerned to submit to him or her an environmental rehabilitation plan for that area within ninety days of the date the licensee or permit holder is required by the Secretary of State to do so.

(7) The environmental rehabilitation plan shall contain a description of how the licensee or permit holder intends to rehabilitate the environment affected by the petroleum operations.

(8) The Secretary of State may, within sixty days of receiving an environmental rehabilitation plan, approve the plan if-

- (a) it complies with the requirements of subsection (1); and
- (b) the Secretary of State is satisfied that the licensee or permit holder, has complied with the provisions of this Act relating to financial guarantee.

(9) The Secretary of State may call for additional information from the licensee or permit holder and direct that the environmental rehabilitation plan be adjusted in the way required by the Secretary of State.

(10) The Secretary of State may-

- (a) at any time after he or she has approved an environmental rehabilitation plan, but prior to the issuance of a closure certificate; and
- (b) after consultation with the licensee or permit holder,

approve an amended environmental rehabilitation plan.

(11) The provisions of subsection (8) apply, with necessary modifications, to the approval of an amended environmental rehabilitation plan under subsection (10).

Closure
certificate

51. (1) Until the Secretary of State issues a closure certificate to a licensee or permit holder in respect of an area or part of an area to which a licence or permit relates, the licensee or permit holder remains responsible and liable for any damage to the environment caused by the petroleum operations carried out by the licensee or permit holder or his or her subcontractors in that area or part of an area.

(2) A licensee or permit holder shall apply for a closure certificate if-

- (a) a licence or permit lapses, is abandoned or cancelled;
- (b) the petroleum operations cease; or
- (c) the licence or permit holder relinquishes any part of the area to which the licence or permit relates.

(3) An application for a closure certificate must be made to the Secretary of State within one hundred and eighty days of the occurrence of an event under subsection (2).

(4) The Secretary of State shall, on issuing a closure certificate, return to the licensee or permit holder any part of the financial guarantee which is not retained by the Secretary of State under section 59 (9).

PART X - MISCELLANEOUS PROVISIONS

Right of audit

52. An auditor or other inspector appointed by the Secretary of State for the purpose has the right-

- (a) at all reasonable times, to inspect, test and audit, as appropriate, the works, equipment, operations and financial books of account, records and registers relating to petroleum operations carried out by a licensee, permit holder or their subcontractors under this Act; and
- (b) to make extracts or copies of any document pertaining to those petroleum operations.

Right of inspection

53. (1) The Commissioner may authorize any public officer to inspect any petroleum operations to ensure that the petroleum operations are carried out in accordance with this Act and regulations made pursuant to this Act and in accordance with the terms and conditions of the applicable licence or permit.

(2) The Commissioner or the authorized public officer may, for the purposes of an inspection under subsection (1) -

- (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 petroleum operations;

(b) inspect and test, or have tested by a qualified person, any machinery or equipment that, in his or her opinion, has been, is being or is to be used in connection with petroleum operations;

(c) take or remove for the purpose of analysis or testing or for use in evidence in connection with an offence against this Act, samples of petroleum, water or other substances from a well;

(d) inspect, take extracts from, and make copies of, any document relating to petroleum operations;

(e) with respect to the health and safety of persons employed by a licensee or permit holder in or otherwise in connection with petroleum operations, issue, in writing, directions to, and impose restrictions on the licensee or holder, or any persons so employed;

(f) order, in writing-

- (i) the cessation of operations on or in, and the withdrawal of any person from, any area, structure or building that is being used in connection with petroleum operations, or

(ii) the discontinuance of the use of any machinery or equipment, which he or she considers unsafe, unless and until such action as is necessary for safety and specified in the order is taken and completed;

(g) make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any direction issued, restrictions imposed or orders made under this Act, are being complied with; and

(h) obtain and record statements from witnesses, and appear at or conduct inquiries held regarding accidents occurring in the course of any petroleum operations and appear at inquests and call and examine and cross-examine witnesses.

(3) The Commissioner or authorized officer shall, before exercising any of his or her powers under subsection (2), identify himself or herself to any person present who is or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment, matter or thing in respect of which the power is about to be exercised.

(4) A person who is aggrieved by a decision, direction or order of an authorized officer made under this section may, within sixty days from the date of the decision, direction or order, appeal in writing to the Commissioner or, in the case of a decision, direction or order made by the Commissioner, to the Secretary of State, who shall, as soon as practicable hear and dispose of the appeal.

(5) The bringing of an appeal under subsection (4) does not affect the execution and operation of the decision, direction or order, pending the disposal of the appeal.

(6) On an appeal under subsection (4), the Commissioner or the Secretary of State, as the case may be, may-

(a) rescind or affirm the decision, direction or order appealed against; or

(b) make a new decision, direction or order in substitution.

(7) In exercising his or her powers under subsection (1), the Commissioner or authorized officer may be accompanied by any person who the Commissioner or the authorized officer believes has special or expert knowledge of any thing being inspected, tested or examined.

(8) An occupier or the person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, or machinery or equipment referred to in subsection (2), shall provide the Commissioner or authorized officer with all reasonable facilities and assistance, including the provision of necessary means of transport, for the effective exercise of the powers under this section.

Assistance in inspections

54. A licensee, permit holder or subcontractor shall provide a person authorized by the Commissioner with all reasonable facilities and assistance to enable effective and timely performance of the inspection functions under this Act.

Right to information

55. (1) The Commissioner may, for the purposes of this Act, request in writing any person to furnish him or her, within such period as may be specified in the request, such information and documents relating to petroleum operations as may be specified in the request or as may be prescribed.

(2) A person requested by the Commissioner to furnish any information or documents under subsection (1) shall comply with the request within the period specified in the request.

Late payments

56. If a licensee or permit holder fails to pay when due any amount payable under this Act or under the licence or permit, then except to the extent otherwise provided under an applicable law, the liability of the licensee or permit holder shall be increased to include interest at the current bank rate on the amount payable from the date on which the payment is due until the date of actual payment, both before and after judgment.

Offences

57. (1) A person who-

- (a) undertakes petroleum operations otherwise than in accordance with this Act;
- (b) in connection with any application under this Act, knowingly or recklessly gives or permits to be given information which is false or misleading in a material particular;
- (c) in any report, return or affidavit submitted in connection with this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular; or
- (d) places, or deposits, or is accessory to the placing or depositing of, any petroleum or substances in a place with the intention of misleading any other person as to the possibility of petroleum or a petroleum reservoir existing in that place,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction-

(a) in the case of an individual, to a fine not less than one hundred thousand United States dollars or the equivalent in dalasis or to imprisonment for a term not less than three years or to both the fine and imprisonment; and

(b) in the case of a body corporate, to a fine not less than two hundred thousand United States dollars or the equivalent in dalasis.

(3) A person who unlawfully interferes with or obstructs a licensee or subcontractor or their agents or employees in the exercise of any right under this Act commits an offence and is liable on conviction-

(a) in the case of an individual, to a fine not less than fifty thousand dalasis or imprisonment for a term not less than six months or to both the fine and imprisonment; and

(b) in the case of a body corporate, to a fine not less than two hundred thousand dalasis.

(4) A public officer who contravenes section 58 commits an offence and is liable on conviction to a fine not less than fifty thousand dalasis or imprisonment for a term not less than two years or to both the fine and imprisonment.

(5) Except as otherwise provided in subsections (1), (2), (3) and (4), a person who contravenes a provision of this Act is liable on conviction-

(a) in the case of an individual, to a fine not less than fifty thousand United States dollars or the equivalent in dalasis or imprisonment for a term not less than two years or to both the fine and imprisonment; and

(b) in the case of a body corporate, to a fine not less than five hundred thousand United States dollars or the equivalent in dalasis.

(6) Where an offence is committed by a body corporate, other than a partnership, every director or officer of that body is deemed also to have committed the offence.

(7) Where an offence is committed by a partnership, every partner or officer of the firm is deemed also to have committed the offence.

(8) No person is deemed to have committed an offence under subsection (6) or (7) unless it is proved that the offence was committed with his or her knowledge or that he or she did not exercise due care and diligence to prevent the commission of the offence having regard to all the circumstances.

(9) The court before which a person is convicted under subsection (1) may order the forfeiture of-

(a) any petroleum obtained by that person or, if the petroleum cannot be forfeited, of such sum of money as the court assesses as the value of the petroleum; and

(b) any vehicle, aircraft, vessel, and equipment used in the commission of the offence.

(10) Any petroleum forfeited under this section shall be sold or otherwise disposed of as the court may direct and the proceeds shall be paid to the Government.

(11) The court may, before making an order under this section, require notice to be given to, and may hear, any person as the court thinks fit.

58. (1) Any instrument which purports to give to, or vest in, a public officer, in his or her private capacity, a direct or indirect, legal or beneficial, interest in a licence or permit is, to the extent that it purports to do so, null and void.

(2) No public officer, in his or her private capacity, shall acquire, hold or attempt to acquire or hold-

(a) a licence or permit or an interest in a licence or permit; or

(b) a direct or indirect, legal or beneficial, interest or share in a body corporate or other entity that is carrying on petroleum operations in The Gambia.

Prohibition on acquisition of rights by public officers

(3) A public officer who contravenes a provision of this subsection commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

(4) In a prosecution for an offence under this section of acquiring an interest or a share of a kind referred to in subsection (2)(b), it is a sufficient defence if the accused person proves that-

(a) the interest or share was acquired by operation of law; and

(b) he or she has taken and continues to take all reasonable steps necessary to dispose of the interest or share.

(5) In a prosecution for an offence under this section of holding a licence or permit or an interest or share of a kind referred to in subsection (2), it is a sufficient defence if the accused person proves that-

(a) the licence or permit, interest or share was acquired before he or she became a public officer; or

(b) the interest or share was acquired before the body corporate became entitled to carry on exploration or production operations for petroleum; and

- (c) since he or she became a public officer or since the body corporate became so entitled, he or she has taken and continues to take all reasonable steps necessary to dispose of the right, interest or share.

(6) For the purpose of this section, the acquisition or holding of a licence or permit or an interest or share of a kind referred to in subsection (2) by a member of a public officer's family who is himself or herself not a public officer is deemed to be an acquisition or holding by the public officer.

(7) In this section, "member of a public officers family" means-

- (a) the husband or wife, or reputed husband or wife;
- (b) the parents;
- (c) the parent of the husband or wife, or reputed husband or wife; or
- (d) the son or daughter, whether born in or outside of wedlock,

of the public officer.

Financial
guarantee

59. (1) A licensee or permit holder shall, pursuant to or in connection with the licence or permit, provide the prescribed financial guarantee in an amount determined by the Secretary of State to be equal to the prevailing maximum potential liability of the licensee or permit holder under the licence or permit.

(2) The Secretary of State shall, in determining the amount under subsection (1), take into account-

- (a) the probable consequences of a breach by the licensee or permit holder of any of his or her obligations;
- (b) the probable or required expenditure the licensee or permit holder will incur in carrying out any minimum work obligations in the licence or permit;
- (c) the probability of a release by the licensee, permit holder or its subcontractors, of a hazardous substance into the environment; and
- (d) the probable costs of rehabilitation of the environment and abandonment of petroleum operations that the licensee or permit holder is obligated to carry out under the licence or permit, this Act and any applicable law.

(3) If at any time a licensee, permit holder or subcontractor, fails to-

- (a) carry out petroleum operations or rehabilitate the environment;
- (b) respond to the release of a hazardous substance into the environment; or
- (c) remedy any other breach of the terms of the licence or permit,

in accordance with the terms of the licence or permit, this Act and all applicable laws, the Secretary of State may, after giving the licensee or permit holder such notice as may be reasonable in the circumstances, take all measures he or she considers necessary.

(4) The measures the Secretary of State may take under subsection (3) include the hiring of third party contractors to rehabilitate the environment and ensure compliance with, or remedy any breach of the terms of the licence or permit and of this Act and all applicable laws.

(5) The licensee or permit holder shall cooperate fully, and also ensure the full cooperation of their respective subcontractors with the Secretary of State, to ensure the effectiveness of any measure the Secretary of State, acting reasonably, considers necessary in the circumstances pursuant to subsections (3) and (4).

(6) The licensee or permit holder shall indemnify the Secretary of State against all costs and expenses incurred by, or on behalf of, the Secretary of State in his or her exercise of the powers referred to in subsections (3) and (4).

(7) Without prejudice to any other rights the Secretary of State has, he or she may claim under the financial guarantee-

(a) the costs and expenses incurred by him or her under subsections (3) and (4); and

(b) an amount equal to the expenditure that the licensee or permit holder would have incurred, or was obligated to incur, had it complied with the minimum work and expenditure obligations under the licence or permit, reduced by the expenditure that the licensee or permit holder actually did incur in relation to the minimum work and expenditure obligations.

(8) The licensee or permit holder shall, within fourteen days of a claim by the Secretary of State under the financial guarantee, reinstate the financial guarantee to the full amount determined by the Secretary of State in accordance with subsection (1).

(9) A licensee or permit holder may make representations to the Secretary of State with respect to the amount of the financial guarantee, and the Secretary of State may adjust the amount of the financial guarantee accordingly.

(10) The requirement to maintain and retain the financial guarantee remains in force until the Secretary of State issues a closure certificate to the licensee or permit holder concerned, but the Secretary of State may retain such portion of the financial guarantee as may be required to rehabilitate the environment in respect of latent or residual environmental impacts which may become known in the future.

(11) The financial guarantee shall be in a form, and be issued by a reputable bank or other entity, in each case acceptable to Cabinet.

Regulations

60. (1) The Secretary of State shall make regulations prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving full effect to this Act.

(2) Without prejudice to the generality of subsection (1), the Secretary of State may make regulations for or with respect to-

- (a) the reference map of Blocks, and guidelines on the maximum number of Blocks that may be held under a licence or permit;
- (b) model clauses to be incorporated in licences and permits;
- (c) conserving and preventing the waste of the natural resources, whether petroleum or otherwise;
- (d) the form and content of, and conditions with respect to, applications for the grant of licences and permits;
- (e) the control of the flow and the prevention of the escape of petroleum or water, gases, other than petroleum, or other hazardous substances;

- (f) the prevention of the escape of water or drilling fluid or a mixture of water or drilling fluid or any other matter;
- (g) the removal of structures, equipment and other property brought into The Gambia in connection with petroleum operations that are not used or intended to be used in connection with those operations;
- (h) the pressure maintenance, or the re-pressuring of petroleum reservoirs and recycling of petroleum;
- (i) the secondary or tertiary recovery of petroleum from petroleum reservoirs and the methods to be used in the recovery;
- (j) 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;
- (k) the rates, or the method of setting the rates, at which petroleum and water may be recovered from any well or petroleum reservoir;
- (l) the methods to be used for the measurement of petroleum, water and other substances from a well;

- (m) safety and welfare standards and the health and safety of persons employed in or in connection with petroleum operations;
- (n) taking, preserving and furnishing to the Commissioner cores, cuttings and samples of petroleum and water;
- (o) the making and submission of reports, records, accounts, returns and other information relating to petroleum operations;
- (p) the registration of instruments relating to petroleum operations under this Act and the effect of the registration of, or failure to register those instruments;
- (q) the transfer of licences or interests in licences;
- (r) the taking of logs or directional surveys or making of other down-hole investigations;
- (s) surface rights and payment of compensation for disturbance of surface rights;
- (t) the control of the tariffs charged for the use of any pipeline and the conditions of use of pipelines;

- (u) ensuring the safe construction, maintenance and operation of installations and facilities used in connection with petroleum operations; and
 - (v) the safety, health and welfare of persons employed in petroleum operations.
- (3) The regulations may also provide for-
- (a) the protection of the environment and the taking of remedial action in respect of any pollution which may occur in connection with petroleum operations;
 - (b) the inspection of areas in which petroleum operations are being carried out and of any plant, machinery or equipment within those areas;
 - (c) the reporting of and inquiries into accidents arising out of petroleum operations;
 - (d) the keeping and inspection of records, accounts, statistics and plans with respect to petroleum operations;
 - (e) the relinquishment of portions of areas subject to the licence;

- (f) the protection of fishing, navigation, and other activities carried out within or in the vicinity of any areas in which petroleum operations are being carried out;
- (g) the standards for petroleum and petroleum products and their transportation;
- (h) royalties and rental rates payable in respect of petroleum production, the methods of calculation of the amount of any royalty or rental and the manner and times of their payment;
- (i) the establishment of competitive bidding procedures for licences;
- (j) the management and organization of data or other information;
- (k) the minimum conditions of service for workers engaged in petroleum operations;
- (l) the processing of crude oil and natural gas into petroleum products;
- (m) the marketing and distribution in The Gambia of petroleum products;
- (n) the fees to be paid for licences, permits and other services; and

- (o) fines not exceeding one million United States dollars or the equivalent in dalasis or terms of imprisonment not exceeding five years or both the fine and imprisonment for breaches of the regulations.

Repeal of Cap.
65:02 and
savings

61. (1) The Petroleum (Exploration and Production) Act is hereby repealed.

(2) Notwithstanding the repeal effected by subsection (1), any licence, permit, lease or similar instrument granted under the repealed Act and in force immediately before the commencement of this Act shall remain in force until it expires or otherwise ceases to have effect under the repealed Act.

PASSED in the National Assembly this 1st day of April,
in the year of Our Lord Two Thousand and Four

M. S. JALLOW
Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill
which was passed in the National Assembly, and found by me to be a true and correct copy
of the said Bill.

M. S. JALLOW
Clerk of the National Assembly.