

REPUBLIC OF SOUTH AFRICA

NATIONAL NUCLEAR REGULATOR BILL

(As amended by the Portfolio Committee on Minerals and Energy (National Assembly)) -

(MINISTER OF MINERALS AND ENERGY)

[B 11B—99]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE NASIONALE KERNREGULEERDER

(Soos gewysig deur die Portefeuljekomitee oor Minerale en Energie (Nasionale Vergadering))

(MINISTER VAN MINERALE EN ENERGIË)

[W 11B—99]

ISBN O 621291072

BILL

To provide for the establishment of a National Nuclear Regulator in order to regulate nuclear activities, for its objects and functions, for the manner in which it is to be managed and for its staff matters; to provide for safety standards and regulatory practices for protection of persons, property and the environment against nuclear damage; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1
INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “action” means— 5
 (a) the use, possession, production, storage, enrichment, processing, reprocessing, conveying or disposal of, or causing to be conveyed, radioactive material;
 (b) any action, the performance of which may result in persons accumulating a radiation dose resulting from exposure to ionizing radiation; or 10
 (c) any other action involving radioactive material;
- (ii) “board” means the Board of Directors as referred to in section 8(1);
- (iii) “certificate of exemption” means a certificate referred to in section 22(1);
- (iv) “certificate of registration” means a certificate referred to in section 22(1);
- (v) “chief executive officer” means the person appointed as such in terms of 15
 section 15(1);
- (vi) “closure” means the completion of all operations after the emplacement of spent fuel or radioactive waste in a disposal facility;
- (vii) “Council for Nuclear Safety” means the Council for Nuclear Safety 20
 contemplated in section 33 of the Nuclear Energy Act, 1993 (Act No. 131 of 1993);
- (viii) “enrich” means increase the ratio of an isotopic constituent of an element to the remaining isotopic constituents of that element relative to the naturally occurring ratio, and ‘enrichment’ has a corresponding meaning;
- (ix) “financial year” in relation to the Regulator, means the period contemplated 25
 in section 18;
- (x) “inspector” means the person appointed as such in terms of section 41(1);
- (xi) “ionizing radiation” means electromagnetic or corpuscular emission emitted 30
 from radioactive material and capable of producing ions, directly or indirectly while passing through matter;
- (xii) “Minister” means the Minister of Minerals and Energy;
- (xiii) “nuclear accident” means any occurrence or succession of occurrences 35
 having the same origin which—
 (a) results in the release of radioactive material, or a radiation dose, which exceeds the safety standards contemplated in section 36; and
 (b) is capable of causing nuclear damage;
- (xiv) “nuclear authorisation” means a nuclear installation licence, nuclear vessel 40
 licence, certificate of registration or certificate of exemption;
- (xv) “nuclear damage” means—
 (a) any injury to or the death or any sickness or disease of a person; or 45
 (b) other damage, including any damage to or any loss of use of property or damage to the environment,
 which arises out of, or results from, or is attributable to, the ionizing radiation associated with a nuclear installation, nuclear vessel or action;
- (xvi) “nuclear energy” means all the energy released by a nuclear fission or nuclear 45
 fusion process;
- (xvii) “nuclear incident” means—
 (a) any unintended event at a nuclear installation which causes off-site 50
 public exposure of the order of at least one tenth of the prescribed limits;
 or
 (b) the spread of radioactive contamination on a site or exposure of a worker above the prescribed limits or a significant failure in safety provisions, other than a nuclear accident;
- (xviii) “nuclear installation” means—
 (a) a facility, installation, plant or structure designed or adapted for or which 55
 may involve the carrying out of any process, other than the mining and

- processing of ore, within the nuclear fuel cycle involving radioactive material, including, but not limited to—
- (i) a uranium or thorium refinement or conversion facility;
 - (ii) a uranium enrichment facility;
 - (iii) a nuclear fuel fabrication facility; 5
 - (iv) a nuclear reactor, including a nuclear fission reactor or any other facility intended to create nuclear fusion;
 - (v) a spent nuclear fuel reprocessing facility;
 - (vi) a spent nuclear fuel storage facility;
 - (vii) an enriched uranium processing and storage facility; and 10
 - (viii) a facility specifically designed to handle, treat, condition, temporarily store or permanently dispose of any radioactive material which is intended to be disposed of as waste material: or
- (b) any facility, installation, plant or structure declared to be a nuclear installation in terms of section 2(3); 15
- (xix) "nuclear installation licence" means a licence referred to in section 21(I):
- (xx) "nuclear reprocessing facility" means a facility operated to extract or separate from source material or special nuclear material that has been subjected to radiation, those constituents that have undergone transmutations as a result of the radiation, or those constituents that have not undergone transmutations and are re-usable: 20
- (xxi) "nuclear vessel licence" means a licence referred to in section 21(2):
- (xxii) "period of responsibility . . . in relation to the holder of a nuclear authorisation, means the period beginning on the date of the grant of the relevant nuclear installation licence or certificate of registration or, in the case of a nuclear vessel, when it enters South Africa's territorial waters, and ending on whichever of the following dates is the earlier, namely— 25
- (a) the date on which the Regulator gives notice in writing to the holder that in its opinion the risk of nuclear damage from—
 - (i) anything on the site, or at or in the nuclear installation, in question; 30
 - (ii) any act performed in regard to the nuclear installation or site in question;
 - (iii) any action described in section 2(1)(c), as the case may be, no longer exceeds the safety standards contemplated in section 36;
 - (b) the date on which a nuclear authorisation in respect of the nuclear installation, site or action in question is granted to some other person; 35
 - (c) in the case of a nuclear vessel, the date on which the nuclear vessel leaves South Africa's territorial waters;
- (xxiii) "plant" means any machinery, equipment or device, whether it is attached to the ground or not; 40
- (xxiv) "prescribed," means prescribed by regulation made in terms of section 47;
- (xxv) "previous Act" means the Nuclear Energy Act, 1993 (Act No. 131 of 1993);
- (xxvi) "radioactive material" means any substance consisting of, or containing, any radioactive nuclide, whether natural or artificial, including, but not limited to, radioactive waste and spent nuclear fuel; 45
- (xxvii) "radioactive nuclide" means any unstable atomic nucleus which decays spontaneously with the accompanying emission of ionizing radiation;
- (XXVIII) "radioactivity" means the measure of a quantity of radioactive materials;
- (xxix) "Regulator" means the National Nuclear Regulator established by section 3;
- (xxx) "site" means a site on which— 50
- (a) a nuclear installation is situated or is being constructed; or
 - (b) any action which is capable of causing nuclear damage, is carried out;
- (xxxi) "specified date" means the date contemplated in section 56(2);
- (xxxii) "this Act" includes any regulations made in terms of section 47.

Application of Act, and declaration of nuclear installation

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2.(1) Subject to subsection (2), this Act applies to—

- (a) the siting, design, construction, operation, decontamination, decommissioning and closure of any nuclear installation;

- (b) vessels propelled by nuclear power or having radioactive material on board which is capable of causing nuclear damage: and
 - (c) any action which is capable of causing nuclear damage.
- (2) This Act does not apply to—
- (a) exposure to cosmic radiation or to potassium-40 in the body or any other radioactive material or actions not amenable to regulatory control as determined by the Minister, after consultation with the board and by notice in the *Gazette*;
 - (b) subject to section 41(4), any action where the radioactivity concentrations of individual radioactive nuclides, or the total radioactivity content, are below the exclusion levels provided for in the safety standards contemplated in section 36;
 - (c) Group IV hazardous substances as defined in section 1 of the Hazardous Substances Act, 1973 (Act No. 15 of 1973);
 - (d) exposure to ionizing radiation emitted from equipment, declared to be a Group III hazardous substance in terms of section 2(1)(b) of the Hazardous Substances Act, 1973.
- (3) For the purposes of this Act, the Minister may, after consultation with the board and by notice in the *Gazette*, declare any facility, installation, plant or structure, including a mine or ore-processing facility, to be a nuclear installation. 20

CHAPTER 2

NATIONAL NUCLEAR REGULATOR

Establishment of National Nuclear Regulator

3. A juristic person to be known as the National Nuclear Regulator, comprising a board, a chief executive officer and staff, is hereby established. 25

Regulator successor to assets and liabilities of Council for Nuclear Safety

4. (1) On the specified date, all assets, rights, liabilities and obligations of the Council for Nuclear Safety pass to the Regulator.

(2) The Registrar of Deeds concerned must make such entries or endorsements as are necessary to give effect to subsection (1) in or on any relevant register, title deed or any other document in his or her office or submitted to him or her. 30

(3) No office fees or other moneys are payable in respect of such an entry or endorsement.

Objects of Regulator

5. The objects of the Regulator are to— 35
- (a) provide for the protection of persons, property and the environment against nuclear damage through the establishment of safety standards and regulatory practices;
 - (b) exercise regulatory control related to safety over-
 - (i) the siting, design, construction, operation, manufacture of component parts, and decontamination, decommissioning and closure of nuclear installations; and 40
 - (ii) vessels propelled by nuclear power or having radioactive material on board which is capable of causing nuclear damage, through the granting of nuclear authorisations: 45
 - (c) exercise regulatory control over other actions, to which this Act applies, through the granting of nuclear authorisations;
 - (d) provide assurance of compliance with the conditions of nuclear authorisations through the implementation of a system of compliance inspections;
 - (e) fulfil national obligations in respect of international legal instruments concerning nuclear safety: and 50
 - (f) ensure that provisions for nuclear emergency planning are in place.

Co-operative governance

6. (1) To give effect to the principles of co-operative government and intergovernmental relations contemplated in Chapter 3 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), all organs of state, as defined in section 239 of the Constitution, on which functions in respect of the monitoring and control of radioactive material or exposure to ionizing radiation are conferred by this Act or other legislation, must co-operate with one another in order to—

- (a) ensure the effective monitoring and control of the nuclear hazard;
- (b) co-ordinate the exercise of such functions;
- (c) minimise the duplication of such functions and procedures regarding the exercise of such functions; and
- (d) promote consistency in the exercise of such functions.

(2) The Regulator must conclude a co-operative agreement with every relevant organ of state to give effect to the co-operation contemplated in subsection (1).

(3) The Minister must, after consultation with the board and in consultation with the Ministers responsible for the relevant organs of state, make regulations regarding—

- (a) time periods and procedures, including procedures for public participation and mechanisms for dispute resolution, in respect of the conclusion of co-operative agreements referred to in subsection (2);
- (b) matters that must be provided for in co-operative agreements, including, but not limited to, provision for—
 - (i) time periods for the implementation of co-operative agreements;
 - (ii) the co-ordination of the functions referred to in subsection (1) in a manner that avoids unnecessary duplication and omissions regarding safety requirements and the issuing of conflicting instructions;
 - (iii) measures to be taken in the event of non-compliance with a co-operative agreement;
 - (iv) dispute resolution in respect of the interpretation or application of co-operative agreements referred to in subsection (2).

(4) The Minister must publish by notice in the *Gazette* every co-operative agreement concluded in terms of subsection (2).

Functions of Regulator

7. (1) The Regulator may, subject to this Act, for the purpose of achieving its objects—

- (a) grant or amend nuclear authorisations;
- (b) hire, purchase or otherwise acquire any movable and immovable property and proprietary right, and rent or dispose of property so acquired, but may not acquire or dispose of immovable property without the prior approval of the Minister, granted with the agreement of the Minister of Finance;
- (c) collaborate with any other body or institution or establish and control facilities for the collection and dissemination of scientific and technical information, in connection with any matter regarding nuclear energy falling within the objects of the Regulator;
- (d) collaborate with any educational, scientific or other body, a government or institution in connection with the provision of instruction for, or the training of, persons required by the Regulator;
- (e) provide, on such conditions as the Regulator thinks fit, financial or other assistance in connection with the training of persons in so far as in the board's opinion it is necessary to ensure that a sufficient number of trained persons are available to enable the Regulator to perform its functions;
- (f) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (g) advise the Minister on matters associated with any action or condition which—
 - (i) is capable of causing nuclear damage;
 - (ii) the Minister refers to the Regulator; or
 - (iii) the Regulator thinks necessary to advise the Minister on:

- (h) for purposes of this Act, act as the national competent authority in connection with the International Atomic Energy Agency's Regulations for the Safe Transport of Radioactive Material;
- (i) conclude contracts, enter into agreements or perform any act, whether in the Republic or elsewhere, whereby its objects are carried into effect or which is calculated, directly or indirectly, to enhance the value of the services which the Regulator renders towards the achievement of its objects or which may be prescribed;
- (j) produce and submit to the Minister an annual public report on the health and safety related to workers, the public and the environment associated with all sites including, but not limited to, the prescribed contents.
- (2) The Minister must table in Parliament the annual public report submitted to him or her in terms of subsection (1)(j) within 14 days after it is so submitted if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.
- (3) The functions of the Regulator must be performed by the chief executive officer, as directed by the board, except where otherwise specified in this Act.

Control and management of affairs of Regulator

8. (1) The Regulator is governed and controlled, in accordance with this Act, by a Board of Directors.
- (2) The board—
- (a) must ensure that the objects of the Regulator referred to in section 5 are carried out; and
- (b) exercises general control over the performance of the Regulator's functions.
- (3) The board represents the Regulator and all acts performed by the board or on its authority are the acts of the Regulator.
- (4) The board consists of—
- (a) the following directors appointed by the Minister:
- (i) One representative of organised labour;
- (ii) one representative of organised business;
- (iii) one person representing communities, which may be affected by nuclear activities;
- (iv) an official from the Department of Minerals and Energy;
- (v) an official from the Department of Environmental Affairs and Tourism;
- and
- (vi) not more than seven other directors; and
- (b) the chief executive officer,
- (5) The Minister must from among the directors of the board referred to in subsection (4)(a)(vi) appoint a chairperson and a deputy chairperson.
- (6) A person may only be appointed as a director in terms of subsection (4)(a) if he or she is suitably qualified.
- (7) For the purposes of appointing the directors of the board referred to in subsection (4)(a)(i), (ii), (iii) and (vi)—
- (a) the Minister must through the media and by notice in the *Gazette* invite nominations of persons as candidates for the relevant positions on the board;
- (b) a panel, appointed by the Minister, which may include representatives of the relevant committees of Parliament, must compile a shortlist of not more than 20 candidates from the persons so nominated;
- (c) the Minister must, from the shortlist so compiled and from other persons nominated as contemplated in paragraph (a), appoint persons to the relevant positions on the board; and
- (d) the Minister may, for a director appointed in terms of subsection (4)(a)(i) to (v), appoint a suitably qualified alternate director to act in the place of that director during his or her absence.
- (8) A person is disqualified from being appointed or remaining a director of the board if he or she—
- (a) is not a South African citizen;
- (b) is declared insolvent;

(c) is convicted of an offence and sentenced to imprisonment without the option of a fine:

(d) becomes a member of Parliament, a provincial legislature, a Municipal Council, the Cabinet or the Executive Council of a province:

(e) is a holder of a nuclear authorisation or an employee of such holder. 5

(9) A director of the board may not be present during, or take part in, the discussion of, or [the making of a decision on, any matter before the board in which that director or his or her spouse, life partner, child, business partner or associate or employer, other than the State, has a direct or indirect financial interest.

(10) Upon appointment of a person as a director of the board he or she must submit I () to the Minister and the board a written statement in which he or she declares whether or not he or she has any interest contemplated in subsection (9).

(11) If any director acquires or contemplates acquiring an interest, which could possibly be an interest contemplated in subsection (9), he or she must immediately in writing declare that fact to the Minister and the board. 15

(12)(a) The chairperson of the board holds office for a period specified in the letter of appointment but not exceeding three years and may be reappointed upon expiry of that term of office.

(b) A director referred to in subsection (4)(a) holds office for a period specified in the letter of appointment but not exceeding three years and may be reappointed upon expiry 20 of that term of office.

(13)(a) If a director dies or vacates office, the Minister may, subject to subsection (8), appoint another person as a director.

(b) The person so appointed serves for the unexpired portion of the predecessor's term of office. 25

(14) Despite the preceding provisions of this section—

(a) the persons who, immediately before the specified date, served as members of the council of the Council for Nuclear Safety in terms of the previous Act, must act as the directors of the Regulator's board from the specified date until the day immediately before the Regulator's board, constituted in accordance 30 with subsection (4), meets for the first time; and

(b) the chairperson of that council must act as chairperson of that board for the period contemplated in paragraph (a) and must determine the times and places of its meetings.

Vacation of office of board members 35

9. (1) The Minister may at any time discharge a director of the board from office—

(a) if the director has repeatedly failed to perform his or her functions efficiently;

(b) if, because of any physical or mental illness or disability, the director has become incapable of performing his or her functions or performing them 40 efficiently; or

(c) for misconduct.

(2) A director vacates office when—

(a) he or she is disqualified in terms of section 8(8);

(b) he or she is discharged in terms of subsection (1);

(c) he or she is absent from three consecutive meetings of the board without the 45 chairperson's permission, unless the board has condoned the absence on good reasons advanced; or

(d) the person's resignation as director takes effect.

Meetings of board

10. (1) The first meeting of the board is held at the time and place determined by the 50 Minister, and thereafter meetings are held at such times and places as the board determines.

(2) The chairperson or, in his or her absence, the deputy chairperson, may at any time call a special meeting of the board to be held at the time and place determined by the 55 chairperson or deputy chairperson.

(3) All directors must be notified in writing of every meeting of the board.

(4) A majority of the directors forms a quorum at any meeting of the board.

(5) Subject to subsection (4), a decision of the majority of the directors present at a meeting of the board constitutes a decision of the board and, in the event of an equality of votes on any matter, the person chairing the relevant meeting has a casting vote in addition to a deliberative vote.

(6) No decision taken by the board or an act performed under its authority, is invalid merely by reason of—

(a) a vacancy on the board; or

(b) the fact that any person not entitled to do so, sat as a director at the time that decision was taken,

if that decision was taken or that act was authorised by the required majority of directors present at the meeting who were entitled to sit as directors.

(7) (a) If the chairperson is for any reason unable to act, or the office of chairperson is vacant, the deputy chairperson must act as chairperson.

(b) If both the chairperson and deputy chairperson are for any reason unable to act, or both the offices of chairperson and deputy chairperson are vacant, the board must designate any other director to act as chairperson.

Minutes of board meetings

11. (1) The board must cause minutes of its meetings to be kept and copies of the minutes to be circulated to its members.

(2) Such minutes, when signed at a next meeting by the person who chairs that meeting, are, in the absence of proof of error therein, regarded as a true and correct record of the proceedings and are *prima facie* evidence of those proceedings before a court of law, a tribunal or a commission of inquiry.

Committees of board

12. The board may—

(a) establish such committees as it considers necessary to assist it in the performance of its functions; and

(b) appoint as members of any such committee such persons, including directors of the board, staff of the Regulator, the holders of nuclear authorisations and employees of such holders, as the board considers appropriate.

Remuneration of directors and committee members

13. A director, or member of a committee, of the board, other than the chief executive officer or a person who is in the full-time employment of the Regulator or other organ of state, is appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister determines with the agreement of the Minister of Finance.

Delegation and assignment by board

14. (1) Subject to subsections (2), (3), (4) and (5), the board may, by resolution, delegate any power, and assign any duty, conferred or imposed on it by the operation of section 8(1) or (2) or conferred or imposed on it elsewhere by this Act, to its chairperson or a committee of the board.

(2) The board is not divested of any power or relieved of any function it so delegated or assigned.

(3) Such delegation or assignment—

(a) may be made subject to conditions determined by the board;

(b) may, subject to subsection (5), be given together with the power to subdelegate or further assign, subject to conditions determined by the board;

(c) must be communicated to the delegatee or assignee in writing.

- (4) The written communication in terms of subsection (3)(c)—
 (a) must contain full particulars of the matters being delegated or assigned and of the conditions determined in terms of subsection (3)(a); and
 (b) if the power of subdelegation or further assignment is conferred, must state that fact and any conditions determined in terms of subsection (3)(b). 5
- (5) The board may, by resolution—
 (a) amend or revoke a delegation or assignment made in terms of subsection (1);
 (b) withdraw any decision, other than a decision which confers a right or entitlement on any third party, made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter itself. 10
- (6) The Minister may, by notice in the *Gazette*—
 (a) prohibit the delegation by the board of any particular power or its assignment of any particular duty, whether generally or in the circumstances specified in the notice;
 (b) limit the circumstances in which any particular power or duty of the board may be delegated, subdelegated, assigned or further assigned; 15
 (c) prescribe conditions for the delegation of any particular power or assignment of any particular duty.

Chief executive officer of Regulator

15. (1) The Minister must, after consultation with the board, appoint a person with suitable qualifications as chief executive officer of the Regulator.

(2) A person is disqualified from being appointed or remaining a chief executive officer if subject to any of the disqualifications mentioned in section 8(8).

(3) A chief executive officer holds office for a period not exceeding three years as specified in the letter of appointment and may be reappointed upon expiry of that term of office. 25

(4) The Minister may at any time discharge the chief executive officer from office—

- (a) if the chief executive officer has repeatedly failed to perform the duties of office efficiently;
 (b) if, because of any physical or mental illness or disability, the chief executive officer has become incapable of performing the functions of that office or performing them efficiently; or
 (c) for misconduct. 30

(5) (a) The person who, immediately before the specified date was the executive officer of the Council for Nuclear Safety by virtue of appointment to that office in terms of section 44 of the previous Act, must, from the specified date until the date on which the appointment of the Regulator's first chief executive officer in terms of subsection (1) of [this section takes effect, act as the Regulator's chief executive officer. 35

(b) A person so acting is not precluded from being appointed as the Regulator's chief executive officer in terms of subsection (1). 40

(6) The chief executive officer must—

- (a) ensure that the functions of the Regulator in terms of this Act are performed;
 (b) report to the board on the proper functioning of the Regulator;
 (c) issue a nuclear authorisation in accordance with this Act;
 (d) complete a report on the activities of the Regulator for each financial year in accordance with the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), and submit the report to the board for approval; 45
 (e) each financial year, after consultation with the board and with the approval of the Minister, publish and distribute a plan of action for the activities of the Regulator. 50

(7) The board must forward the report mentioned in subsection (6)(d), as approved by it, to the Minister within three months of the end of the financial year concerned.

(8) The chief executive officer is the accounting officer of the board charged with the responsibility of accounting for all money received and payments made by, and the assets of, the Regulator. 55

(9) The chief executive officer must exercise all the powers and perform all the duties conferred or imposed on the accounting officer by—

- (a) this Act, the Reporting by Public Entities Act, 1992, or any other law;
- (b) the board.

(10) If the chief executive officer is for any reason unable to perform any of his or her functions, the chairperson of the board must appoint an employee of the Regulator to act as chief executive officer until the chief executive officer is able [o resume those 5 functions.

(11) An acting chief executive officer has all the powers and must perform all the duties of the chief executive officer.

Staff of Regulator

16. (1) Subject to the written directions of the board, the chief executive officer may 10 appoint such staff for the Regulator as are necessary to perform the work arising from or connected with the Regulator's functions in terms of this Act.

(2)(a) The terms and conditions of service of the chief executive officer and other staff of the Regulator, including their remuneration, allowances, subsidies and other service benefits, are determined by the board. 15

(b) That remuneration and those allowances, subsidies and other service benefits must be determined in accordance with a system approved by the Minister with the agreement of the Minister of Finance.

(3)(a) The persons who, immediately before the specified date, were employees of the Council for Nuclear Safety appointed in terms of section 13(1) of the previous Act, 20 or deemed by section 13(2) of that Act to have been so appointed, are, from that date, deemed to be employees of the Regulator who have been appointed in terms of subsection (1) of this section.

(b) The terms and conditions of service, allowances, subsidies and other service benefits that were applicable to those employees immediately before the specified date, 25 continue, with effect from the specified date, to apply until re-determined by the board in terms of subsection (2).

(c) The terms and conditions of service, allowances, subsidies and other service benefits so re-determined, may not be less than those applicable before the re-determination. 30

(d) Those employees' respective periods of pensionable service with the Council for Nuclear Safety or its predecessor in terms of any law must be regarded as pensionable service for the purpose of membership of any pension fund or scheme of which they are members after the specified date.

(e) The leave which has been accumulated by each of those employees while in the 35 service of the Council for Nuclear Safety must be regarded as if it were leave accumulated by such an employee in the service of the Regulator.

(4) Subject to subsection (5), the Regulator is regarded to be an associated institution for the purposes of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963). 40

(5) The board may, with the approval of the Minister granted with the agreement of the Minister of Finance, establish, manage and administer any pension or provident fund or medical scheme for the benefit of the staff of the Regulator for the benefit of its employees or have such a scheme or fund managed or administered by any other body 45 or person.

(6) Any pension or provident fund established by the Council for Nuclear Safety in terms of section 13(4)(b) of the previous Act is deemed to be a fund established in terms of subsection (5).

Funds of Regulator

17. (1) The funds of the Regulator consist of— 50

- (a) money appropriated by Parliament;
- (b) fees paid to the Regulator in terms of section 28; and
- (c) donations or contributions received by the Regulator, with the approval of the Minister, from any source.

- (2) The Regulator must, within the constraints of its statement referred to in subsection (7), utilise its funds for the defrayal of the expenses incurred by it in the performance of its functions in terms of this Act.
- (3) The chief executive officer must—
- (a) open an account in the name of the Regulator with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
 - (b) deposit therein all money received in terms of subsection (1).
- (4) The chief executive officer may, on behalf of the Regulator, invest any money received in terms of subsection (1) which is not required for immediate use—
- (a) with the approval of the Minister, with the Public Investment Commissioners referred to in section 2 of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984); or
 - (b) with such other institution as the board and the Minister, with the agreement of the Minister of Finance, determine.
- (5) The Regulator may use interest derived from the investment contemplated in subsection (4) to defray expenses in connection with the performance of its functions in terms of this Act.
- (6) The Regulator may, with the approval of the Minister, granted with the agreement of the Minister of Finance—
- (a) authorise the establishment of such reserve funds as it considers necessary or expedient; and
 - (b) deposit such amounts therein.
- as it considers necessary or expedient.
- (7) The Regulator must in each financial year, at such time as determined by the Minister, submit a statement of its estimated income and expenditure for the following financial year to the Minister for his or her approval, granted with the agreement of the Minister of Finance.
- (8) The Auditor-General must externally audit the Regulator.

Financial year of Regulator

18. The Regulator's financial year is from 1 April in any year to 31 March in the following year, but the first financial year is from the specified date to 31 March in the following year.

Judicial management and liquidation of Regulator

19. Despite the provisions of any other law, the Regulator may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted specially for that purpose.

CHAPTER 3

NUCLEAR AUTHORISATION

Restrictions on certain actions

20. (1) No person may site, construct, operate, decontaminate or decommission a nuclear installation, except under the authority of a nuclear installation licence.

(2) No vessel which is propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage may—

- (a) anchor or sojourn in the territorial waters of the Republic; or
 - (b) enter any port of the Republic,
- except under the authority of a nuclear vessel licence.

(3) No person may engage in any action described in section 2(1)(c) other than any action contemplated in subsection (1) or (2), except under the authority of a certificate of registration or a certificate of exemption.

Application for nuclear installation or vessel licence

21. (1) Any person wishing to site, construct, operate, decontaminate or decommission a nuclear installation may apply in the prescribed format to the chief executive officer for a nuclear installation licence and must furnish such information as the board requires. 5

(2) Any person wishing to—

- (a) anchor or sojourn in the territorial waters of the Republic; or
- (b) enter any port in the Republic.

with a vessel which is propelled by nuclear power or which has on board any radioactive material capable of causing nuclear damage, may apply to the chief executive officer for a nuclear vessel licence and must furnish such information as the board requires. 10

(3) The chief executive officer must direct the applicant for a nuclear installation or vessel licence to—

- (I) serve a copy of the application upon—
 - i every municipality affected by the application; and 15
 - ii such other body or person as the chief executive officer determines; and
- (b) publish a copy of the application in the Gazette and two newspapers circulating in the area of every such municipality

(4) (a) Any person who may be directly affected by the granting of a nuclear installation or vessel licence pursuant to an application in terms of subsection (1) or (2), may make representations to the board, relating to health, safety and environmental issues connected with the Implication, within 30 days of the date of publication in the Gazette contemplated in subsection (3)(b). 20

(b) If the board is of the opinion that further public debate is necessary, it may arrange for such hearings on health, safety and environmental issues as it determines. 25

(5) Subject to the board's approval, the chief executive officer may—

- (a) refuse an application for a nuclear installation or vessel licence and must provide the applicant in writing with the reasons for the refusal; or
- (b) grant an application for a nuclear installation licence or nuclear vessel licence subject to such conditions as may be determined in terms of section 23. 30

Application for certificate of registration or exemption for certain actions

22. (1) Any person wishing to engage in any action described in section 2(1)(c) may apply in the prescribed format to the chief executive officer for a certificate of registration or a certificate of exemption and must furnish such information as the board requires. 35

(2) The chief executive officer may direct that the applicant for a certificate of registration—

- (a) serve a copy of the application upon—
 - i every municipality affected by the application and
 - ii such other body or person as the chief executive officer determines; and 40
- (b) publish a copy of the application in the Gazette and two newspapers circulating in the area of every such municipality.

(3) The chief executive officer may, with the approval of the board—

- (a) refuse to grant an application for a certificate of exemption or a certificate of registration made in terms of subsection (1) and must provide the applicant in writing with the reasons for the refusal; or 45
- (b) issue—
 - (i) a certificate of registration subject to such conditions as may be determined in terms of section 23; or
 - (ii) a certificate of exemption if satisfied that the action in question complies with the exemption criteria specified in the safety standards contemplated in section 36. 50

Conditions relating to nuclear installation licence, nuclear vessel licence or certificate of registration

23. (1) The chief executive officer may establish standard conditions applicable to one or more categories of certificates of registration.
- (2) The chief executive officer may, subject to subsection (3), impose any condition in a nuclear installation or vessel licence or certificate of registration which—
- (a) is necessary to ensure the protection of persons, property and the environment against nuclear damage; or
 - (b) provides for the rehabilitation of the site.
- (3) The chief executive officer—
- (a) may, subject to paragraph (c), amend any condition in a nuclear installation or vessel licence or certificate of registration;
 - (b) must notify the person in writing to whom the nuclear installation or vessel licence or certificate of registration was issued of such amendment and the reasons therefor; and
 - (c) must submit to the board any amendments made to a nuclear authorisation as contemplated in paragraph (a) for ratification at the first meeting of the board following the amendments.

Special conditions relating to nuclear vessel licence

24. (1) The chief executive officer may include in a nuclear vessel licence—
- (a) conditions relating to—
 - (i) liability for nuclear damage which may determine, limit or preclude liability, despite any provisions to the contrary in any other law; or
 - (ii) security for nuclear damage and the manner of providing the security, as determined by the Minister;
 - (b) any other conditions as the chief executive officer considers necessary to ensure compliance with the safety standards contemplated in section 36;
 - (c) if the vessel in question is registered outside the Republic, the appropriate terms of any agreement between the Government of the Republic and the government of the country in which the vessel is registered.
- (2) Any provision included in an agreement referred to in subsection (1)(c) which could be included in terms of subsection (1)(a) or (b) as a condition of a nuclear vessel licence, is considered to be a condition of that licence, even if it is not expressly embodied in the relevant licence as a condition thereof.
- (3) Subject to the terms of any agreement referred to in subsection (1)(c), the chief executive officer may amend or repeal any condition imposed in terms of this section.
- (4) A nuclear vessel licence is valid for such period as is determined by the chief executive officer, and may from time to time be renewed for any further period.
- (5) The holder of a nuclear vessel licence is not, solely because of the expiry of that licence, relieved of liability for nuclear damage resulting from anything which occurred or which was done or omitted during the currency of that licence.
- (6) The chief executive officer must exercise the powers conferred by this section on behalf of the board and subject to the Ministers directions.

Prohibition on transfer of nuclear authorisation

25. A nuclear authorisation is not transferable.

Responsibilities of holders of nuclear authorisations

26. (1) The holder of a nuclear authorisation must, at all times, display copies of that authorisation at such places and in such languages and form as determined by the chief executive officer to ensure public access to the conditions specified in the authorisation.

(2) The holder of a nuclear authorisation must implement an inspection programme to ensure compliance with all conditions of the nuclear authorisation.

(3) The holder of a nuclear authorisation must provide any information or monthly return as required by the chief executive officer. 10

(4) The holder of a nuclear installation licence must establish a public safety information forum as prescribed in order to inform the persons living in the municipal area in respect of which an emergency plan has been established in terms of section 38(1) on nuclear safety and radiation safety matters.

Revocation and surrender of nuclear authorisation

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27. (1) The chief executive officer may, with the approval of the board, revoke a nuclear authorisation.

(2) The holder of a nuclear authorisation may surrender that authorisation.

(3) If a nuclear authorisation has been revoked or surrendered in terms of subsection (1) or (2), the holder of the nuclear authorisation concerned must— 20

(a) if so directed by the chief executive officer, deliver to the person appointed by the chief executive officer, or account for, such nuclear authorisation; and

(b) for the duration of his or her period of responsibility, display, or cause to be displayed, on the relevant site or the vessel in respect of which a nuclear authorisation has been granted, such notices as directed by the chief executive officer. 25

(4) On revocation or surrendering of a nuclear authorisation, or at any time during the period of responsibility of the holder of that authorisation, the chief executive officer, in writing, may give any direction to the person liable for nuclear damage in terms of section 30, which the chief executive officer believes is necessary to prevent nuclear damage which— 30

(a) may be caused by anything which is being done, may be done or was done; or

(b) is or was present.

at or in the relevant nuclear installation or site,

Fees for nuclear authorisation

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28. The Minister may, on the recommendation of the board and in consultation with the Minister of Finance and by notice in the *Gazette*, determine the fees payable to the Regulator in respect of—

(a) any application for the granting of a nuclear authorisation;

(b) an annual nuclear authorisation fee. 40

CHAPTER 4

FINANCIAL SECURITY AND LIABILITY

Financial security by holder of nuclear installation licence

29. (1) The Minister must, on the recommendation of the board and by notice in the *Gazette*, categorise the various nuclear installations in the Republic, based on the potential consequences of a nuclear accident. 45

(2) The Minister must, on the recommendation of the board and in consultation with the Minister of Finance and by notice in the *Gazette*, determine—

(a) the level of financial security to be provided by holders of nuclear installation licences in respect of each of those categories; and 50

(b) the manner in which that financial security is to be provided.

in order for the holder of a nuclear installation licence to fulfil any liability which may be incurred in terms of section 30.

(3) Despite subsection (2), the Minister may, after consultation with the board, for so long as the holder of a nuclear installation licence may be liable for nuclear damage—

- (a) increase or decrease the level of financial security to be provided by that holder as determined in terms of subsection (2);
- (b) if financial security has not been required in terms of subsection (2) require that holder to provide financial security;
- (c) discharge that holder from the requirement to provide financial security;
- (d) amend the manner in which that holder must provide financial security. 10

(4) If—

- (a) nuclear damage occurs and compensation is claimed as a result thereof: or
- (b) the Minister is satisfied that such compensation is likely to be so claimed. the Minister may require the holder of the nuclear installation licence in question to give additional financial security in respect of those claims or possible claims. to an amount 15 which the Minister, after consultation with the board, determines.

(5) The holder of a nuclear installation licence must annually provide proof to the Regulator that any claim for compensation to an amount contemplated in section 30(2). can be met.

Strict liability of holder of nuclear installation licence for nuclear damage 20

30. (1) Subject to subsections (2), (3), (5) and (6), only a holder of a nuclear installation licence is, whether or not there is intent or negligence on the part of the holder, liable for all nuclear damage caused by or resulting from the relevant nuclear installation during the holder's period of responsibility—

- (a) by anything being present or which is done at or in the nuclear installation or 25 by any radioactive material or material contaminated with radioactivity which has been discharged or released, in any form, from the nuclear installation: or
- (b) by any radioactive material or material contaminated with radioactivity which is subject to the nuclear installation licence, while in the possession or under the control of the holder of that licence during the conveyance thereof from 30 the nuclear installation, to any other place in the Republic or in the territorial waters of the Republic from or to any place in or outside the Republic.

(2) The liability for nuclear damage by any holder of a nuclear installation licence is limited, for each nuclear accident, to the amounts determined in terms of section 29(2).

(3) The liability contemplated in subsection (1)(b) ends upon the relevant material 35 coming—

- (a) onto another site in respect of which a nuclear installation licence has been granted: or
- (b) onto a site or into the possession or the control of any person authorised in terms of section 3A of the Hazardous Substances Act, 1973 (Act No. 15 of 40 1973), where such material is a Group IV hazardous substance as defined in section 1 of that Act.

(4) For the purposes of subsection (1) radioactive material or material contaminated with radioactivity which is being conveyed on behalf of the holder of a nuclear installation licence is regarded to be in the possession or under the control of the holder 45 of that licence.

(5) Nothing in this section precludes a person from claiming a benefit in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), but such person may not benefit both in terms of this Act and the Compensation for Occupational Injuries and Diseases Act, 1993. 50

(6) The holder of a nuclear installation licence is not liable to any person for any nuclear damage—

- (a) to the extent to which such nuclear damage is attributable to the presence of that person or any property of that person at or in the nuclear installation or on the site in respect of which the nuclear installation licence has been granted. 55 without the permission of the holder of that licence or of a person acting on behalf of that holder: or

(b) if that person intentionally caused, or intentionally contributed to, such damage,

(7) The holder of a nuclear installation licence retains any contractual right of recourse or contribution which the holder has against any person in respect of any nuclear damage for which that holder is liable in terms of subsection (1). 5

(8) Any person who, without a nuclear installation licence, carries out an action for which such a licence is required, is, whether or not there is intent or negligence on the part of that person, liable for all nuclear damage,

(9) Nothing in this section affects any right, which any person has in terms of any contract of employment, to benefits more favourable than those to which that person 10 may be entitled in terms of this section.

Special provisions for liability for nuclear damage caused by vessels

31. If the chief executive officer has not determined any conditions for liability for nuclear damage as contemplated in section 24(1)(a)(i) for a holder of a nuclear vessel licence granted in respect of a vessel, the provisions of section 30 apply with the changes 15 required by the context.

Liability of holder of certificate of registration for nuclear damage

32. (1) The liability of a holder of a certificate of registration, for any nuclear damage caused by or resulting from any action carried out by virtue of that certificate during his or her period of responsibility, must be determined in accordance with— 20

(a) the common law; or

(b) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993).

as the case may be,

Claims for compensation in excess of maximum liability 25

33. (1) If—

(a) the total amount of claims for compensation against a holder of a nuclear installation licence; or

(b) the total amount of claims for compensation against such holder plus the estimated amount of claims for compensation likely to be required to be paid, 30 exceeds, or is likely to exceed, the amount for which that holder has given security in terms of section 29, the holder must immediately notify the board and the Minister thereof in writing.

(2) Such notice must include—

(a) particulars of the total number and amount of all such claims received; and 35

(b) an estimate of the number and amount of any other claims which may have to be satisfied.

(3) If on receipt of that notice, the Minister is satisfied that the total amount of claims for compensation against a holder of a nuclear installation licence that is unpaid, and of such claims as are likely to be made thereafter, will exceed the amount of security given 40 by that holder in terms of section 29 in respect of such claims, the Minister must—

(a) table in Parliament a report on the nuclear damage in question, which recommends that Parliament appropriate funds for rendering financial assistance to the holder to the amount by which the claims exceed or are likely to exceed the security which is available; and 45

(b) by notice in the *Gazette* suspend the obligation to pay the claims in respect of that nuclear damage until Parliament has decided about the recommendation.

(4) The liability of a person who has provided or must provide financial security as contemplated in section 29, is not affected by any appropriation in terms of subsection 50 (3)(/).

(5) If Parliament has by resolution decided that funds to an amount specified in the report by the Minister be appropriated, no payment of any such claim for compensation arising out of the nuclear damage concerned may be made after the passing of such resolution without the approval of the Minister or an order of court.

(6) The giving of additional security by a holder of a nuclear installation licence in 5 terms of section 29(4) does not affect the application of this section.

Prescription of actions

34. (1) Despite anything to the contrary in any other law, an action for compensation in terms of section 30, 31 or 32 may, subject to subsection (2), not be instituted after the expiration of a period of 30 years from— 10

(a) the date of the occurrence which gave rise to the right to claim that compensation: or

(b) the date of the last event in the course of that occurrence or succession of occurrences, if a continuing occurrence or a succession of occurrences, all attributable to a particular event or the carrying out of a particular operation. 15 gave rise to that right.

(2) If the claimant concerned became aware, or by exercising reasonable care could have become aware, of—

(a) the identity of the holder of the nuclear authorisation concerned: and 20

(b) the facts from which the right to claim compensation arose. during the period of 30 years contemplated in subsection (1), an action for compensation in terms of section 30, 31 or 32 may not be instituted after the expiration of a period of two years from the date on which he or she so became aware or could have become aware.

(3) The running of the period of two years referred to in subsection (2) is suspended 25 from the date negotiations regarding a settlement by or on behalf of the claimant and the relevant holder of the nuclear authorisation are commenced in writing until the date any party notifies the other party that the negotiations are terminated.

Compensation for injuries of Regulators employees

35. (1) If a person who is employed in any capacity by or on behalf of the Regulator, 30 while so performing services, suffers a personal injury or contracts a disease attributable to ionizing radiation from any radioactive material, or to the flammable, explosive, poisonous or special properties of radioactive material, or to the ionizing radiation produced by any apparatus, and in respect of which no liability can be established in terms of section 30, 31 or 32, the Regulator must, subject to subsection (2)— 35

(a) defray all reasonable expenses incurred by or on behalf of such person in respect of any medical treatment, including, but not limited to, the supply and maintenance of any artificial part of the body or other device, necessitated by such injury or disease: and

(b) pay compensation in respect of disablement or death caused by such injury or 40 disease.

(2) Nothing in this section precludes an employee of the Regulator from claiming a benefit in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), but such employee may not benefit both in terms of this Act and the Compensation for Occupational Injuries and Diseases Act, 1993. 45

(3) Nothing in this section affects any right, which any person has in terms of any contract of employment, to benefits more favourable than those to which that person may be entitled in terms of this section.

CHAPTER 5

SAFETY AND EMERGENCY MEASURES

Safety standards and regulatory practices

36. (1) The Minister must, on the recommendation of the board, make regulations regarding safety standards and regulatory practices. 5

(2) Before any regulations are made in terms of subsection (1), [he Minister must, by notice in the *Gazette*, invite the public to comment on the proposed regulations and consider that comment.

Duties regarding nuclear accidents and incidents

37. (1) If a nuclear accident occurs in connection with a nuclear installation, nuclear I () vessel or action, the holder of the nuclear authorisation in question must immediately report it to the Regulator and to any other person described in that nuclear authorisation.

(2) When the occurrence of a nuclear accident is so reported to the Regulator, it must—

(a) immediately investigate such accident and its causes, circumstances and 15 effects;

(b) in such manner as it thinks fit, define particulars of the period during which and the area within which, in its opinion, the risk of nuclear damage connected with the accident exceeds the safety standards and regulatory practices contemplated in section 36: 20

(c) direct the holder of the nuclear authorisation in question to obtain the names, addresses and identification numbers of all persons who were during that period within that area; and

(d) if, of the opinion that it has not been informed of all persons who could have been present during that period within that area, publish by notice in the 25 *Gazette* and in two publications of the daily newspapers in circulation in that area, the fact that a nuclear accident has occurred during that period within that area.

(3) (a) The Regulator must, in the prescribed manner, keep a record of the names of all persons who, according to its information, were within the area so defined at any time 30 during the period so defined, and of such particulars concerning them as may be prescribed.

(b) For the purposes of the proof of claims for compensation for nuclear damage, any such record is on its mere production by any person in a court of law admissible in evidence, and is *prima facie* proof of the presence of the person in question within the 35 area and during the period so defined.

(4) The right of any person to claim compensation from a holder of a nuclear authorisation in terms of section 30 is not prejudiced by—

(a) the defining of any area or period in terms of subsection (2)(b); or

(b) the failure to record the name of any person in terms of subsection (3), 40

(5) If a nuclear incident occurs on a site, the holder of the nuclear authorisation in question must report it to the Regulator within the period stipulated in that authorisation.

Emergency planning

38. (1) Where the possibility exists [hat a nuclear accident affecting the public may occur, the Regulator must direct the relevant holder of a nuclear authorisation, other than 45 a holder of a certificate of exemption, to—

(a) enter into an agreement with the relevant municipalities and provincial authorities to establish an emergency plan within a period determined by the Regulator;

(b) cover the costs for the establishment, implementation and management of 50 such emergency plan insofar as it relates to the relevant nuclear installation or any action contemplated in section 2(1)(c); and

(c) submit such emergency plan for its approval.

(2) The Regulator must ensure that such emergency plan is effective for the protection of persons should a nuclear accident occur.

(3) When a nuclear accident occurs, the holder of a nuclear authorisation, other than a holder of a certificate of exemption, in question must implement the emergency plan as approved by the Regulator.

(4) The Minister may, on recommendation of the board and in consultation with the relevant municipalities, make regulations on the development surrounding any nuclear installation to ensure the effective implementation of any applicable emergency plan.

Record of nuclear installations

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39. (1) The Regulator must keep—

(a) a record of the particulars:

(b) a map showing the location; and

(c) where applicable, diagrams showing the position and limits.

of nuclear installations in respect of which a nuclear installation licence has been granted. 15

(2) If the Regulator believes that a risk of nuclear damage—

(a) arising from anything done or being done; or

(b) which has been or is present.

at or in any nuclear installation in respect of which a nuclear installation licence is no longer in force, is within safety standards contemplated in section 36, it may remove the particulars in connection therewith from that record. 20

Record of nuclear accidents and incidents and access thereto

40. The Regulator must—

(a) keep and maintain a record of the details of every nuclear accident and nuclear incident; 25

(b) store that record safely;

(c) retain that record for 40 years from the date of the nuclear accident or nuclear incident; and

(d) on the request of any person, make that record available to that person. 30

Appointment and powers of inspectors

41. (1) The chief executive officer must, with the approval of the board and subject to section 16(2), appoint such number of suitably qualified inspectors to enforce compliance with the objects of the Regulator referred to in section 5.

(2) The chief executive officer must issue to every person appointed under subsection (1) a certificate to the effect that such person has been so appointed and restricting such person to the actions in respect of which he or she may exercise the powers and perform the duties conferred or imposed on an inspector in terms of this Act. 35

(3) When exercising his or her powers or performing his or her duties in terms of this Act, the inspector must on request by any interested person produce that certificate. 40

(4) Subject to the restrictions in the certificate contemplated in subsection (2), an inspector may—

(a) at all reasonable times enter—

(i) any nuclear installation or site in respect of which an application for a nuclear installation licence has been made or such a licence has been granted; 45

(ii) any place which the inspector on reasonable grounds suspects to be a site on which there is a nuclear installation;

(iii) any place where parts of a nuclear installation are present or manufactured; 50

- (iv) any place where radioactive material is kept or is present, and in respect of which an application for a nuclear authorisation has been made or a nuclear authorisation has been granted;
- (v) any place where the inspector on reasonable grounds suspects that radioactive material is kept or present or any action prohibited in terms of section 20 is being carried out; 5
- (b) carry out inspections and use any applicable equipment during such inspections at any of the nuclear installations, sites or places referred to in paragraph (a) and conduct such investigations as are necessary for the purpose of monitoring or enforcing compliance with this Act: 10
- (c) if necessary for the purposes of monitoring or enforcing compliance with this Act, direct in writing the holder of or the applicant for a nuclear authorisation, or any other person having any power or duty in connection with or on the relevant nuclear installation, site or place referred to in paragraph (a), to—
 - (i) allow the inspector to take away for investigation the articles or objects pointed out by the inspector: 15
 - (ii) allow the inspecting of the documents specified by the inspector, and to make copies thereof;
 - (iii) furnish to the inspector information which is under his or her control:
- (d) after signing for any object or document, or copies thereof, remove it for investigation: 20
- (e) if any action contemplated in section 20, or any condition associated with such action, does not comply with the requirements laid down in the nuclear authorisation, or with the safety standards contemplated in section 32, direct any person in control of the action— 25
 - (i) to discontinue such action or immediately rectify such condition: or
 - (ii) to rehabilitate the relevant site or other place to a condition that complies with the requirements laid down in the nuclear authorisation or with the safety standards contemplated in section 36;
- (f) if any action contemplated in section 2(2)(b), or any condition associated with such action, does not comply with the exemption criteria specified in the safety standards contemplated in section 36, direct the person in control of the action— 30
 - (i) to discontinue such action or immediately rectify such condition:
 - (ii) to rehabilitate the site or other place to a condition that complies with the exemption criteria provided for in the safety standards contemplated in section 36: or 35
 - (iii) to apply for a certificate of registration;
- (g) require any person who causes any site or other place to be contaminated with radioactive material to rehabilitate the site or place to a condition that complies with the safety standards contemplated in section 36; 40
- (h) be accompanied by such persons as the inspector considers necessary—
 - (i) to assist the inspector in the exercise of his or her powers in terms of this subsection;
 - (ii) to exercise such powers, and perform such duties, of the inspector as he or she determines: 45
- (i) exercise any other powers and perform any other duties conferred or imposed by this Act.

(5) An inspector authorised thereto in writing by the Regulator has, in respect of any vessel and subject to the terms of any agreement referred to in section 24(1)(c), has the same powers conferred upon an inspector in respect of nuclear installations, sites and other places contemplated in this section, 50

Regulator's powers regarding security of property and premises

42. (1) The Regulator may make or cause to be made such arrangements as it considers necessary for the proper protection or security of property which belongs to, or is under the control of the Regulator or is on any premises on which activities of the Regulator are performed. 5

- (2) No unauthorised person may enter any premises which—
- (a) are under the control of the Regulator; and
 - (b) the Regulator has identified as premises where information relating to the safety and security of or on a nuclear installation is kept.

CHAPTER 6 10

APPEALS

Appeal to chief executive officer against inspector's decision

43. (1) Any person adversely affected by any action or decision of an inspector may appeal to the chief executive officer against that action or decision.

- (2) Such appeal must— 15

- (a) be lodged within 60 days from the date of the action or the date on which the decision was made known, as the case may be, or such later date as the chief executive officer permits; and
- (b) set out the grounds of appeal.

(3) After considering the grounds of appeal and the inspector's reasons for the action or decision, the chief executive officer must as soon as practicable—

- (a) confirm, set aside or amend the action or decision; or
- (b) substitute any other decision for the decision.

Appeal to board against chief executive officer's decision

44. (1) Any person adversely affected by a decision of the chief executive officer, either in terms of section 43(3) or in the exercise of any power in terms of this Act, may appeal against that decision to the board. 25

- (2) Such appeal must—

- (a) be lodged within 60 days from the date on which that decision was made known by the chief executive officer or such later date as the board permits; 30 and
- (b) must set out the grounds for the appeal.

(3) After considering the grounds of appeal and the chief executive officer's reasons for the decision, the board must as soon as practicable—

- (a) confirm, set aside or vary the decision; or 35
- (b) substitute any other decision for the decision of the chief executive officer.

Appeal to Minister against board's decision

45. (1) Any person adversely affected by a decision of the board, either in terms of section 44(3) or in the exercise of any power in terms of this Act, may appeal against that decision to the Minister. 40

- (2) Such appeal must—

- (a) be lodged within 60 days from the date on which the decision was made known by the board or such later date as the Minister permits; and
- (b) set out the grounds for the appeal.

(3) After considering the grounds of appeal and the board's reasons for the decision, the Minister must as soon as practicable— 45

- (a) confirm, set aside or vary the decision; or
- (b) substitute any other decision for the decision of the board.

Appeal to High Court against Minister's decision

46. (1) Any person adversely affected by a decision of the Minister, either in terms of section 45(3) or in the exercise of any power in terms of this Act, may appeal against that decision to the High Court.

(2) Such appeal must—

(a) be lodged within 60 days from the date on which the decision was made known by the Minister or such later date as the High Court permits; and

(b) set out the grounds for the appeal.

(3) The appeal must be proceeded with as if it were an appeal from a Magistrates Court to a High Court.

CHAPTER 7

GENERAL

Regulations

47. (1) The Minister may, after consultation with the board and by notice in the *Gazette*, make regulations as to any matter—

(a) required or permitted to be prescribed in terms of this Act;

(b) necessary for the effective administration of this Act.

(2) Any regulation made in terms of subsection (1) may provide that—

(a) the contravention of or failure to comply therewith, is an offence; and

(b) a person convicted of that offence is punishable with a prescribed fine or a term of imprisonment not longer than the period so prescribed.

(3) Before any regulations are made in terms of subsection (1), the Minister must, by notice in the *Gazette*, invite comment on the proposed regulations and consider that comment.

(4) Despite the repeal of the previous Act, the regulations made under section 77 of the previous Act and in force immediately before the specified date, in so far as they relate to matters which are required or permitted to be prescribed as contemplated in subsection (1)(a) or (b), are regarded to have been made in terms of subsection (1).

Delegations and assignment by Minister

48. (1) Subject to subsection (2), the Minister may delegate any power and assign any duty conferred or imposed upon the Minister in terms of this Act to the Director-General: Minerals and Energy.

(2) Any power or duty conferred or imposed upon the Minister in terms of section 2, Chapter 2 and sections 28, 29, 33, 36, 38(4), 45 and 47 may not be delegated or assigned in terms of subsection (1).

(3) A delegation or assignment under subsection (1) must be in writing and may be subject to any conditions or limitations determined by the Minister.

(4) The Minister is not divested of any power nor relieved of any power or duty delegated or assigned in terms of subsection (1).

(5) The Minister may at any time—

(a) amend or revoke a delegation or assignment made in terms of subsection (1);

(b) subject to subsection (5), withdraw any decision made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter himself or herself.

(6) A decision made by a delegatee or assignee may not be withdrawn in terms of subsection 5(b) where it confers a right or entitlement on any third party.

Disagreement between Minister and board

49. (1) If the Minister rejects a recommendation of the board contemplated in section 28(1), 29(1) or (2), 36(1) or 38(4), the Minister and the board must endeavour to resolve their disagreement.

(2) If the Minister and the board fail to resolve their disagreement, the Minister makes the final decision, in consultation with the relevant Minister.

Exemption from duties and fees

50. The Regulator is exempt from the payment of any duty or fee which, were it not for the provisions of this section, would have been payable by it to the State in terms of any law, except the Customs and Excise Act, 1964 (Act No. 91 of 1964), and the Value Added Tax Act, 1991 (Act No. 105 of 1991), in respect of any act or transaction or any document connected with that act or transaction.

Disclosure of information

51. (1) In this section "information" includes anything purporting to be information or containing or providing information. 15

(2) Subject to subsection (4) and any national legislation contemplated in section 32(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)—

(a) no person may disclose to any other person or publish any information which relates to any nuclear installation or site or vessel or action described in section 2(1)(c) in respect of which a nuclear authorisation has been issued or is to be issued and not yet public knowledge if the disclosure of that information is likely to jeopardise the physical security arrangements in respect of such installation, site, vessel or action as required by the Regulator for the protection of persons or the security of the Republic; 20

(b) no person may be in possession of any documents if not authorised and such possession is likely to jeopardise the physical security arrangements in respect of such installation, site, vessel or action as required by the Regulator for the protection of persons or the security of the Republic; 25

(c) no person may receive any information knowing or having reasonable grounds to believe that it has been disclosed to him or her in contravention of the provisions of paragraph (a) or (b); 30

(d) a person must take reasonable steps to safeguard information which he or she has in his or her possession or under his or her control and which he or she is in terms of paragraph (a) or (b) prohibited from disclosing to any person, or publishing, or so conduct himself or herself as not to endanger the secrecy thereof. 35

(3) No member of the board or a committee of the board or an employee of the Regulator may disclose any information obtained by him or her in the performance of his or her functions in terms of this Act except—

(a) to the extent to which it may be necessary for the proper administration of this Act; 40

(b) for the purposes of the administration of justice; or

(c) at the request of any person entitled thereto.

(4) Despite the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information if— 45

(a) the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of a health or safety risk or a failure to comply with a duty imposed by this Act; and

- (b) the disclosure was made in accordance with subsection (5).
- (5) Subsection (4) applies only if the person concerned—
- (a) disclosed the information concerned to—
 - (i) a committee of Parliament or a provincial legislature;
 - (ii) the Public Protector; 5
 - (iii) the Human Rights Commission;
 - (iv) the Auditor-General;
 - (v) the National Director of or a Director of Public Prosecutions;
 - (vi) the Minister;
 - (vii) the Regulator; or 10
 - (viii) more than one of the bodies or persons referred to in subparagraphs (i) to (vii); or
 - (b) disclosed the information concerned to one or more news medium and on clear and convincing grounds (of which he or she bears the burden of proof) believed at the time of the disclosure— 15
 - (i) that disclosure was necessary to avert an imminent and serious threat to the health or safety of an individual or the public, to ensure that the health or safety risk or the failure to comply with a duty imposed by the Act was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or 20
 - (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure; or
 - (c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure (other than the procedures contemplated in paragraph (a) or (b)); or 25
 - (d) disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.

Offences and penalties 30

52. (1) Any person who—

- (a) contravenes or fails to comply with section 20 or a condition imposed on him or her in terms of section 23;
- (b) as a master of a vessel referred to in section 20(2) contravenes or fails to comply with a condition imposed on him or her in terms of section 24; 35
- (c) fails to comply with a directive contemplated in section 41(4);
- (d) fails to pay any fee contemplated in section 28;
- (e) hinders an inspector in the exercise of his or her powers or the performance of his or her duties in terms of this Act, or fails to comply with any order given to him or her by an inspector in terms of this Act; 40
- (f) contravenes section 42(1) or (2); or
- (g) contravenes or fails to comply with section 51,

is guilty of an offence.

(2) Any person who contravenes or fails to comply with any provision of this Act or any condition, notice, order, instruction, directive, prohibition, authorisation, permission, exemption, certificate or document determined, given, issued, promulgated or granted in terms of this Act is, if any such contravention or failure is not declared an offence in terms of subsection (1), is guilty of an offence.

(3) Any person convicted of an offence in terms of subsection (1) or (2) is liable on conviction— 50

- (a) in the case of an offence referred to in subsection (1)(a), (b), (c), (d), or (f) or (2) to a fine or to imprisonment for a period not exceeding 10 years;
- (b) in the case of an offence referred to in subsection (1)(e), to a fine or to imprisonment for a period not exceeding five years; or
- (c) in the case of an offence referred to in subsection (1)(g), to a fine or to 55 imprisonment for a period not exceeding three years.

Reproduction of documents by Regulator

53. (1) The Regulator may—
- (a) reproduce or cause to be reproduced documents in its possession or under its control by—
 - (i) microfilming: 5
 - (ii) electronic means: or
 - (iii) any other process which in its opinion reproduces such a document in a durable and accurate manner: and
 - (b) keep or cause to be kept the reproduction instead of the original document in question. 10
- (2) For the purposes of this Act—
- (a) any reproduction referred to in subsection (1) is regarded to be the relevant original document: and
 - (b) a copy obtained by means of that reproduction and certified by the chief executive officer or an officer authorised by the chief executive officer as a true copy. 15

is *prima facie* evidence of the contents of the original document in any court of law, any tribunal or a commission of inquiry.

Partial repeal of Act 131 of 1993, and savings

54. (1) The following provisions of the Nuclear Energy Act, 1993 (Act No. 131 of 1993) are hereby repealed: 20
- (a) Chapters V and VI;
 - (b) section 1, in so far as it relates to anything in any of these Chapters: and
 - (c) the provisions of Chapter VII, in so far as they relate to the Council for Nuclear Safety. 25

(2) On the specified date anything done before such date in terms of any provision of the previous Act repealed by subsection (1), and which could be done in terms of this Act, is regarded to have been done in terms of this Act, except where otherwise provided in this Act.

Legal succession to Council for Nuclear Safety 30

55. (1) The Regulator is substituted for the Council for Nuclear Safety in any contract or agreement entered into by the latter before the specified date, if the contract or agreement—
- (a) relates to any matter which, on the specified date, falls within the Regulator's competence in terms of this Act: and 35
 - (b) has not yet expired or any obligation thereunder has not been fulfilled, whichever is applicable.
- (2) From the specified date, the Regulator—
- is responsible for all projects and work which had been commenced by the Council for Nuclear Safety before that date in terms of the previous Act— 40
 - (i) with regard to matters which, on the specified date, fall within the Regulator's functions in terms of this Act; and
 - (ii) which, on the specified date, have not been completed; and
 - (b) is competent to continue with any project and work and to carry out those projects and that work or to have them carried out subject to— 45
 - (i) the provisions of this Act; and
 - (ii) of any contract or agreement, contemplated in subsection (1), relating to the execution of the projects or the performance of the work by the other contracting party.

(3) (a) The Regulator is substituted for the Council for Nuclear Safety as a party in any legal proceedings instituted by or against the Council for Nuclear Safety before the specified date and still pending on that date, where the legal proceedings are founded on a cause of action relating to or arising from the exercise or performance of any power or duty of the Council for Nuclear Safety in terms of or purportedly in terms of the previous Act or from its business or operations thereunder, if, on the specified date, the Regulator would have been competent in terms of this Act, to exercise or perform such a power or duty or to conduct any business or operations of a nature substantially the same as those relevant in the proceedings. 5

(b) Any legal proceedings founded on a cause of action which arose before the specified date, which relates to or arises from the exercise or performance of any power or duty of the Council for Nuclear Safety in terms of the previous Act or from its business and operations thereunder and which is brought after the specified date, must be instituted by or against the Regulator if, on the specified date, the Regulator would have been competent, in terms of this Act, to exercise or perform such a power or duty or to conduct any business or operation of a nature substantially the same as those relevant in the proceedings. 10 15

(4) (a) The State, as represented by the Minister, is substituted for [the Council for Nuclear Safety in—

(i) any contract or agreement entered into by the Council for Nuclear Safety before the specified date and still pending on that date, in any case where subsection (1) does not apply; and 20

(ii) any legal proceedings instituted by or against [the Council for Nuclear Safety before the specified date and still pending on that date, where the legal proceedings are founded on a cause of action relating to or arising from the exercise or performance of any power or duty or the conducting of any business or operations of the Council for Nuclear Safety, in any case where subsection (3)(a) does not apply; 25

(b) Any legal proceedings founded on such a cause of action that arose before the specified date and which are brought after the specified date, must be instituted by or against the State, as represented by the Minister, in any case where subsection (3)(b) does not apply. 30

(c) (i) The Minister is responsible, from the specified date, for all projects and work commenced by the Council for Nuclear Safety before the specified date but not yet completed by that date, in any case where subsection (2)(a) does not apply. 35

(ii) The Minister is competent to continue with and carry out those projects and that work, subject to the provisions of this Act and any agreement referred to in subsection (2)(b).

Short title and commencement

56. (1) This Act is called the National Nuclear Regulator Act, 1999. 40

(2) This Act takes effect on the date of commencement of the Nuclear Energy Act, 1999, as contemplated in section 61 of that Act.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL NUCLEAR REGULATOR BILL, 1999

The main objects of the National Nuclear Regulator Bill are to establish the National Nuclear Regulator, to separate the functions of nuclear safety from those of development and application of nuclear technology, and to provide for more transparent and accountable governance of safety in the South African nuclear industry.

BACKGROUND

South Africa's nuclear industry gained momentum in its development with the passing of the Nuclear Energy Act, 1982 (Act No. 92 of 1982).

Although the Act was aimed at developing the South African nuclear industry, a large part of its primary objectives was imbedded in the policies of the political order at the time.

Since 1985, the Act has been amended four times. This culminated in its repealing and replacement by the present Nuclear Energy Act, 1993 (Act No. 131 of 1993).

The White Paper on Energy Policy for the Republic of South Africa, issued by the Department of Minerals and Energy, provides for the continued development of the nuclear industry, albeit under a different governance regime.

The Bill seeks to separate the functions of the Atomic Energy Corporation (AEC) from those of the Council for Nuclear Safety (CNS). At present, the functions of both government organisations are contained in the same Act, the Nuclear Energy Act, 1993. The CNS regulates the nuclear industry through the issuing of licences, except for those radioactive materials which are controlled by the Minister of Health in terms of the Hazardous Substances Act, 1973 (Act No. 15 of 1973). Historically, the country has never had an Act which solely governed the CNS. The history of the CNS is therefore tied to that of the AEC. In addition, the Department of Foreign Affairs represents government in the negotiation of international nuclear agreements on safety issues.

The present Nuclear Energy Act, 1993, is not limited to issues of nuclear safety and the regulation of the nuclear industry by the CNS, but also governs the AEC. There is therefore no clear differentiation between the CNS as a regulatory body of the nuclear industry, and the AEC as a participant and player in the nuclear industry. The fact that both bodies are presently governed by the same Act has led to incorrect perceptions that they are one and the same body. The present Act also does not allow for compliance with international standards regarding permissible activity levels of radioactive substances. Finally, the governance of the CNS needs to be reorganised, in order to allow for more transparent and accountable operation as a nuclear regulatory body.

To rectify the problem issues related to the regulation of the South African nuclear industry, the National Nuclear Regulator Bill was drafted in order to—

- (a) reformulate the governance regime of the CNS so that a more transparent and accountable situation is established;
- (b) reorganise the mandate of the management and governance structures of the CNS, so that matters of public and industrial concerns may be satisfactorily addressed;
- (c) clearly define the mandate of the CNS and make provision for co-operative governance;
- (d) separate the legislation that governs the CNS and the AEC;
- (e) set internationally aligned national standards for minimum permissible activity levels for radioactive substances with regard to safety.

On the date of commencement of the Bill, if enacted, the CNS will be substituted by the National Nuclear Regulator (NNR). Similarly, the AEC will be substituted by the South African Nuclear Energy Corporation Ltd on the date of commencement of the Nuclear Energy Bill, if enacted. The National Nuclear Regulator Bill should therefore be considered in conjunction with the Nuclear Energy Bill by Parliament.

The Department of Minerals and Energy and the State Law Advisers are of the opinion that the Bill should be dealt with by Parliament in accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) since it contains no provision to which the procedures set out in section 74 or 76 of the Constitution apply.