

THE GAMBIA PUBLIC UTILITIES REGULATORY AUTHORITY ACT, 2001

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THE GAMBIA PUBLIC UTILITIES REGULATORY AUTHORITY ACT, 2001

A BILL ENTITLED

AN ACT to provide for the establishment of an Authority to regulate the activities of providers of certain public services and matters incidental or connected therewith.

[see section 1(2)]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

Short title
and commencement

1.(1) This Act may be cited as The Gambia Public Utilities Regulatory Authority Act, 2001.

(2) This Act shall come into force on such date as the Secretary of State may appoint by Order published in the *Gazette*.

Interpretation

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

“Authority” means The Gambia Public Utilities Regulatory Authority established by section 3;

“Board” means the governing Board established for the Authority under section 4;

“Chairperson” means the Chairperson of the Board;

“communication service” means a telecommunication, broadcasting or postal service;

“consumer” means a person who purchases, receives or makes use of a regulated public service provided by a public utility being a person who does not resell or deliver the service to another person;

“data storage device” means a device for the storage of data in electronic form, film, tape or other similar form;

“energy service” means the provision and supply of electricity, petroleum or gas;

“Inspector” means a person for the time being holding the office of Inspector by virtue of an appointment made under section 40(1);

“licence” means a licence issued by the Authority in accordance with this Act;

“member” means a member of the Board and includes the Chairperson and the Director General;

“public utility” means a provider of a regulated public service;

“provision and supply” in respect of electricity, petroleum gas and water, includes, as the case may be, its generation, collection, importation, storage, transportation, transmission and distribution;

“regulated public service” means a communication service, a transport service, an energy service or a water service provided directly or indirectly to the public or to any section of the public;

“Secretary of State” means the Secretary of State responsible for the administration of this Act;

“transport service” means a service in relation to transport provided on land, water or in the air;

“water service” means the provision and supply of water or sewerage services or both.

(2) A reference in this Act to a regulated public service being provided includes, where the context so admits, a regulated public service that is authorised by a licence to be provided but is not being provided.

PART II – THE GAMBIA PUBLIC UTILITIES REGULATORY AUTHORITY

Establishment
of the Authority

3.(1) There is hereby established an Authority to be known as The Gambia Public Utilities Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal.

(3) The Authority may -

- (a) sue and be sued in its corporate name;
- (b) enter into contracts and acquire, hold and dispose of property; and
- (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(4) The application of the common seal of the Authority shall be authenticated by the signature of the Chairperson or any other person as authorised by the Authority to sign on its behalf, and every document bearing the imprint of the seal of the Authority is to be taken to be properly sealed unless the contrary is proved.

The Board

4.(1) There is hereby established for the Authority a governing Board which shall comprise –

- (a) a Chairperson;
- (b) four other persons; and
- (c) the Director General of the Authority.

(2) There shall be Secretary to the Board who shall be appointed by the Board from the staff of the Authority.

(3) In so far as practicable, members shall be chosen from persons who have knowledge or experience relevant to the Authority's functions.

(4) The President shall appoint the members specified in paragraphs (a) and (b) of subsection (1) on the recommendation of the Secretary of State.

Term of office
of members

5.(1) Except as provided by section 8(2), a member shall hold office for a term of three years and may be re-appointed for one further term of three years.

(2) A member may resign from office at any time by a letter addressed to the President.

Removal
from office

6. Members shall not be removed from office unless-

- (a) the Secretary of State has advised the President that the member has, without good reason, been absent from at least three consecutive meetings of the Board without the permission of the Secretary of State;
- (b) a qualified medical practitioner has certified to the President that the member is incapacitated by physical or mental illness to such an extent as to render the member incapable of carrying out his or her functions as a member; or
- (c) on the grounds of misconduct or incompetence.

Allowances of
members

7. The members shall be paid such allowances as are determined by the Secretary of State.

Absences and
vacancies

8.(1) If, for any reason, a member cannot carry out his or her functions as a member for more than six months, the President may appoint another person to carry out those functions until the member is again able to do so.

(2) A member appointed to fill a vacancy shall hold office for the remainder of the term of the previous member and may be re-appointed for one further term of three years.

Meetings of
the Board

9.(1) The Board shall meet at least once during any period of three months in such place and at such times as the Chairperson may determine.

(2) The Chairperson may, at any time, and shall, if three other members request in writing, convene a special meeting of the Board to be held within seven days of the request.

(3) At a meeting of the Board -

- (a) the Chairperson shall preside but in the absence of the Chairperson, the other members present shall elect one of their number to preside at the meeting;
- (b) four members, including the Director General, shall form a quorum;

- (c) subject to paragraph (d), each member has one vote on a matter for deliberation; and
- (d) a decision of the Board shall be by a simple majority vote, and if there is an equality of votes, the Chairperson or member presiding shall have a casting vote.

(4) The Board may co-opt any person to act as an adviser at a meeting of the Board but the person shall not vote at the meeting.

(5) The validity of a proceeding of the Board shall not be affected by a vacancy in the membership of the Board or by any defect in the appointment of a member.

(6) Minutes of each meeting of the Board shall be kept by the Secretary.

(7) Except as otherwise provided by this Act, the Board and any of its committees may regulate their own procedures.

Absence of
Director General
from meetings

10. If the office of Director General is vacant or the Director General is for any reason unable to attend a meeting of the Board, the person for the time being carrying out the duties of the Director General shall attend the meeting and may participate in its deliberations.

Disclosure of
Interest by
members

11. If a member has a direct or indirect personal interest in the outcome of the deliberations of the Board in relation to any matter –

- (a) the member shall disclose the nature of the interest at a meeting of the Board;
- (b) the disclosure shall be recorded in the minutes of the meeting; and
- (c) the member shall withdraw from any deliberations of the Board in respect of that matter and not vote on it.

Transaction of
business without
meeting

12. A resolution is a valid resolution of the Board if -

- (a) it is signed or assented to by a majority of the members; and

- (b) reasonable notice of the proposed resolution was given to each member and to the Director General,

notwithstanding that it was not passed at a meeting of the Board.

PART III – FUNCTIONS OF THE AUTHORITY

Functions

13.(1) The functions of the Authority are to –

- (a) provide guidelines on rates and fees for the provision of regulated public services;
- (b) examine rates and fees chargeable for the provision of regulated public services;
- (c) protect the interest of consumers and of public utilities;
- (d) monitor and enforce standards of performance by public utilities;
- (e) initiate and conduct investigations into standards of services by public utilities;
- (f) promote fair competition among public utilities;
- (g) conduct studies relating to economies and efficiency in the provision of regulated public services to consumers;
- (h) collect and compile data on regulated public services and their provision necessary for the performance of the Authority's functions;
- (i) provide advice in respect of regulated public services and their provision;
- (j) maintain a register (which may be in electronic form) of public utilities and the services they provide;
- (k) publish, in such manner as it considers appropriate, information relating to the Authority's functions and activities;

- (l) recommend and administer, in accordance with this Act, a licensing system in respect of public utilities;
- (m) provide advice or assistance to a public utility to assist or enable the public utility to comply with a requirement of this Act or of any licence;
- (n) prepare or cause to be prepared any relevant documentation (including drafts of any required legislation) necessary to give the Authority the power to regulate public utilities in accordance with this Act; and
- (o) perform such other functions as may be imposed on it by any other legislation.

(2) The Authority shall in carrying out its functions seek to balance the interests of both the consumers and public utilities.

(3) In subsection (1)(n), "required legislation" includes regulations made under this Act.

Powers of the Authority

14.(1) The Authority has powers to –

- (a) require a public utility to furnish the Authority with information in relation to its business and the regulated public service it provides;
- (b) require a public utility or an employee or agent of a public utility to appear before and furnish the Authority with information relating to the business of the public utility and the public service it provides;
- (c) appoint, consult and seek the advice of any person or body (including a Department of State or other agency of Government) whether inside or outside The Gambia;
- (d) establish committees and other bodies (which may consist of or include persons who are not members or employees of the Authority) with the responsibility to undertake specified functions on behalf of the Authority;

- (e) require and have access to the records (including a data storage device) in the possession or under the control of a public utility;
- (f) make an extract from or a copy (in any form) of a record in the possession or under the control of a public utility; and
- (g) to do such other things as are necessary to enable it to carry out its functions and as are conducive or incidental to the proper discharge of those functions.

(2) A committee or other body which is established in accordance with subsection (1)(d) has such powers as the Authority may determine and its decisions shall have no effect unless confirmed by the Authority.

Independence of the Authority

15. The Authority shall not be subject to the direction or control of any person or authority in the performance of its functions or exercise of its powers under this Act and shall act in all matters and at all times impartially.

PART IV – STAFF OF THE AUTHORITY

Appointment of Director General

16.(1) There shall be a Director General of the Authority who shall be appointed by the President.

(2) The Director General shall be the Chief Executive of the Authority and be appointed on such terms and conditions as determined by the President on the advice of the Secretary of State.

(3) The Director General shall be responsible for the day-to-day administration of the Authority and for the implementation and execution of its decisions.

Appointment of other staff

17.(1) The Board shall appoint for the Authority such employees as it may think necessary for the due discharge of the functions of the Authority, on such terms as to remuneration or otherwise as it may determine.

(2) The Board shall be responsible for the discipline and removal of employees of the Authority.

(3) The Board shall make regulations establishing schemes for pensions, gratuities and other retirement benefits in respect of employees of the Authority.

(4) Regulations made under subsection (3) may include provisions for the grant of benefits to the dependants of the employees of the Authority or their legal representatives.

(5) The Authority shall, for the purpose of achieving maximum efficiency in the discharge of its functions under this Act, institute schemes for -

- (a) the training of its employees in administration, regulatory management and other skills; and
- (b) building up capacity specialisation in public utilities sector regulation,

with a view to securing the benefit of their knowledge, experience and expertise in the conduct of the operations of the Authority.

PART V – IMPOSITION OF LICENSING OBLIGATION

Application of
this Part
Schedule

18. This Part applies to the regulated public services listed in the Schedule to this Act.

Licensing
obligation

19. The power to issue a licence to a public utility providing a regulated public service to which this Part applies shall vest in –

- (a) the Secretary of State responsible for matters relating to the regulated public service; or
- (b) such other person as may be specified in the legislation applicable to the regulated public service,

on the advice of the Authority.

PART VI – LICENSING CONTROL

Application of
this Part and
interpretation

20. (1) This Part applies to the administration of the licensing arrangement for the provision of the regulated public services listed in the Schedule to this Act.

(2) In this Part -

“appropriate person” means the Secretary of State responsible for matters relating to a regulated public service or any other person specified in a legislation to issue a licence in respect of a regulated public service listed in Schedule to this Act.

Licensing requirements

21.(1) No person shall provide a regulated public service to which this Part applies unless the person –

- (a) has a licence to do so issued by the appropriate person; and
- (b) is providing the service in accordance with the terms of that licence.

(2) A person who provides a regulated public service to which this Part applies without a licence issued by the appropriate person commits an offence and is liable on conviction to a fine of not less than five hundred thousand dalasis.

(3) The provisions of this section shall have effect notwithstanding the provisions of any other legislation.

Application for licence

22. An application for a licence shall be -

- (a) made to the Authority;
- (b) in a form approved for the purpose by the Authority; and
- (c) accompanied by such fee and documents as the Authority may determine.

Issuance of licence

23. The appropriate person shall, on the advice of the Authority, issue a licence on an application made under section 22, if the Authority is satisfied that -

- (a) having regard to the purposes of this Act, it is in the interest of the public to do so;
- (b) the applicant has complied with the conditions of a previous licence issued to it, under this Act or

any other legislation, to provide a regulated public service and it appears to the Authority that the applicant would also comply with the conditions of a new licence if one were to be issued to the applicant; and

- (c) the applicant has adequate facilities (including financial facilities) and experience to provide the regulated public service in a satisfactory manner.

Conditions of
licence

24.(1) The Authority shall require a public utility to comply with any condition specified in a licence.

(2) The Authority shall, when imposing conditions, have regard to its functions and the purpose of this Act and any other legislation applicable to the regulated public service and shall only impose conditions accordingly.

(3) A licence may, in particular, contain conditions requiring the public utility to -

- (a) determine the tariffs, charges and terms and conditions that are applicable to the provision of the regulated public service provided by the public utility in the manner and at the times specified in the licence;
- (b) publish in the manner and at the times specified in the licence a notice indicating the method that is to be adopted for determining its charges and other terms and conditions that are to apply to the regulated public service provided;
- (c) pay to the Authority, during the term of the licence, such fees and other charges as may be determined by the Authority;
- (d) provide to the Authority, in the manner and at reasonably required intervals, estimates, returns or other information in respect of the public utility which the Authority requires to perform its functions;

- (e) provide the regulated public service permitted by the licence in accordance with any standard of performance applicable to that service by virtue of this Act or specified in the licence; and
- (f) obtain the approval of the Authority before undertaking any activity specified in the licence as requiring the prior approval of the Authority.

(4) The Authority shall, in specifying the manner to be used by a public utility to determine the tariffs, charges and terms and conditions applicable to the provision of the regulated public service by the public utility, have regard to -

- (a) the continued viability of the public utility;
- (b) the population distribution in The Gambia;
- (c) the need to make the best use of any natural resources of The Gambia; and
- (d) the economic development of The Gambia or of any particular region of The Gambia.

Non-transferability
of licence

25.(1) A licence is not transferable except with the written approval of the Authority, which may be given subject to compliance with conditions specified in the approval.

(2) An application to transfer a licence shall be -

- (a) made to the Authority;
- (b) in a form approved for the purpose by the Authority; and
- (c) accompanied by such fee and documents as the Authority may, from time to time, determine.

Duration of
licence

26. A licence shall, unless sooner terminated in accordance with this Act, remain in force for the period specified in it or in any extension of that period.

Extension of
term of licence

27.(1) The appropriate person may, on the advice of the Authority, extend the period of validity of a licence on the application of the public utility.

(2) An application to extend the period of validity of a licence shall be -

- (a) made to the Authority;
- (b) in a form approved for the purpose by the Authority; and
- (c) accompanied by such fee and documents as the Authority may, from time to time, determine.

(3) An application to extend the period of validity of a licence must be made not later than ninety days before the end of the period of validity of the licence to give the Authority sufficient time to consider the application.

Amendment of
licence

28.(1) The Authority may at any time amend any provision, term or condition of a licence by agreement with the public utility.

(2) Where a class of public utilities is licensed, those public utilities shall be taken to have agreed to the amendment of a provision, term or condition if the majority of them have so agreed.

Suspension and
cancellation
of licence

29.(1) The Authority may , with approval of the appropriate person, suspend or cancel a licence if it is satisfied that the public utility is not complying with or has not complied with any provision, term or condition of the licence.

(2) The Authority shall, before suspending or cancelling a licence, give the public utility written notice of its intention to do so specifying -

- (a) the cause for the Authority's dissatisfaction;
- (b) the action the Authority intends to take; and
- (c) when it intends to take that action.

(3) If the Authority considers that the public utility can take rectifying action, the Authority shall also specify in the notice -

- (a) the action the Authority requires the public utility to take;
- (b) the time in which that action is to be taken; and
- (c) the action the Authority intends to take if the rectifying action is not taken within the specified time.

(4) The Authority shall, before suspending or cancelling a licence, also give the public utility a reasonable opportunity to be heard and to make representation to the Authority.

(5) The Authority shall, in considering whether to proceed to suspend or cancel a licence, take into account -

- (a) any representation made to it by the public utility; and
- (b) the extent to which the public or any section of the public is likely to suffer loss, damage or inconvenience if the licence is suspended or cancelled.

PART VII – REGULATION OF PUBLIC UTILITIES NOT SUBJECT TO LICENSING

Application of this Part

30.(1) This Part applies to public utilities which, though providing regulated public services -

- (a) need not be regulated by a licensing arrangement; but
- (b) should nevertheless be subject to regulation by the Authority acting in accordance with this Act.

(2) In order to give effect to subsection (1), the Secretary of State may, on the advice of the Authority, make regulations declaring that the provisions of this Part shall apply in respect of a public utility or a class of public utilities providing a regulated public service specified in the regulations.

Duty to provide
adequate service

31. A public utility to which this Part applies shall -

- (a) maintain its equipment and property used in the provision of the regulated public service in a condition that enables the service to be provided effectively;
- (b) provide a safe regulated public service that is adequate and, so far as is reasonably possible, efficient and non-discriminatory;
- (c) make any repair, change, extension or improvement to the regulated public service necessary for the efficient provision of the service;
- (d) where the Authority has determined a standard of performance in respect of the provision of the regulated public service in accordance with section 33, comply with that standard; and
- (e) where the Authority has established fee or charging guidelines in respect of the provision of the regulated public service in accordance with section 34, impose fees and other charges that do not vary substantially from those guidelines.

Authority may
compel compliance

32.(1) If the Authority is satisfied that a public utility to which this Part applies has failed to comply with a requirement of section 31, the Authority may serve on the public utility a written notice requiring compliance.

(2) The notice under subsection (1) shall specify -

- (a) the failure by the public utility and the manner in which it failed;
- (b) the rectifying action the Authority requires the public utility to take;
- (c) the time in which the rectifying action is to be taken; and
- (d) the action the Authority intends to take if the rectifying action is not taken within the specified time.

(3) The action the Authority may require a public utility to take may include, in appropriate cases, the payment of compensation by the public utility to consumers who have suffered damage as a result of the failure by the public utility.

(4) The Authority shall, before taking the action specified in the notice, give the public utility a reasonable opportunity to be heard and to make representation to the Authority.

(5) The Authority shall, in considering whether to proceed and the manner in which it intends to proceed, take into account any representation made to it by the public utility.

(6) A public utility which, without the approval of the Authority, does not comply with the requirements of a notice served on it in accordance with subsection (1), within the time specified in the notice, commits an offence and is liable on conviction to a fine of not less than five hundred thousand dalasis.

Standards of performance

33.(1) The Authority may determine a standard of performance in respect of the provision of a regulated public service.

(2) The Authority shall, before determining a standard of performance under subsection (1) -

(a) seek the views of providers of the service; and

(b) carry out any research, including seeking the opinions of consumers of the service, it considers necessary.

(3) The Authority shall publish a standard of performance in respect of the provision of a regulated public service in a manner that will best bring it to the attention of public utilities providing the service and of consumers of the service.

Fee and charging guidelines

34.(1) The Authority may establish fee and charging guidelines in respect of the provision of a regulated public service.

(2) The Authority shall, before establishing guidelines under subsection (1) -

- (a) seek the views of providers of the service; and
- (b) carry out any research, including seeking the opinions of consumers of the service, it considers necessary.

(3) The Authority shall publish fee and charging guidelines in respect of the provision of a regulated public service in such manner as will best bring them to the attention of public utilities providing the service and of consumers of the service.

(4) The Authority shall, in establishing fee and charging guidelines in respect of a regulated public service, have regard to –

- (a) the continued viability of the public utilities providing the service;
- (b) the population distribution in The Gambia;
- (c) the need to make the best use of any natural resources of The Gambia; and
- (d) the economic development of The Gambia or of any particular region of The Gambia.

(5) The Authority may establish different fee and charging guidelines for different parts or regions of The Gambia and for different classes of consumers.

Authority may obtain details of fees

35.(1) The Authority may require a public utility to which this Part applies to supply to the Authority details of the utility's fees and charges within a reasonable period specified by the Authority.

(2) A public utility which -

- (a) fails to comply with a requirement under subsection (1); or
- (b) knowingly or recklessly provides information that is false, misleading or incomplete,

commits an offence and is liable on conviction to a fine of not less than one hundred thousand dalasis.

Authority may
require returns

36.(1) The Authority may, for the purpose of carrying out its functions, require a public utility to which this Part applies to supply to the Authority, at intervals specified by the Authority, a detailed report of the public utility's finances and operations in a form and containing particulars specified by the Authority.

(2) A public utility which -

(a) fails to comply with a requirement under subsection (1); or

(b) knowingly or recklessly provides information that is false, misleading or incomplete,

commits an offence and is liable on conviction to a fine of not less than one hundred thousand dalasis.

PART VIII – COMPLAINTS AND INVESTIGATIONS

Application of
this Part

37. This Part applies to -

(a) a public utility listed in the Schedule; and

(b) a public utility to which Part VII applies.

Authority to investigate
complaints

38.(1) A person may complain to the Authority that a public utility to which this Part applies is not complying with an obligation imposed on the public utility by or in accordance with this Act.

(2) The Authority shall investigate the complaint and shall, if it finds the complaint to be justified, take action under or in accordance with this Act to ensure compliance by the public utility.

(3) The Authority need not investigate a complaint if it is satisfied that -

(a) the complaint is trivial, frivolous or not made in good faith; or

(b) the complaint is on the same subject already under investigation.

(4) The Authority shall inform a person who makes a complaint under this section of the action taken by the Authority, including any decision not to investigate the complaint.

Authority may
hold investigations

39.(1) The Authority may hold an investigation in respect of a regulated public service and the service it provides if it is satisfied that it is necessary to do so for the purpose of carrying out its functions under this Act.

(2) The Secretary of State may, on the advice of the Authority, make regulations giving the Authority any power it does not otherwise have under this Act to enable the Authority to hold an effective investigation.

(3) Regulations made under subsection (2) may prescribe the manner in which the investigation is to be held and the procedure to be followed.

PART IX – ENFORCEMENT

Authority may
appoint Inspectors

40.(1) The Authority, acting on the advice of the Director General, may appoint any person to be an Inspector.

(2) The Authority shall appoint an Inspector by instrument in writing signed by the Director General.

(3) An Inspector shall have the powers specified in the Inspector's instrument of appointment.

(4) A person appointed to be an Inspector need not be an employee of the Authority.

(5) An Inspector shall be appointed on such terms and conditions as may be determined by the Authority on the advice of the Director General.

Inspector may
enter premises

41.(1) This section applies to premises owned, used or under the control of –

(a) a public utility licensed under Part VI; or

(b) a public utility to which Part VII applies.

(2) An Inspector may enter premises to which this section applies to confirm compliance by the public utility of an obligation imposed on the public utility by or in accordance with this Act.

(3) An Inspector shall not enter premises under this section except -

- (a) at a reasonable time, having regard to the regulated public service being provided; and
- (b) on production of the Inspector's instrument of appointment, if so requested by a person apparently in control of the premises.

Enforcement of
decision

42.(1) If –

- (a) in the exercise of its functions, the Authority makes a decision or gives a direction requiring a person to do or to desist from doing an act; and
- (b) the person fails to comply with the decision or direction within a specified period or, if no period is specified, within a reasonable period,

then either party may refer the matter to arbitration in accordance with the Arbitration Act.

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(2) Each party shall appoint one arbitrator and the arbitrators so appointed shall together appoint an umpire.

(3) The fact that -

- (a) the matter has been referred to arbitration;
- (b) the arbitrators may have made an award and the award, by leave of the court, may have been enforced; or
- (c) the person may subsequently have complied with the decision or direction of the Authority,

does not exempt the person required to comply with the decision or direction or any other person from any criminal liability under this Act incurred by virtue of the failure to comply with the decision or direction.

PART X – FINANCIAL PROVISIONS

Funds of the Authority

43. The funds of the Authority shall include -

- (a) funds appropriated to it by the National Assembly;
- (b) loans granted to the Authority;
- (c) monies accruing by way of licence fees and charges and other fees and charges; and
- (d) any grants and gifts made to the Authority, provided that the terms and conditions attached to a grant or gift are not inconsistent with the functions of the Authority.

Accounts, audit and estimates

44.(1) The Authority shall keep proper records and books of accounts of its income and expenditure.

(2) The Authority shall prepare a statement of accounts in respect of each financial year.

(3) The accounts of the Authority in respect of each financial year shall be subject to audit by the Auditor General.

(4) The Authority shall within three months of the end of each financial year submit its statement of accounts to the Auditor General.

(5) The audited accounts of the Authority and the Auditor General's report on those accounts shall form part of the Auditor General's overall annual report to the National Assembly.

(6) The Authority shall, not later than 31st July of each year, submit to the Secretary of State an estimate of the income and expenditure of the Authority for the next succeeding year.

Annual reports

45.(1) The Authority shall prepare and submit to the Secretary of State within three months of the end of each financial year a report on the activities of the Authority during the preceding year.

(2) The Secretary of State shall cause the report to be laid before the National Assembly at the first reasonable opportunity.

PART XI – MISCELLANEOUS

Protection of
members
and staff

46. No action, suit, prosecution or other proceedings shall be brought or instituted against a member of the Board or staff of the Authority personally in respect of any thing done in pursuance, execution or intended execution of any of the provisions of this Act.

Failure to provide
information

47.(1) A public utility or an employee or agent of a public utility who –

- (a) fails to provide the Authority with information or access to records in relation to the public utility and the regulated public service it provides when requested to do so by the Authority; or
- (b) knowingly or recklessly provides information that is false, misleading or incomplete,

commits an offence and is liable on conviction to a fine of not less than twenty-five thousand dalasis.

(2) A public utility or an employee or agent of the public utility who -

- (a) after being given reasonable written notice to do so, fails to appear before the Authority to furnish it with information in relation to the public utility and the regulated public service it provides; or
- (b) having appeared, fails to furnish the information required by the Authority or knowingly or recklessly provides information that is false, misleading or incomplete,

commits an offence and is liable on conviction to a fine of not less than twenty-five thousand dalasis.

(3) An employee or agent of a public utility who fails to produce documentary evidence as required by the Authority commits an offence and is liable on conviction to a fine of not less than twenty-five thousand dalasis if, after being given reasonable written notice of the documentary evidence required, the employee or agent, being capable of doing so, fails to produce that evidence at the time and in the manner required.

Secrecy

48.(1) Except as provided by subsection (3), a person who receives information relating to the business or other affairs of a person –

- (a) under or for the purpose of this Act; or
- (b) directly or indirectly from a person who has so received it under or for the purpose of this Act,

commits an offence and is liable on conviction to a fine of not less than twenty-five thousand dalasis, if he or she discloses the information without the consent of the person to whom it relates, and where paragraph (b) applies, of the person from whom it was received.

(2) This section does not apply to information which -

- (a) at the time of disclosure had already been made available to the public from other sources; or
- (b) is the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) This section does not preclude the disclosure of information necessary to enable the Authority or persons acting on its behalf to discharge their functions.

Offences by corporations

49. Where an offence under this Act committed by a partnership, body corporate or association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or default on the part of –

(a) a person who is a partner, director, manager, secretary or other similar officer of the partnership, company or association; or

(b) a person purporting to act in such a capacity,

the person commits an offence and is liable in the same manner as the partnership, company or association to the penalty provided for the offence.

Assessment of fees and charges

50. The Authority shall, in assessing fees and charges which it may impose under this Act, take into account any money due to it from other sources and its administration expenses, and shall assess its fees and charges accordingly.

Level of fines

51. When assessing the level of a fine to be imposed in respect of an offence under this Act, the court imposing the fine shall take into account -

(a) the measure of any benefit the person gained or was likely to gain by reason of the offence;

(b) any disadvantage or inconvenience suffered by the public or any section of the public, or any consumer or consumers by virtue of the offence;

(c) the size of the business carried on by the public utility and the likely effect the imposition of the fine would have on that business;

(d) the length of any period during which the conduct giving rise to the offence continued;

(e) whether the person has previously been convicted of an offence of the same or similar nature and, if so, on how many occasions; and

(f) any special, unusual or unexpected circumstance that gave rise to the commission of the offence.

Arbitration

52.(1) This section applies to a decision –

(a) not to issue a licence;

(b) as to the conditions imposed by a licence;

- (c) not to approve a transfer of a licence;
- (d) as to the conditions imposed on an approval to transfer a licence;
- (e) as to the term of a licence or to the term of any extension of the term of a licence; and
- (f) to suspend, amend or cancel a licence.

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(2) A person aggrieved by a decision to which this section applies may refer the matter to arbitration under the Arbitration Act.

(3) Each party shall appoint one arbitrator and the arbitrators so appointed shall together appoint an umpire.

(4) On a reference to arbitration under this section, the arbitrators may -

- (a) confirm the decision of the Authority;
- (b) order the Authority to revoke its decision; or
- (c) order the Authority to take some other action in accordance with this Act.

Licensing provisions of this Act to prevail

53. (1) Notwithstanding anything contained in any other law, as from the commencement of this Act, the licensing of a public utility providing a regulated public service to which this Act applies shall be in accordance with the provisions of this Act;

(2) Accordingly, if the licensing provisions of any law relating to a public utility providing a regulated public service to which this Act applies conflicts with the provisions of this Act, the provisions of this Act shall prevail.

Regulations

54.(1) The Secretary of State may, on the advice of the Authority, make regulations for the better carrying out of the provisions of this Act.

(2) In particular, regulations may be made to establish in various parts of The Gambia consumer service groups to aid and advise the Authority in carrying out its functions.

SCHEDULE

Section 18

REGULATED PUBLIC SERVICES REQUIRING LICENSING

1. Telecommunications and broadcasting
2. Electricity
3. Water and Sewerage
4. Transport
5. Such other public utilities as the Secretary of State, in consultation with the appropriate Secretary of State, may prescribe by an Order published in the *Gazette*.

OBJECTS AND REASONS

This Bill compliments The Gambia Divestiture Agency Act, 2001 by establishing The Gambia Public Utilities Regulatory Authority charged with the duty of regulating the activities of persons (public utilities) who provide certain services to the public (regulated public services) especially where they enjoy a monopoly in the provision of a service.

The public utilities that may be regulated are those providing energy services (electricity, petroleum and gas), communication services (telecommunications, broadcasting and postal services), water and sewage services, and transport services (on land, water and in the air).

The power to issue licences to public utilities is vested in the Secretary of State responsible for the regulated public service concerned or such other person as may be specified in the legislation applicable to the regulated public service on the advice of the Authority.

The Bill provides for licensing arrangement which will be administered by the Authority.

In cases where licensing may not be necessary because, for example, there is sufficient competition in the provision of the regulated public service, the Act permits the Authority a degree of control by requiring a public utility to comply, when providing the service, broadly with certain standards, and the fee and charging guidelines prescribed by the Authority.

The licensing arrangement will give the Authority the power to ensure that the interest of both the public utilities providing a regulated public service and the consumers of the service are adequately protected.

The Authority is accordingly vested with the necessary powers to enable it to discharge the functions and duties for which it is to have responsibility under the Act.

The Authority is to operate entirely independently and is not subject to control by the government nor by any other person. This is necessary if people are to accept that the Authority is acting as an independent arbiter – in much the same way as the courts act. The members are therefore given a degree of security of tenure so that they may act without fear or favour.

A person aggrieved by a decision of the Authority may refer the matter to arbitration.

The sources of the Authority's funding are varied and include monies provided by the Government, and fees and charges it receives from licensees and for the other services it provides.

Hopefully, by virtue of being able to charge these fees and charges, the Authority will quickly become self-funding so that it can be seen as truly independent and not reliant on government funding to continue to be able to carry out its regulatory functions.

The Authority is required to keep proper accounts, which must be audited by the Auditor General.

The Authority is to submit annual reports to the Secretary of State who is required to lay them before the National Assembly as soon as practicable.

Finally, the Secretary of State, acting on the advice of the Authority, is empowered to make any necessary regulations under the Act.

**FAMARA JATTA
SECRETARY OF STATE FOR FINANCE
AND ECONOMIC AFFAIRS**

NOTE: - THIS ACT WAS PASSED BY NATIONAL ASSEMBLY ON 24TH DECEMBER 2001.