

ICC Illegal traffic - Zambia

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Language

System language

1. 1. a. Has your country enacted laws, regulations, policies, procedures and other measures that embody the provision set forth in paragraph 3 of Article 9 of the Basel Convention?

No

*** Yes ***

If yes, please provide the name of the relevant piece of legislation, regulation, policy, procedures or other measure

Environmental Management Act of 2011 as read with the Environmental Management (Licensing) Regulations of 2013

Please also provide a copy of such relevant national provision implementing paragraph 3 of Article 9 (in English) or, alternatively, outline the main elements of the national provision implementing paragraph 3 of Article 9 of the Basel Convention

Attached as requested.

If possible attach a copy

Environmental Management Act of 2011.pdf0.41mb

If no, please indicate any reason for the lack of enactment of laws, regulations, policies, procedures and other measures embodying the provision set forth in paragraph 3 of Article 9 of the Basel Convention

N/A

2. 1. b. Has your country enacted laws, regulations, policies, procedures and other measures that embody the provision set forth in paragraph 4 of Article 9 of the Basel Convention?

No

*** Yes ***

If yes, please provide the name of the relevant piece of legislation, regulation, policy, procedures or other measure

Environmental Management Act of 2011 as read with the Environmental Management (Licensing) Regulations of 2013

Please also provide a copy of such national provision implementing paragraph 4 of Article 9 (in English) or, alternatively, outline the main elements of the national provision implementing paragraph 4 of Article 9 of the Basel Convention

Attached as requested.

If possible attach a copy

Environmental Management Act of 2011.pdf0.41mb

If no, please indicate any reason for the lack of enactment of laws, regulations, policies, procedures and other measures embodying the provision set forth in paragraph 4 of Article 9 of the Basel Convention

N/A

3. 2. a. Does your country have experience dealing with cases where paragraph 3 of Article 9 of the Basel Convention has been applied?

No

*** Yes ***

If yes, provide the number of cases in the last 5 years, and if possible in the last 10 years, and provide details on the more relevant cases that occurred in the last five years.

1. Past Experience

There was a case involving illegal import of electronic waste into the country in 2014. The waste was intercepted at Chirundu Border and sent back to the country of origin.

2. Current Cases

- i. There is a case in the courts of law involving an illegal import of electronic waste into the country. The illegal import was successfully conducted in 2014 and disposal of this waste awaits court ruling.
- ii. There is an investigation currently going on about empty pesticide containers which are purported to have been exported for disposal but the receiving country authorities submit that the country is not aware of the hazardous waste having been imported in the country.

4. 2. b. Does your country have experience dealing with cases where paragraph 4 of Article 9 of the Basel Convention has been applied?

*** No ***

Yes

If yes, provide the number of cases in the last 5 years, and if possible in the last 10 years, and provide details on the more relevant cases that occurred in the last five years.

Not applicable

5. 3. a. Has your country faced any difficulties in implementing the provision in paragraph 3 of Article 9 of the Basel Convention?

No

*** Yes ***

If yes, provide the nature of the difficulty encountered:

6. (i) Domestic difficulties:

Lack of or inappropriate domestic legal or institutional framework to implement and enforce paragraph 3 of Article 9 of the Basel Convention;

Lack of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer;

*** Challenges in identifying that a transboundary movement of hazardous wastes or other wastes may be a case of illegal traffic as defined by paragraph 1 of Article 9 (constitutive elements); ***

*** Challenges in concluding that the illegal traffic is the result of the conduct on the part of the importer or disposer and/or identification of the relevant importer or disposer; ***

*** Lack of awareness of relevant entities that should be involved in combating illegal traffic; ***

*** Lack of awareness by importers or disposers about the requirements of the Basel Convention; ***

*** Lack of cooperation by importers or disposers in complying with the requirements set out in paragraph 3 of Article 9 of the Basel Convention; ***

*** Lack of coordination/cooperation at the national level among relevant entities involved in combating illegal traffic; ***

*** Difficulty to dispose of the waste in an environmentally sound manner; ***

Other difficulties (Please specify):

Need for the Judiciary to appreciate the provisions of paragraph 3 of Article 9 of the Basel Convention

Please also elaborate on any box you have ticked

There is need for various entities that should be involved in combating illegal trafficking to

i. have awareness raised on the provisions of paragraph 3 of Article 9 of the Basel Convention; and

ii. Synchronise and synergise

7. (ii) International cooperation difficulties:

Difficulties in communicating and cooperating with other States concerned by the case of illegal traffic (State of transit, State of export);

Lack of shared understanding among States concerned of how to operationalize paragraph 3 of Article 9;

Lack of guidance on how to operationalize paragraph 3 of Article 9;

Other difficulties (Please specify):

Please also elaborate on any box you have ticked

Not applicable

8. 3. b. Has your country faced any difficulties in implementing the provision in paragraph 4 of Article 9 of the Basel Convention?

*** No ***

Yes

If yes, provide the nature of the difficulty encountered:

9. (i) Domestic difficulties:

Lack of or inappropriate domestic legal or institutional framework to implement and enforce paragraph 4 of Article 9 of the Basel Convention;

Lack of access to adequate information about possible cases of transboundary movements of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer;

Challenges in identifying that a transboundary movement of hazardous wastes or other wastes may be a case of illegal traffic as defined by paragraph 1 of Article 9 (constitutive elements);

Challenges in concluding that the responsibility for illegal the traffic cannot be assigned either to the exporter or generator or to the importer or disposer;

Challenges in identifying the States concerned (State of transit, State of export);

*** Lack of awareness of relevant entities that should be involved in combating illegal traffic; ***

*** Lack of awareness/cooperation by importers or disposers; ***

*** Lack of coordination/cooperation at the national level among relevant entities involved in combating illegal traffic; ***

*** Difficulty to dispose of the waste in an environmentally sound manner; ***

Other difficulties (Please specify):

Please also elaborate on any box you have ticked

N/A

10. (ii) International cooperation difficulties:

Difficulties in communicating/cooperating with the relevant entities from the States concerned (State of transit, State of export);

Difficulties in identifying or communicating with exporter or generator;

Lack of shared understanding of how to operationalize paragraph 4 of Article 9;

Lack of guidance on how to operationalize paragraph 4 of Article 9;

*** Differences in the level of "evidence" required that there might be a case of illegal traffic justifying the application of paragraph 4 of Article 9; ***

Lack of an adequate mechanism to handle cooperation difficulties between Parties (NB: Existing mechanisms include the role of the Secretariat under Article 16 (1) (i), a submission to the Implementation and Compliance committee, the verification procedure under Article 19 and the settlement of disputes under Article 20);

Other difficulties (Please specify):

Please also elaborate on any box you have ticked

N/A

11. 4. Has your country been able to overcome difficulties stated under sections 3.a. and 3.b. above?

*** No ***

Yes

If yes, explain how

N/A

12. 5. a. Please indicate consequences your country has faced as a result of difficulties encountered with the implementation of paragraph 3 of Article 9 of the Basel Convention (e.g. leaking of containers causing pollution; containers damaged by accident or storms; costs of storage or disposal borne by your country).

It is taking long for the current case to be disposed of in the courts of law resulting in potential for incurring of storage costs and tempering with evidence.

The limited information by other law enforcement officers who may be partners in implementing the provisions makes it possible illegal trans boundary moments to be successful. It also makes it difficult to investigate cases where it is not clear whether or not the waste was legally disposed of as is the case in one of the matter currently under investigation.

13. 5. b. Please indicate consequences your country has faced as a result of difficulties encountered with the implementation of paragraph 4 of Article 9 of the Basel Convention (e.g. leaking of containers causing pollution; containers damaged by accident or storms; costs of storage or disposal borne by your country).

N/A

14. 6. Please share examples of best practices your country or countries in your region have developed and used to implement and comply with the provisions set forth in paragraphs 3 and 4 of Article 9 of the Basel Convention (eg. existing mechanisms or arrangements in place).

The country is planning to develop e-waste guidelines in 2016. In the meantime, the practices adopted in implementing the provisions is stipulated under Part IV of the Environmental Management (Licensing) Regulations of 2013.

15. 7. Please share lessons learned (both negative and positive) that the Committee may wish to take into account in the development of guidance on the implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention.

Besides the Principal Environmental Law (the Environmental Management Act of 2011) and the Environmental Management (Licensing) Regulations of 2013, the country is yet to develop other guidance documents to guide the implementation of paragraphs 3 and 4 of Article 9 of the Basel Convention

16. 8. Please list and, if possible, share guidance documents or training materials developed at the national, regional or global level that you may be aware of that is aimed at assisting Parties implement these provisions.

None

17. 9. Does your country transmit to the Secretariat the “Form for confirmed cases of illegal traffic” (available at <http://archive.basel.int/legalmatters/illegtraffice/illegtrafform.pdf>)?

*** No ***

Yes

18. Please add any additional information or comments pertaining to the implementation of the provisions set forth in paragraphs 3 and 4 of Article 9 of the Basel Convention that is not included in answers to the above questions.

There is need to strengthen the domestication of the said paragraphs by way of supporting

- i. development of guidance documents; and
- ii. Operationalising the developed pieces of legislation and respective guidance documents;

iii. Training of personnel responsible for the implementation of the provisions of the BC, national legislation and guidance documents.

19. Submitting Party:

Submitting Party:
Zambia

20. Contact details of the person who completed the questionnaire:

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THE ENVIRONMENTAL MANAGEMENT ACT, 2011

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Superiority of Act
4. Right to clean, safe and healthy environment
5. Duty to protect environment
6. Principles governing environmental management

PART II

THE ZAMBIA ENVIRONMENTAL MANAGEMENT AGENCY

7. Continuation and re-naming of Council
8. Seal of Agency
9. Functions of Agency
10. Appropriate authority
11. Board of Agency
12. Functions of Board
13. Director-General, Secretary and other staff
14. Inspectors
15. Powers of inspectors
16. Powers of arrest
17. Honorary inspectors
18. Appointment of prosecutors
19. Immunity of inspectors

PART III

INTEGRATED ENVIRONMENTAL MANAGEMENT

20. State of Environment Report
21. National Environmental Action Plan
22. Environmental management strategies
23. Strategic environmental assessment
24. Environmentally Protected Areas
25. Declaration of area as wetland
26. Conservation of biological diversity
27. Conservation of biological diversity *in-situ*
28. Conservation of biological diversity *ex-situ*
29. Environmental impact assessment
30. Regulations relating to environmental assessments

PART IV

ENVIRONMENTAL PROTECTION AND POLLUTION CONTROL

Division 1 - Pollution Control

31. Protection of atmosphere
32. Prohibition of discharges into environment
33. Licensing of emission of pollutant or contaminant into environment
34. Procedure for application, grant, modification, etc. of emission licence
35. Reporting of discharge into environment
36. Duty to inform Agency of intention to develop
37. Duty to submit information to inspectorate
38. Integrated pollution prevention and control
39. Integrated decision-making process and single permit or licence system
40. Promotion of cleaner production and sustainable consumption of goods and services
41. Environmental emergency preparedness
42. Declaration of environmental emergency
43. Regulations on pollution control
44. Local, regional and global contaminants

Division 2 - Water

- 45. Interpretation
- 46. Prohibition of water pollution
- 47. Permission to discharge effluent into sewerage system
- 48. Responsibilities of Agency

Division 3 - Air

- 49. Interpretation
- 50. Emergency situations
- 51. Controlled areas
- 52. Responsibilities of Agency

Division 4 - Waste Management

- 53. Interpretation
- 54. General prohibition and duty of care
- 55. Waste licences
- 56. Role of local authorities in waste management
- 57. Designation of waste control areas
- 58. Extended producer responsibility
- 59. Cessation of activity relating to hazardous waste
- 60. Site restoration orders
- 61. Emergency situations
- 62. Responsibilities of Agency
- 63. Regulations relating to waste management

Division 5 - Pesticides and Toxic Substances

- 64. Interpretation
- 65. Pesticide and toxic substance licence
- 66. Responsibilities of Agency

Division 6 - Noise

- 67. Interpretation
- 68. Prohibition of noise emission exceeding established standards
- 69. Exemption
- 70. Responsibilities of Agency

Division 7 - Ionising Radiation

- 71. Interpretation
- 72. Powers of inspectors relating to ionising radiation
- 73. Responsibilities of Agency

Division 8 - Natural Resources Management

- 74. Interpretation
- 75. Protection of hills and landscapes
- 76. Promotion of conservation of natural resources
- 77. Prohibition of importation, introduction, etc. of invasive alien species
- 78. Duty of owner or occupier in relation to invasive alien species
- 79. Development of sector plans
- 80. Rehabilitation works
- 81. Powers of inspectors relating to natural resources
- 82. Register
- 83. Responsibilities of Agency

PART V

INTERNATIONAL MATTERS

- 84. International agreements
- 85. Transboundary environmental management programmes

PART VI

ENVIRONMENTAL INFORMATION

- 86. Analysis and dissemination of environmental information
- 87. Central Environmental Information System
- 88. Environmental education and awareness
- 89. Environmental research
- 90. Registry of environmental information

PART VII

PUBLIC PARTICIPATION

- 91. Public participation in environmental decision-making

- 92. Public review
- 93. Public hearings
- 94. Regulations relating to public participation

PART VIII

THE ENVIRONMENT FUND

- 95. Establishment of Fund
- 96. Administration and management of Fund
- 97. Application of Fund
- 98. Environmental performance bond
- 99. Financial year
- 100. Statement of income and expenditure

PART IX

ENFORCEMENT PROVISIONS

- 101. Environmental audit
- 102. Environmental monitoring
- 103. Prevention order
- 104. Protection order
- 105. Environmental restoration order
- 106. Compliance order
- 107. Cost order
- 108. Orders initiated by public
- 109. Prosecutions initiated by public
- 110. Civil action
- 111. Protection, repair and costs orders

PART X

REVIEWS AND APPEALS

- 112. Right of review
- 113. Review by Board
- 114. Conduct of inquiry
- 115. Review by Minister
- 116. Appeals

PART XI

ENVIRONMENTAL OFFENCES

- 117. Offences relating to environmental impact assessment
- 118. Offences relating to returns and records
- 119. Offences relating to environmental standards
- 120. Offences relating to biological diversity
- 121. Offences relating to hazardous waste materials, chemicals and radio-active substances
- 122. Offences relating to pesticides and toxic substance
- 123. Offences relating to protected areas

PART XII

GENERAL PROVISIONS

- 124. Confidentiality
- 125. General penalty
- 126. Offence by body corporate or unincorporate body
- 127. Presumptions
- 128. Civil damages
- 129. Forfeiture on conviction
- 130. Disposal of matter, article, vehicle, aircraft or boat
- 131. Power to make orders on process in premises, plant and machinery
- 132. Summary imposition of penalties
- 133. Protected disclosure
- 134. Regulations
- 135. Repeal of Cap. 204 and Cap. 156 of old edition of laws

FIRST SCHEDULE

SECOND SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 12 of 2011

Date of Assent: 12th April, 2011

An Act to continue the existence of the Environmental Council and re-name it as the Zambia Environmental Management Agency; provide for integrated environmental management and the protection and conservation of the environment and the sustainable management and use of natural resources; provide for the preparation of the State of the Environment Report, environmental management strategies and other plans for environmental management and sustainable development; provide for the conduct of strategic environmental assessments of proposed policies, plans and programmes likely to have an impact on environmental management; provide for the prevention and control of pollution and environmental degradation; provide for public participation in environmental decision-making and access to environmental information; establish the Environment Fund; provide for environmental audit and monitoring; facilitate the implementation of international environmental agreements and conventions to which Zambia is a party; repeal and replace the Environmental Protection and Pollution Control Act, 1990; and provide for matters connected with, or incidental to, the foregoing.

[15th April, 2011

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

- Short title **1.** This Act may be cited as the Environmental Management Act, 2011.
- Interpretation **2.** In this Act, unless the context otherwise requires —
- “abatement” means the reduction, mitigation or removal of environmental pollution to permitted or prescribed levels;
- “adverse effect” means any harmful or detrimental effect on the environment, whether actual or potential, that—
- (a) impairs, or may impair, human health; and
 - (b) results in, or may result in, an impairment of the ability of people and communities to provide for their health, safety, cultural and economic wellbeing;
- “Agency” means the Zambia Environmental Management Agency provided for under section *seven*;
- “appropriate authority” means the Minister for the time being having responsibility for, or such public body having powers under any other law over any natural resource, and includes a public or statutory office, body or institution under the following:
- (a) the Zambia Wildlife Act, 1998;
 - (b) the Water Supply and Sanitation Act, 1997;
 - (c) the National Heritage Conservation Commission Act;
 - (d) the Lands Act;
 - (e) the Lands and Deeds Registry Act;
 - (f) the Mines and Minerals Development Act, 2008;
 - (g) the Fisheries Act, 2011;
 - (h) the Forests Act;
 - (i) the Water Resources Management Act, 2011;
 - (j) the Biosafety Act, 2007;
 - (k) the Inland Waters Shipping Act;
- Act No. 12 of 1998
- Act No. 28 of 1997
- Cap. 173
- Cap. 184
- Cap. 185
- Act No. 7 of 2008
- Act No. of 2011
- Cap. 199
- Act No. 21 of 2011
- Act No. 10 of 2007
- Cap. 466

(l) the Town and Country Planning Act;	Cap. 283
(m) the Public Health Act;	Cap. 295
(n) the Standards Act;	Cap. 416
(o) the Local Government Act;	Cap. 281
(p) the Disaster Management Act, 2010;	Act No. 13 of 2010
(q) the Citizens Economic empowerment Act, 2006;	Act No. 9 of 2006
(r) the Zambia Development Agency Act, 2006;	Act No. 11 of 2006
(s) the Public-Private Partnership Act, 2009;	Act No. 14 of 2009
(t) the Tourism and Hospitality Act, 2007;	Act No. 23 of 2007
(u) the Energy Regulation Act; and	Cap. 436
(v) any treaty, agreement or convention, to which Zambia is a State Party, relating to environmental protection and the management of natural resources;	

“aquatic environment” means all surface and ground waters, but does not include water in installations and facilities for industrial effluent, sewage collection and treatment;

“biological diversity” means the variability among living organisms from all sources including, terrestrial ecosystems, aquatic ecosystems and the ecological complexes of which they are part, and includes diversity within species, among species, and of ecosystems;

“biological resources” include genetic resources, organisms or parts thereof, populations or any other biotic component or ecosystems with actual or potential use or value to humanity;

“Board” means the Board of the Agency constituted under section *eleven*;

“Chairperson” means the person appointed as Chairperson of the Board under section *eleven*;

“committee” means a committee constituted by the Board under paragraph 2 of the First Schedule;

“compliance order” means an order issued under section *one hundred and six*;

“conservation” means the sustainable management and use of nature and natural resources for their inherent value and for the benefit of human beings and other living things;

“conservancy authority” means any person or institution who, either voluntarily or under the authority of any law, manages, conserves, preserves, maintains or protects the environment;

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- “contaminant” means a substance, physical agent, energy or a combination of substances and physical agents, that may contribute to, or create a condition of, pollution;
- “cost order” means an order issued under section *one hundred and seven*;
- Cap. 204 “Council” means the Environmental Council established under the repealed Act;
- “developer” means a person who proposes to undertake a new project that requires approval under this Act;
- “Director-General” means the person appointed as such under section *thirteen*;
- Cap. 1 “Director of Public Prosecutions” means the person appointed as such under the Constitution;
- “discharge” means spilling, leaking, pumping, pouring, emitting, emptying or dumping;
- “ecosystem” means a living functional system which contains all organisms including human beings, their environment and the relationship that exists between them;
- “effect”, in relation to the environment, includes any actual, potential, temporary, permanent or cumulative effect on the environment;
- “element”, in relation to the environment, means any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;
- “emission” means the discharge into the atmosphere of a pollutant from any source in solid, liquid or gaseous state;
- “environment” means the natural or man-made surroundings at any place, comprising air, water, land, natural resources, animals, buildings and other constructions;
- “environmental audit” means the systematic, documented, periodic and objective evaluation of how well conservancy authorities and equipment are performing in conserving or preserving the environment;
- “environmental impact assessment” means a systematic examination conducted to determine whether or not an activity or a project has or will have any adverse impacts on the environment;
- “environmental management” means the protection, conservation and sustainable use of the various elements of the environment;

“environmental management strategy” means a broad course of action or initiative designed to make the best use of natural resources and opportunities aimed at promoting, protecting and conserving the environment;

“environmental monitoring” means the continuous or periodic determination of actual and potential effects of any activity or phenomenon on the environment;

“environmental restoration order” means an order issued under section *one hundred and five*;

“extended producer responsibility” means actions that extend a person’s financial or physical responsibility for a product to the post-consumer stage of the product, and includes—

(a) waste minimisation programmes;

(b) financial contributions to any fund established to promote the minimisation, recovery, reuse or recycling of waste;

(c) awareness programmes to inform the public of the impacts of waste emanating from the product on human health and the environment; and

(e) any other measures to reduce the potential impacts of the product on human health and the environment;

“*exsitu* conservation” means conservation outside the natural ecosystem and habitat of the biological organism;

“Fund” means the Environment Fund established under section *ninety-five*;

“genetic resources” means genetic material of actual or potential value;

“honorary inspector” means any person appointed as such under section *seventeen*;

“*insitu* conservation” means conservation within the natural ecosystem and habitat of the biological organisms;

“inspector” means a person appointed as such under section *fourteen*;

“inspectorate” means the inspectorate established under section *fourteen*;

“invasive alien species” means an animal or plant with potential to cause harm to the environment when introduced into an ecosystem where the animal or plant does not normally exist;

“noise” means any undesirable sound that is intrinsically objectionable or that may cause adverse effects on human health or the environment;

“occupier”, in relation to any land or premise, means the person

in actual occupation of, or in charge of, or responsible for, managing the land or premise;

“operator”, in relation to works, industry, undertaking or business, means the person having the control of the works, industry, undertaking or business;

“ozone layer” means the layer of the atmospheric zone above the planetary boundary layer;

“pesticide” means any substance or mixture of substances intended for preventing, destroying or controlling any pest, including vectors of human or animal disease or unwanted species of plants or animals causing harm or otherwise interfering with the production, processing, storage, transport or marketing of food, agricultural commodities, wood, wood products or animal feed, or which may be administered to animals for the control of insects, mites, spider mites or other pests in or on their bodies, and includes substances intended for use as a plant growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage or transport;

“policy, plan or programme” means a policy, plan or programme which relates to the whole country, and which is formulated by, or will be implemented by, an organ of Government or a public body, and includes policies, plans and programmes relating to national development of urban and rural areas, land use, livestock, transport, the exploitation of minerals, industrial development, water utilisation, agriculture and any other sector;

“pollutant” includes any substance whether liquid, solid or gaseous which—

(a) may, directly or indirectly, alter the quality of any element of the receiving environment; or

(b) is hazardous or potentially hazardous to human health or the environment; and includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

“polluter” means a person who contributes to, or creates a condition of, pollution;

“polluter pays principle” means the principle that the person or institution responsible for pollution or any other damage to the environment shall bear the cost of restoration and

- cleanup of the affected area to its natural or acceptable state;
- “pollution” means the presence in the environment of one or more contaminants or pollutants in such quantities and under such conditions as may cause discomfort to, or endanger, the health, safety and welfare of human beings, or which may cause injury or damage to plant or animal life or property, or which may interfere unreasonably with the normal enjoyment of life, the use of property or conduct of business;
- “precautionary principle” means the principle that, lack of scientific certainty should not be used as a reason to postpone measures to prevent environmental degradation, or possible environmental degradation, where there is a threat of serious or irreversible environmental damage, because of the threat;
- “prevention order” means an order issued under section *one hundred and three*;
- “private body” means any person or organisation which is not a public body, and includes a voluntary organisation, non-governmental organisation, charitable institution, company, partnership or a club;
- “proponent” means the Government, public body or a corporate body proposing or recommending measures for a policy, programme or plan;
- “proprietary information” means information relating to any manufacturing process, trade secret, trademark, copyright, patent, formula or other intellectual property protected by law or international treaty to which Zambia is a party;
- “protection order” means an order issued under section *one hundred and four*;
- “public body” means the Government, any Ministry or department of the Government, the National Assembly, a local authority, parastatal, board, council, authority, commission or other body appointed by the Government, or established by, or under, any written law;
- “repealed Act” means the Environmental Protection and Pollution Control Act; Cap. 204
- “Secretary” means the person appointed as such under section *thirteen*;
- “segment”, in relation to the environment, means any portion or portions of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;

“sewage” means waste water generated by residential, industrial and commercial establishments;

“sewerage” includes sewage treatment plants;

“site restoration order” means an order issued under section *sixty*;

“standards” means the limits of pollution prescribed under this Act;

“strategic environmental assessment” means an assessment of the positive and adverse effects or impact that the implementation of a policy, programme or plan has or is likely to have on the protection and conservation of the environment or on the sustainable management of the environment;

“sustainable development” means development that meets the needs and aspirations of the present generation without causing deterioration or compromising the ability to meet the needs of future generations;

“sustainable use” means the use of the environment which does not compromise the ability to use the environment by future generations or degrade the capacity of the supporting ecosystems;

“sustainable management” means protecting and managing the use of the environment, in a manner that, while enabling human beings to provide for their health, safety, social, cultural and economic well being—

(a) safeguards the life-supporting capacity of air, water, soil and ecosystems;

(b) maintains the life-supporting capacity and quality of air, water, soil and ecosystems, including living organisms, to enable future generations to meet their reasonably foreseeable needs; and

(c) avoids the creation of adverse effects, wherever practicable, and where adverse effects cannot be avoided, mitigates and remedies the adverse effects as far as is practicable;

“toxic substance” means chemical material, including an object or article, which is poisonous, corrosive, irritant, explosive, inflammable or harmful to human beings, animals, plants or the environment;

“Vice-Chairperson” means the person appointed as Vice-Chairperson of the Board under section *eleven*;

“waste” means any matter whether liquid, solid, gaseous or radio-active, which is discharged, emitted or deposited in the environment in such volume, composition or manner as to cause an adverse effect to the environment, and includes such waste as may be prescribed under this Act;

“waste water” means water which has been used for domestic, commercial, agricultural, trading or industrial purposes and as a result of such use may cause pollution of the aquatic environment when discharged into the aquatic environment;

“water” means water in its natural state, including—

(a) surface water;

(b) water which rises naturally on any land or drains or falls naturally on to any land, even if it does not visibly join any watercourse; or

(c) ground water; and

“wetland” means a transitional area of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salty, including areas of marine water the depth of which at low tide does not exceed six metres.

3. Subject to the Constitution, where there is any inconsistency between the provisions of this Act and the provisions of any other written law relating to environmental protection and management, which is not a specific subjected related to law on a particular environmental element, the provisions of this Act shall prevail to the extent of the inconsistency.

Superiority
of Act
Cap. 1

4. (1) Subject to the Constitution, every person living in Zambia has the right to a clean, safe and healthy environment.

(2) The right to a clean, safe and healthy environment shall include the right of access to the various elements of the environment for recreational, education, health, spiritual, cultural and economic purposes.

Right to
clean, safe
and healthy
environment
Cap. 1

(3) A person may, where the right referred to in subsection (1) is threatened or is likely to be threatened as a result of an act or omission of any other person, bring an action against the person whose act or omission is likely to cause harm to human health or the environment.

(4) The action referred to in subsection (3) may seek to—

(a) prevent, stop or discontinue any activity or omission, which threatens, or is likely to cause harm to, human health or the environment;

- (b) compel any public officer to take measures to prevent or discontinue any act or omission, which threatens, or is likely to cause harm to, human health or the environment;
- (c) require that any on-going activity or omission be subjected to an environmental audit or monitoring;
- (d) require the person whose activity or omission threatens, or is likely to cause harm to, human health or the environment, to take measures to protect human life or the environment;
- (e) compel the person responsible for any environmental degradation to restore the degraded environment, as far as practicable, to its condition immediately prior to the damage; and
- (f) provide compensation to any victim for the harm or omission and the cost of beneficial uses lost as a result of an activity that caused harm to human health or the environment.

(5) A court, tribunal, appropriate authority, a person or body exercising a public function and any person exercising jurisdiction under this Act shall, in relation to any decision, order, exercise of any power or performance of any function, be guided by the principles set out in section *six*.

Duty to
protect
environment

5. Every person has a duty to safeguard and enhance the environment and to inform the Agency of any activity or phenomenon that affects or may affect the environment.

Principles
governing
environmental
management

6. The following principles shall be applied in achieving the purpose of this Act:

- (a) the environment is the common heritage of present and future generations;
- (b) adverse effects shall be prevented and minimized through long-term integrated planning and the co-ordination, integration and co-operation of efforts, which consider the entire environment as a whole entity;
- (c) the precautionary principle;
- (d) the polluter pays principle;
- (e) equitable access to environmental resources shall be promoted and the functional integrity of ecosystems shall be taken into account to ensure the sustainability of the ecosystems and to prevent adverse effects;
- (f) the people shall be involved in the development of policies, plans and programmes for environmental management;
- (g) the citizen shall have access to environmental information to enable the citizen make informed personal choices

- which encourages improved performance by industry and the Government;
- (h) the generation of waste should be minimised, wherever practicable, and waste should, in order of priority, be re-used, re-cycled, recovered and disposed of safely in a manner that avoids creating adverse effects;
 - (i) the environment is vital to people's livelihood and shall be used sustainably in order to achieve poverty reduction and socio-economic development;
 - (j) non-renewable natural resources shall be used prudently, taking into account the needs for the present and future generations;
 - (k) renewable natural resources shall be used in a manner that is sustainable and does not prejudice their viability and integrity; and
 - (l) community participation and involvement in natural resources management and the sharing of benefits arising from the use of the resources shall be promoted and facilitated.

PART II

THE ZAMBIA ENVIRONMENTAL MANAGEMENT AGENCY

7. (1) The Environmental Council established under the repealed Act shall continue to exist as a body corporate as if established under this Act and is hereby re-named the Zambia Environmental Management Agency.

Continuation
and re-
naming of
Council
Cap. 204

(2) The provisions of the First Schedule apply to the Agency.

8. (1) The seal of the Agency shall be such device as may be determined by the Board and shall be kept by the Director-General.

Seal of
Agency

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Director-General or any other person authorised in that behalf by a resolution of the Board.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency, by the Director-General or any other person generally or specifically authorised in that behalf by the Agency.

(4) Any document purporting to be under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Functions of
Agency

9. (1) The Agency shall do all such things as are necessary to ensure the sustainable management of natural resources and protection of the environment, and the prevention and control of pollution.

(2) Without limiting the generality of subsection (1), the Agency shall—

- (a) advise the Minister on the formulation of policies on all aspects of the environment and, in particular, make recommendations for the sustainable management of the environment;
- (b) co-ordinate the implementation of activities of all ministries, appropriate authorities and conservancy authorities in matters relating to the environment;
- (c) develop and enforce measures aimed at preventing and controlling pollution;
- (d) develop, in liaison with the relevant appropriate authority, standards and guidelines relating to the protection of air, water, land and other natural resources and the prevention and control of pollution, the discharge of waste and the control of toxic substances;
- (e) advise any private or public body on any aspect of nature conservation;
- (f) initiate, conduct and promote research, surveys, studies, training and investigations in environmental management;
- (g) research or sponsor research on the effects of climate change on human beings and the environment;
- (h) ensure the integration of environmental concerns in overall national planning through co-ordination with appropriate authorities;
- (i) undertake general educational programmes for the purpose of creating public awareness on the environment;
- (j) review environmental impact assessment reports and strategic environmental assessment reports;
- (k) monitor trends of natural resources, their use and impact on the environment and make necessary recommendations to the appropriate authority;
- (l) collaborate with Government agencies, appropriate authorities and other bodies and institutions to control pollution and protect the environment;
- (m) request information on projects proposed, planned

- or in progress and advise stakeholders on projects, programmes, plans and policies for which environmental assessments are necessary;
- (n) collaborate with such local and international agencies as the Agency considers necessary for the purposes of this Act;
- (o) publicise information on any aspect of the environment and facilitate public access to information on the environment; and
- (p) carry out any other activities relating to environmental management and the prevention and control of pollution, which are necessary or conducive to the better performance of its functions under this Act.

10. (1) The Minister may, in consultation with the Agency, appropriate authorities and conservancy authorities, by notice in the *Gazette*, appoint an appropriate authority to perform such functions of the Agency as the Agency may specify. Appropriate authority

(2) The Agency may, where an appropriate authority fails to comply with the terms and conditions of its appointment, suspend or revoke its appointment after giving it fourteen days notice to that effect and an opportunity to be heard.

11. (1) There is hereby constituted a Board of the Agency which shall consist of the following part-time members appointed by the Minister: Board of Agency

- (a) one representative each from the Ministries responsible for—
 - (i) the environment and natural resources;
 - (ii) health;
 - (iii) mines and minerals development;
 - (iv) local government;
 - (v) agriculture;
 - (vi) energy and water development; and
 - (vii) national planning;
- (b) a representative of the Attorney-General;
- (c) a representative of the Zambia Association of Chambers of Commerce and Industry;
- (d) one person representing non-governmental organisations dealing with environmental management;
- (e) one person representing an institution involved in scientific and industrial research; and
- (f) two other persons.

(2) The Minister shall appoint the Chairperson and the Vice-Chairperson of the Board from amongst the members of the Board, except that the Chairperson and the Vice-Chairperson shall not be public officers.

(3) A person shall not be appointed as a member of the Board if that person is—

- (a) not a citizen of Zambia;
- (b) an undischarged bankrupt;
- (c) affected by a mental disability which makes the member incapable of performing the functions of a member; or
- (d) convicted of an offence under this Act or any other written law and has been sentenced to imprisonment for a period exceeding six months without the option of a fine.

(4) A member shall hold office for a period of three years and may be re-appointed for one further period of three years.

(5) A member may resign upon giving one month's notice, in writing, to the Minister.

(6) The office of a member shall become vacant—

- (a) if the member is absent, without reasonable excuse, from three consecutive meetings of the Board of which the member has had notice;
- (b) if the member is adjudged bankrupt;
- (c) if the member is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine;
- (d) if the member is removed by the Minister;
- (e) if the member has a mental disability which makes the member incapable of performing the functions of office; or
- (f) upon the member's death.

(7) The provisions of the First Schedule apply to the Board.

Functions of
Board

12. Subject to the other provisions of this Act, the functions of the Board are to—

- (a) carry out the functions of the Agency;
- (b) oversee the implementation and successful operation of the policy and functions of the Agency;
- (c) review the policy and strategic plan of the Agency;
- (d) provide guidance to the Director-General and staff of the Agency;
- (e) approve the annual budget and plans of the Agency;

- (f) monitor and evaluate the performance of the Agency against budgets and plans;
- (g) establish and approve rules and procedures for the appointment, discipline, termination and terms and conditions of service of the staff of the Agency; and
- (h) perform any other function conferred or imposed on the Board by, or under, this Act.

13. (1) The Board shall appoint a Director-General on such terms and conditions as the Board may determine.

Director-General,
Secretary
and other
staff

(2) The Director-General shall be the chief executive officer of the Agency and shall be responsible, under the direction of the Board, for the day-to-day administration of the Agency.

(3) The Director-General shall be an *ex officio* member of the Board.

(4) The Board may appoint, on such terms and conditions as it may determine, the Secretary and such other staff as it considers necessary for the performance of the Agency's functions under this Act.

14. (1) The Agency shall establish an inspectorate with the necessary technical staff and facilities required to administer, monitor and enforce measures for the protection of the environment and the prevention of pollution.

Inspectors

(2) The Board may appoint any suitable person to be an inspector for the purposes of ensuring compliance with this Act, on such terms and conditions as the Board may determine.

(3) The Board shall provide an inspector with a certificate of appointment, in the prescribed form, which shall be *prima facie* evidence of the inspector's appointment as such.

(4) An inspector shall, in performing any function under this Act—

- (a) be in possession of the certificate of appointment referred to under subsection (3); and
- (b) show the certificate of appointment to any person who requests to see it or is subject to an investigation under this Act.

Powers of
Inspectors

15. (1) An inspector may, at any reasonable time—

- (a) enter and search any industrial facility or plant, undertaking, business or any other premises, where the inspector has reasonable grounds to believe information or documents which are relevant to the investigation are kept or an activity discharging or likely to discharge a

contaminant or pollutant into the environment is being carried out or is likely to be carried out and—

- (i) take samples or materials used in or resulting from the activity; and
 - (ii) inspect any vehicle or other conveyance at the industrial facility or plant, undertaking, business or other premises;
- (b) search any person in an industrial facility or plant, undertaking, business or any other premises if there are reasonable grounds to believe that the person has possession of any document or article that has a bearing on an investigation:

Provided that a person shall only be searched by a person of the same sex;

- (c) examine any document, material, matter, substance or article found in any industrial facility or plant, undertaking, business or other premises that has a bearing on an investigation;
- (d) require information to be given about any document, article, an industrial facility or plant, undertaking, business or any other premises by—
- (i) the owner of the industrial facility or plant, undertaking, business or premises;
 - (ii) the person in control of the industrial facility or plant, undertaking, business or premises;
 - (iii) any person who has control of the document, an industrial facility or plant, undertaking, business or article; or
 - (iv) any other person who may have the information;
- (e) take extracts from, or make copies of, any book, licence, permit or document found in an industrial facility or plant, undertaking, business or premises that has a bearing on an investigation;
- (f) use any computer system in any industrial facility or plant, undertaking, business or premises, or require the assistance of any person in the industrial facility or plant, undertaking, business or premises to use that computer system, to—
- (i) search any data contained in, or available to, the computer system;
 - (ii) reproduce any record from the data; or
 - (iii) seize any output from the computer for examination and copying; and

- (g) attach and, if necessary, remove from an industrial facility or plant, undertaking, business or premises for examination and safeguarding any document, matter, material, substance or article that has a bearing on an investigation.
- (2) An inspector may, for purposes of an investigation—
- (a) inspect and examine any premises, vehicle, aircraft, boat, railway carriage or other conveyance in or upon which the inspector has reasonable grounds to believe that a pesticide, toxic substance, hazardous waste, invasive alien species or other contaminant or pollutant is being or has been used, stored or transported;
 - (b) order the production of any document pertaining to the use, storage or transportation of any pesticide, toxic substance, hazardous waste, invasive alien species or other contaminant or pollutant;
 - (c) order the cessation of any operation or activity causing any adverse effects to the environment or which poses or is likely to pose an immediate danger to human, animal or plant life;
 - (d) obtain any samples of the invasive alien species or substances mentioned in paragraph (b) as the inspector considers necessary; or
 - (e) request information from any person who has custody or control of any premises, conveyance or substance referred to in paragraph (a).
- (3) An inspector may seize and detain any substance, material, matter, vehicle, aircraft, boat or other conveyance where the inspector has reasonable grounds to believe that—
- (a) the substance, material, matter, vehicle, aircraft, boat or other conveyance has been used or is being used for the commission of an offence under this Act;
 - (b) the substance, material, matter, vehicle, aircraft, boat or other conveyance is causing or is likely to cause pollution contrary to this Act; or
 - (c) the vehicle, aircraft, boat or other conveyance is transporting or hoarding any matter, material, substance or article causing or likely to cause pollution contrary to the provisions of this Act.
- (4) An inspector who removes any document, matter, material,

substance or article from any industrial facility or plant, undertaking, business or premises under paragraph (g) of subsection (1) shall—

- (a) issue a receipt for the document, matter, material, substance or article to the owner of, or person in control of, the industrial facility or plant, undertaking, business or premises; and
- (b) return the document, matter, material, substance or article as soon as practicable if—
 - (i) the purpose for which it was removed is achieved;
 - (ii) the Director of Public Prosecutions advises the Agency, in writing, that no prosecution shall be instituted in relation to the matter, material, substance or article; or
 - (iii) the person from whom the document, article, substance, material, matter, vehicle, aircraft, boat or other conveyance was seized is not convicted of an offence under this Act.

(5) A person who—

- (a) delays or obstructs an inspector in the performance of the inspector's functions under this Act;
- (b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspector's powers;
- (c) gives an inspector false or misleading information in answer to an inquiry made by the inspector; or
- (d) impersonates or falsely represents oneself to be an inspector;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(6) An inspector shall furnish the Agency with a written report and any other information relating to an inspection, as the Agency may require.

(7) Nothing in this section requires a person to disclose or produce information, or a document, that is classified or which falls under the State Security Act.

Cap. 111

Powers of
arrest

16. (1) An inspector may arrest a person, without warrant, where the inspector has reasonable grounds to believe that the person—

- (a) is committing or has committed an offence under this Act;

(b) is about to commit an offence under this Act and there is no other way to prevent the commission of the offence;

(c) unless arrested, will—

(i) escape or cause unreasonable delay, trouble or expense in being made answerable to justice;

(ii) interfere with the witnesses; or

(iii) tamper with or destroy relevant evidence or material; or

(d) is willfully obstructing the inspector in the execution of the inspector's duties.

(2) An inspector shall, where the inspector arrests a person under subsection (1), hand over the person to a police officer, or surrender that person to a police post or station within twenty-four hours.

(3) An inspector who makes an arrest under subsection (1) shall, without undue delay, have the person so arrested brought before a court of competent jurisdiction to be dealt with accordingly.

17. (1) The Agency may, by notice in the *Gazette*, on such terms and conditions as it may determine, appoint any suitable person as an honorary inspector for a period not exceeding three years, and may renew such appointment for a further three years.

Honorary
inspectors

(2) The Agency may, by notice in the *Gazette*, revoke or renew any appointment made under subsection (1).

(3) The appointment of an honorary inspector may be—

(a) general, to empower the honorary inspector to act in any area of the Republic; or

(b) limited, to empower the honorary inspector to act in such area of the Republic as may be specified in the instrument of appointment.

(4) Subject to the other provisions of this Act and to the terms of the instrument of appointment, an honorary inspector shall, within the terms of the appointment, exercise the functions and perform the duties of an inspector.

18. (1) The Director of Public Prosecutions may, at the request of the Agency, appoint by name or rank an inspector to undertake, or assist in undertaking and prosecuting, criminal proceedings in respect of an offence alleged to have been committed by any person in contravention of this Act, and may, at any time, cancel the appointment.

Appointment
of
prosecutors

(2) An inspector shall, in prosecuting any proceedings under subsection (1), act in accordance with the general or special instruction of the Director of Public Prosecutions and shall, for

Act No. 34 of 2010

the purpose of any prosecution, have the powers of a prosecutor appointed under the National Prosecutions Authority Act, 2010.

Immunity of inspectors

19. An action or other proceeding shall not lie or be instituted for, or in respect of, any act or thing done or omitted to be done in good faith by an inspector in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred on the inspector under this Act.

PART III

INTEGRATED ENVIRONMENT MANAGEMENT

State of Environment Report

20. (1) The Minister shall, within two years of the commencement of this Act, and every five years thereafter, publish a State of the Environment Report.

(2) The State of the Environment Report shall provide information on the environment in Zambia and, in particular, on the quality of the environment, and without limiting its generality, shall—

(a) describe the quality of the environment and the results of environmental quality monitoring;

(b) describe any significant adverse effects that have been caused, are being caused or are likely to be caused in the foreseeable future, and where possible, identify the causes and trends;

(c) describe the monitoring, enforcement and other measures which have been, and are being, taken to address the causes of the adverse effects and to improve environmental quality; and

(d) with respect to international agreements and negotiations relating to the environment in Zambia, the regional or the global environment—

(i) report on all agreements to which Zambia is a party, and on their domestic implementation; and

(ii) report on negotiations in which Zambia has participated since the previous State of the Environment Report.

National Environmental Action Plan

21. (1) The Minister shall, within three years of the commencement of this Act and every ten years thereafter, prepare and publish a National Environmental Action Plan.

- (2) The National Environmental Action Plan shall include—
- (a) an assessment of both the urgency and the importance of actions that should be taken in the short, medium and longterm in order to prevent, eliminate and reduce adverse effects as described in the most recent State of the Environment Report;
 - (b) an assessment of the resources at the disposal of the Government as a whole, the Minister and the Agency, which may be used to take the actions referred to in paragraph (a);
 - (c) a strategy and schedule for the implementation of the necessary actions; and
 - (d) any other information as may be prescribed.

(3) A draft National Environmental Action Plan shall be subject to public review in accordance with Part VII before its finalisation.

22. (1) Within three years of the commencement of this Act, each Minister shall ensure that an environmental management strategy for the Ministry for which the Minister is responsible, is prepared and submitted to the Agency for approval.

Environmental
management
strategies

(2) The Board shall consider each environmental management strategy submitted to it and shall, as soon as reasonably practicable, notify the Ministry concerned that it has approved the strategy or of the ways in which the Board requires the strategy to be amended in order for the Board to approve it.

(3) After the Board has approved a strategy, the Ministry concerned shall, within six months of the date of approval, publish the strategy in the *Gazette* and start implementing it.

- (4) A strategy shall include the following:
- (a) a description of the principal effects that the activities regulated by the Ministry have or may have on the environment and the sustainable management of natural resources;
 - (b) a description of the principal effects that the activities of the Ministry have or may have on the environment and the sustainable management of natural resources;
 - (c) a statement of the objectives of the strategy, which shall be designed to further the achievement of the purpose of this Act and the National Environmental Action Plan referred to in section *twenty-one*; and
 - (d) a description of the practical measures that the Ministry will take to give effect to the purposes of this Act and to

the principles referred to in section *six*, and to ensure that it exercises its functions in a way that helps to achieve the objectives of the strategy.

(5) A Ministry shall review its environmental management strategy at least once every ten years and shall publish a report on that review in the *Gazette*.

(6) A review report shall include—

- (a) an assessment of the effects that activities in the sector regulated by the Ministry have had on the environment and the sustainable management of natural resources over the previous five years, and an assessment of future trends in this regard;
- (b) an assessment of the effects that the activities of the Ministry have had on the environment and on the sustainable management of natural resources, over the previous five years;
- (c) an assessment of the extent to which the objectives of the strategy have been achieved and the effectiveness of the strategy in assisting the Ministry to apply the principles set out in section *six*;
- (d) recommendations for improving the strategy; and
- (e) proposed amendments to the strategy or a draft of a new strategy that takes into account the assessments noted in the review.

Strategic
environmental
assessment

23. (1) The proponent of a policy, programme or plan that could have an adverse effect on environmental management or on the sustainable management and utilisation of natural resources shall conduct a strategic environmental assessment of the draft policy, programme or plan and present a strategic environmental assessment report to the Agency, for approval.

(2) The proponent referred to in subsection (1) shall not adopt or implement the policy, plan or programme, which is not approved by the Agency.

(3) A strategic environmental assessment report prepared under subsection (1) shall include —

- (a) a full description of the policy, programme or plan and the objectives it intends to achieve;
- (b) an identification, description and assessment of the positive and adverse effects that the implementation of the policy, programme or plan is likely to have on the environment and on the sustainable management of natural resources;

- (c) an identification, description and assessment of the likely effects of the alternative means to achieve the policy, programme or plan;
- (d) an identification, description and assessment of a range of practicable measures that could be taken to avoid, mitigate or remedy any adverse effect that may occur as a result of the implementation of the policy, programme or plan; and
- (e) any other information prescribed by the Minister, by statutory instrument.

(4) Where any proponent considers that a policy, programme or plan, does not require a strategic environmental assessment under this section, the proponent shall submit a draft of the relevant document to the Agency and the Agency shall, as soon as practicable, determine whether or not an assessment is required and shall inform the proponent accordingly, in writing, and the reasons therefor.

(5) A proponent shall, after receipt of the decision of the Agency in relation to the strategic environmental assessment report submitted by the proponent, review the policy, programme or plan taking into consideration the strategic environmental assessment report and shall submit the following documents to the Minister and to the Agency:

- (a) the revised strategic environmental assessment report; and
- (b) a report indicating—
 - (i) the revisions made to the original document in order to promote environmental protection and the sustainable management of natural resources or to avoid, mitigate or remedy any adverse effects which the implementation of the policy, programme or plan, may have had; and
 - (ii) any other measures that have been, or will be taken to avoid, mitigate or remedy any adverse effects, and when these were or will be taken, and if any measures recommended by the assessment report have been or will not be taken, the reasons for not doing so; and
 - (iii) a revised version of the policy, programme or plan.

(6) Where the Agency considers that the environmental concerns raised during the strategic environmental assessment process are not adequately addressed by the policy, programme or plan, and that additional cost-effective measures to avoid or mitigate the adverse effects should be taken, the Agency shall, within thirty days of the receipt of the documents referred to in subsection (5), lodge an objection with the proponent and consult with the proponent with a view to reaching an agreement on the amendments to be made to the policy, programme or plan in order to give full effect to the purpose and principles of this Act.

(7) Where the Agency and the proponent are unable to reach agreement on the amendments to be made to the revised policy, programme or plan, or the measures to be taken, the Director-General or the proponent may lodge a notice of objection with the Minister.

(8) The Minister may, upon receipt of the notice under subsection (7), order the documents referred to in subsection (5) to be subjected to public review or a public hearing before making a final determination.

Environmentally
Protected
Areas

24. (1) Subject to subsection (2), the Minister may, by statutory instrument, on the recommendation of the Agency and relevant appropriate authority, declare an area of land which is ecologically fragile or sensitive to be an Environmentally Protected Area.

(2) The powers conferred on the Minister under this section shall not extend to areas declared, or which may be declared, as protected areas under any other written law.

(3) The following areas shall be environmentally sensitive areas for the purposes of this Act:

- (a) wetlands;
- (b) any area declared as environmentally sensitive by any local authority;
- (c) an area designated by the Agency as prone to soil erosion;
- (d) any land designated by the Agency as land where landslides have occurred or are likely to occur;
- (e) all areas that have been closed by the Minister to livestock keeping, occupation, cultivation and other specified activities;
- (f) areas on slopes with a gradient exceeding any angle which the Minister shall, after taking account of scientific advice, specify;
- (g) any arid and semi-arid lands;

(h) land specified by the Agency as land which should not be developed on account of its fragile nature or of its environmental significance; and

(i) land declared under any other written law to be an environmentally sensitive area or hazardous land.

(4) In determining whether or not to declare an area as an Environmentally Protected Area, the Minister shall have regard to—

(a) the natural features and beauty of the area;

(b) the flora and fauna of the area;

(c) the unique or special geographical, physiographical, ecological or historic and cultural features of the area;

(d) any special scientific feature, cultural feature or biological diversity of, or existing in, the area;

(e) the interests of the local communities in, or around, the area; and

(f) the need for the Government to comply with any international obligation under any agreement to which Zambia is a party.

(5) The management of the Environmentally Protected Area shall vest in the Agency.

(6) The Agency shall, where an area is declared to be an Environmentally Protected Area, in consultation with the appropriate authorities and conservancy authorities, prepare an environmental protection plan for the area.

(7) An environmental protection plan for an Environmentally Protected Area shall—

(a) set out the objectives and policies of protecting and managing the area;

(b) formulate strategies for the protection and management of the area;

(c) provide for the development of social amenities and recreational facilities, where necessary;

(d) facilitate the carrying out of scientific research; and

(e) incorporate all the necessary requirements for the effective and sustainable management of the area.

(8) Notwithstanding subsections (5) and (6), the Agency may, in addition to the environmental protection plan, prepare an ecosystem management plan for an Environmentally Protected Area.

Declaration
of area as
wetland

25. (1) The Minister may, in consultation with the local community and relevant appropriate and conservancy authorities, declare any wetland to be an ecologically sensitive area and may impose limitations on development in or around the area.

(2) A person shall not, except in accordance with the written authorisation of the Agency, given after consultation with the Board and the Minister responsible for water resources management—

- (a) reclaim or drain a wetland;
- (b) disturb a wetland by drilling or tunneling in a manner that has, or is likely to have, an adverse impact on the wetland or adversely affect the ecosystem;
- (c) introduce in a wetland an exotic animal or plant; or
- (d) plant species in a wetland.

(3) A person who contravenes subsection (2) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Conservation
of biological
diversity

26. (1) The Minister shall strive to attain the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of biological resources.

(2) The Minister shall regulate appropriate access to biological resources and appropriate transfer of relevant technologies, taking into account all rights over those resources, indigenous biological medical knowledge, general knowledge, technologies and appropriate funding.

(3) The Minister may, in consultation with the Agency and the appropriate authorities, make regulations prescribing—

- (a) the development of national strategies, programmes or plans for the conservation and sustainable use of biological diversity;
- (b) the adaptation of strategies, plans or programmes for the purposes of conservation of biological diversity;
- (c) the integration, as far as possible and as appropriate, of the conservation and sustainable use of biological diversity into relevant sectoral or crosssectoral plans, programmes and policies;
- (d) the identification of the components of biological diversity important for conservation and sustainable use, having regard to any international standards applicable to Zambia;

- (e) monitoring, through sampling and other techniques, the components of biological diversity, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (f) identifying the processes and categories of activities which have or are likely to have significant adverse impacts on the conservation, equitable sharing and sustainable use of biological diversity, and monitoring their effects through sampling and other techniques; and
- (g) the maintenance and organisation by any mechanism or data derived from the identification and monitoring of activities pursuant to this section.

27. (1) The Minister may, in consultation with the Agency and the appropriate authorities, make regulations providing for *insitu* conservation of biological diversity.

Conservation
of biological
diversity
insitu

- (2) Regulations made under this section may prescribe—
 - (a) procedures for the establishment of a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
 - (b) guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
 - (c) how to regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
 - (d) the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
 - (e) the promotion of environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of the areas;
 - (f) the rehabilitation and restoration of degraded ecosystems and promotion of the recovery of threatened species through the development and implementation of plans or other management strategies;
 - (g) the prevention of the introduction of, control or eradication of invasive alien species which threaten ecosystems, habitats or species;

- (h) the furnishing of conditions for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;
- (i) guidelines on methods to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities;
- (j) the adoption of economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity;
- (k) the promotion of the equitable sharing of the benefits arising from the utilisation of knowledge, innovations, genetic resources and practices of indigenous and local communities; and
- (m) the procedures for the establishment of a system of protected areas where special measures need to be taken to conserve biological diversity.

Conservation
of biological
diversity
ex situ

28. The Minister may, in consultation with the Agency and the appropriate authorities, make regulations with respect to *ex situ* conservation so as to—

- (a) adopt measures for the *ex situ* conservation of components of biological diversity originating in Zambia;
- (b) establish and maintain facilities for *ex situ* conservation and research on plants, animals and micro-organisms, preferably in the country of origin of genetic resources;
- (c) adopt measures for the recovery and rehabilitation of threatened species and for their re-introduction into their natural habitats under appropriate conditions;
- (d) regulate and manage collection of biological resources from natural habitats for *ex situ* conservation purposes so as not to threaten ecosystems and *in situ* populations of species;
- (e) adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity; and
- (f) co-operate in providing financial and other support for *ex situ* conservation.

Environmental
Impact
Assessment

29. (1) A person shall not undertake any project that may have an effect on the environment without the written approval of the Agency, and except in accordance with any conditions imposed in that approval.

(2) A person, appropriate authority or other public body shall not grant a permit or licence for the execution of a project referred to in subsection (1) unless an approval for the project is granted by the Agency, or the grant of the permit or licence is made conditional upon such approval being granted.

(3) Subject to this Act, the Agency may delegate to an appropriate authority any of its functions under this section and may impose conditions with respect to the exercise of the delegated functions:

Provided that nothing in this subsection shall be construed so as to absolve the Agency from its responsibility for any act done by such a body or person in the exercise of the delegated authority.

(4) The Agency shall not grant an approval in respect of a project if the Agency considers that the implementation of the project would bring about adverse effects or that the mitigation measures may be inadequate to satisfactorily mitigate the adverse effects of the proposed project.

(5) A person aggrieved with the granting or refusal of an approval under this section may, within fourteen days of that decision, lodge an appeal in accordance with Part X.

30. (1) The Minister may, by statutory instrument, on the advice of the Agency, make regulations for the effective administration of strategic environmental assessments and environmental impact assessments.

Regulations
relating to
environmental
assessments

(2) Without limiting the generality of subsection (1), regulations made under that subsection may provide for—

- (a) the categories of projects that are considered to have an effect on the environment for the purposes of subsection (1) of section *twenty-nine* and are required to conduct environmental impact assessments;
- (b) the procedural requirements for public hearings, strategic environmental assessments, environmental impact assessments and comprehensive mitigation plans;
- (c) the information to be included in a strategic environmental assessment report, an environmental impact assessment and a comprehensive mitigation plan;
- (d) the fees for the cost of dealing with any application for the approval of projects;
- (e) the categories of facilities and activities in respect of which the Agency may require environmental audits to

be conducted and may require the submission of reports on the audits to the Agency;

- (f) the contents of an environmental audit report; and
- (g) the penalties for non-compliance with the regulations made under this section.

PART IV

ENVIRONMENTAL PROTECTION AND POLLUTION CONTROL

Division 1 - Pollution Control

Protection
of
atmosphere

31. (1) The Minister shall, in consultation with the Agency and appropriate authorities—

- (a) undertake, or commission other persons to undertake, research relating to substances, activities and practices that deplete the stratospheric ozone layer and other components of the stratosphere to the detriment of human health and well being and the environment; and
- (b) issue guidelines and institute programmes relating to—
 - (i) the elimination of substances that deplete the ozone layer;
 - (ii) management practices of activities likely to lead to the degradation of the ozone layer and the stratosphere; or
 - (iii) the reduction and minimisation of risks to human health created by the degradation of the ozone layer and the stratosphere.

(2) A person shall not, without a licence—

- (a) conduct any activity that produces, or is likely to produce, a controlled substance or any other substance likely to deplete the ozone layer; or
- (b) import, export, distribute, sell or offer for sale, handle, store, recover, recycle or reclaim a substance likely to deplete the ozone layer.

(3) A person who contravenes subsection (2) commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

(4) The Minister may, by statutory instrument, make regulations for the importation, exportation and consumption of ozone depleting substances or related equipment.

32. (1) A person shall not, without a licence, discharge, cause or permit the discharge of, a contaminant or pollutant into the environment if that discharge causes, or is likely to cause, an adverse effect.

Prohibition of discharges into environment

(2) A person who operates a motor vehicle, boat, train, aircraft or other similar conveyance shall not—

- (a) operate the conveyance in a manner that is likely to cause the discharge of a contaminant or pollutant in contravention of the prescribed emission standards; or
- (b) import any machinery, equipment, device or similar thing likely to cause the emission of a contaminant or pollutant into the environment in contravention of prescribed emission standards.

(3) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

(4) In addition to a sentence that the court may impose under subsection (3), the court may direct the person to—

- (a) clean up the polluted environment and remove the effects of pollution to the satisfaction of the Agency; and
- (b) pay the full cost of cleaning the polluted environment and of removing the pollution.

(5) Without prejudice to the provisions of subsections (3) and (4), the court may direct the polluter to meet the cost of the pollution to any third parties affected by the pollution caused by that person, through adequate compensation, restoration or restitution.

33. The Agency may issue an emission licence to a person to emit or discharge a pollutant or contaminant into the environment in such manner and under such conditions as may be prescribed.

Licensing of emission of pollutant or contaminant into environment

34. The Minister shall, on the recommendation of the Agency, prescribe —

- (a) the criteria and procedure for applying for an emission licence and the grant, varying, renewal, transfer and revocation of an emission licence;

Procedure for application, grant, modification, etc. of emission licence

- (b) the terms and conditions attaching to an application, grant, varying, refusal, renewal, transfer or revocation of an emission licence; and
- (c) any other matters that are necessary or incidental to the effective regulation of emission licences under this Act.

Reporting
of discharge
into
environment

35. (1) A person who discharges or causes or permits the discharge of a contaminant or pollutant into the environment in a manner or amount that is unlawful or that causes, or is likely to cause, an adverse effect shall—

- (a) immediately notify the Agency;
- (b) submit to the Agency information relating to the quantity and quality of the discharge or emission; and
- (c) take all practicable steps to contain the discharge or emission and to prevent, mitigate or remedy the adverse effects resulting from the discharge or emission, including removing any deposit.

(2) A person or a facility discharging or emitting a pollutant or contaminant into the environment shall measure the levels of the discharge or emission and submit the results to the Agency in the prescribed manner.

(3) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Duty to
inform
Agency of
intention to
develop

36. (1) A person intending to erect, install or develop a new industrial facility or plant, an agricultural scheme, business or any other undertaking that is likely to emit or discharge any pollutant or contaminant into the environment shall inform the Agency of the intention during the early planning stage.

(2) The Agency may, after the receipt and consideration of the information submitted under subsection (1), require the developer of the industrial facility or plant, agricultural scheme, business or undertaking referred to in subsection (1) to undertake an environmental impact assessment in accordance with section *twenty-nine*.

(3) An extension or alteration of an existing industrial facility or plant, agricultural scheme, business or any other undertaking shall be deemed to be new if the extension will

- (a) increase any emission or discharge into the environment in the quantity or concentration of the pollutant or contaminant;

- (b) alter the ecosystem;
- (c) alter the biodiversity regime;
- (d) alter the landuse of a particular zone or area; or
- (e) introduce one or more types of pollutants or contaminants into the environment.

37. (1) An owner or operator of an agricultural scheme, sewerage system, industrial facility or plant, business or any other undertaking which is likely to cause emission or discharge of a pollutant or contaminant into the environment shall submit to the inspectorate information relating to the quantity and quality of the pollutant or contaminant.

Duty to submit information to inspectorate

(2) The inspectorate may require an owner or operator of an agricultural scheme, sewerage system, industrial facility or plant, business or any other undertaking which the inspectorate has reasonable grounds to believe is likely to cause or is causing the discharge or emission of a pollutant or contaminant into the environment to submit information relating to the quantity and quality of the pollutant or contaminant as the inspectorate may require. (3) The inspectorate may order an owner or operator referred to in this section, at their expense, to install such metering devices, have such samples taken and analysed, and keep such records, as the inspectorate may require.

38. (1) A person who discharges any pollutant or contaminant into the environment or emits noise shall take reasonable measures to ensure that the best practicable option, as defined in subsection (3), is adopted in relation to the discharge or emission.

Integrated pollution, prevention and control

(2) In determining whether or not to issue a licence or other authorisation to discharge a pollutant or contaminant, and the terms and conditions of the licence or authorisation, the Director-General or any other person empowered to make the decision shall ensure that the best practicable option is adopted.

(3) For the purposes of this section, “best practicable option”, in relation to the discharge of a pollutant or contaminant or an emission of noise, means the best method for preventing or minimising adverse effects on the environment, having regard, among other things, to—

- (a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects;
- (b) the effect on the environment of that option when compared with other options; and
- (c) the current state of technical knowledge and the likelihood that the option can be successfully applied.

Integrated
decision-
making
process and
single permit
or licence
system

39. (1) An appropriate authority shall not issue or grant any licence, permit or other authorisation for the doing of any activity by any person, which may have an adverse effect on the environment, before the appropriate authority first consults the Agency as to whether the issuing or the grant of the licence, permit or other authorisation will have an adverse effect on the environment.

(2) The Agency may, where consulted under subsection (1), impose such conditions or stipulate such requirements as the Agency considers necessary to maintain or protect the environment, including conditions relating to the strict compliance of any other written law.

(3) Where the Agency imposes any conditions or stipulates any requirement under subsection (2), an appropriate authority shall endorse such condition or requirement on any licence or permit issued to any person whose activities under the licence or permit will affect the environment.

(4) A conservancy authority or an appropriate authority shall, when requested to do so by the Agency, give to the Agency any advice or assistance or submit such information as may be necessary for the performance of the Agency's functions under this section.

(5) Any contravention of any condition or requirement endorsed on any licence or permit, under subsection (3), shall be a ground for the revocation of any permit or licence issued by an appropriate authority under the relevant law.

(6) A person whose permit or licence authorises the doing of any activity likely to have an adverse effect on the environment as specified in the permit or licence shall pay, to the appropriate authority that issued the permit or licence, the charge prescribed under this Act for that activity and such permit or licence shall for all purposes be deemed to be a permit or licence issued under this Act for the activity as specified and shall be subject to this Act.

(7) Where a person makes a payment under subsection (6), the appropriate authority shall transmit to the Agency the charges paid.

40. (1) The Agency shall, in collaboration with the appropriate authorities and conservancy authorities, promote cleaner production technologies and techniques and foster sustainable consumption of goods and services.

(2) The Agency may, in consultation with an appropriate authority and conservancy authority, establish guidelines relating to—

Promotion of
cleaner
production
and
sustainable
consumption
of goods
and services

- (a) cleaner production technologies and techniques and sustainable consumption to guide industrial, tourism, trade, mining, agriculture and service oriented activities;
- (b) the monitoring of the impact of cleaner production;
- (c) mainstreaming of procedures and guidelines for financing projects so as to encourage sustainable financing for cleaner production initiatives; and
- (d) mainstreaming of cleaner production and sustainable consumption approaches in relevant policies in public and private bodies.

41. (1) The Minister shall, in consultation with the Agency and relevant appropriate authority, prepare guidelines for the management of environmental emergencies including—

Environmental
emergency
preparedness

- (a) oil spills and gas leakages;
- (b) spills of toxic substances;
- (c) industrial accidents;
- (d) natural and climate change related to disaster such as floods, cyclones, droughts and major pest infestations or the introduction and spread of invasive alien species;
- (e) the influx of refugees; and
- (f) fire.

(2) Notwithstanding subsection (1), the Minister shall not issue separate regulations in relation to the matters to be prescribed where similar regulations have been issued under another law dealing with the particular subject matter.

(3) The Agency shall, where regulations are issued under other laws, have the general power to supervise and enforce those regulations to ensure adequate and effective protection of the environment as if issued under this Act.

(4) The Minister shall, with a view to prepare an emergency preparedness plan appropriate to the risk anticipated in any establishment, premises or any area of land, consult with the Disaster Management Unit, appropriate authorities, public and private bodies, local and international organisations and members of the public.

42. (1) The Minister may, by notice in the *Gazette*, where the Minister considers that an emergency has arisen in an area in relation to a pollution incident, declare an environmental emergency in that area.

Declaration of
environmental
emergency

(2) The Minister shall, as soon as an emergency is declared under subsection (1), establish an emergency committee which shall include amongst others, all relevant appropriate authorities

to co-ordinate the remedial emergency action under the direction and control of the Director-General.

(3) The Minister may, where the Minister declares an environmental emergency in an area, make a statutory order—

- (a) specifying the conditions applicable to the area;
- (b) prescribing the signage to designate the area;
- (c) prescribing the conditions for entry into the area and the activities which may or may not be conducted in the area;
- (d) prescribing the method of securing the area;
- (e) regulating the use of the area for a specified period after the lifting of the emergency situation; and
- (f) any other matter necessary for the purposes of environmental emergencies.

Regulations
on pollution
control

43. (1) The Minister may, by statutory instrument, on the advice of the Agency after the Agency has consulted appropriate authorities, make regulations—

- (a) preventing and controlling activities that result in adverse effects on the environment;
- (b) requiring any person or class of persons to monitor discharges of pollutants or contaminants and to keep records of the results of the monitoring;
- (c) creating systems of integrated pollution prevention and control;
- (d) providing for the substantive and procedural requirements for licences issued under this Act;
- (e) establishing requirements, standards and guidelines for preventing and controlling discharges into the environment and for activities and the operation of facilities which may cause discharges into the environment;
- (f) classifying discharges, activities and facilities;
- (g) classifying toxic substances, environmentally harmful substances and other types of controlled substances;
- (h) preventing, prohibiting and regulating the import, export, manufacture, transportation, handling, sale, offering for sale, possession, use, storage or disposal of any class of controlled substance or substance or product containing a controlled substance;

- (i) providing for the manner in which the Agency and competent authorities in other countries are to be notified or consulted prior to any permission being given for the importation, manufacture or registration of controlled substances;
- (j) requiring, prohibiting, regulating and establishing standards in relation to the use of any technology, procedure, equipment, fuel, input or other method used in an operation, process or activity that may result in the discharge of a pollutant or contaminant into the environment;
- (k) for the monitoring of discharges of pollutants or contaminants into the environment and of ambient environmental quality in areas surrounding discharges;
- (l) for the reporting of any information relating to discharges of pollutants or contaminants into the environment by any person or appropriate authority;
- (m) establishing a system to control discharges of pollutants or contaminants into the environment;
- (n) for the payment of fees in relation to discharges of pollutants or contaminants into the environment;
- (o) in respect of motor vehicles—
 - (i) requiring, regulating and prohibiting the installation, maintenance and use of certain equipment and devices;
 - (ii) establishing mandatory emission standards and testing programmes; and
 - (iii) prohibiting the use of any motor vehicle that fails to comply with an emission standard;
- (p) prohibiting or regulating in certain areas, for specified periods, the carrying out and manner of carrying out of activities that may result in the discharge of a pollutant or contaminant; and
- (q) any other matter related to the purposes of this Division.

(2) The Minister may make regulations under this section in the absence of absolute or conclusive scientific proof of the degree of toxicity or the hazard posed by any substance, so long as the regulations refer to the precautionary principle as the rationale for doing so.

(3) The Minister shall, before making or amending regulations under this section in relation to any substance that is regulated under any other written law, consult with the Minister responsible for implementing the relevant legislation with a view to ensuring that the substance is regulated in a consistent manner.

Local,
regional
and global
contaminants

44. For the purpose of promoting, enhancing, protecting and conserving the global or regional environment and the sustainable management of natural resources in the region or globally, the Minister may, by statutory instrument, on the advice of the Agency after consultation with relevant appropriate and conservancy authorities, make regulations—

- (a) declaring any substance to be a contaminant that affects the global environment;
- (b) classifying contaminants that affect the global environment; and
- (c) prohibiting, regulating, monitoring, and gathering and disseminating information in respect of—
 - (i) the import, export, manufacture, transportation, sale, offering for sale, possession, use, storage, discharge or disposal of any contaminant or class of contaminant that affects the global environment; and
 - (ii) the import, export, manufacture, transportation, sale, offering for sale, possession or use of technology for the production and use of any product or device containing a contaminant that affects the global environment.

Division 2 - Water

Interpretation

45. (1) In this Division, unless the context otherwise requires—

“effluent” means waste water or other fluid of domestic, agricultural, trade or industrial origin, treated or untreated, and discharged, directly or indirectly, into the aquatic environment;

“licence” means a licence issued under section *thirty-three*; and

“water pollution” means the introduction, directly or indirectly, of pollutants into an aquatic environment.

(2) In this Division, unless the context otherwise requires, words or terms not defined in this Act shall have the same meaning as words and terms defined in the law relating to water resource management.

46. A person shall not discharge or apply any poisonous, toxic, eco-toxic, obnoxious or obstructing matter, radiation or other pollutant, or permit any person to dump or discharge such matter or pollutant into the aquatic environment in contravention of water pollution control standards established by the Agency in liaison with the relevant appropriate authority.

Prohibition
of water
pollution

47. (1) An owner or operator of a trade or industrial undertaking who wishes to discharge into an existing sewerage system effluent from their plant shall obtain written permission to do so from the local authority operating or supervising the sewerage system.

Permission
to discharge
effluent into
sewerage
system

(2) A local authority operating or supervising a sewerage system may impose conditions under which any effluent may be accepted or may prescribe methods of pretreating the effluent prior to acceptance into the sewerage system, which conditions shall be endorsed on the emission licence .

(3) A local authority may vary the conditions of acceptance of an effluent, but a variation shall not be made unless the local authority gives three months notice to that effect.

(4) A person who discharges any effluent into a sewerage system in contravention of the conditions imposed by the local authority operating or supervising the sewerage system, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

48. (1) The Agency shall, in liaison with the relevant appropriate authority—

Responsibilities
of Agency

- (a) establish water quality and pollution control standards;
- (b) determine conditions for the discharge of effluents into the aquatic environment;
- (c) formulate rules for the preservation of aquatic areas, drinking water sources and reservoirs, recreational and other areas, where water may need special protection;
- (d) order or carry out investigations of actual or suspected water pollution, including the collection of data;
- (e) take steps or authorise any works to be carried out which appear to be necessary to prevent or abate water pollution from natural causes or from abandoned works or undertakings;
- (f) determine the analytical methods by which water quality and pollution control standards can be determined and

establish laboratories for the analytical services required by the inspectorate;

- (g) initiate and encourage international co-operation in the control of water pollution, in particular with those neighbouring countries with which Zambia shares river basins;
- (h) collect, maintain and interpret data from industries and local authorities on the pre-treatment, nature and levels of effluents;
- (i) collect, maintain and interpret data on water quality and hydrology which is relevant to the granting of licences under this Division; and
- (j) do all such things as are necessary for the monitoring and control of water pollution.

(2) Notwithstanding subsection (1), the Agency shall not establish separate standards or issue separate rules in relation to matters already dealt with under rules, regulations or standards under other written laws.

(3) The Agency shall, where regulations, rules or standards are issued under any other laws as provided in subsection (2), have the general power to supervise and enforce the regulations, rules and standards, as if issued under this Act.

Division 3 - Air

Interpretation

49. In this Division, unless the context otherwise requires—

“air pollution” means a condition of the ambient air arising, wholly or partly, from the presence of one or more pollutants in the air that endangers the health, safety or welfare of human beings or that interferes with the normal enjoyment of life or property, endangers animal life or causes damage to plant life or property;

“ambient air” means the atmosphere surrounding the earth, but does not include the atmosphere within a structure or within any underground space;

“air quality” means the concentration, prescribed under this Division, of a pollutant in the atmosphere at the point of measurement;

“emission standard” means the amount, specified under this Division, of a pollutant emitted from a specific source;

“licence” means a licence issued under section *thirty-three*; and

“stationary source” means any source of emission of one or more pollutants other than a motor vehicle, ship, train, aircraft or other similar conveyance.

50. The inspectorate shall, in the case of an emergency involving hazardous pollutants, take, and advise on, appropriate measures to be taken for the protection of human beings and the environment.

Emergency situations

51. The Minister may, on the advice of the Agency, by statutory instrument —

Controlled areas

(a) declare an area to be a controlled area for the purposes of this Division; and

(b) within a controlled area, prescribe emission standards from industrial or business activities or from burning liquids or solid fuels.

52. (1) The Agency shall—

Responsibilities of Agency

(a) establish ambient air quality and emission standards and guidelines;

(b) specify the analytical methods for monitoring air contaminants and establish laboratories for analytical services needed by the inspectorate;

(c) identify areas of research and initiate or sponsor research on the effects of air pollutants on human beings, the environment, flora and fauna;

(d) order or carry out investigations of actual or suspected air pollution, including the collection of data;

(e) initiate and encourage international co-operation in matters of air pollution, especially with neighbouring countries;

(f) order any industry or other source of air pollution to file such returns and provide such information as the Agency may require; and

(g) do all such things as are necessary for the monitoring and control of air pollution.

(2) The Agency shall, in establishing emission standards, consider —

(a) the rate of emission, concentration and nature of the pollutants emitted; and

(b) the best practicable technology available in controlling pollutants during the emission process.

(3) The emission standards established under this Division shall be published in the *Gazette* at least ninety days before the date upon which they shall come into effect.

Division 4 - Waste Management

- Interpretation **53.** In this Division, unless the context otherwise requires—
- “collection” means the act of removing waste or materials which have been separated, from a storage point, for the purpose of disposal;
- “disposal” means the storing, handling, sorting, processing, treatment and utilisation and final location of waste to avoid adverse effects on the environment;
- “disposal site” means the area or land or water on which waste disposal facilities are physically located;
- “hazardous waste” means waste which is poisonous, corrosive, irritant, explosive, inflammable, toxic or other substance or thing that is harmful to human beings, animals, plants or the environment;
- “licence” means a waste management licence or hazardous waste licence;
- “storage” means the interim containment of waste after generation and prior to collection for ultimate recovery or disposal; and
- “waste” means garbage, refuse, sludges and other discarded substances resulting from industrial and commercial operations and domestic and community activities, but does not include waste water as defined in the definition of “effluent” in Division 2.
- General prohibition and duty of care **54.** (1) A person shall not collect, transport, sort, recover, treat, store, dispose of, or otherwise manage waste in a manner that results in an adverse effect, or creates a significant risk of an adverse effect occurring.
- (2) A person who produces, collects, recovers, transports, keeps, treats or disposes of waste shall take all reasonable measures to prevent any other person contravening subsection (1) in relation to that waste.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.
- (4) A person shall not dispose of waste in such a manner that it becomes litter or is likely to become litter.
- (5) A person who contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding

fifty thousand penalty units or to imprisonment for a period not exceeding six months, or to both.

55. (1) The Agency may, upon application, issue a waste management licence to a person to allow the person to— Waste licences

- (a) reclaim, re-use, recover or recycle waste;
- (b) collect and dispose of waste from industrial, commercial, domestic or community activities;
- (c) transport waste to a disposal site;
- (d) own, construct or operate a waste disposal site or other facility for the permanent disposal or storage of waste; or
- (e) transit, trade in or export waste.

(2) The Agency may, upon application, issue a hazardous waste licence to a person to allow the person to—

- (a) generate, pre-treat or treat hazardous waste;
- (b) handle, transport or store hazardous waste;
- (c) dispose of hazardous waste; or
- (d) transit, trade in or export hazardous waste.

(3) Where a person applies for a licence under subsection (1) to dispose of water into the aquatic environment or uses water to dilute, pre-treat or treat waste before discharge into the aquatic environment, the Agency shall inform the appropriate authority managing water resources, for the imposition of such conditions on the licence as such authority may determine before granting the licence.

(4) The Minister shall, on the recommendation of the Agency, prescribe—

- (a) the criteria for the licensing of persons under subsection (1) and (2);
- (b) the procedure for applying for a licence and the grant, modification, renewal, transfer and revocation of a licence;
- (c) the terms and conditions attaching to an application, grant, modification, refusal, renewal, transfer or revocation of a licence; and
- (d) such other matters as are necessary or incidental to the effective regulation of licences under this Division.

(5) The Minister may, on the recommendation of the Agency, and for the purposes of facilitating the effective implementation and enforcement of this Act—

Role of local
authorities
in waste
management

- (a) exempt certain categories of waste and persons from the application of some or all of the provisions of this section; and
 - (b) provide that some or all of the provisions of this section shall not apply in certain circumstances.
- 56.** (1) A local authority shall, within its area of jurisdiction—
- (a) collect and dispose of, or arrange for the collection and disposal of, all household waste in accordance with this Act;
 - (b) ensure that waste is collected, transported and disposed of in accordance with this Act;
 - (c) ensure that waste management services are provided within its jurisdiction in a manner which prioritises the recovery, re-use or recycling of waste and provides for the treatment and safe disposal of waste;
 - (d) take all practical measures to promote and support the minimisation of waste and the recovery of waste, particularly at the point at which it is produced;
 - (e) provide litter receptacles in public places; and
 - (f) prepare and submit to the Agency for approval, an integrated waste management plan that conforms to the requirements of the Agency, including any national waste management strategy published by the Agency.
- (2) A local authority shall report annually to the Agency on the types of waste and the quantity of each type of waste generated and disposed of within its area of jurisdiction and on the implementation of its integrated waste management plan.
- (3) A local authority shall, with respect to its area of jurisdiction, ensure that—
- (a) the standards prescribed for hazardous waste management are in place and operational at all times;
 - (b) premises producing hazardous waste are adequately ventilated and are in compliance with prescribed standards;
 - (c) waste effluents are treated or are so modified as to comply with prescribed standards before final disposal; and
 - (d) hazardous liquid wastes are treated to conform with prescribed environmental standards.
- (4) The Agency shall, in order to promote the enhancement, protection and conservation of the environment and the sustainable

management of natural resources, give specific or general directions to—

- (a) the local authorities regarding their function relating to the collection and disposal of waste under the Local Government Act; and
- (b) public bodies or other bodies regarding their role in the management and disposal of waste.

Cap. 281

57. (1) Where the Minister, acting on the advice of the Agency, considers that the disposal of waste in an area is resulting in an adverse effect, or that there is a significant risk that it will result in an adverse effect, the Minister may, by notice in the *Gazette*, designate the area as a waste control area.

Designation
of waste
control areas

(2) A local authority shall, in a waste control area—

- (a) prepare and submit to the Agency, for approval, a plan for the management of waste in the waste control area that conforms to the requirements of the Agency, including any national waste management strategy published by the Agency;
- (b) designate one or more waste disposal sites or waste collection sites within the waste control area;
- (c) inform the public within the waste control area of the location of the designated waste disposal and waste collection sites;
- (d) prescribe by-laws for the disposal of waste within the waste control area; and
- (e) report annually to the Agency on the implementation of its waste management plan.

58. (1) A person whose activities generate waste with potential to pollute the environment shall employ measures essential to minimise waste through treatment, reclamation, re-use, recovery or recycling.

Extended
procedure
responsibility

(2) The Agency may identify—

- (a) a product or class of products in respect of which extended producer responsibility measures shall be taken; and
- (b) the category of persons to take the measures referred to in paragraph (b).

(3) The Agency may, in terms of subsection (1)—

- (a) specify the requirements in respect of the implementation and operation of a waste minimisation programme, including the requirements in respect of the prevention of waste generation, recovery, re-use and recycling;

- (b) establish institutional arrangements for the administration of a waste minimisation programme;
- (c) determine the financial arrangements for a waste minimisation programme;
- (d) indicate the percentage of products to be recovered under a waste minimisation programme;
- (e) prohibit or restrict the sale of waste or any product or classes of products emanating from waste;
- (f) require the producer of a specified product or class of product emanating from waste to carry out a life cycle assessment in relation to the product in such a manner or in accordance with such standards or procedures as may be specified; and
- (g) specify the requirements to be complied with in respect of cleaner production measures.

Cessation
of activity
relating to
hazardous
waste

59. The Agency shall, pursuant to an order made by a court, immediately stop any hazardous waste generation, handling, transportation, storage and disposal activity which presents an imminent and substantial danger to human health, well being or the environment.

Site
restoration
orders

60. (1) Where waste is deposited in any place in contravention of this Act or any condition of a waste management licence or a hazardous waste management licence, the Director-General may serve a site restoration order on a person referred to in subsection (2) requiring that person to remove the waste and restore the site to a condition satisfactory to the Director-General, and to take any other measures stipulated in the order.

(2) A site restoration order under subsection (1) may be served on —

- (a) any person whom the Director-General has reason to believe deposited the waste;
- (b) any person whom the Director-General has reason to believe ordered or permitted the waste to be deposited; or
- (c) an owner, occupier or person having the charge, management or control of the place or premises.

(3) A person on whom a site restoration order is served shall immediately take all reasonable measures to comply with the order.

(4) A person who contravenes subsection (3) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

(5) A person on whom a site restoration order is served may apply to the Board for the review of the decision to issue the order or against any requirement or condition in the order in accordance with Part X.

(6) The Board shall revoke a site restoration order if, after considering the representations made to it by the appellant, it is satisfied that the person on whom the order was served is not the owner, occupier or person having the charge, management or control of the place or premises, and did not deposit, order or permit the waste to be deposited.

61. Where an emergency occurs involving toxic substances, the Agency shall take appropriate measures for the protection of human beings and the environment.

Emergency situations

62. The Agency, in consultation with the relevant appropriate authorities, shall—

Responsibilities of Agency

- (a) prepare a national waste management strategy;
- (b) formulate and provide standards on the classification and analysis of waste;
- (c) formulate and advise on standard disposal methods and means;
- (d) regulate the handling, storage, transportation, segregation and destruction of any hazardous waste;
- (e) control the export and generation of hazardous waste;
- (f) provide for the monitoring and regulation of waste disposal sites;
- (g) publicise the correct means of storage, collection and disposal of any class of waste;
- (h) monitor the contamination and degradation of the environment arising from the operation of disposal sites;
- (i) monitor the safety and health of workers at disposal sites;
- (j) provide for members of the public to make representations to the Agency on any matter under this Division if the matter has, or may have, an adverse effect on their health, environment or aesthetic value of their surroundings;
- (k) initiate and undertake research into the collection, storage, transportation and disposal of any class of waste;
- (l) collect and analyse statistical data on the nature, quantity and volume of waste generated, and on sites where waste disposal is taking or has taken place;

- (m) inspect waste disposal, handling and recovery facilities in respect of which a waste management licence is in force;
- (n) review and monitor the implementation of waste management plans by local authorities and public bodies;
- (o) provide technical and advisory services to waste operators; and
- (p) do all such things as are necessary for the monitoring and control of waste.

Regulations relating to waste management

63. (1) The Minister may, on the advice of the Agency after consultation with the relevant appropriate authorities, make regulations to regulate waste management, treatment and disposal.

(2) Without limiting the generality of subsection (1), regulations made under that subsection may—

- (a) classify and define categories of waste, including hazardous, and clinical, waste, and deem certain substances to fall within or outside such categories;
- (b) restrict the locations at which waste disposal and waste management may be carried out;
- (c) require specified categories of persons involved in the generation, management and disposal of waste to gather data and to submit reports, studies and plans, and prescribe the form and content of the reports, studies and plans;
- (d) require compliance with plans and empower the Director-General to require compliance with plans submitted under paragraph (c);
- (e) require and regulate the control of litter and nuisances associated with waste;
- (f) require the payment of charges and fees for the collection, management and disposal of waste;
- (g) require the separation of types of waste at the point of generation, management and disposal;
- (h) prohibit or regulate the movement and carriage of waste or any category of waste, including—
 - (i) prohibiting and regulating the export or transit of waste through any countries;
 - (ii) establishing mechanisms and measures for the movement of any waste;

- (iii) regulating and establishing standards for the packaging and labelling of waste and for documents accompanying consignments of waste in transit;
 - (iv) requiring manifesting systems and other systems for tracking the movement of hazardous or clinical waste; and
 - (v) requiring proof of arrangements for the safe and orderly movement and final disposal of the waste, proof of prescribed notification and prior informed consent of competent authorities of the State of import and any transit States and proof of the existence of prescribed arrangements specifying sound waste management and disposal;
- (i) require the physical separation of waste types by persons involved in the generation, management or disposal of waste;
 - (j) regulate and promote waste reduction, re-use, recycling, and recovery;
 - (k) prohibit and regulate the disposal of re-usable, recyclable and recoverable wastes; and
 - (l) impose responsibility for any stage of hazardous or clinical waste management upon the generators, transporters, handlers and receivers of the waste.

Division 5 - Pesticides and Toxic Substances

- 64.** In this Division, unless the context otherwise requires — Interpretation
- “container” means a package, can, bottle, bag, barrel, drum, tank or other container used to enclose a pesticide or toxic substance, excluding spray applicator tanks;
 - “manufacture” means the mechanical or chemical transformation of materials or substances into pesticides and toxic substances;
 - “package” means a container, wrapping, covering or holder in which a pesticide or toxic substance is wholly or partly packed, and “packaging” shall be construed accordingly;
 - “sale” includes offering, advertising and exposing toxic substance for sale; and

“use” means any act of handling or releasing a pesticide or the exposure of human beings, animals or the environment to pesticides.

Pesticide
and toxic
substance
licence

65. (1) A person who intends to manufacture, import, export, store, distribute, transport, blend, process, re-process or change the composition of a pesticide or toxic substance or who intends to re-process an existing pesticide or toxic substance for a significantly new use, shall apply to the Agency for a licence.

(2) The application referred to in subsection (1) shall include the name of the trade mark of the pesticide or toxic substance, the chemical identity, molecular structure, proposed categories of use, an estimate of the amount, byproducts, processing and methods of disposal of the pesticide or hazardous substance, and any test data related to health and environmental effects.

(3) The Agency may issue a pesticide and toxic substance licence to allow the applicant to—

- (a) manufacture, blend, process, re-process or store any pesticide or toxic substance;
- (b) use, sell, distribute or transport any pesticide or toxic substance; or
- (c) import, transit or export any pesticide or toxic substance.

(4) The Minister shall, on the recommendation of the Agency, prescribe—

- (a) the criteria for the licensing of persons under this section;
- (b) the procedure for applying for a licence and the grant, modification, renewal, transfer and revocation of a licence;
- (c) the terms and conditions attaching to an application, grant, modification, refusal, renewal, transfer or revocation of a licence; and
- (d) any other matter that is necessary for purposes of this Division.

Responsibilities
of
Agency

66. The Agency shall—

- (a) control the importation, exportation, manufacture, storage, distribution, sale, use, packing, transportation, disposal and advertisement of pesticides and toxic substances;
- (b) provide for the labelling and packaging of pesticides and toxic substances;
- (c) review the use and efficacy of pesticides and toxic substances;

- (d) provide for the monitoring, in the environment, of pesticides and toxic substances and their residues;
- (e) establish laboratories for pesticides and toxic substances;
- (f) establish and enforce procedures and regulations for the storage of packages and containers of pesticides or toxic substances;
- (g) collect data from industries on the production, use and effects on human health and the environment, of pesticides and toxic substances;
- (h) keep records and reports necessary for the administration of this Division; and
- (i) do all such things as are necessary for the monitoring and control of pesticides and toxic substances.

Division 6 - Noise

- 67.** In this Division, unless the context otherwise requires— Interpretation
- “noise level” means the level of noise, measured in decibels or other suitable units; and
- “noise emission standards” means the noise level emission standards established by the Agency pursuant to section *seventy*.
- 68.** Subject to section *sixty-nine*, a person shall not emit noise in excess of the noise emission standards established pursuant to section *seventy*. Prohibition of noise emission exceeding established standards
- 69.** (1) Notwithstanding section *sixty-eight*, the inspectorate may grant a permit allowing excessive emission of noise under such terms and conditions as it may determine. Exemption
- (2) Where an exemption is granted under subsection (1), workers exposed to excessive levels of noise shall be adequately protected in accordance with the directives of the Agency.
- 70.** (1) The Agency shall, in consultation with the relevant appropriate authorities—
- (a) set up standard procedures for noise measurement;
 - (b) establish noise level and noise emission standards for construction sites, plants, machinery, motor vehicles, aircrafts, including sonic booms and industrial and commercial activities;

- (c) apply appropriate measures to ensure the abatement and control of noise from the sources referred to in paragraph (b);
- (d) measure the level of noise emanating from the sources referred to in paragraph (b), details of which measurement shall be given to the owner or occupier of the premises from which the measurement was taken; and
- (e) advise on noise pollution abatement measures.

(2) The noise emission standards and guidelines as well as zones prescribed for the purposes of subsection (1) shall be published in the *Gazette* at least ninety days before the date upon which they come into effect.

Division 7 - Ionising Radiation

Interpretation	71. In this Division, unless the context otherwise requires—
Act No. 16 of 2005	“emergency” has the meaning assigned to it in the Ionising Radiation Protection Act, 2005;
Act No. 16 of 2005	“facility” has the meaning assigned to it in the Ionising Radiation Protection Act, 2005;
Act No. 16 of 2005	“ionising radiation” has the meaning assigned to it in the Ionising Radiation Protection Act, 2005;
	“monitoring” means the measurement of radiation or radio-activity for the assessment or control of exposure to radiation or radio-active material;
	“natural background levels” means radiation levels due to cosmic rays and natural radio-activity;
	“nuclide” means a species of atom characterised by the constitution of its nucleus;
	“radio-active material” means any material having a specific activity greater than seventy becquerel per gram;
	“radio-active contamination” means the deposition of radio-active material in any place where it is not desired, particularly where its presence may be harmful and the harm may be vitiating an experiment or procedure, or where it actually may be a source of danger to the public; and
	“radio nuclide” means any radio-active nuclide.
Powers of inspectors relating to ionising radiation	72. An inspector may, at any reasonable time—
	(a) enter, inspect and examine any place, area, premises or any vehicle, vessel, boat, aircraft or any conveyance of any description in or on which the inspector has reasonable

grounds to believe that radio-active material or any source of ionising radiation is stored, used, transported or disposed of:

Provided that entry shall not be made into a private dwelling house except under the authority of a court warrant;

- (b) order the presentation of—
 - (i) a licence authorising the possession or use of radio-active material or sources of dangerous ionising radiation;
 - (ii) a licence authorising the mining and processing of radio-active ores; or
 - (iii) a register, certificate, notice or document kept pursuant to the Ionising Radiation Protection Act, 2005;
- (c) make inquiries from any person with respect to matters under this Division, where there is reasonable cause to believe that such person is contaminated with radio-active material or is unlawfully in possession of an ionising radiation source; and
- (d) exercise such other powers as are necessary for the carrying out of the provisions of this Division.

Act No. 16 of
2005

73. Without prejudice to the Ionising Radiation Protection Act, 2005, the Agency shall, in liaison with the Radiation Protection Authority —

Responsibilities
of Agency
Act No. 16 of
2005

- (a) establish standards for the regulation of radio-active contamination;
- (b) inspect and examine any area, place or premises, or any vehicle, vessel, boat, aircraft or any conveyance of any description in or upon which the inspectorate has reasonable cause to believe that radio-active material or any source of ionising radiation is stored, used, transported or disposed of;
- (c) examine any person with respect to matters under this Division, where there is reasonable cause to believe that that person is contaminated with radio-active material or is unlawfully in possession of an ionising radiation source;
- (d) provide information, warn and protect the public, in case of actual or potential public exposure to radio-active material or ionising radiation in the environment;

- (e) liaise with any other organisation dealing with radio-active material;
- (f) conduct an ionising radiation monitoring programme and advise on ionising radiation control and protection measures;
- (g) maintain records of releases of radio-active contaminants into the environment and keep records of natural background levels of radiation in the environment;
- (h) request the relevant authority in other States to offer assistance required to help carry out the duties of the inspectorate; and
- (i) do all such things as are necessary for the monitoring and control of pollution from radiation.

Division 8 - Natural Resources Management

Interpretation

74. In this Division, unless the context otherwise requires—

“derelict land” means land that is damaged by extractive, industrial or agricultural activities or that is unsightly and is incapable of reasonable beneficial use;

“land use” includes an activity that has an impact on the environment;

“petroleum operations” has the meaning assigned to it in the Petroleum (Exploration and Production) Act, 2008; and

“rehabilitation” means the restoration of natural resources to their original state or in accordance with standards developed by the Agency in consultation with the Zambia Bureau of Standards.

Act No. 10 of 2008

Protection of hills and landscapes

75. (1) The Agency shall, in consultation with the local authorities and other appropriate authorities, within five years of the commencement of this Act, identify hilly areas, which are at risk from environmental degradation.

(2) A hilly area shall be regarded to be at risk from environmental degradation if—

- (a) it is prone to soil erosion;
- (b) landslides have occurred or are likely to occur in that area;
- (c) vegetation cover has been removed or is likely to be removed from the area at a rate faster than it is being replaced; or

(d) any other land use activity in that area is likely to lead to environmental degradation.

(3) The Minister shall, by order in the *Gazette*, issue a list of landscapes and hilly areas regarded to be at risk from environmental degradation and such landscapes and hilly areas shall be protected areas under this Act.

(4) The list of the areas referred to under subsection (3) shall be kept under the custody of the Agency.

(5) The Agency shall establish strategies and standards for the management of areas protected under this section.

76. (1) Subject to section *three*—

(a) fisheries resources shall be managed in accordance with the provisions of the Fisheries Act, 2011;

(b) wildlife resources shall be managed in accordance with the Zambia Wildlife Act, 1998;

(c) forestry resources shall be managed in accordance with the provisions of the Forests Act;

(d) water resources shall be managed in accordance with the Water Resources Management Act, 2011;

(e) regional and urban planning shall be managed in accordance with the Town and Country Planning Act;

(f) tourism activities shall be conducted and managed in accordance with the Tourism and Hospitality Act, 2007;

(g) petroleum operations shall be conducted in accordance with the Petroleum (Exploration and Production) Act, 2008; and

(h) any matter or activity relating to agriculture or the protection and conservation of natural and cultural heritage shall take into account necessary requirements for the protection of the environment as provided for under this Act.

(2) The Agency shall manage natural resources in open areas which are not regulated or protected under any other written law.

77. (1) A person shall not, without the approval of the Agency in consultation with the appropriate authorities, import or export invasive alien species.

(2) A person shall not, without the approval of the Agency in consultation with the appropriate authorities, place any invasive alien species into any element or segment of the environment.

Promotion of conservation of natural resources
Act No. of 2011

Act No. 12 of 1998

Cap. 199
Act No. of 2011

Cap. 283

Act No. 23 of 2007

Act No. 10 of 2008

Prohibition of importation, introduction, etc. of invasive alien species

Duty of
owner or
occupier
in relation
to invasive
alien species

(3) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

78. (1) An owner or occupier of any premises on which, or a local authority in whose area, any invasive alien species are present or are suspected to be present shall immediately notify the Agency.

(2) An owner or occupier of any land, building or other premises shall take such measures as are prescribed and are reasonably necessary for the eradication or prevention of the spread of invasive alien species as an inspector may, by notice in writing, order the owner or occupier to take under this Act.

(3) An inspector may, where an owner or occupier of any land, building or premises fails to take the necessary measures in accordance with subsection (2)—

(a) on giving the owner or occupier notice, in writing, of the inspector's intention to do so, cause the measures to be taken; or

(b) where the inspector is satisfied that the measures must be taken without delay, cause the measures to be taken immediately without giving the notice required under paragraph (a).

(4) An owner or occupier of any land, building or other premises is, without prejudice to any penalty incurred by reason of the owner's or occupier's failure to take the measures that the owner or occupier is required to take in terms of this Division, liable to pay the costs of the measures which an inspector requires to be taken in terms of subsection (3).

(5) The Minister may, by civil action in a court of competent jurisdiction, recover from an owner or occupier of any land, building or other premises the costs of the measures that an inspector has required to be taken under subsection (3).

(6) An inspector may destroy, without compensation, any invasive alien species on any land, building or other premises—

(a) where disinfection is impracticable or will not be a complete safeguard; or

(b) where the delay caused by disinfection would give rise to the risk of the introduction or spread of invasive alien species.

79. An appropriate authority shall consult the Agency in the preparation of any plan relating to forestry, fisheries, wildlife, water or any other natural resource.

80. (1) The Agency may, in liaison with the relevant appropriate authority, direct a person responsible for land dereliction or contamination to carry out rehabilitation works within such period as the inspectorate may specify.

(2) Where the inspectorate has reasonable grounds to believe that land contamination in an area warrants immediate correction, it may carry out the rehabilitation works and may charge all or part of the costs of those works to the person responsible for causing the dereliction or contamination, and who shall pay such costs within the period specified by the inspectorate.

(3) A person who fails to comply with a directive made by the inspectorate under this section commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

(4) A court may, in addition to any other penalty which it may impose under this section, order the person responsible for the dereliction of any land to comply with the directive within such period as the court may determine.

81. An inspector may—

- (a) make such inquiries and examinations as are necessary to ascertain whether the provisions in this Division are being complied with;
- (b) carry out surveys and interviews to assist in the proper management and conservation of natural resources;
- (c) inspect land uses to determine their impact on the quality and quantity of natural resources; and
- (d) publicise land use guidelines and natural resources conservation regulations.

Powers of inspectors relating to natural resources

82. The Agency shall establish and maintain a register, as may be prescribed, of all the licences and approvals issued under this Act.

Register

83. The Agency shall—

- (a) conduct or sponsor research or any other studies on land use practices and their impact on natural resources, which shall be the basis for the conservation, sustainable use and management of natural resources;
- (b) establish and review land use guidelines;

Responsibilities of Agency

- (c) in consultation with the relevant appropriate authorities, establish standards for the conservation and protection of natural resources;
- (d) monitor dereliction or contamination of land and where dereliction or contamination of land exists, assess the nature of rehabilitation works required; and
- (e) do all such other acts and things as are necessary to carry out the purposes of this Division.

PART V

INTERNATIONAL MATTERS

International agreements

84. (1) The Government shall exercise and give effect to Zambia's sovereignty over its environment and natural resources, including its genetic resources, and its powers and rights to manage the living and non-living natural resources within its territories and in areas over which it exercises rights of sovereignty, to the fullest extent permitted under international law.

(2) The Government shall cooperate with other governments, and with local and international organisations in order to protect the regional and global environment.

(3) The Minister shall, after signing an international agreement designed to protect the environment, as soon as is practicable—

(a) cause the agreement to be ratified; and

(b) take appropriate measures to give effect to the agreement.

(4) The Minister may delegate to the Agency, an appropriate authority, conservancy authority or other relevant institution, the implementation of any international agreement relating to the environment to which Zambia is a party.

Trans-boundary environmental management programmes

85. (1) The Minister may, in consultation with the appropriate authorities and other relevant ministries, collaborate with the relevant authorities of neighbouring countries on environmental management programmes and measures to avoid and minimise trans-boundary environmental impacts.

(2) The Minister shall, in cooperation with sector ministries or government agencies, initiate and implement transboundary environmental management programmes with neighbouring countries.

PART VI

ENVIRONMENTAL INFORMATION

86. (1) The Agency shall—

- (a) gather information on the environment and natural resources;
- (b) subject to any other written law, have access to any data collected on the environment and natural resources;
- (c) analyse information relating to the environment and natural resources;
- (d) disseminate information to public and private users;
- (e) commission studies in demography and trends impacting on environmental and development issues;
- (f) carry out public information and education campaigns in the field of environment;
- (g) exchange information relating to the environment with non-governmental organisations and any other regional and international organisations;
- (h) co-ordinate the management of environmental information with sector ministries;
- (i) advise the Minister on existing information gaps and needs; and
- (j) establish, in consultation with sector ministries, guidelines and principles for the gathering, processing and dissemination of environmental information.

Analysis and dissemination of environmental information

(2) The Director-General may publish any information on the protection, conservation, management and utilisation of the environment and natural resources as the Director-General considers necessary for public education and awareness.

87. The Agency shall establish and operate a Central Environmental Information System in which shall be stored any findings, data and statistics generated by both public and private bodies in the course of environmental observation and management.

Central Environmental Information System

88. (1) The Director-General shall, in consultation with the relevant appropriate authorities, take measures for the integration of environment matters in schools, colleges and institutions of higher learning.

Environmental education and awareness

(2) The Director-General shall plan and conduct programmes aimed at raising awareness of the public on sustainable development and environmental management.

Environmental
research

89. (1) The Agency shall conduct surveys on the state of the environment and may research and forecast environmental changes and undertake other studies that may contribute to the formulation of policies and preparation of action plans and strategies with regard to environmental protection, conservation and management.

(2) Notwithstanding subsection (1), the Minister may designate any institution as an advisory body charged with the responsibility of enhancing of targeted scientific research, and information generation in the field of environment and the monitoring and assessment of effectiveness of actions taken.

Registry of
environmental
information

90. (1) The Agency shall create and maintain an environmental information registry.

(2) The registry shall contain information relating to the environment, including the following information:

- (a) a list of the Acts, statutory instruments, international environmental agreements to which Zambia is a party, and any policies, plans, guidelines, studies, reports, decisions, recommendations and other publications relating to the environment published by the Agency, the Minister or the Government;
- (b) a list of every environmental management strategy and environmental management strategy review report issued by any Ministry;
- (c) every State of the Environment Report and every National Environmental Action Plan;
- (d) every National Waste Management Strategy;
- (e) a list of each application for a licence or approval under this Act;
- (f) a list of each licence, order and approval issued under this Act; and
- (g) details of all charges laid and convictions entered for contravention of this Act.

(3) The Agency shall keep in the form of paper documents, in one location, copies and information documents of the matters listed in the registry which shall be accessible for public viewing during ordinary business hours.

(4) The registry shall be created no later than one year after the coming into force of this Act.

(5) A person may apply, in writing, to the Director-General requesting that any information that is not in the public domain should not be included in the registry or available to the public, on

the basis that it is proprietary information or for reasons of State security.

(6) Where the Director-General determines that the information referred to in subsection (5) is proprietary information and that maintaining it would not unreasonably prejudice the purpose of this Act or the public interest, the Director-General may exclude the information, or aggregate, edit or otherwise present it in a manner which would protect the interests of concern.

(7) The Director-General shall, where the Director-General determines that any information is proprietary information, advise the applicant, in writing, that the information will be made public within thirty days unless the applicant applies to the Minister for a review of the decision in accordance with Part X, in which case the confidentiality of the information shall be maintained pending the determination of the appeal.

PART VII

PUBLIC PARTICIPATION

91. (1) The public have the right to be informed of the intention of public authorities to make decisions affecting the environment and of available opportunities to participate in such decisions.

Public participation
in environmental
decision-making

(2) The public shall have the right to participate in decisions concerning the formulation of environmental policies, strategies, plans and programmes and to participate in the preparation of laws and regulations relating to the environment.

(3) The Agency and the appropriate authorities shall establish mechanisms to collect and respond to public comments, concerns and questions relating to the environment including public debates and hearing.

92. Public review of documents shall be conducted in the prescribed manner.

Public review

93. Public hearings on any document under public review shall be conducted in the prescribed manner.

Public
hearings

94. (1) The Minister may, by statutory instrument, make regulations to enhance the ability of the public to acquire environmental information, to participate in decision-making and to protect the environment.

Regulations
relating
to public
participation

(2) Without limiting the generality of subsection (1), the regulations made under that subsection may provide for—

(a) the rules, procedures and mechanisms for the enhanced provision of information to the public;

- (b) protecting employees from dismissal, discipline, penalty or other forms of coercion or intimidation for complying with this Act or for notifying the Agency or the Ministry of any noncompliance; and
- (c) the rules, procedures and forms in relation to the registry.

PART VIII

THE ENVIRONMENT FUND

- Establishment of Fund
- 95.** (1) There is hereby established the Environment Fund.
- (2) The Fund shall consist of—
- (a) such moneys as Parliament may appropriate for the purpose of the Fund;
 - (b) voluntary contributions to the Fund from any person or organisation;
 - (c) such sums as may be levied from, or donated by, a person, industry or developer conducting an activity which has, or is likely to have, an adverse effect on the environment;
 - (d) any grants mobilised from any source, within or outside Zambia, for the purpose of environmental management and protection;
 - (e) interest arising out of any investment of the Fund; and
 - (f) such other monies as may be prescribed.
- (3) This Part does not apply to industries, facilities and activities covered by the Environmental Protection Fund established under the Mines and Minerals Development Act, 2008, and the Petroleum (Exploration and Production) Act, 2008.
- Act No. 7, 2008
Act No. 10 2008
- Administration and management of Fund
- 96.** The Fund shall be vested in the Agency and shall be managed and administered in such manner as the Minister may prescribe, by statutory instrument.
- 97.** The Fund shall be used for—
- (a) mitigating or restoring environmental degradation and adverse effects on the environment;
 - (b) facilitating research to further the requirements of environmental management and sustainable natural resource management; and
 - (c) such other purpose as may be prescribed.
- Application of Fund

- 98.** (1) The Agency shall create a register of the activities, industrial facilities or plants, undertakings or businesses which have, or are likely to have, adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices. Environmental Performance Bond
- (2) The Minister may, by statutory instrument, make regulations to provide for the depositing, amounts, refunding, confiscation and application of environmental performance bonds and any other matter relating to performance bonds.
- 99.** The financial year of the Fund shall be the period of twelve months ending on 31st December in each year. Financial year
- 100.** (1) The Agency shall cause to be prepared proper books of accounts and other records relating to the Fund. Statement of income and expenditure
- (2) The Agency shall cause to be prepared an annual statement of the income and expenditure of the Fund to be laid before the National Assembly.

PART IX

ENFORCEMENT PROVISIONS

- 101.** (1) An owner of premises or a person undertaking a project shall take all reasonable measures to mitigate any adverse effects not contemplated in the environmental impact assessment made in respect of the premises or the project, and shall prepare and submit an environmental audit report on the measures to the Agency annually or as the Agency may, in writing, require. Environmental audit
- (2) The Agency shall carry out an environmental audit of all the activities that are likely to have an adverse effect on the environment.
- (3) An inspector may enter upon any land or premises for the purpose of determining the extent to which the activities carried out on the land or premises conform with the environmental impact assessment made in respect of the land or premises.
- (4) An owner of premises or a person undertaking a project for which an environmental impact assessment is made shall keep accurate records and make annual reports to the Agency describing the extent to which the project conforms, in operation, with the environmental impact assessment.
- 102.** (1) The Agency shall, in consultation with the relevant agencies or bodies, monitor— Environmental monitoring
- (a) all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; or

(b) the operation of any industry, project or activity with a view of determining its immediate and long-term effects on the environment.

(2) An inspector may enter upon any land or premises for the purposes of monitoring the effects upon the environment of any activities carried out on that land or premises.

Prevention
Order

103. (1) Where the Director-General has reasonable grounds to believe that a person is, or will be, conducting an activity, or is or will be in possession or control of a substance or thing that may result in an adverse effect, the Director-General may serve a prevention order on that person.

(2) A prevention order served on a person under subsection (1) may require that person to—

(a) prepare a written emergency response plan to reduce or eliminate the risk and provide a copy of the plan to the Director-General;

(b) have any necessary equipment, facilities and trained personnel available to deal with the risk;

(c) upon an identified event or set of circumstances occurring, implement the plan; and

(d) take measures that are necessary to ensure that any emergency can be effectively dealt with.

(3) A person on whom a prevention order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(4) A person who contravenes subsection (3) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both, and where the person fails to comply with a requirement specified in the prevention order within the specified time, to a further fine not exceeding one thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

Protection
order

104. (1) The Director-General may, where the Director-General considers that it is necessary to conserve, protect and enhance the environment and natural resources in an area, serve a protection order on—

(a) the owner, manager or person in control of the premises, vehicle, vessel, aircraft or equipment where the activity is occurring or will occur; or

(b) any person who caused or permitted the activity.

(2) A protection order may require the person on whom it is served to—

(a) take any measures to avoid, remedy or mitigate any adverse effects and to—

(i) stop the activity that is resulting or is likely to result in, an adverse effect;

(ii) control the activity;

(iii) assess the actual or anticipated extent of the adverse effect;

(iv) remedy any adverse effects caused by the activity;
or

(v) prevent a recurrence of the activity or the adverse effect;

(b) preserve flora and fauna;

(c) preserve the quality and flow of water in a dam, lake river or aquifer;

(d) preserve any outstanding geological, physiographical, ecological, archaeological or historical features of the area;

(e) preserve scenic view;

(f) preserve the natural contours and features;

(g) prevent or restrict the scope of any agricultural activity in the area; or

(h) create or maintain migration corridors for wildlife.

(3) A person on whom a protection order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(4) A person who contravenes subsection (3) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both, and where the person fails to comply with a requirement specified in the protection order within the specified time, to a further fine not exceeding one thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

105. (1) An inspector shall, where there is a discharge of a contaminant or pollutant into the environment in an amount, concentration or manner that constitutes a risk to human health or

Environmental
restoration order

property, or that causes or has the potential to cause adverse effects, serve an environmental restoration order on—

- (a) the owner, manager or person in control of the premises, vehicle, vessel, aircraft or equipment from which the discharge was or is being made;
- (b) any person who, at the time the discharge occurred, was the owner, manager or person in control of the premises, vehicle, vessel, aircraft or equipment from which the discharge was made; or
- (c) any person who caused or permitted the discharge.

(2) An environmental restoration order may require the person on whom it is served to take any measures that will assist in reducing or eliminating the risk or harm and to take any measures to—

- (a) take such action as will prevent the continuation or cause of pollution;
- (b) restore land, including the replacement of soil, the replanting of trees and other flora and the restoration as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land or area as may be specified in the particular order;
- (c) take such action to prevent the commencement or continuation or cause of environmental hazard;
- (d) cease to take any action which is causing or may contribute to causing pollution or an environmental hazard;
- (e) remove or alleviate any injury to land or the environment or to the amenities of the area;
- (f) prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on or under or about the land specified in the order or land or the environment contiguous to the land specified in the order;
- (g) remove any waste or refuse deposited on the land or sea specified in the order and dispose of the same in accordance with the provisions of the order;
- (h) require the person on whom it has been served to restore the environment as near as it may be to the state in which it was before the asking of the action which is the subject of the order; and
- (i) prevent the person on whom it is served from taking any action which would or is reasonably likely to cause harm to the environment.

(3) A person on whom an environmental restoration order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(4) A person who contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both, and if the person fails to comply with a requirement specified in the order within the specified time, to a further fine not exceeding two thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

106. (1) The Director-General may, where the Director-General has reasonable grounds to believe that any condition of a licence issued under this Act has been breached, serve a compliance order on the licensee requiring the licensee to remedy the breach within the period stipulated in the order.

Compliance
order

(2) A compliance order issued under subsection (1) may—

(a) suspend the licence with immediate effect if the Director-General considers that the suspension is necessary to prevent or mitigate an imminent risk of significant adverse effects to the environment or to human health occurring; or

(b) require the licensee to take specified measures to prevent or abate any adverse effect.

(3) The Agency may, where a licensee fails to comply with a compliance order—

(a) take the necessary steps to remedy the breach and recover the cost from the licensee in accordance with section *one hundred and seven*;

(b) vary the conditions of the licence; or

(c) revoke the licence.

(4) A person on whom a compliance order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(5) A person who contravenes subsection (4) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both, and if the person fails to comply with a requirement specified in the compliance order within the

specified time, to a further fine not exceeding two thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues.

Cost order **107.** (1) The Director-General may, where a person fails to comply with a requirement in an order, licence or approval issued under this Act, cause the required measures to be taken and may issue a cost order requiring that person to reimburse the Agency for the cost of taking the measures.

(2) A cost order shall be enforced as if it were an order of court if no application for the review of the cost order is made.

Orders initiated by public **108.** (1) A person may, in writing, request the Director-General to issue an order under this Act.

(2) A request made under subsection (1) shall set out the reasons for the request, including the detailed factual grounds upon which the Director-General would have jurisdiction to issue the order.

(3) The Director-General shall consider the request made under subsection (1) and within thirty days shall decide whether or not to issue an order, and shall notify the requesting person, in writing, of the decision, stating the reasons therefor and, if applicable, the date upon which the Director-General intends to issue the order.

(4) Where the Director-General decides not to issue an order, the requesting person may, within ten days of the date of being notified of the decision, apply to the Minister for a review of the decision in accordance with Part X.

(5) Without prejudice to any other grounds for review, an application for review made under subsection (4) may be made on the ground that the Agency has failed to discharge its function under this Act to take all reasonably practicable steps to enforce the Act.

Prosecutions initiated by public **109.** (1) A person may, in writing, request the Director-General to investigate an alleged contravention of this Act.

(2) A request made under subsection (1) shall set out the reasons therefor, including the detailed factual grounds for believing that a contravention has occurred.

(3) The Director-General shall consider the request and, within thirty days, shall decide whether or not to commence an investigation, and shall notify the requesting person, in writing, of that decision, stating the reasons therefor, and, if applicable, the date upon which the Director-General intends to commence the investigation.

(4) Where the Director-General decides not to commence an

investigation, the requesting person may lay a charge and initiate and conduct the prosecution and may obtain the assistance of any person in doing so.

(5) A person acting under subsection (4) shall, in writing, notify the Director-General prior to laying the charge.

(6) A court shall not award any costs or damages against a person who initiates a prosecution after informing the Director-General in accordance with this section, unless the court finds that the primary motivation for the prosecution was not a concern for the public interest or for the enhancement, protection and conservation of the environment.

110. (1) A person may sue for damages in respect of an act or omission that constitutes a contravention of this Act or that is likely to have an adverse effect, whether or not that person or any other person has suffered, or is likely to suffer, any loss or harm from the act or omission. Civil action

(2) The right of action in subsection (1) is in addition to any other legal rights or remedies available to a plaintiff or applicant.

(3) The court shall, in any proceedings under subsection (1), order any damages awarded to a plaintiff or applicant to be applied in the following order:

(a) to compensate the plaintiff or applicant for any actual legal costs that are not fully compensated by an order against the defendant or respondent, and to compensate the plaintiff or applicant for any damages that that person may have suffered;

(b) to compensate other parties for any damages suffered and to remedy any adverse effect caused by the act or omission; and

(c) the balance if any, shall be divided in equal parts between the Fund and the plaintiff.

(4) A court shall not award any costs or damages against a person who initiates civil proceedings under subsection (1) unless the court finds that the primary motivation for the proceedings was not a concern for the public interest or the enhancement, protection or conservation of the environment.

111. A court that convicts a person of an offence under this Act may, in addition to any other penalty imposed—

(a) order the person to take and pay for measures to avoid, remedy or mitigate any adverse effects arising from, or Protection,
repair and
costs orders

- likely to arise from, the offence; and
- (b) if the person fails to comply with an order under paragraph (a), issue an order allowing the Director-General to take those measures, and requiring the person to pay the Director-General's costs of so doing.

PART X

REVIEWS AND APPEALS

Right of
review

112. (1) A person who is aggrieved with a decision made, or direction given, by the Agency under this Act, may apply to the Board for a review of that decision or direction in the prescribed manner and form.

(2) Without prejudice to any other grounds for review, a person may object to the granting of a licence or other approval under this Act on the basis that the conditions in the licence or approval do not provide adequate protection to the environment or to human beings against the risk of adverse effects, or otherwise fail to give effect to the purpose of this Act.

Review by
Board

113. (1) A person shall submit a review application to the Board within thirty days from the date on which the applicant was given notice of the decision or direction that the applicant wants reviewed.

(2) The Board may accept a review application submitted out of time if it considers that it is equitable to do so.

(3) The Board may, on receiving a review application under subsection (1), cause an inquiry to be conducted concerning the matters raised in the review application by a person or persons appointed by the Board, in writing, for that purpose.

(4) The Board may dismiss a review application and need not cause an inquiry to be conducted if the Board, after considering the review application, considers it to be trivial, frivolous or without merit.

(5) The Board shall, where it dismisses an appeal under subsection (4), notify the applicant in writing of the reasons for the dismissal of the application.

Conduct of
inquiry

114. (1) An inquiry shall be conducted in the prescribed manner.

(2) The person conducting the inquiry shall give the applicant

and the person who made the decision or gave the direction an opportunity to be heard and to make written submissions.

(3) An inquiry shall be conducted fairly according to the merits of the case.

115. (1) The Minister shall, where the Minister receives an appeal or an application for review under any provision of this Act, consider and determine the review application and may— Review by
Minister

- (a) allow the application or appeal wholly or in part;
- (b) dismiss the application or appeal; or
- (c) refer the application or appeal back to the Board with a request for consideration or further consideration of some fact or issue.

(2) In determining a review application, the Minister—

- (a) shall have regard to the purpose of this Act and the principles set out in section *six*;
- (b) shall have regard to relevant environment policies, guidelines and standards published by the Agency;
- (c) shall have regard to, but is not bound by, the findings and recommendations of the person conducting the inquiry.

(3) The decision of the Minister on a review application shall be given in a written notice delivered to the applicant and to the Director-General, and shall set out the reasons for the decision.

116. (1) A person aggrieved with the decision of the Agency may appeal to the Minister within thirty days of the decision. Appeals

(2) A person aggrieved with the decision of the Minister may appeal to the High Court within thirty days of the decision.

PART XI

ENVIRONMENTAL OFFENCES

117. A person who—

- (a) wilfully fails to undertake an environmental impact assessment contrary to the provisions of this Act;
 - (b) fails to prepare and submit a project brief or an environmental impact assessment report as required under this Act; or
 - (c) recklessly or fraudulently makes a false statement on an environmental impact assessment report submitted under this Act;
- Offences relating to hazardous waste materials, chemicals

commits an offence and is liable, upon conviction, to a fine not

exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

118. A person who—

Offences relating to returns and records

- (a) fails to keep a record required to be kept under this Act;
- (b) fails to submit a return required for purposes of this Act;
- (c) submits false or misleading information in any return; or
- (d) alters a record required under this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

119. A person who—

Offences relating to environmental standards

- (a) contravenes any environmental standards or guidelines established or prescribed under this Act;
- (b) contravenes a measure prescribed or ordered under this Act; or
- (c) uses the environmental or natural resources in a wasteful or destructive manner contrary to the prescribed standards, measures or guidelines;

commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

120. A person who—

Offences relating to biological diversity

- (a) trades in any component of biological resources contrary to the provisions of this Act or any other written law;
- (b) unlawfully possesses any biological resources; or
- (c) unlawfully disturbs the habitat of a biological resource in contravention of this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

121. A person who—

Offences relating to hazardous waste materials, chemicals

- (a) fails to manage any hazardous waste and materials in accordance with this Act;
- (b) imports or exports any hazardous waste contrary to this Act;
- (c) knowingly mislabels any waste, pesticide, chemical, toxic substance or radio-active substance;
- (d) fails to manage any chemical or radio-active substance

in accordance with this Act;

- (e) aids or abets illegal trafficking in hazardous waste, chemicals, toxic substances or pesticides;
- (f) disposes of any chemical contrary to this Act or hazardous waste within the Republic; or
- (g) withholds information or provides false information about the management of hazardous wastes, chemicals or radio-active substances;

commits an offence and is liable, upon conviction, to a fine not exceeding one million penalty units, or to imprisonment for a period not exceeding ten years, or to both.

122. (1) A person shall not—

- (a) detach, alter or destroy the labelling of a pesticide or toxic substance; or
- (b) use or dispose into the environment a pesticide or toxic substance in contravention of this Act.

Offences relating to pesticides and toxic substances

(2) A person shall not distribute, sell, offer for sale, store, import, export, transport, manufacture, change the composition of, or deal in any manner with any unregistered pesticide or toxic substance or without a licence.

(3) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

123. A person who fails, neglects or refuses to comply with guidelines prescribed to regulate environmentally protected areas commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Offences relating to protected areas

PART XII

GENERAL PROVISIONS

124. An inspector shall treat as confidential the source of any report of any contravention of this Act and shall not disclose to the owner of the place inspected or that person's representative that a report was made, or divulge any information that might identify the person who made the report.

125. (1) A person who pollutes the environment or contravenes any provision of this Act for which no penalty is provided, is liable, upon conviction, to a fine not exceeding three hundred thousand

General penalty

penalty units or to imprisonment for a period not exceeding three years, or to both.

(2) Except as otherwise specified in this Act, a person who is convicted of an offence that is a continuing one, shall in addition to the penalty specified for the offence, be liable, upon conviction, to a further fine, for each day or part of a day on which the offence continues—

(a) in the case of an individual, not exceeding five hundred penalty units per day on a first conviction, and not more than eight hundred penalty units per day on each subsequent conviction; and

(b) in the case of a body corporate or an unincorporate body, not exceeding one thousand penalty units per day on a first conviction, and not more than two thousand penalty units per day on each subsequent conviction.

(3) A court that convicts a person of an offence under this Act may suspend, revoke or amend any licence issued to that person under this Act.

Offences
by body
corporate or
unincorporate
body

126. Where an offence under this Act is committed by a body corporate or an unincorporate body, every director or manager of the body corporate or unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Presumptions

127. (1) For the purposes of this Act, an adverse effect is deemed to have been caused by an act or omission if it is possible that the adverse effect could have resulted from the act or omission, if it was reasonably foreseeable that the effect could have resulted from the act or omission, and if there was no other plausible cause for the adverse effect.

(2) For the purposes of this Act, an act or thing done or omitted to be done by a director, officer, employee or agent of a body corporate or unincorporate body in the exercise of their powers, functions or duties is deemed to be an act or thing done or omitted to be done by the body corporate or unincorporate body.

C i v i l
damages

128. (1) The Agency may, without prejudice to any other remedy available under this Act or any other written law, institute

an action against any person for damage caused by that person to the environment.

(2) Any damages payable under this section shall be paid to the Agency.

(3) A court may liquidate the damage done to the environment where the damage to the environment cannot be quantified in a precise manner.

129. (1) Subject to the other provisions of this Act, where a person is convicted of an offence under this Act, the court may, on application by an inspector or police officer, in addition to any other penalty imposed, declare any matter, article, vehicle, aircraft, boat or any other conveyance used in the commission of the offence to be forfeited to the State.

Forfeiture on conviction

(2) The court may, where an inspector or a police officer makes an application under subsection (1), make an order, hereinafter referred to as a conditional order, to the effect that unless any person other than the convicted person claims any right of ownership in the matter, article, vehicle, aircraft, boat or any other conveyance within a period of three months from the date of the order, the matter, article, vehicle, equipment, aircraft, boat or other conveyance shall be forfeited to the State.

(3) An inspector shall, within a period of thirty days from the date of the order, cause a notice of the order to be published in at least three issues of a daily newspaper of general circulation in the place where the offence was committed.

(4) The notice referred to in subsection (3) shall be in the prescribed form.

(5) The Agency shall, where the article, matter, vehicle, equipment, aircraft, boat or other conveyance is registered in the name of a person other than the convicted person, within seven days after the publication of the notice in the daily newspaper of general circulation in the area, cause a copy to be sent by registered post to the person at the address indicated on the register.

(6) A person who claims any right of ownership in the matter, article, vehicle, aircraft, boat or other conveyance may, within the period stipulated under subsection (2), serve upon the Agency and lodge with the clerk of court an application, in writing, for the discharge of the conditional order setting out the claim of ownership in the matter, article, vehicle, aircraft, boat or other conveyance.

(7) The clerk of court shall, where an application is lodged under subsection (6)—

- (a) fix a date for the hearing, not less than one month after the lodgement of the application; and
- (b) within seven days of the lodgment, cause notice of the hearing of the application to be served upon the Agency.

(8) In any proceedings brought under subsection (6), the onus of proof shall be on the applicant and no order discharging the conditional order shall be made unless the applicant proves that the applicant was not in any manner privy to the offence and that the matter, article, vehicle, equipment, aircraft, boat or other conveyance was at the time of the commission of the offence, used for such purpose without the applicant's knowledge or consent, and without any negligent disregard on the part of the applicant of its use by the convicted person.

(9) Where, upon any application made under subsection (6), the court is satisfied that the matter, article, vehicle, aircraft, boat or other conveyance is owned jointly by the claimant and the convicted person or is the subject matter of a hire purchase agreement between the claimant and the convicted person and the claimant has discharged the onus of proof required under subsection (8), the court shall declare forfeited to the State all of the estate or interest of the convicted person in the article, matter, vehicle, aircraft, boat or other conveyance or all the rights therein accrued to the claimant under the hire purchase agreement or under the Hire Purchase Act and order the estate, interest or rights to be disposed of as the court may consider fit.

Cap. 399

(10) Except with the consent of the court, any right vested in any claimant under any hire purchase agreement, or under the Hire Purchase Act to repossess any matter, article, vehicle, aircraft, boat or conveyance which is subject to a conditional order made under subsection (2), shall be suspended pending the determination of any application brought under subsection (6), and in the event of the court declaring the rights therein accrued to the convicted person to be forfeited to the State, the accrued right to repossess the matter, article, vehicle, aircraft, boat or conveyance shall not be exercisable against the Government or Agency.

Cap. 399

Disposal
of matter
article,
vehicle,
aircraft or
boat

130. (1) Where any matter, article, vehicle, aircraft, boat or conveyance is seized under this Act in relation to, or in connection with, the commission of an offence under this Act and—

- (a) the person suspected of having committed the offence is unknown;
- (b) the person suspected of having committed the offence cannot be found for the purpose of service of the process of the court charging that person with the offence; or

- (c) having been served with such process, the person suspected of having committed the offence fails to appear in answer to the charge;

the Agency may, one month after the publication of a notice of its intention to do so, in an issue of a daily newspaper of general circulation in the district in which the offence is alleged to have been committed, apply by way of an *ex-parte* original application, to the court for an order declaring the matter, article, vehicle, aircraft, boat or conveyance to be forfeited to the State without compensation and ordering it to be disposed of as the court may consider fit.

(2) Where any person claims any right of ownership in any vehicle, aircraft, boat or conveyance to which a notice published under subsection (1) applies, that person may, within one month after the date of publication, lodge with the clerk of court a claim of ownership and serve a copy of the notice upon the Agency, and the provisions of section *one hundred and twenty-nine* shall apply, with the necessary modification, to the claim of ownership.

(3) Where any matter, article, vehicle, aircraft, boat or conveyance is seized under this Act, in relation to, or in connection with, the commission of any offence, the Agency may apply to the court by way of *ex-parte* original application, for an order for the immediate disposal by sale or otherwise of the matter, article, vehicle, aircraft, boat or conveyance and the court may order the sale.

(4) Where the matter, article, vehicle, aircraft, boat or conveyance is sold, the proceeds shall be held by the Agency.

(5) Where the person suspected of having committed the offence is unknown or cannot be found for the purpose of service of the process of the court, subsection (1) shall apply with the necessary modifications to the proceedings.

131. (1) An inspector may, by way of an *ex-parte* application, apply to a court for an order in respect of any premises on which an offence is suspected of being committed under this Act—

- (a) to prohibit the carrying on of a process or operation causing pollution or which is likely to cause significant damage to human, plant or animal health or the environment; or
- (b) to prohibit the use of any machinery, plant, equipment or appliance whose use is causing or is likely to cause significant damage to human, plant or animal health or the environment;

Disposal
of matter
article,
vehicle,
aircraft or
boat

after having given the owner or occupier seven days notice of the intention to make the application to the court:

Provided that where an inspector suspects that pollution is occurring which poses immediate danger to human life and the environment, the inspector shall, without delay, make the application to court, notwithstanding the seven day notice requirement.

(2) The notice of intention to make the application to a court under subsection (1) shall be in the prescribed form.

(3) Where, in the case of premises on which an offence is suspected of being committed under this Act, the court is satisfied on an application made by an inspector under subsection (1)

- (a) that the seven days' notice of the intention to make an application under this section stating the time at which it had been made, has been served on the occupier of the premises;
- (b) that the carrying on or use of the operation or process on any part of the premises is in contravention of the provisions of this Act;
- (c) that the carrying on or use of the operation or process on any part of the premises is causing pollution likely to cause significant damage to human, plant or animal health or the environment; or
- (d) that any machinery, plant, equipment or appliance is being used so as to cause significant damage to human, plant or animal health or the environment;

the court may make an interim order prohibiting either absolutely, or subject to conditions, the use of the plant, machinery, equipment or appliance or the carrying on or use of the operation or process until the earliest opportunity for hearing and determining the application.

(4) Where, after the hearing of the application by an inspector under subsection (1), the court is satisfied on evidence submitted by an inspector and after affording the owner or occupier an opportunity to be heard, the court may—

- (a) prohibit the use of the machinery, plant, equipment or appliance in question unless the machinery, plant, equipment or appliance can be repaired, altered or moved so as to permit the use thereof without the polluting effect, in which case the court may prohibit its use until it has been so repaired, altered or moved;

- (b) prohibit the carrying on or use of the operation or process in question unless satisfied that there shall be taken such steps as will enable it to be carried on or used otherwise than in the manner causing pollution or causing significant damage to human, plant or animal health or the environment, in which case the court may prohibit the use of the machinery, plant, equipment or appliance or the carrying on or use of the operation or process until such steps are taken in the course of the carrying on or the use of it; or
- (c) make such other order as the court may consider appropriate.

132. (1) An inspector may, where satisfied that any person has committed an offence for which the penalty does not exceed two hundred thousand penalty units or where a person has admitted the commission of an offence under this Act for which the penalty does not exceed two hundred thousand penalty units, summarily demand from the person the payment of a fine not exceeding six thousand penalty units in respect of the offence.

Summary
imposition
of penalties

(2) An inspector shall, where the inspector demands a payment under subsection (1), inform the person against whom the demand is made of the right to admit or dispute the liability.

(3) A person from whom payment of a fine has been demanded under subsection (1) may elect to admit liability and pay the fine, or dispute liability.

(4) The payment of a fine shall operate as a bar to any further criminal proceedings against the person making the payment in respect of the offence concerned.

(5) An inspector who receives payment of a fine shall give a receipt to the person making the payment in such form as may be prescribed.

(6) An inspector who receives a payment under this section and

- (a) fails to issue a receipt to the person making the payment as required under subsection (5);
- (b) fails to account for any payment made under this section; or
- (c) in any manner, misuses or puts to personal use any payment made under this section;

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

- Protected disclosure
- Act No. 4 of 2010
- Regulations
- Repeal of Cap 204 and Cap. 156 of old edition of laws
- 133.** A disclosure made by a person who, in good faith, believed at the time of the disclosure that the person was disclosing evidence of an environmental risk is a protected disclosure for the purposes of the Public Interest Disclosure (Protection of Whistleblowers) Act, 2010.
- 134.** (1) The Minister may, on the recommendation of the Agency, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.
- (2) Without limiting the generality of subsection (1), regulations made under that subsection may—
- (a) prescribe fees or charges payable in respect of any matter arising under, provided for, or authorised by, this Act;
 - (b) prescribe offences and fines not exceeding five hundred thousand penalty units or imprisonment for a period not exceeding five years;
 - (c) prescribe the forms for applications, licences, approvals, registers, notices, orders and other documents required for the purpose of this Act;
 - (d) prescribe the information to be given in returns and other documents delivered or made for the purposes of this Act;
 - (e) provide the procedure for the service of notices, orders and documents under this Act and the times at which they shall be taken to have been served; and
 - (f) prescribe the procedure for objections, reviews and public inquiries under this Act, and the making, consideration, hearing and determination of objections, reviews and public inquiries.
- 135.** (1) The Environmental Protection and Pollution Control Act, 1990, and the Natural Resources Conservation Act are hereby repealed.
- (2) Notwithstanding subsection (1), the provisions of the Second Schedule shall apply in respect of the matters specified therein.

FIRST SCHEDULE
(Sections 7 (2) and 11(7))

ADMINISTRATION OF THE AGENCY

PART I

THE BOARD OF THE AGENCY

Proceedings
of Board

1. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if not less than one-third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Board.

(4) The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, with six other members shall constitute a quorum at any meeting of the Board.

(5) There shall preside at any meeting of the Board—

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice-Chairperson; or
- (c) in the absence of both the Chairperson and the Vice-Chairperson, such other member as the members present may elect for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.

(7) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board, but such person shall have no vote.

(8) The validity of any proceedings, acts or decisions of the

Committees of Board	<p>Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.</p>
Allowances of members	<p>2. (1) The Board may, for the purpose of performing its functions under this Act, constitute a committee and delegate to the committee such functions of the Board as it considers necessary.</p> <p>(2) Subject to sub-paragraph (1), the Board may appoint as members of a committee constituted under sub-paragraph (1), persons who are, or are not, members of the Board, except that at least one member of a committee shall be a member of the Board.</p> <p>(3) A person serving as a member of a committee shall hold office for such period as the Board may determine.</p> <p>(4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.</p>
Disclosure of interest	<p>3. There shall be paid to a member of the Board or a member of a committee such allowances as the Board may determine, with the approval of the Minister.</p> <p>4. (1) If any person is present at a meeting of the Board or a committee of the Board at which any matter is the subject of consideration, and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.</p>
Prohibition of publication or disclosure of information to unauthorised persons	<p>(2) A disclosure of interest made under sub-paragraph (1) shall be recorded in the minutes of the meeting at which it is made.</p> <p>5. (1) A person shall not, without the consent in writing given by, or on behalf of, the Agency, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.</p> <p>(2) A person who contravenes sub-paragraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.</p> <p>(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-paragraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable,</p>

upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

6. An action or other proceeding shall not lie or be instituted against a member of the Board, a committee of the Board or a member of staff of the Agency, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act. Immunity

PART II

FINANCIAL PROVISIONS

7. (1) The funds of the Agency shall consist of such monies as may— Funds of Agency

(a) be appropriated to the Agency by Parliament for the purposes of the Agency;

(b) be paid to the Agency by way of fees, grants or donations; and

(c) otherwise vest in or accrue to the Agency.

(2) The Agency may, subject to the approval of the Minister—

(a) accept monies by way of grants or donations from any source within or outside Zambia;

(b) raise by way of loans or otherwise, such monies as it may require for the discharge of its functions; or

(c) in accordance with the regulations made under this Act, charge and collect fees for services provided by the Agency.

(3) There shall be paid from the funds of the Agency—

(a) the salaries, allowances, pensions and loans of the members of staff of the Agency;

(b) such reasonable travelling and other allowances for the members of the Board and the members of any committee of the Board when engaged in the business of the Agency, at such rates as the Board may, with the approval of the Minister, determine; and

(c) any other expenses incurred by the Agency in the performance of its functions under this Act.

(4) The Agency may invest, in such manner as it considers appropriate, such funds of the Agency which it does not immediately require for the performance of its functions.

- Financial year **8.** The financial year of the Agency shall be a period of twelve months ending on 31st December in each year.
- Accounts **9.** (1) The Agency shall cause to be kept proper books of account and other records relating to its accounts.
- (2) The accounts of the Agency shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General's fees shall be paid by the Agency.
- Annual report **10.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Agency shall submit to the Minister a report concerning its activities during the financial year.
- (2) The report referred to in sub-paragraph (1) shall include information on the financial affairs of the Agency and there shall be appended to the report—
- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.
- (3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 135 (2))

SAVINGS AND TRANSITIONAL PROVISIONS

- Staff of Council **1.** (1) For the avoidance of doubt, a person who, before the appointed date, was an officer or employee of the Council, shall continue to be an officer or employee of the Agency, as the case may be, as if appointed or employed under this Act.
- (2) The service of the persons referred to in sub-paragraph (1) shall be treated as continuous service.
- (3) Nothing in this Act, affects the rights and liabilities of any person employed or appointed by the Council before the appointed date.
- Transfer of assets and liabilities **2.** (1) On or after the appointed date, there shall be transferred to, vest in and subsist against the Agency by virtue of this Act and without further assurance—
- (a) the affairs of the Council; and
- (b) subject to this Act, all property, rights and obligations which, immediately before the appointed date, were the property, rights and obligations of the Council.

(2) Except as provided in this Act, every deed, bond and agreement, other than an agreement for personnel service, to which the Council was a party immediately before the appointed date, whether or not of such a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if—

- (a) Agency had been party to it;
- (b) for any reference to the Council there was substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Agency; or
- (c) for any reference to any officer of the Council, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the appointed date, a reference to such officer of the Agency as the Agency shall designate.

(3) Where under this Act, any assets, rights, liabilities and obligations of the Council are deemed to be transferred to the Agency in respect of which transfer a written law provides for registration, the Agency shall make an application in writing to the appropriate registration authority for registration of the transfer.

(4) The registration authority, referred to in subparagraph (3), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

4. (1) Any legal proceedings or application of the Council pending immediately before the appointed date by or against the Council may be continued by or against the Agency.

Legal
proceedings

(2) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Council, may be instituted by or against the Agency.

5. For purpose of this schedule, “appointed date” means such date as the Minister may, by Statutory Instrument, appoint.

