

A BILL

entitled

FUELS ACT 2022

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SCHEDULE
SAVINGS AND TRANSITIONAL MATTERS

WHEREAS to provide for the supervision, monitoring and regulation of the fuel sector by the Regulatory Authority; to provide for matters connected therewith; to make consequential amendments to the Regulatory Authority Act 2011 and to certain other legislation and related, incidental and connected matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

- 1 This Act may be cited as the Fuels Act 2022.

Interpretation

- 2 (1) In this Act, unless the context otherwise requires—
 - “approved retail prices” means the retail price that are approved from time to time by the Authority as provided in section 28;
 - “Authority” means the Regulatory Authority established under the Regulatory Authority Act 2011;
 - “company” has the meaning given in section 2(1) of the Companies Act 1981;
 - “critical infrastructure” has the meaning given in section 26;
 - “distribution” includes operation of a distributing point facility or other facility for movement or delivery of fuel to an end user including by transportation as defined;
 - “fees” means fees paid by a licensee under this Act, the Government Fees Regulations or and include Government Authorisation fees;
 - “fuel” includes—
 - (a) petrol or petroleum;
 - (b) diesel;
 - (c) kerosene;
 - (d) aviation fuels;

- (e) liquefied petroleum gas or “LPG”;
- (f) natural gas;
- (g) hydrogen;
- (h) biomass (if imported);
- (i) biodiesel (that is, a diesel fuel obtained by esterification of oil derived from plants or animals);
- (j) ethanol;
- (k) any substance that is used as a substitute for a fuel mentioned in paragraphs (a) to (g);
- (l) any other petroleum or non-petroleum fuel;
- (m) any substance that is supplied or represented as a fuel mentioned in paragraphs (a) to (i), or a substitute substance under paragraph (k);

“fuel sector” means persons engaged in business in the fuel sector including receiving, storage, transportation, processing or refining, distribution and sale or retail of fuel.

“Government authorisation fees” means the fees established under section 52 of the Regulatory Authority Act 2011;

“licence” means a licence granted by the Authority under this Act or regulations and “licensee” shall be construed accordingly;

“Minister” means the Minister responsible for energy;

“official website”, in relation to the Authority, means the website referred to in section 18 of the Regulatory Authority Act 2011;

“petrol” or “petroleum” has the meaning given in regulation 1(1) of the Building Authority (Petroleum) Regulations 1962;

“regulations” means regulations prescribed under section 42;

“relevant legislation” means the applicable provisions of any of any enactment related to activities in the fuel sector including the following—

- (a) Development and Planning Act 1974;
- (b) Building Act 1988;
- (c) Building Authority Act 1962;
- (d) Building Authority (Petroleum) Regulations 1962;
- (e) Liquefied Petroleum Gases (Handling, Storage, Supply and Transport) Regulations 1988;

“retail” means the supply or offer for sale of fuel to a consumer or end user, and “retailer” and “retailing” shall be construed accordingly;

“transportation” means conveyance by vehicle by road, and “transported” and “transporting” shall be construed accordingly;

“wholesale” means a person, other than a retailer, who sells a petroleum product or keeps a petroleum product for sale.

(2) Unless a term is defined in this Act or the context otherwise requires, terms defined by the Regulatory Authority Act 2011 have the same meaning when used in this Act.

Relationship to the Regulatory Authority Act 2011

3 (1) This Act is sectoral legislation within the meaning of the Regulatory Authority Act 2011.

(2) To the extent possible, the provisions of this Act shall be construed consistently with the provisions of the Regulatory Authority Act 2011.

(3) In the event of an irreconcilable conflict between this Act and the Regulatory Authority Act 2011, the provisions of this Act shall prevail.

Application

4 This Act applies in relation to the fuel sector.

Purposes of this Act

5 The principal purposes of this Act include the following, namely, to seek—

- (a) to ensure that Bermuda has a proper, adequate and continuous supply of fuel;
- (b) to ensure the safe, efficient, economic and environmentally responsible operation of the fuel sector;
- (c) to enable, in relation to fuel sector, the security and continuity of services over critical infrastructure in Bermuda by seeking to identify and understand the risks, and to ensure that there is an appropriate risk management strategy;
- (d) to ensure the provision to the public of fuel at reasonable prices which accord with international price levels, while ensuring that persons in the fuel sector obtain fair and reasonable returns;
- (e) to promote the development of competitive markets for fuel and fuel services;
- (f) to promote investments in the fuel sector in a manner which promotes fair competition and economic activity and the sustainability of fuel supplies.

PART 2

FUNCTIONS AND POWERS OF THE MINISTER

Functions of Minister

6 (1) The Minister shall have those functions in respect of the fuel sector for which he is responsible that are specified in this Act or any relevant legislation.

(2) The Minister may issue Ministerial declarations that establish policies for the fuel sector.

(3) Section 4(3) and (4) of the Regulatory Authority Act 2011 applies for the purposes of this section.

Ministerial directions

7 (1) The Minister may, in accordance with sections 7 and 8 of the Regulatory Authority Act 2011, issue Ministerial directions to the Authority regarding any matter within his authority respecting the fuel sector.

(2) Ministerial directions shall be designed with due regard to the purposes of this Act.

(3) Ministerial directions may relate to the structure of the fuel sector; and where such directions concern companies the Minister shall consult the Authority and the Minister responsible for the Registrar of Companies.

(4) The Minister shall not direct the Authority regarding—

(a) the application of general policies to specific matters before the Authority; or

(b) the specific rights or obligations of any individual licensee or licensees in the fuel sector.

(5) The Authority shall act in accordance with any Ministerial directions issued pursuant to subsection (1).

(6) Subject to subsection (2), any Ministerial directions shall—

(a) be published in the Gazette and on the official website of the Authority; and

(b) be available to the public at the office of the Authority in the form and on the terms determined by the Minister.

(7) The Minister may cause to be redacted any portion of a Ministerial direction so published if he reasonably concludes that publication of that portion of the Direction would—

(a) jeopardise national security;

(b) result in the disclosure of confidential, proprietary or sensitive information; or

(c) harm the public interest.

Information and technical advice may be requested from the Authority

8 (1) The Minister, when necessary for the performance of his duties, may request the Authority to provide him with information regarding the fuel sector.

(2) The information that the Minister may obtain from the Authority under subsection (1) includes technical analyses and technical advice concerning the fuel sector and related matters.

(3) The Authority shall—

- (a) submit such information in accordance with section 6 of the Regulatory Authority Act 2011;
- (b) in its submission, identify any information which is subject to confidentiality.

PART 3

THE AUTHORITY, ITS FUNCTIONS AND POWERS

Functions of the Authority

9 (1) The function of the Authority is generally to monitor and regulate the fuel sector to ensure that the operations and activities are carried out in a manner that is consistent with the public interest so as to attain the purposes set forth in section 5.

(2) For the purposes of subsection (1), the functions of the Authority shall include—

- (a) those conferred on it related to the fuel sector by this Act or any other law, including the functions necessary to effectively and efficiently achieve the purposes set out in section 5;
- (b) subject to this Act, those conferred on it by the Regulatory Authority Act 2011;
- (c) monitoring the prices of fuel in Bermuda and monitoring the global fuel markets in order to understand the market forces which impact on the importation and pricing of fuel delivered to Bermuda;
- (d) maintaining a database of all bulk fuels imported into Bermuda, and, as near current as possible, an inventory of bulk storage of fuel;
- (e) conducting market analyses to assess the effectiveness of competition in the markets;
- (f) taking such action as is required under this Act and any other law to secure the safety of any regulated premises;
- (g) performance of any and all such acts as may be necessary to carry out the purposes of this Act or relevant legislation.

Performance of functions

- 10 (1) In performing its functions, the Authority shall—
- (a) conform to any Ministerial directions issued by the Minister under section 7;
 - (b) have due regard to the purposes in section 5;
 - (c) have due regard to the regulatory principles in section 16 of the Regulatory Authority Act 2011.
- (2) The Authority shall make administrative determinations to provide for the control and conduct of the provision of fuel services, including—
- (a) the grant, renewal, modification, suspension or revocation of licences for the provision of fuel;
 - (b) the regulation of the operations and trade practices of the fuel sector, having regard to the ecological and environmental needs of Bermuda;
 - (c) where appropriate and, if considered to be in the public interest, the regulation of infrastructure sharing;
 - (d) the establishment and supervision of technical standards for equipment used in connection with the provision or use of fuel services, including equipment.
- (3) Where any of the purposes of this Act and the Ministerial directions appear to be in conflict, the Minister shall resolve the conflict in such manner as best serves the public interest.

Delegation to staff

- 11 The Authority may exercise the powers conferred on it under section 27 of the Regulatory Authority Act 2011 to delegate any of its functions under this Act to any Commissioner or to any member of the staff.

PART 4

LICENSING

Activities in the fuel sector requiring licence

- 12 (1) No person shall without a valid licence issued by the Authority under this Act or regulations engage in business as a commercial fuels operator in any of the following activities—
- (a) receiving fuel imported into Bermuda;
 - (b) storage of fuel;
 - (c) transportation of fuel;
 - (d) distribution of fuel;

- (e) processing or refining of fuel;
- (f) sale, wholesale or retail, of fuel.

(2) The Authority may take steps to determine whether any person is engaged in any of the activities requiring a licence as contemplated subsection (l).

Types of and classes of licence

13 (1) The types of licences to be granted to an applicant under this Act in relation to the activities set forth in section 12(1) for which a licence is required, shall be either—

- (a) prescribed by the Minister, on the advice of the Authority, by regulations; or
- (b) prescribed by the Authority by general determination,

as the case may be.

(2) A licence shall be in the form, and include the terms, as set by the Authority by administrative determination in respect of that type of licence.

Criteria for grant of licence

14 (1) The criteria for the grant of any licence under or pursuant to this Act are that the applicant, if a company, must be registered in Bermuda and the company—

- (a) has obtained such permission as required under the Companies Act 1981, the Development and Planning Act 1974, the Building Act 1988 and any other relevant legislation;
- (b) either—
 - (i) has demonstrated the technical capacity required to provide such services or operate such a facility in the fuel sector reliably and safely; or
 - (ii) in the case of a company which is not yet providing services in the fuel sector, the Authority is satisfied that such services will be carried on with the professional and technical skills appropriate to the nature and scale of its proposed regulated activity and facility;
- (c) has demonstrated the necessary financial capacity to build and maintain such facility or provide such services;
- (d) every person who is, or is to be, a director, controller or senior executive of the applicant company is a fit and proper person to perform the functions in relation to any regulated activity under this Act carried on by the company, having regard to the probity of the applicant and its officers;
- (e) any other criteria prescribed by regulations.

(2) Unless otherwise expressly provided in this Act or regulations, any person may be an applicant.

Grant of licence

- 15 (1) The Authority may grant a licence if—
- (a) the applicant pays the Government authorisation fees;
 - (b) the grant is consistent with the purposes of this Act and any Ministerial directions regarding the structure of the fuel sector under section 7;
 - (c) the applicant meets the criteria set forth in this Act or prescribed regulations, as the case may be, for the grant of the type of licence to which the application relates;
 - (d) the grant does not contravene any restrictions or prohibitions as set forth in this Act.
- (2) For the purposes of subsection (1), section 48 of the Regulatory Authority Act 2011 applies and—
- (a) section 48(5) of the Regulatory Authority Act 2011 shall be construed as if “by general determination” in that section reads “by administrative determination”; and
 - (b) section 48(8)(a) of that Act shall be construed as if “a general determination” reads “an administrative determination”.

Conditions

- 16 (1) The Authority may include, as a condition of any licence, permit or other authorisation, a requirement that the licensee—
- (a) pay any fees or penalties that may be imposed by the Authority;
 - (b) comply with this Act and any regulations or applicable relevant legislation;
 - (c) comply with any administrative determinations made by the Authority;
 - (d) meet any consumer protection requirement specified by the Authority;
 - (e) if deemed to have a dominant position, comply with any remedy imposed by the Authority;
 - (f) comply with any information request issued by the Authority relating to the fuel sector including a request for the purposes of section 9(2)(d); and
 - (g) participate in industry self-regulatory or co-regulatory bodies, when directed to do so by the Authority.
- (2) The Authority may only include, as a condition of any licence, permit or other authorisation, any additional condition if the condition is adopted with the consent of the Minister.
- (3) Any condition imposed by the Authority shall be objective, proportionate, not unreasonably discriminatory and specified expressly in the authorisation.

Notice of grant

17 (1) The Authority shall publish notice of the grant of a licence on its official website and in the Gazette.

(2) For the avoidance of doubt, any notice issued or revised under this section is not a statutory instrument within the meaning of the Statutory Instruments Act 1977.

Term and renewal of licence

18 (1) Subject to section 15, a licence issued by the Authority shall be for the term stated in the licence.

(2) Unless provision to the contrary is made in the licence, a licence may be renewed.

Modification of licence

19 (1) Subject to this section, the Authority may of its own motion, or with the consent of the licensee, modify a licence.

(2) Section 51 of the Regulatory Authority Act 2011 shall apply with respect to the modification of a licence under this Act and, before taking any action pursuant to this section, the Authority shall give the licensee reasonable notice and an opportunity to comment, and shall take into account any representations made by or on behalf of the licensee.

(3) The Authority, of its own motion or at the request of the licensee, may modify the service standards under Part 7.

Transfer of licences

20 (1) A licence shall not be transferred or assigned without the prior consent of the Authority.

(2) Transfer includes change in control of the licensee, where "control" refers to—

(a) the power, whether held directly or indirectly, to exercise decisive influence over a licence holder, including by directing its management and policies, whether through ownership of shares, stocks, or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; or

(b) the ownership of 25 percent or more of the shares, stocks, or other securities or voting rights, including through an agreement or arrangement of any type.

(3) The Authority shall determine whether to give consent under subsection (1) as if the transferee were an applicant for the licence.

(4) The Authority shall have regard to the purposes set forth in section 5.

(5) If the Authority intends to give consent under subsection (1) to the transfer or assignment of a licence, the Authority shall first consult the Minister and obtain his approval.

(6) The Minister may refuse to give his approval under subsection (5), but only if he is satisfied that the Authority's intended consent to the transfer or assignment is not in accordance with any Ministerial directions issued pursuant to section 7.

Suspension or revocation of licences

21 (1) A licence may be suspended in whole or in part on the basis that the licensee is in breach of its obligations under the licence and the breach is such that suspension is justified and —

- (a) the suspension is confirmed on appeal under section 43; or
- (b) the time limited by law for filing a notice of appeal has expired and the licensee has not filed a notice of appeal.

(2) A licence may be revoked by the Authority upon—

- (a) the expiration of the term, without renewal;
- (b) on the basis that the licensee is in breach of its obligations under the licence and the breach is such that revocation is justified and—
 - (i) the revocation is confirmed on appeal under section 43; or
 - (ii) the time limited by law for filing a notice of appeal has expired and the licensee has not filed a notice of appeal.

Warning notices

22 (1) Where the Authority proposes to suspend or revoke a licence, the Authority shall issue a warning notice.

(2) A warning notice must—

- (a) state the measure (whether to suspend or revoke the licence) which the Authority proposes to impose or take;
- (b) be in writing; and
- (c) give reasons for the measure to be imposed or taken.

(3) The warning notice must specify a reasonable period (which may not be less than 28 days) within which the person to whom it is given may make representations to the Authority.

(4) Where representations are made under subsection (3) to the Authority, the Authority shall take them into account in deciding whether to give a decision notice.

(5) The Authority may extend the period specified in the notice.

Decision notices

23 (1) A decision notice must—

- (a) be in writing;

- (b) give reasons for the Authority's decision to impose the measure to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the Supreme Court.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 22 was given; and if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 24.

- (3) A decision notice on the imposition of a penalty must state the date of payment.
- (4) A decision notice shall state the day on which it is to take effect.

Notices of discontinuance

24 (1) If the Authority decides not to impose a penalty or other measure proposed in a warning notice, the Authority must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the default alleged to have been committed and the penalty or other disciplinary measure which is being discontinued.

Refusal of licence

25 (1) The Authority may refuse to grant a licence on either of the following grounds—

- (a) the application is incomplete, and any time accorded to the applicant for completing the application has expired; or
- (b) the criteria for approval are not satisfied in the opinion of the Authority.

(2) An application is incomplete if it does not contain the information and documents required under section 16.

(3) If an application is refused under subsection (1), the Authority shall inform the applicant in writing.

(4) In the case of refusal on the ground in subsection (1)(b), the Authority shall, before refusing the application, give the applicant an opportunity to make representations regarding the proposed refusal and shall take the representations into account.

PART 5

CRITICAL INFRASTRUCTURE

Definition of "critical infrastructure"

26 In this Act, "critical infrastructure" means systems or assets or both, whether physical or virtual, so essential or vital to Bermuda for the supply or distribution of fuel in the fuel sector, that the incapacity or destruction of the systems or assets would have a

debilitating impact on security, economy's security, public health or safety, or any combination of those matters.

Critical infrastructure

27 (1) The Authority shall use its information-gathering powers under the Regulatory Authority Act 2011, including those conferred by sections 60, 61, 62 and 89 to 92 of that Act, to collect from any licensee or other entity that performs any function in the fuel sector such information as the Authority considers necessary for any one or more of the following purposes—

- (a) identifying the geographic position and nature of critical infrastructure;
- (b) enabling the security and continuity of services in the fuel sector over critical infrastructure; and
- (c) any other prescribed purpose.

(2) The exercise of such power shall be subject to the rules of natural justice and no person shall be required to disclose information that is subject to legal professional privilege.

(3) In accordance with section 61(5) of the Regulatory Authority Act 2011, the Authority may consider and rely on international best practices, benchmarks and data from countries that the Authority concludes are relevant to Bermuda, in the absence of sufficient evidence that is specific to Bermuda.

(4) For purposes of this section, the Minister, on the advice of the Authority, may, by regulations—

- (a) designate any commercial fuels operator (as that term is defined by regulations) whether or not the entity is required to have a licence under this Act as a designated entity if the Authority is satisfied pursuant to this section that it is in the public interest to do so considering the entity's role with respect to critical infrastructure in connection with the fuel sector in Bermuda; and
- (b) prescribe the matters about which the entity shall notify the Authority and related matters.

(5) Where the Authority proposes to give such advice under subsection (4), the Authority must first consult with the relevant entity, give the entity the opportunity to be heard and shall take into account any representations and all relevant matters.

PART 6

PRINCIPLES FOR PRICING OF FUEL

Prices for retail of fuel

28 (1) The prices to be charged by a licensee that retails fuel and to be paid by a person to whom the retailer retails fuel shall be in accordance with such rates as may be

established from time to time by the Authority in accordance with the conditions of the licence and the principles set forth in section 29.

(2) The prices established under subsection (1) shall be published by the fuel retailer in such manner as to ensure adequate publicity unless the Authority otherwise directs.

(3) In establishing prices under subsection (1), the licensee shall neither show undue preference as between persons or any class of persons nor exercise undue discrimination as between persons or any class of persons.

(4) A retailer shall not increase its charges or price for heating fuel or motor fuel greater than the maximum price set by the Authority.

Retail tariff-setting principles

29 (1) The Authority shall determine the retail tariff in accordance with the methodology set by general determination and in accordance with the principles set out in this section.

(2) The tariff methodology shall seek to enable the licensee to generate a total revenue that recovers reasonable costs of service incurred in achieving the service standards and, in particular, the reasonable costs in respect of—

- (a) investment if it is prudently incurred and for which the investment is used and useful;
- (b) reasonable return on investment that is commensurate with the return on investments in business undertakings with comparable risks, and that is sufficient to attract needed capital.

(3) The tariff shall seek to enable the licensee to generate a total revenue that recovers reasonable costs of service incurred in achieving the service standards and, in particular, the reasonable costs in respect of the following expenses efficiently incurred—

- (a) operating expenses;
- (b) fuel procured for retail or wholesale;
- (c) other expenses including—
 - (i) the Government authorisation fees and the Regulatory Authority fee; and
 - (ii) other statutory fees.

(4) The methodology set by general determination relating to the setting or approval of tariffs and the regulation of revenues shall—

- (a) be designed to enable an efficient licensee to recover the cost of its licensed activities, including a reasonable return as set out in subsections (2) and (3);
- (b) include information that gives end-users proper information regarding the costs that their demand imposes on the licensee's business.

(5) The methodology set by general determination shall seek to protect the interests of consumers with respect to prices and affordability.

(6) A licensee may not charge an end-user any other tariff or make use of provisions in agreements other than that determined or approved by the Authority pursuant to this Act and the regulations and rules.

(7) No licensee shall vary the tariff or any published schedule of prices or charges for fuel unless notice in writing of the intention to vary the tariff, and the amount of the variation, has been approved by the Authority.

(8) Section 13(o) of the Regulatory Authority Act 2011 applies for the purposes of this section.

PART 7

SAFETY MEASURES; SERVICE STANDARDS; CONSUMER PROTECTION PROVISIONS

Safety requirements under other laws

30 (1) This Part applies with respect to safety measures for the fuel sector.

(2) All applicable safety measures, planning, building, environmental and other requirements that are set forth in law must be complied with by licensees, whether imposed by the Authority or other responsible person under relevant legislation.

(3) For the avoidance of doubt, the provisions of relevant legislation apply in respect of licensees in relation to precautions, localities, conditions, safety measures, inspection and related matters shall prevail.

(4) Where this is a conflict between this section and relevant legislation with respect to safety and related measures, the relevant legislation will prevail regarding those matters that relate to safety.

Safety requirements regarding fuels

31 (1) Where the Authority approves an application for a licence, the Authority shall issue a licence which may be subject to such terms as the Authority, after consultation with the relevant authority, thinks fit in relation to safety and related measures.

(2) A licensee shall comply with all applicable building codes or other codes or provisions.

(3) In accordance with section 61(5) of the Regulatory Authority Act 2011, the Authority may consider and rely on international best practices, benchmarks and data from countries that the Authority concludes are relevant to Bermuda, in the absence of sufficient evidence that is specific to Bermuda.

Service standards

32 (1) The Authority may, by administrative determination, set standards for reliability, quality and customer service for the supply of fuel that are in line with industry best practice.

(2) Section 13(p) of the Regulatory Authority Act 2011 applies for the purposes of this section.

Consumer protection

33 (1) The Authority may by administrative determination specify consumer protection requirements for the fuel sector or any part thereof having due regard to the purposes set forth in section 5.

(2) The authority may make general determinations—

- (a) governing the commercial and marketing practices of sectoral participants to protect the rights of end-users, having due regard to the purposes of this Act; or
- (b) issuing or approving codes of practice in accordance with sections 55 and 56 of the Regulatory Authority Act 2011 for the purposes of subsection (1).

PART 8

MONITORING COMPLIANCE; INVESTIGATION; ENFORCEMENT

Information-gathering powers

34 The Authority shall use its information-gathering powers under the Regulatory Authority Act 2011, including those conferred by sections 60, 61, 62 and 89 to 92 of that Act to—

- (a) monitor compliance with this Act or any other relevant legislation related to the fuel sector;
- (b) perform routine benchmarking of the performance of licensees against international peers to ensure that the safety measures and service standards remain in line with industry best practice;
- (c) otherwise to seek to ensure the purposes of this Act.

Reporting requirements

35 (1) A licensee shall submit reports to the Authority, by such date as the Authority may direct in accordance with section 53 of the Regulatory Authority Act 2011.

(2) The Authority may require a licensee to submit reports, at the time specified by the Authority, and any additional reports or information that is prescribed to be submitted pursuant to regulations or an administrative determination.

Significant market power

36 The provisions set forth in section 59 of the Regulatory Authority Act 2011 (procedures for determining whether to impose ex ante remedies) apply with any necessary modifications where a licensee in respect of its provision of service in a relevant market or markets in the fuel sector if, individually or together with others, the licensee has significant market power in that market.

Investigation and enforcement

37 (1) The provisions set forth in Part 8 of the Regulatory Authority Act 2011 apply in respect of the investigation, either on its own initiative or at the request of any person, for any of the following purposes—

- (a) to gather information prior to, or as part of, a public consultation;
- (b) to assess whether to initiate enforcement action;
- (c) to respond to a request for information from a Minister pursuant to section 8;
- (d) for any purpose provided for in this Act; or
- (e) in other situations in which the Authority determines that doing so would be expedient.

(2) The Authority, at the direction of the Chief Executive, may initiate enforcement proceedings in any case in which there is reason to believe that a licensee has contravened any or all of the following—

- (a) this Act;
- (b) a provision of the Regulatory Authority Act 2011;
- (c) any regulations;
- (d) a relevant provision of relevant legislation;
- (e) any administrative determination;
- (f) any adjudicative decision and order; or
- (g) a condition contained in any authorisation.

PART 9

PROTECTION OF AUTHORITY; CONFIDENTIALITY

Immunity from suit

38 No action, suit, prosecution or other proceedings shall lie against any Director, any member of the staff or any person acting on behalf of the Authority in respect of any act done, or any omission made, in good faith in the execution or intended execution of any function under this Act or regulations.

Confidentiality

39 (1) Subject to subsection (2), a person, being a Director, an officer, employee, agent or adviser or a member of staff of the Authority shall not reveal or in any manner communicate or disclose to any other person, except as authorised or required by law, any information acquired by him by reason of his office or employment or in exercise of the Authority's function under or for the purposes of this Act or any other law, which information relates to the affairs of—

- (a) the Authority;
 - (b) a licensee;
 - (c) a designated entity; or
 - (d) any other person.
- (2) Subsection (1) shall not apply to a disclosure—
- (a) lawfully required or permitted by a court of competent jurisdiction in Bermuda;
 - (b) made for the purpose of assisting the Authority to exercise a function conferred on it by this Act or any other law;
 - (c) made in respect of the affairs of a licensee or designated entity or its owner, for which consent has been voluntarily given by the owner, manager or other authorised person;
 - (d) where the information disclosed is or has been available to the public from any other source;
 - (e) where the information disclosed is in the form of a summary or in statistics expressed in a manner that does not enable the identity of the person to whom, or an asset or property to which, the information relates to be ascertained; or
 - (f) lawfully made to a person entitled to obtain such information under the laws of Bermuda.

Privileged information

40 A person shall not be required under this Act to provide or produce information or to answer questions which the person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the Court.

Confidentiality: supplemental provision

41 Subject and further to sections 39 and 40 , any person may submit a request under section 33 of the Regulatory Authority Act 2011.

PART 10
MISCELLANEOUS

Regulations

42 (1) The Minister, after consultation with the Authority, may make such regulations for the purposes of this Act respecting such matters as may be expedient for the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister, after consultation with the Authority, may make regulations with respect to the fuel sector and such regulations may—

- (a) further provide for applications and decisions related to applications for fuel licences and the types or the classes of licences to be granted;
- (b) provide for the grant, refusal, renewal, extension, suspension or revocation of licences or other authorisations, as the case may be, and the imposition or variation of conditions that the Authority deems to be necessary;
- (c) prescribe measures that require the fuel sector to provide, or publish, certain information;
- (d) provide for designation of certain entities where the entity's asset or system is identified as critical infrastructure and prescribe reporting and information-gathering measures that will apply to designated entities in circumstances including, but not limited to, information concerning a change of the Chief Executive Officer or other matters;
- (e) prescribe restrictions or thresholds on the issue of licence or for sale or storage of fuel or other activities in the fuel sector in the interest of public safety;
- (f) provide for safety measures, service standards and consumer protection;
- (g) create offences and prescribe penalties for such offences (including any defence, or if thought fit, imprisonment), but not exceeding any penalties fixed by this Act;
- (h) provide for objections and appeals;
- (i) provide for savings and transitional matters;
- (j) provide for the exercise of any of the Authority's other functions set out in this Act or the Regulatory Authority Act 2011;
- (k) prescribe any other matters or measures as the Minister considers necessary for the carrying out by the Authority of its functions and duties in relation to the fuel sector.

(3) Regulations made under this section are subject to the negative resolution procedure.

(4) Any regulations referring to the landing, transporting and storing of dangerous commodities in municipal areas shall, before adoption, be referred to the corporation of the municipality concerned, for consultation, and shall so far as practicable conform with any municipal ordinance on the subject.

(5) Any regulations related to or connected with matters falling within the responsibility of the department with responsibility for planning or for the environment shall, before adoption, be referred to that department for consultation.

Appeal

43 (1) A person that is aggrieved by the determination of an application for the grant, modification, suspension, revocation or transfer of a licence by the Authority may appeal to the Supreme Court on that account.

(2) Section 96 of the Regulatory Authority Act 2011 shall apply with respect to appeals.

Crown binding

44 This Act binds the Crown.

PART 11
OFFENCES

Offences: general

- 45 (1) A person who—
- (a) contravenes section 12;
 - (b) contravenes section 20;
 - (c) fails to pay Government authorisation fees in accordance with the Government Fees Act 1965 and regulations made under it, or Regulatory Authority fees in accordance with the Regulatory Authority Act 2011 and regulations made under it;
 - (d) notwithstanding any other penalty in law, being a licensee—
 - (i) does not comply with any safety standards under the Building Code or other relevant legislation relating to fuel sector systems; or
 - (ii) causes, by his apparatus, an obstruction or impediment to the use of any public road or street by foot passengers or others, or danger to any person on such public road or street and who does not immediately remove the obstruction or repair the apparatus;
 - (e) fails to comply with its licence otherwise than by an action that constitutes another offence under this Part;
 - (f) notwithstanding any other penalty in law, connects any equipment or apparatus for the provision of fuel that is non-compliant with the safety standards under the Building Code or other relevant legislation;
 - (g) connects any equipment or apparatus for the provision of fuel that is non-compliant with the safety standards under the Building Code or other relevant legislation,

commits an offence and is liable on summary conviction to a fine of \$25,000 and on conviction on indictment to a fine of \$50,000.

(2) In the case of either subsection (1)(a) or (b), in the event of a continuing offence, the Court may impose a further fine of \$5,000 for every day during which the offence continues.

(3) Where any person is convicted of an offence under this section the court, where it is proved to its satisfaction that the contravention includes the illegal operation or possession of any apparatus, may order the confiscation of the apparatus.

Obstruction of the Minister or Authority

46 (1) A person shall not wilfully obstruct, or knowingly fail to comply with any request, direction or instruction of, the Minister or the Authority in the exercise of their functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for six months or to both.

Damage to or interference with licensee's plant or apparatus

47 (1) A person shall not damage or interfere with the plant or apparatus of a licensee used for or in connection with the supply of fuel.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine \$20,000 or imprisonment for one year or to both, and a further fine of \$500 per day for every day during which the offence continues; and
- (b) on conviction on indictment, to a fine of \$150,000 or imprisonment for five years or to both, and a further fine of \$5,000 per day for every day during which the offence continues.

(3) If the damage is done by the owner or occupier of the property to the apparatus located on the property, it is a defence for the owner or occupier to prove that—

- (a) the apparatus was placed on the land without lawful authority;
- (b) a notice in writing had been delivered to the person at the person's last known address to remove the apparatus within 60 days of the date of the notice; and
- (c) the person had not done so at the time of the occurrence of the damage.

Offences by bodies corporate, etc.

48 (1) Where an offence under this Act committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) In this section, “officer”, in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity.

PART 12
FINAL PROVISIONS

Consequential amendment of Regulatory Authority Act 2011

49 The Regulatory Authority Act 2011 is amended in the Schedule, by adding after item 3 the following—

“4. Fuel”.

Consequential amendments to statutes and instruments related to fuel sector

50 (1) The Minister may by regulations repeal or amend any provision relating to the fuel sector—

- (a) in any law that is passed before this Act; or
- (b) in any other instrument made under an Act before the passing of this Act,

if and only where it appears to him that that provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act.

(2) Regulations made under subsection (1) shall be subject to the negative resolution procedure.

Savings and transitional matters

51 The provisions set forth in the Schedule in relation to savings and transitional matters shall have effect.

Commencement

52 This Act shall come into operation on such day as the Minister responsible for energy may by notice in the Gazette appoint.

SCHEDULE

(Section 51)

SAVINGS AND TRANSITIONAL MATTERS

Interpretation

1 In this Schedule—

“commencement day” means the day when this Act comes into operation;

“Minister” means the Minister responsible for energy;

“relevant person” means a person, on the commencement day, responsible for granting a licence for an activity in the fuel sector to which section 12 will on the commencement day, apply.

Valid licences

2 (1) Subject to subparagraph (2), any valid licence, certificate or permission, howsoever described, to which section 12 applies on the commencement day, in relation to a business in the fuel sector granted by a relevant person before the commencement day, has effect from the commencement day as if granted by the Authority under or pursuant to this Act.

(2) A person who, immediately before the commencement day, was lawfully operating, or engaged in a business to which this Act applies, may continue to operate that business under this Act—

(a) during the period of six months beginning with the commencement day;

(b) if within that period application is made for renewal of the licence, until that application is finally disposed of or withdrawn.

(3) For the avoidance of doubt, all persons continuing to operate pursuant to subparagraph (1) or (2) are subject to monitoring and regulation by the Authority.

(4) The Minister may by order extend the time limit imposed pursuant to this section for further periods not exceeding 18 months in aggregate to enable compliance.

(5) An order made by the Minister under subparagraph (4) shall be subject to the negative resolution procedure.

Applications pending before a relevant person

3 (1) An application for a licence or renewal of a licence related to activities in the fuel sector to which this Act applies by virtue of section 12 which is pending immediately before the commencement day, shall be dealt with under the law in force immediately before the commencement day and fees shall be paid accordingly.

(2) Where an investigation or inquiry in relation to such activities or connected therewith has not, immediately before the commencement day, been concluded the said investigation, inquiry or other matter shall be continued and completed under the law in force immediately before the commencement day.

Transfer of proceedings etc.

4 (1) Anything in the process of being done by any relevant person in relation to a person who will on the commencement day require a licence under this Act, including any legal proceedings then pending to which such relevant person is a party, may be continued by or in relation to the Authority.

(2) Where, immediately before the commencement day—

- (a) any legal proceedings are pending to which the Government is or is entitled to be a party; and
- (b) such proceedings are related to any function, right or liability transferred to the Authority by or pursuant to this Act,

the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government or shall be made a party thereto in like manner as the Government could have become, and such proceedings shall not abate by reason of the substitution.

Transitional provisions relating to government authorisation or other fees

5 The fees applicable to participants in the fuel sector under the Government Fees Regulations 1976 or other relevant legislation immediately prior to the commencement day shall remain in effect without change until modified, suspended or withdrawn by amendment to the Government Fees Regulations 1976 or prescribed by regulations pursuant to this Act.

Transitional: licence required

6 Any person who immediately before the commencement day has been carrying on an activity specified in section 12 of this Act for which a licence will henceforth be required pursuant to this Act, may continue to do so as if section 12 of the Act had not come into operation—

- (a) for a period of six months or such further period as the Authority may determine from that date; and
- (b) if before the expiration of that period, that person applies for a licence in respect of that activity under this Act and until the date on which a licence is granted or the application is refused or withdrawn.