

**CHAPTER 350
PETROLEUM ACT**

ARRANGEMENT OF SECTIONS

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**CHAPTER 350
PETROLEUM ACT**

*1969
No. 51*

An Act to provide for the exploration of petroleum from territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resources derivable therefrom in the Federal Government and for other matter incidental thereto.

Annotation 2

Commencement

[27th November, 1969]

*Vesting of
petroleum in the
State*

1. (1) The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.

Annotation 3

(2) This section applies to all land (including land covered by water) which-

(a) is in Nigeria; or

(b) is under the territorial waters of Nigeria; or

(c) forms part of the continental shelf; or

(d) forms part of the Exclusive Economic Zone of Nigeria

1998 No. 22

Annotation 4

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(3) In this section, references to "territorial waters" are references to the expression as defined in the Territorial Waters Act.

*Oil exploration
licences, oil
prospecting
licences and oil
mining leases*

2. (1) Subject to this Act, the Minister may grant –

(a) a licence, to be known as an oil exploration licence to explore for petroleum;

(b) a licence, to be known as an oil prospecting licence to prospect for petroleum; and

(c) a lease, to be known as an oil mining lease, to search for, win, work, carry away and dispose of petroleum.

*Section 3 of
1998 No. 22*

(2) A licence or lease under this section may be granted only to--

Annotation 5

Cap. 59

(b) A company incorporated in Nigeria under the Companies and Allied Matters Act or any corresponding law.

(3) The provisions of the First Schedule to this Act shall, in so far as they are applicable, have effect in relation to licences and leases granted under this section.

Refineries

3. (1) No refinery shall be constructed or operated in Nigeria without a licence granted by the Minister.

(2) Licences granted under this section shall be in the prescribed form and shall be subject to the prescribed terms and conditions or, where no form is prescribed or no terms or conditions are prescribed, in such form or subject to such terms and conditions as may be decided or imposed by the Minister.

(3) There shall be charged in respect of every licence granted under this section such application fees and such other fees as may be prescribed.

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(4) The provisions of this section are additional to the provisions of the Hydrocarbon Oil Refineries Act.

Control of petroleum products.

4. (1) Subject to this section, no person shall import, store, sell or distribute any petroleum products in Nigeria without a licence granted by the Minister.

1977 No.37

(2) Subsection (1) of this section shall not apply in respect of-

(a) the storage, sale or distribution of not more than 500 litres of kerosene, and such other categories of petroleum products as may be exempted from the application of subsection (1) of this section by the Minister by order published in the *Federal Gazette*;

(b) storage of petroleum products undertaken otherwise than in connection with the importation, sale or distribution of petroleum products.

(3) Licences granted by the Minister under this section shall be subject to the prescribed terms and conditions of where no form is prescribed or no terms or conditions are prescribed, in such form and on such terms and condition as may be decided or imposed by the Minister.

(4) There shall be charged in respect of every licence granted under this section application fees and such other fees as may be prescribed.

(5) The Minister may by order published in the *Federal Gazette* delegate the power to grant licences under this section to such persons or authorities in a State as he may deem fit.

(6) Any person who does, without the appropriate licence, any act for which a licence is required under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for two years or a fine of two thousand naira or both, and, in addition, the petroleum products in respect of which the offence was committed shall be forfeited.

Offences in connection with the distribution of petroleum products. 1976 No. 49

5. (1) If any oil marketing company in pursuance of any agreement between it and any other oil marketing company borrows any petroleum products from any other oil marketing company and fails to return to that company an equivalent quantity of the petroleum products borrowed within two weeks of the date on which petroleum products were borrowed, the first named marketing company shall be guilty of an offence and on conviction shall be liable to a fine of one hundred Naira per metric ton of the petroleum products concerned.

(2) If any oil marketing company at any time registers only unpumpable stock in respect of petroleum products stored in its depot at Apapa, Lagos, that company shall be guilty of an offence and shall on conviction be liable to a fine of five thousand naira for each day during which only unpumpable stock is registered.

(3) In this section, "oil marketing company" means any company in respect of which a marketer's licence has been granted by the Minister under section 4 of this Act.

Price control

6. (1) The Minister may by order published in the Federal *Gazette* fix the prices at which petroleum products or control any particular class or classes thereof may be sold in Nigeria or in any particular part or parts thereof.

(2) The Minister may by notice in writing require any person appearing to him to have or to be likely to have access to information which is relevant to the fixing of any prices of the kind mentioned in subsection (1) of this section to supply that information to the Minister, and any person so required shall be legally bound to use his best endeavours to supply the information accordingly.

Section 4(a) of 1998 No. 22

Right of pre-emption

7. (1) In the event of a state of national emergency or war the Minister shall have the right of pre-emption of all petroleum and petroleum products obtained, marketed or otherwise dealt with under any licence or lease granted under this Act.

Annotation 6

(2) The provisions of the Second Schedule to this Act shall have effect in relation to the right mentioned in subsection (1) of this section.

(3) Any person who without reasonable excuse (the burden of proof of which shall lie on him) fails to comply with a requisition made by or on behalf of the Minister under paragraph 1, 2 or 7 of the Second Schedule to this Act, or fails to conform to or obey a direction issued by the Minister under paragraph 8 of the Second Schedule to this Act, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two thousand naira.

(4) Any person who obstructs or interferes with the Minister or his servants or agents in the exercise of the powers conferred on the Minister by paragraph 8 of the Second Schedule to this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two hundred naira or to imprisonment for a period not exceeding six months, or to both.

*Section 4(b) of
1998 No. 22*

(5) The Minister may, for the purpose of subsection (1) of this section, advise the President to declare a state of national emergency if the Minister is satisfied that, as a result of the low level of availability of petroleum and petroleum products-

Annotation 7

- (a) there is an actual breakdown of public order and public safety in the Federation or any part thereof; or
- (b) there is a clear and present danger of actual breakdown of public order or public safety in the Federation or any part thereof.

(6) The President may, on receiving the advice of the Minister under subsection (5) of this section declare a state of national emergency under the provisions of the Constitution of the Federal Republic of Nigeria 1979, as amended for the purpose of this section if he is satisfied that it is necessary to do so.

*Powers and
duties of public
officers.*

8. (1) The Minister-

- (a) shall exercise general supervision over all operations carried on under licences and leases granted under this Act;
- (b) shall report annually to the Federal Government on the progress of the oil industry in Nigeria;
- (c) shall have access at all times to the areas covered by oil exploration licences, oil prospecting licences and oil mining leases, and to all refineries and installations which are subject to this Act, for the purpose of inspecting the operations conducted therein and enforcing the provisions of this Act and any regulations made thereunder and the conditions of any licences or leases granted under this Act or under any corresponding law for the time being in force in Nigeria;
- (d) may arrest without warrant any person whom he finds committing, or whom he reasonably suspects of having committed, any offence under this Act or any regulations made thereunder and shall hand over any person so arrested to a police

thereunder, and shall hand over any person so arrested to a police officer with as little delay as possible;

(e) may by notice in writing require the holder of a licence or lease granted under this Act or any contractor working for the holder (or any servant or agent of the holder or the contractor) to appear before him at a reasonable time and place to give such information as he may require about the operations being conducted under the licence or lease, and every person so required to appear shall be legally bound to comply with the notice and give the information;

(f) may direct in writing that operations under a licence or lease granted under this Act shall be suspended in any area until arrangements have been made which in his opinion are necessary to prevent danger to life or property;

(g) may direct in writing the suspension of any operations which in his opinion are not being conducted in accordance with good oil field practice; and

(h) may direct in writing the suspension of any operations where in his opinion a contravention of this Act or any regulations made thereunder has been or may have been or is likely to be committed.

(2) The Director of Geological Survey shall have access at all times to the areas covered by oil exploration licences, oil prospecting licences and oil mining leases for the purpose of inspecting geophysical and geological operations therein.

Regulations

9. (1) The Minister may make regulations –

Annotation 8

(a) prescribing anything requiring to be prescribed for the purposes of this Act;

(b) providing generally for matters relating to licences and leases granted under this Act and operations carried on thereunder, including-

- (i) safe working,
- (ii) the conservation of petroleum resources,
- (iii) the prevention of pollution of water courses and the atmosphere,
- (iv) the making of reports and returns (including the reporting of accidents) ,

- (v) inquiries into accidents,
- (vi) the keeping and inspection of records, books, statistics, accounts and plans,
- (vii) the measurement of production, and
- (viii) the measurement of crude oil delivered to refineries

(c) regulating the construction, maintenance and operation of installations used in pursuance of this Act;

(d) regulating refineries and refining operations, and where two or more refineries are in operation specifying-

- (i) the proportion or quantity of crude oil to be supplied to each refinery,
- (ii) the share of each refinery in the total market and;
- (iii) the prices of refinery products;

(e) regulating the importation, handling, storage and distribution of petroleum, petroleum products and other flammable oils and liquids, and in particular (without prejudice to the generality of the foregoing).

(i) prohibiting the importation or exportation petroleum or petroleum products except at specific ports or places,

(ii) prescribing the notice to be given (and the person by whom the same shall be given) on the arrival at a port of a ship carrying petroleum or petroleum products as cargo,

(iii) defining dangerous petroleum and dangerous petroleum products, prescribing anchorages for ships carrying dangerous petroleum or dangerous petroleum products as cargo and requiring those ships to proceed to and remain at those anchorages,

(iv) regulating the loading, unloading, transport within a port, landing, trans-shipment and shipment of petroleum and petroleum products,

(v) providing for the licensing of lighters and other craft to carry petroleum and petroleum products within a port,

(vi) prescribing conditions and restrictions to be imposed upon vessels arriving at a port after having carried petroleum, petroleum products, dangerous petroleum or dangerous petroleum products,

(vii) providing for the examination and testing of petroleum and

petroleum products, and prescribing the tests to be applied to ascertain its flash point and the method of applying those tests, and

(viii) subject to subsection (2) of this section, regulating the transport of petroleum and petroleum products, prescribing the quantity of petroleum and petroleum products which may be carried in any vessel, cart, truck, railway wagon or other vehicle, the manner in which they shall be stored when being so carried, the receptacles in which they shall be contained when being so carried and the quantities to be contained in those receptacles, and providing for the search and inspection of any such vessel, cart, truck, railway wagon or other vehicle;

(f) conferring or imposing on public officers for the purposes of this Act powers and duties additional to those conferred or imposed by section 8 of this Act;

(g) where paragraph (a) of this subsection does not apply; prescribing-

- (i) forms to be used for the purposes of this Act, and
- (ii) fees to be charged in connection with the operation of this Act (including, without prejudice to the generality of the foregoing, fees for the giving of any permission by the Minister and for the supplying of any document or other material, the carrying out of any examination and the doing of any other thing by him); and

(h) providing for such other matters as in his opinion may be necessary or desirable in order to give proper effect to this Act.

(2) Regulations made under subsection (1)(e)(viii) of this section shall apply only where petroleum or petroleum products are being transported -

Cap 62
1999 No. 24

(a) on the waters mentioned in item 36(a) and (b) of Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria; or

(b) by railway or transport ancillary thereto; or

(c) on trunk roads within the meaning of item 63 of that Part of that Schedule.

Annotation 9

Discharge of obligation to make payments

10. An obligation to pay any fee, rent, royalty, premium or other sum imposed by or under this Act shall be discharged if, and only if, the payment is made within the time provided by or under this Act (or, where no time is so provided, within a reasonable time) to the Minister or his duly authorized representative.

Settlement of disputes by arbitration

11. (1) Where by any provision of this Act or any regulations made thereunder a question or dispute is to be settled by arbitration, the question or dispute shall be settled in accordance with the law relating to arbitration in the appropriate State and that provision shall be treated as a submission to arbitration for the purposes of that law.

(2) In this section "the appropriate State" means the State agreed by all parties to a question or dispute to be appropriate in the circumstances or, if there is no such agreement, the Federal Capital Territory, Abuja.

Delegation of powers.

12. (1) The Minister may by writing under his hand delegate to another person any power conferred on him by or under this Act except the power to make orders or regulations.

Annotation 10

(2) The Minister or the Director of Geological Survey may by writing under his hand delegate any power conferred on him by or under this Act to another public officer.

Offences

13. (1) Any person who interferes with or obstructs the holder of a licence or lease granted under section 2 of this Act (or his servants or agents) in the exercise of any rights, power or liberty conferred by the licence or lease shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two hundred naira or to imprisonment for a period not exceeding six months, or to both.

(2) Any person who-

(a) constructs or operates a refinery in Nigeria without a licence granted under section 3 of this Act, or

(b) in any land to which section 1 of this Act applies –

- (i) explores for petroleum without an oil exploration licence, or
- (ii) prospects for petroleum without an oil prospecting licence, or
- (iii) wins or works petroleum otherwise than in pursuance of a licence or lease granted under this Act,
- (iv) does, without the appropriate licence, any act for which a licence is required under any regulations made under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding two thousand naira.

(3) Any person who contravenes any provision of an order made under section 6 of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two thousand naira.

(4) Where a person is convicted of an offence under subsection (2) or (3) of this section in respect of any petroleum or petroleum products, then, in addition to any penalty imposed under the subsection in question, the convicting court may-

- (a) order the petroleum or petroleum products to be forfeited; or
- (b) order that person to pay to the Minister the value of the petroleum or petroleum products.

*Repeals
amendment,
transitional and
savings
provisions*

14. (1) The enactments specified in the Third Schedule to this Act are hereby repealed to the extent therein specified.

Annotation 11

Cap 226

Cap 351

1998 No. 23

1998 No. 24

(2) The reference to the Mineral Oils Act in section 112(1) and (2) of the Minerals Act and the reference to the Petroleum Act in section 8(3) of the Petroleum Control Act shall be construed as including a reference to this Act.

(3) The transitional and savings provisions in the Fourth Schedule to this Act shall have effect notwithstanding any other provision of this Act.

Interpretation

15.(1) In this Act, unless the context otherwise requires-
"barrel" means a barrel of forty-two United States gallons;

"continental shelf" means the seabed and subsoil of those submarine areas adjacent to the coast of Nigeria the surface of which lies at a depth no greater than two hundred metres (or, where its natural resources are capable of exploitation, at any depth) below the surface of the sea, excluding so much of those areas as lies below the territorial waters of Nigeria;

"crude oil" means mineral oil in its natural state before it has been refined or treated (excluding water and other foreign substances);

"explore", in relation to petroleum, means to make a preliminary search by surface geological and geophysical methods, including aerial surveys but excluding drilling below 91.44 metres;

"Minister" means the Minister of Petroleum Resources

"natural gas" means gas obtained from bore holes and wells and consisting primarily of hydrocarbons;

"petroleum" means mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and does not include coal or bituminous or other stratified deposits from which oil can be extracted by destructive distillation;

"petroleum products" includes motor spirit, gas oil, diesel oil, automotive gas oil, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubrication oil or grease or other lubricant;

"prospect" , in relation to petroleum, means search for by all geological and geophysical methods, including drilling and seismic operations;

"refinery" means petroleum refinery;

"rent" includes any annual or other periodic charge made in respect of a licence granted under section 2 of this Act;

"State", except in section 1 of this Act, means a State of the Federation.

*Section 169 of
1999 No. 24*

(2) References in this Act to the Director of Geological Survey are references to the persons for the time being holding, acting in or performing the functions of the offices so designated in the public service of the Federation as defined in the Constitution of the Federal Republic of Nigeria.

Annotation 12

Cap 62.

*Short title and
commencement*

16. (1) This Act may be cited as the Petroleum Act.
(2) This Act, except section 6 and the Second Schedule thereof, shall come into force on 27th November, 1969.

Section 2(3)

FIRST SCHEDULE

OIL EXPLORATION LICENCES, OIL PROSPECTING LICENCES AND OIL MINING LICENCES *Oil exploration licences*

1. An oil exploration licence shall apply to the area specified therein which may be any area on which a premium has not been placed by the Minister, and shall authorise the licensee to undertake exploration for petroleum in the area of the licence, excluding land in respect of which

the grant of an oil prospecting licence or oil mining lease has been approved by the Minister and land in respect of which an oil prospecting licence or oil mining lease is in force.

2. An oil exploration licence shall not confer any exclusive rights over the area of the licence, and the grant of an oil exploration licence in respect of any area shall not preclude the grant of another oil exploration licence or of an oil prospecting licence or oil mining lease over the same area or any part thereof.

3. An oil exploration licence shall terminate on the 31st December next following the date on which it was granted, but the licensee shall have an option to renew the licence for one further year if-

Annotation 12A

(a) he has fulfilled in respect of the licence, all obligations imposed upon him by this Act or otherwise,

(b) the Minister is satisfied with the work done and the reports submitted by the licensee in pursuance of the licence, and

(c) an application for renewal has been made at least three months before the date of expiry of the licence.

4. An oil exploration licence shall not confer any right to the grant of an oil prospecting licence or an oil mining lease.

Oil prospecting licences

5. The holder of an oil prospecting licence shall have the exclusive right to explore and prospect for petroleum within the area of his licence.

6. The duration of an oil prospecting licence shall be determined by the Minister, but shall not exceed five years (including any period of renewal).

7. The holder of an oil prospecting licence may carry away and dispose of petroleum won during prospecting operations, subject to the fulfilment of obligations imposed upon him by or under this Act (including any special terms or conditions imposed under paragraph 34 of this Schedule) or by the Petroleum Profits Tax Act or any other law imposing taxation in respect of petroleum.

Annotation 13

Cap 354

Oil mining leases

8. An oil mining lease may be granted only to the holder of an oil prospecting licence who has -

(a) satisfied all the conditions imposed on the licence or otherwise imposed on him by this Act, and

(b) discovered oil in commercial quantities.

9. For the purposes of paragraph 8 of this Schedule, oil shall be deemed to have been discovered in commercial quantities by the holder of an oil prospecting licence if the Minister, upon evidence adduced by the licensee, is satisfied that the licensee is capable of producing at least 10,000 barrels per day of crude oil from the licensed area.

Annotation 14

10. The term of an oil mining lease shall not exceed twenty years but may be renewed in accordance with this Act.

11. Subject to this Act and any special terms or conditions imposed under paragraph 34 of this Schedule, the lessee of an oil mining lease shall have the exclusive right within the leased area to conduct exploration and prospecting operations and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the leased area.

12. (1) Ten years after the grant of an oil mining lease one-half of the area of the lease shall be relinquished.

(2) Paragraph 18 of this Schedule shall apply to the relinquished area.

13. (1) The lessee of an oil mining lease shall be entitled to apply in writing to the Minister, not less than twelve months before the expiration of the lease, for a renewal of the lease either in respect of the whole of the leased area or any particular part thereof; and the renewal shall be granted if the lessee has paid all rent and royalties due and has otherwise performed all his obligations under the lease.

(2) Paragraph 12 of this Schedule shall not apply in relation to a lease which has been renewed under this paragraph.

Assignments

14. Without the prior consent of the Minister, the holder of an oil prospecting licence or an oil mining lease shall not assign his licence or lease, or any right, power or interest therein or thereunder.

Annotation 15

15. The prescribed fee shall be paid on an application for an assignment under paragraph 14 of this Schedule and the Minister's consent for the assignment may be given on payment of such other fee or such premium,

or both, and upon such terms, as he may decide:

Provided that the Minister may waive payment of that other fee or that premium, or both, if he is satisfied that the assignment is to be made to a company in a group of which the assignor is a member, and is to be made for the purpose of re-organisation in order to achieve greater efficiency and to acquire resources for more effective petroleum operations.

16. The Minister shall not give his consent to an assignment unless he is satisfied that-

(a) the proposed assignee is of good reputation, or is a member of a group of companies of good reputation, or is owned by a company or companies of good reputation;

(b) there is likely to be available to the proposed assignee (from his own resources or through other companies in the group of which he is a member, or otherwise) sufficient technical knowledge and experience and sufficient financial resources to enable him effectually carry out a programme satisfactory to the Minister in respect of operations under the licence or lease which is to be assigned; and

(c) the proposed assignee is in all other respects acceptable to the Federal Government.

Farm-out

1996 No. 23

16A (1) The holder of an oil mining lease may, with the consent of and on such terms and conditions as may be approved by the Head of State, Commander-in-Chief of the Armed Forces, farm-out any marginal field which lies within the lease area.

Annotation 16

(2) The Head of State, Commander-in-Chief of the Armed Forces may cause the farm-out of marginal field if the marginal field has been left unattended for a period of not less than 10 years from the date of the first discovery of the marginal field.

(3) The Head of State, Commander-in-Chief of the Armed Forces shall not give his consent to a farm-out or cause the farm-out of a marginal field unless he is satisfied –

(a) that it is in the public interest so to do, and in addition, in the case of a non-producing marginal field, that the marginal field has been left unattended for an unreasonable time, not being less than 10 years; and

(b) that the parties to the farm-out are in all respect acceptable to the Federal Government.

(4) For the purposes of this paragraph –

“farm-out” means an agreement between the holder of an oil mining lease and a third party which permits the third party to explore, prospect, win, work and carry away any petroleum encountered in a specified area during the validity of the lease;

“marginal field” means such field as the Head of State, Commander-in-Chief of the Armed Forces may, from time to time, identify as a “marginal field.”

Terminations

17. (1) The holder of an oil prospecting licence or oil mining lease may, at any time, terminate his licence or lease by giving to the Minister not less than three months notice in writing to that effect.

(2) Where notice is given under this paragraph, no rent paid shall be refundable, and the termination shall otherwise be without prejudice to any obligation or liability imposed by or incurred under the licence or lease before the effective date of termination.

18. (1) Without prejudice to paragraph 12 of this Schedule the holder of an oil prospecting licence or oil mining lease shall be entitled at any time on giving three months notice in writing to the Minister to surrender the licence or lease in respect of any particular part of the licensed or leased area.

(2) Paragraphs 19 to 22 of this Schedule shall apply where a surrender is made under this paragraph.

19. The shape and size of the area to be retained and of the area to be relinquished shall be approved by the Minister.

20. Subject to the provisions of all the relevant laws and terms and conditions as may be approved by the Minister, the licensee or lessee shall be entitled to such way-leaves for the laying, operation and maintenance of pipelines, telephones and the like through or across the surrendered area or areas as he may reasonably require-

(a) for the carrying on of operations under the licence or lease; or

(b) for inter-communication and passage between retained areas (and, in the case of licences or leases in the continental shelf, between retained areas and onshore lands) ,

and any such way-leaves shall form part or be included in the calculation of the amount of the retained areas.

21. There shall be reserved to the Minister over the retained part such way-leaves, easements or other rights as in his opinion are necessary or desirable for the laying, operation and maintenance of pipelines, telephone lines; and any way-leaves or other rights so reserved shall enure for the benefit of any person or body to whom the Minister may subsequently grant the same to the extent that he may so grant them.

22. No rent paid shall be refundable, but the surrender shall otherwise be without prejudice to any obligation or liability imposed by or incurred under the licence or lease before the effective surrender.

Revocations

23. (1) The Minister may revoke any oil prospecting licence or oil mining lease if the licensee or lessee becomes controlled directly or indirectly by a citizen of, or subject of, or a company incorporated in any country which is-

(a) a country other than the licensee's or lessee's country of origin; and

(b) a country the laws of which do not permit citizens of Nigeria or Nigerian companies to acquire, hold and operate petroleum concessions on conditions which in the opinion of the Minister are reasonably comparable with the conditions upon which such concessions are granted to subjects of that country .

(2) In this paragraph "Nigerian company" means a company incorporated in Nigeria or a company controlled directly or indirectly by citizens of Nigeria.

24. (1) The Minister may revoke any oil prospecting licence or oil mining lease if in his opinion the licensee or lessee-

- (a) is not conducting operations
- (i) continuously,

(ii) in a vigorous and businesslike manner in accordance with the basic work programme approved for the licensee or lessee, and

(iii) in accordance with good oil field practice; or.

(b) has failed to comply with any provision of this Act or any regulation or direction given thereunder or is not fulfilling his obligations under the special conditions of his licence or lease; or

(c) fails to pay his due rent or royalties, whether or not they have been demanded by the Minister, within the period specified by or in pursuance of this Act; or

(d) has failed to furnish such reports on his operations as the Minister may lawfully require.

(2) Paragraphs 25 to 29 of this Schedule shall apply where there is revocation under this paragraph.

25. The Minister shall inform the licensee or lessee of the grounds on which the revocation is contemplated and shall invite the licensee or lessee to make any explanation if he so desires.

26. If the Minister is satisfied with the explanation, he may invite the licensee or lessee to rectify the matter complained of within a specified period.

27. If-

(a) the licensee or lessee makes no or no sufficient explanation; or

(b) does not rectify the matter complained of within the specified period, the Minister may revoke the licence or lease.

28. A notice sent to the last known address of the licensee or lessee or his legal representative in Nigeria and published in the Federal *Gazette* shall, for all purposes, be sufficient notice to him of the revocation of the licence or lease.

29. The revocation shall be without prejudice to any liabilities which the licensee or lessee may have incurred, or to any claim against him which may have accrued to the Federal Government.

Fees, rents and royalties

30. There shall be paid in respect of licences and leases to which this Schedule applies such application fees as may be prescribed.

Annotation 18

31. There shall be paid in respect of licences and leases to which this Schedule applies such rents as may be prescribed.

32. Royalties shall be paid at the prescribed rates or, where rates are specified in special terms and conditions attached to the relevant licence or lease, at the rates so specified:

Annotation 19

Provided that the Minister may, on giving notice in that behalf, call for and receive any royalty (or part thereof) in kind.

General and supplementary

33. Licences and leases to which this Schedule applies shall be in the prescribed form or, where no form is prescribed, in such form as the Minister considers suitable.

34. If he considers it to be in the public interest, the Minister may impose on a licence or lease to which this Schedule applies special terms and conditions not inconsistent with this Act including (without prejudice to the generality of the foregoing) terms and conditions as to-

(a) participation by the Federal Government in the venture to which the licence or lease relates, on terms to be negotiated between the Minister and the applicant for the licence or lease, and

(b) special provisions applying to any natural gas discovered; which provisions shall include-

(i) the right of the Federal Government to take natural gas produced with crude oil by the licensee or lessee free of cost at the flare or at an agreed cost and without payment of royalty;

(ii) the obligation of the licensee or lessee to obtain the approval of the Federal Government as to the price at which natural gas produced by the licensee or lessee (and not taken by the Federal Government) is sold; and

1973 No. 16

(iii) a requirement for the payment by the licensee or lessee of royalty on natural gas produced and sold.

35. The holder of an oil prospecting licence or oil mining lease shall

(a) have a general right to enter and remain on the licensed or leased lands and do such things as are authorised by the licence or lease, and

(b) shall comply with any enactment relating to town or country planning or regulating the construction, alteration, repair or demolition of buildings, or providing for similar matters, which affects him in carrying out the operations authorised by the licence or lease.

36. The holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands.

37. The holder of an oil mining lease shall ensure that-

(a) within ten years from the grant of his lease-

(i) the number of citizens of Nigeria employed by him in connection with the lease in managerial, professional and supervisory grades (or any corresponding grades designated by him in a manner approved by the Minister) shall reach at least 75 *per cent* of the total number of persons employed by him in those grades, and

(ii) the number of citizens of Nigeria in anyone such grade shall be not less than 60 *per cent* of the total, and

(b) all skilled, semi-skilled and unskilled workers are citizens of Nigeria.

38. The holder of any licence or lease to which this Schedule applies shall at all times indemnify and keep harmless the Federal Government, the Minister and every officer in the civil service of the Federation or the States (and their agents) against all actions, costs, charges, claims and demands whosoever which may be made or brought by any third party in relation to any matter or thing done or purported to be done in pursuance of this Act.

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39. If any fee, rent or royalty due under this Act is unpaid for a period of one month after the date when it becomes due (whether legally demanded or not), the Minister may, in addition to any other remedies which may be available-

(a) enter into and upon any land, property or premises possessed or occupied by the licensee or lessee in connection with the licence or lease; and

(b) seize and distrain and sell as landlords may do for rents in arrear any petroleum, petroleum products, engines, machinery, tools, implements or other effects belonging to the licensee or lessee which may be found in or upon the land, property or premises; and

(c) out of moneys arising from the sale of the distress, retain and pay off the arrears of the said fee, rent or royalty and also the costs and expenses incident to the distress and sale, rendering the surplus (if any) to the licensee or lessee.

40. (1) Failure on the part of the holder of a licence or lease to which this Schedule applies to fulfil any of the terms or conditions of the licence or lease shall not (except as may be otherwise provided for in relation to the licence or lease) give the Minister any claim against the licensee or lessee, or be deemed a breach of the licence or lease, if the failure arises from causes beyond the control of the licensee or lessee.

(2) If from any such cause the fulfilment by any such licensee or lessee, of any term or condition of his licence or lease or of any provision of this Act is delayed, the period of delay shall be added to the period fixed for the fulfilment of the term or condition.

41. If any question or dispute arises in connection with any licence or lease to which this Schedule applies between the Minister and the licensee or lessee (including a question or dispute as to the payment of any fee, rent or royalty), the question or dispute shall be settled by arbitration unless it relates to a matter expressly excluded from arbitration or expressed to be at the discretion of the Minister.

Section 7(2)

SECOND SCHEDULE RIGHTS OF PRE-EMPTION

1. The Minister shall have the right to require the holder of any licence or lease granted under this Act (the holder in question being referred to in this Schedule as "the licensee or lessee")-

(a) to produce for the Federal Government, to the extent of any refinery capacity he may have in Nigeria, petroleum products complying with specifications given by the Minister;

(b) to deliver to any person holding a licence to operate a refinery, such quantity and quality of crude oil as may be specified by the Minister to the extent that the licensee or lessee has crude oil of that quantity and quality,

Annotation 21

2. The licensee or lessee shall use his best endeavours to increase so far as possible with his existing facilities the supply of petroleum or petroleum products, or both, for the Federal Government to the extent required by the Minister.

3. The licensee or lessee shall, with all reasonable expedition and so as to avoid demurrage on the vessels conveying the same, use his best endeavours to deliver all petroleum or petroleum products purchased by the Minister under his said right of pre-emption in such quantities, and at such places of shipment or storage in Nigeria, as may be determined by the Minister.

4. If a vessel employed to carry petroleum or petroleum products pursuant to paragraph 3 of this Schedule is detained on demurrage at the port of loading, the licensee or lessee shall pay the amount due for demurrage according to the terms of the charter-party or the rates of loading previously agreed by the licensee or lessee, unless the delay is due to causes beyond the control of the licensee or lessee.

5. Any dispute which may arise as to whether a delay is due to causes beyond the control of the licensee or lessee shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.

6. The price to be paid for petroleum or petroleum products taken by the Minister in exercise of his said right of pre-emption shall be-

(a) the reasonable value at the port of delivery, less discounts to be agreed by both parties; or

(b) if no such agreement has been entered into prior to the exercise of the right of pre-emption, a fair price at the port of delivery to be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.

7. To assist in arriving at a fair price for the purposes of paragraph 6(b) of this Schedule, the licensee or lessee shall, if the Minister so

requires—

(a) furnish for his confidential information particulars of the quantities, descriptions and prices of petroleum or petroleum products sold to other customers and of charters or contracts entered into for their carriage; and

(b) exhibit original or authenticated copies of the relevant contracts or charter-parties.

8. The Minister may take control of any works, plants or premises of the licensee or lessee; and if he does so, the licensee or lessee and his servants or agents shall conform to and obey all directions issued by the Minister or on his behalf.

9. Reasonable compensation shall be paid to the licensee or lessee for any loss or damage caused to him by reason of the exercise by the Minister of the powers conferred by paragraph 8 of this Schedule.

10. Any compensation payable under paragraph 9 of this Schedule shall be settled by agreement between the Minister and the licensee or lessee or, in default of agreement, by arbitration.

THIRD SCHEDULE

Section 14(1)

REPEALS

<i>Chapter or number</i>	<i>Short title or citation</i>	<i>Extent of repeal</i>
Cap 120 } of 1958 Laws Cap 121 } of Nigeria	Minerals Oils Act Minerals Act	The whole Act The words “and mineral oils”, in section 3, together with the words “mineral oils” in the marginal note.
Cap 150 } of 1958 Laws Cap 151 } of Nigeria	Petroleum Act Petroleum Fuel Control Act	The whole Act The whole Act
1967 No. 28	Petroleum Control Act 1967	Section 7

FOURTH SCHEDULE

*Section
14(3)*

TRANSITIONAL AND SAVINGS PROVISIONS

1. Any licence or lease granted under an enactment repealed by this Act shall continue in force notwithstanding the repeal, but subject to this Act and to any regulations made thereunder except as regards the duration of the licence or lease, the rent and royalties payable in respect thereof and any term or condition as to which the Minister certifies that the justice of the case requires that the condition in question shall continue to be effective notwithstanding this Act.

2. Where a refinery constructed with the approval of the Government, or of any of its predecessors, was in operation immediately before the commencement of this Act-

(a) it shall be the duty of the persons in control of the refinery to apply in writing within sixty days of the commencement of this Act (or within such further period as the Minister may allow) to the Minister for a licence under section 3 of this Act;

(b) on receipt of the application the Minister shall grant the licence subject to the payment of such fees (including application fees), such rent and such conditions as he thinks fit, if any; and

(c) section 12(2) of this Act shall not have effect in relation to the refinery during the said sixty days or any such further period or, if the application is duly made, until the application is finally disposed of.

1973 No. 16

3. (1) Any existing operator may, within sixty days of the commencement of this Act or within such further period as the Minister may allow, apply in writing to the Minister for a licence under section 4(1) of this Act or under any regulations coming into force simultaneously with this Act, and section 16(2) of this Act, in so far as it relates to the existing operator and to the licence-

(a) shall not have effect during the said sixty days or any such further period; or

(b) if such a licence is applied for under this paragraph, have effect in relation to the applicant until his application has been finally disposed of.

(2) In this paragraph "existing operator", in relation to a licence, means any person who immediately before the commencement of this Act was carrying on with the knowledge and approval of the Federal Government the activity regulated by the licence.

L.N. 45 of 1963
Cap 150 of 1958
Laws of Nigeria
L.N. 71 of 1967

4. (1) The Mineral Oils (Safety) Regulations 1963 and, to the extent that Regulations 1967 shall be deemed to have been made under section 9 of this Act and may be added to, amended, varied or revoked accordingly.

(2) The power conferred by sub-paragraph (1) of this paragraph shall be deemed to include power to make any modifications necessary to bring the said regulations into conformity with the powers conferred by the said section 9.

5. A person shall not be convicted of an offence for doing any act authorised by a licence or lease as saved by paragraph 1 of this Schedule.

6. Within the twelve months immediately following the commencement of this Act, the Minister may by order in the Federal *Gazette* make such further transitional or saving provisions (not inconsistent with this Schedule) as he may think necessary or desirable.

Petroleum Act Cap 350 – ANNOTATIONS

Annotation

1. "Oil Mining Licences" should read Oil Mining Leases (see section 2(1) (c) of the Act itself.) The same too in the caption of the First Schedule.
2. In light of section 2, of 1998 No.22, it should be remembered that the Exclusive Economic Zone of Nigeria is included in the coverage of the provisions of this Act. Section 44 (3) of the 1999 Constitution (1999 No 24) includes the mineral oil and natural gas in the EEZ area among the minerals over which the Federal Government has ownership and control rights. For the law that delimits Nigeria's EEZ, see Cap 116.

Perhaps a comment needs to be made on the statement here that this Act also provides for the vesting of the ownership in the Federal Government of the revenue from on-shore and off -shore petroleum resources. This statement creates the wrong impression that the Act has direct and specific revenue provisions as a core issue. It is submitted with respect that this is not entirely true; as a study of the provisions would show. The law that has more direct bearing on the Federal Government's earning from petroleum resources is the Petroleum Profits Tax Act (Cap 354), than this Act. This statement has helped to attract a degree of odium to the Petroleum Act from proponents of resource control by some States in the Federation. The Petroleum Act thus earns a stigma undeservedly as a result of this statement; while section 44 (3) of the Constitution, which is the *grundnorm* in the matter gets by relatively unscathed. The attack on the Petroleum Act as a result of this statement in the long caption of the Act even comes from persons who should know that by virtue of the provision of section 3(2) of the Interpretation Act -Cap 192. such caption does not constitute a part of or provision of the Act itself.

3. Also see section 44(3) of the 1999 Constitution and item 39 of the Exclusive Legislative List- Second Schedule to the Constitution.
4.
 - (i) Section 2 of 1998 No.22 formally brought the EEZ into the purview of the Petroleum Act.
 - (ii) In the text of section 2, 1998 No.22, the word "form" is used. It should read "forms".
5.
 - (i) At long last, an amendment has been effected (by section 3 of 1998 No.22) whereby only a corporate body (incorporated in Nigeria under the provisions of CAMA -Cap 59 or any corresponding law) may be the grantee of an opl or oml. Before this repeal of section 2(2) (a) of the Petroleum Act, an individual who is a Nigerian citizen could qualify for an

opl or oml grant; a situation which conflicted by way of a breach, with the provision of another enactment i.e. section 22 (1) of the PPTA.

- (ii) The way in which section 3 of 1998 No.22 is worded leaves the only surviving provision of subsection 2(2) as 2(2) (b). There should now just be a subsection 2(2).
6. An amendment was introduced to this section by section 4(a) of 1998 No. 22. The effect is the deletion of "(of the existence of which the Minister shall be the sole judge)" which were contained in section 7(1).
 7. This amendment was introduced to this section-by-section 4(b) of 1998 No 22: The effect is that the whole of section 7(5) was repealed and replaced with new section 7(5) and 7(6). The constitutionality of section 7(6) in light of the 1999 constitution has been questioned earlier in chapter of this book.
 8. This is the provision that empowers the Minister to issue *inter alia*, the Mineral Oils (Safety) Regulations, the Petroleum (Drilling and Production) Regulations, and the Crude Oil (Transportation and Shipment) Regulations; three of the items of subsidiary legislation (of the Petroleum Act) the texts of which are reproduced in this Book.
 9. The text in which item 35(a) and (b) of Part I, (Exclusive Legislative List) of the Second Schedule to the Constitution is mentioned, is with regard to the 1979 Constitution. The provision of this section has been up-dated to the text in this book to reflect the 1999 Constitution.
 10. Regarding activities under the Oil Pipelines Act, see section 34 of that Act for the provision that authorizes the delegation of the Minister's powers thereunder.
 11. (i) Note that 1998 No 23 has repealed the Petroleum Control Act- Cap 351
(ii) 1990 No.24 amends sections 2, 3, 14, 16, 17, 18, 20, 27, 38, 43, 75, 76, and 78 of the Minerals Act- Cap 226.
 12. The provision in the 1999 Constitution relating to the establishment of the Federal Civil Service is in section 169.
 - 12A. It should be noted that the duration provision of this paragraph, that of paragraph 6 and the relinquishment provision of paragraph 12 of this same First Schedule have no application to NNPC's oels, opls and omls, vide section 20 (a) and (b) of the NNPC Act - Cap 320
 13. Paragraph 34 of the First Schedule to the Petroleum Act, came to be by way of an amendment by 1973 No.16. The amendment empowers the Petroleum Minister to impose special terms on the operations of the licensee or lessee, which in essence

- may limit the licensee's or lessee's ownership interest and right in his operation over the natural gas he discovers; in favour of the Federal Government.
14. It is known that oil-mining leases have been granted from opl production of slightly less than 10,000 barrels per day. This is not a breach of the law since paragraph 9 of the First Schedule speaks of the capability of producing at least 10 ,000 barrels per day.
 15. See the Petroleum (Drilling and Production) (Amendment) Regulations 2001 in Statutory Instrument (S.I) No 3 of 2001 for the increased rates of the fees payable in respect of transactions that have to do with assignments of opls and ompls.
 16. One of the criticisms leveled against the provisions of this amendment is the requirement that a farm-out agreement has to go as high a level as the President for approval; when in accordance with paragraph 14 of the First Schedule to the Petroleum Act, the Minister of Petroleum Resources has the power to consent to the assignment of an opl or an ompl -a transaction of greater consequence than a farm -out agreement of a marginal field. Seeking the approval of the President could occasion delay which can be avoided by limiting the approval to the level of the Minister.
 17. Section 5 of 1998 No 22 which authorised this amendment of Paragraph 24(1)(a), introduced a new Paragraph 24(1) (a) (i) to (iii).
 18. See the Petroleum (Drilling and Production) (Amendment) Regulations 2001 in Statutory Instrument No 3 of 2001, for the up-dated increased rates of fees and rents that are payable in respect of the grants of oil exploration licenses, oil prospecting licences and oil mining leases.
 19. Section 5 of 1999 No 91 lists the rates of royalties payable in respect of production by PSC companies operating in the Deep Offshore and Inland Basin areas. These rates are less than normal; a move meant as fiscal incentives for investment in Nigeria's deep offshore areas. The rate of royalty for the inland basin area is stated in the section as 10% flat.
 20. "whosoever" in the provision is definitely meant to read "howsoever".
 21. "delivery" appearing in paragraph 1 (b) and paragraph 3 of the Second Schedule of the authentic text has been corrected here to read "deliver".