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GOVERNMENT GAZETTE

STAATSKOERANT

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1493.

3 July 1991

No. 1493.

3 Julie 1991

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

† No. 95 of 1991: Abolition of the National Energy Council Act, 1991

No. 95 van 1991: Wet op die Afskaffing van die Nasionale Energieraad, 1991

GENERAL EXPLANATORY NOTE:

- [** **]** Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To provide for the abolition of the National Energy Council; for the transfer of powers, assets, liabilities, rights, duties, obligations and staff of the said Council to the Minister of Mineral and Energy Affairs; and for matters incidental thereto.

(English text signed by the State President.)
(Assented to 27 June 1991.)

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

Definitions

1. In this Act, unless the context indicates otherwise—
- “council” means the National Energy Council established by section 2 of the Energy Act, 1987 (Act No. 42 of 1987); 5
- “Minister” means the Minister of Mineral and Energy Affairs;
- “register” means the register of patents referred to in the Patents Act, 1978 (Act No. 57 of 1978).

Abolition of council 10

2. (1) The council is hereby abolished with effect from 1 April 1991.
- (2) A member or alternate member of the council shall vacate his office with effect from the date of such abolition.

Transfer of assets, liabilities, rights, duties and obligations

3. (1) Notwithstanding anything to the contrary in any law contained, all the assets, liabilities, rights, duties and obligations of the council shall, with effect from 1 April 1991, vest in the Minister. 15
- (2) (a) A patent forming part of the assets referred to in subsection (1) shall not, notwithstanding the provisions of any other law, while it so vests in the Minister, be recorded in the register in the name of the Minister. 20
- (b) A patent which would have been recorded in the register in the name of the council but for the adoption of this Act, shall, notwithstanding the provisions of this Act and of any other law, be recorded in the register in the name of the council.
- (c) The Minister may, subject to such conditions as he may determine, transfer 25 a patent referred to in paragraphs (a) and (b), or any part thereof, to such institution or body as he may deem fit, and such patent shall, notwithstanding the

provisions of the Patents Act, 1978 (Act No. 57 of 1978), be recorded in the register in the name of the institution or body in question as if it was transferred to that institution or body from the council.

(d) A registrar appointed in terms of section 7 of the Patents Act, 1978, shall, on submission to him of a certificate by the Minister that a patent described in that certificate has been transferred to an institution or body in terms of paragraph (c), make such entries or endorsements as he may deem necessary in or on any relevant register, certificate or other document in his office or submitted to him, in order to record that patent in the name of the institution or body. 5

Transfer of staff

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4. (1) Every person referred to in section 13(2)(a) and (c) of the Energy Act, 1987 (Act No. 42 of 1987), in the service of the council on 31 March 1991 and who on 1 April 1991 would have been in the service of the council but for the adoption of this Act, shall with effect from the latter date be placed in the service of the Minister until such person is transferred and employed in terms of subsection (5). 15

(2) Before or after 1 April 1991 the services of any person referred to in subsection (1) shall not be terminated with or without pension nor shall his post be declared to be redundant nor shall he obtain any right to retire with a view to or as a result of the abolition of the council.

(3) Notwithstanding anything to the contrary in any law contained, but subject to the provisions of this Act, the provisions of the Labour Relations Act, 1956 (Act No. 28 of 1956), shall continue to apply to a person referred to in subsection (1) save in so far as the negotiation and determination of his remuneration in respect of his employment are concerned: Provided that in the case of any person who, in terms of subsection (5), is transferred to and employed in a post in the Public Service, the said Act shall, as from the date of such transfer and employment, only apply to the extent to which it applies to persons in the service of the State in respect of their services as such. 20 25

(4) (a) The provisions of any contract of service and the conditions of service applying to any person referred to in subsection (1) on 31 March 1991 and which would have applied to him on 1 April 1991 but for the adoption of this Act, shall without change, subject to the provisions of paragraph (b) and of subsection (3), continue to apply to him until he is transferred and employed in terms of subsection (5). 30

(b) The conditions of service referred to in paragraph (a) may, during the period referred to in subsection (1), be amended only on the recommendation of the Commission for Administration (hereinafter referred to as the "Commission"), provided that any such amendment shall result in more favourable conditions of service for the person concerned than those that applied to him on 31 March 1991. 35

(5) (a) A person referred to in subsection (1) shall, with effect from a date determined by the Minister— 40

(i) subject to the provisions of subsection (6) and on the recommendation of the Commission be transferred to and employed in a post in the Public Service; or

(ii) subject to the provisions of paragraph (b) and subsection (7) be transferred to and employed by any other body established by or under any law and approved by the Minister. 45

(b) A person referred to in paragraph (a)(ii) may be transferred to and employed by such a body only with his consent.

(6) If any person is transferred and appointed in a post in the Public Service in terms of subsection 5(a)(i), he shall be appointed and employed on the conditions applying to the appointment and service of officers and employees in the Public Service, unless the Commission, with the concurrence of the Minister of Finance, recommends other conditions: Provided that— 50

(a) the salary or salary scale of any person shall not be reduced on his transfer and appointment; 55

(b) vacation leave standing to the credit of any person with the council shall stand to his credit in the Public Service;

- (c) pensionable service performed by any person in the service of the council and pensionable service recognized by the council shall be deemed to be pensionable service performed by him in the Public Service;
- (d) a person shall not as a consequence of such transfer and appointment acquire a retirement age which is less favourable than that which applied to him in the service of the council; 5
- (e) any person shall, within six months, or such longer period as the Minister of Finance may determine, after his transfer to and appointment in a post in the Public Service, be given a non-recurrent choice either to remain a member of the pension fund of which he was a member while in the service of the council or, subject to the conditions determined by the Minister of Finance, to become a member of the pension fund applicable to officers or employees in the Public Service; 10
- (f) any disciplinary steps instituted or being considered against such person in respect of alleged misconduct committed before the date of his transfer and appointment shall be dealt with in terms of the provisions of the Public Service Act, 1984 (Act No. 111 of 1984), as if the person concerned was an officer or employee in the Public Service at the time when the misconduct was committed. 15
- (7) If any person is transferred and appointed to any body established by or under law and approved by the Minister in terms of subsection (5)(a)(ii), he shall be appointed and employed on the conditions applying to the appointment and service of employees with such body: Provided that— 20
- (a) the salary or salary scale of any person shall not be reduced on his transfer and appointment; 25
- (b) vacation leave standing to the credit of any such person with the council shall stand to his credit with such body;
- (c) pensionable service performed by any person in the service of the council and pensionable service recognized by the council shall be deemed to be pensionable service performed by him in the service of the body concerned; 30
- (d) a person shall not as a consequence of such transfer and appointment acquire a retirement age which is less favourable than that which applied to him in the service of the council;
- (e) any person shall, within six months after his transfer to and appointment by the body concerned, be given a non-recurrent choice either to remain a member of the pension fund of which he was a member while in the service of the council or to become a member of the pension fund applicable to employees of the body concerned, subject to the laws and rules applicable to that pension fund; 40
- (f) any disciplinary steps instituted or being considered against such person in respect of alleged misconduct or improper conduct committed before the date of his transfer and appointment shall be dealt with in terms of the provisions of the laws that apply to employees of the body concerned as if such person was an employee of that body at the time when the misconduct or improper conduct was committed. 45
- (8) If the Minister appoints a person under the powers conferred upon him by this Act, the provisions of subsections (1), (3), (4), (5) and (6) or (7) shall *mutatis mutandis* apply to such person.

Administration of laws

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5. (1) The administration or exercise of any power or right conferred or duty imposed which is assigned by any law to the council shall on 1 April 1991 pass to the Minister.

(2) Any person, except a person contemplated in section 2(2), who, immediately prior to the abolition of the council, exercised a power in any post or office, shall continue, unless clearly inappropriate, to perform the functions attached to that post or office as if this Act had not been adopted, unless the Minister determines otherwise. 55

Interpretation of certain expressions

6. Unless it is clearly inappropriate in any particular case, any reference in any law or document to—

- (a) the council shall with effect from 1 April 1991 be construed as a reference to the Minister;
- (b) a person in the service of the council shall with effect from 1 April 1991 be construed as a reference to a person in the service of the Minister.

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Advice in respect of functions

7. (1) The Minister may, subject to such conditions as he may determine, appoint persons to advise him with regard to any energy matter and with regard to the execution of the functions entrusted to him in terms of the provisions of this Act.

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(2) The remuneration and allowances of such persons shall be determined by the Minister with the concurrence of the Minister of Finance.

Delegation of powers

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8. (1) The Minister may in writing authorize—

- (a) any officer or employee in the Department of Mineral and Energy Affairs;
- (b) any person in his service; or
- (c) a committee of persons designated by him,

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to exercise or perform in general or in a particular case or in cases of a particular nature, any power, duty or function conferred or imposed on him by or under this Act.

Repeal and amendment of laws

9. (1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column of the Schedule.

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(2) Anything done under any law repealed by subsection (1), or any act performed by the council before the repeal of that law or the abolition of the council by section 2, shall remain in force as if the law had not been repealed or the council had not been abolished, and any reference in any such law to the council or any functionary or an act of a functionary shall, subject to section 6, be construed as a reference to the Minister or to a functionary designated by him.

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Short title

10. This Act shall be called the Abolition of the National Energy Council Act, 1991.

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Schedule

No. and year of law	Title	Extent of repeal or amendment
Act No. 38 of 1977	Central Energy Fund Act, 1977	<p>The amendment of section 1—</p> <p>(a) by the substitution for paragraph (b) of subsection (4) of the following paragraph:</p> <p>“(b) one officer in the Department of Mineral and Energy Affairs appointed by the Minister of [Economic Affairs and Technology] Mineral and Energy Affairs [and one member of the National Energy Council’s personnel referred to in section 13 of the Energy Act, 1987 (Act No. 42 of 1987), who possesses, in the opinion of the said Minister, expert knowledge of crude oil supply and fuel matters appointed by the said Minister]; and”; and</p> <p>(b) by the substitution for subsection (8) of the following subsection:</p> <p>“(8) A director who is in the full-time service of the State [or the National Energy Council] shall not in respect of the services rendered by him as a director of CEF (Proprietary) Limited be paid any remuneration in addition to his salary by virtue of such service, nor shall any such director be paid any travel and subsistence allowances at a rate other than that applicable to him by virtue of such service.”.</p>
Act No. 41 of 1987	Electricity Act, 1987	The repeal of section 5A.
Act No. 42 of 1987	Energy Act, 1987	The whole.
Act No. 72 of 1989	Energy Amendment Act, 1989	The whole.