



Number 27 of 2003

PROTECTION OF THE ENVIRONMENT ACT 2003

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and collective citations.
2. Commencement.
3. Repeals and revocations.
4. Definitions.

PART 2

AMENDMENT OF ACT OF 1992

CHAPTER 1

AMENDMENT OF SECTIONS 3, 4, 5, 6, 7, 9, 13, 14, 63 AND PART III
OF ACT OF 1992

5. Amendment of section 3 of Act of 1992.
6. Amendment of section 4 of Act of 1992.
7. Amendment of section 5 of Act of 1992.
8. Amendment of section 6 of Act of 1992.
9. Amendment of section 7 of Act of 1992.
10. Amendment of section 9 of Act of 1992.
11. Amendment of section 13 of Act of 1992.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Section

12. Amendment of section 14 of Act of 1992.
13. Amendment of section 63 of Act of 1992.
14. Environmental inspections.

CHAPTER 2

INTEGRATED POLLUTION PREVENTION AND CONTROL UNDER ACT OF
1992

15. Substitution of new Part for Part IV of Act of 1992.

CHAPTER 3

GROUNDWATER PROTECTION

16. Insertion of Part IVA in Act of 1992.

CHAPTER 4

AMENDMENT OF SECTION 111 OF, AND FIRST SCHEDULE TO, ACT OF 1992

17. Amendment of section 111 of Act of 1992.
18. Substitution of new First Schedule to Act of 1992.

PART 3

AMENDMENT OF ACT OF 1996

19. Amendment of section 2 of Act of 1996.
20. Amendment of section 5 of Act of 1996.
21. Amendment of Act of 1996 consequent on *section 20*.
22. Amendment of section 10 of Act of 1996.
23. Evidence of consent of landowners in certain cases.
24. Amendment of section 14 of Act of 1996.
25. Amendment of section 16 of Act of 1996.
26. Amendment of section 22 of Act of 1996.
27. Further amendment of section 22 of Act of 1996: minor textual corrections.
28. Amendment of section 29 of Act of 1996.
29. Amendment of section 32 of Act of 1996.
30. Amendment of section 33 of Act of 1996.
31. Amendment of section 34 of Act of 1996.
32. Amendment of section 35 of Act of 1996.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

Section

33. Amendment of section 39 of Act of 1996.
34. Relationship between Act of 1996 and Act of 1992.
35. Amendment of section 40 of Act of 1996.
36. Amendment of section 41 of Act of 1996.
37. Reckoning of certain periods.
38. Additional power to amend waste licences.
39. Amendment of section 44 of Act of 1996.
40. Amendment of section 46 of Act of 1996.
41. Power to revoke or suspend waste licence.
42. Amendment of section 49 of Act of 1996.
43. Operator of landfill facility to impose charge for disposals.
44. Insertion of Part VA in Act of 1996 (end-of-life vehicles).
45. Amendment of section 54 of Act of 1996.
46. Extension to Agency of powers under section 55 of Act of 1996.
47. Extension to Agency of powers under section 56 of Act of 1996 and clarification of that section.
48. Amendment of section 57 of Act of 1996.
49. Amendment of section 58 of Act of 1996.
50. Amendment of section 72 of Act of 1996.
51. Amendment of section 74 of Act of 1996.
52. Charges for waste services.
53. Transitional provisions relating to waste licences.
54. Substitution of new Third Schedule to Act of 1996.
55. Substitution of new Fourth Schedule to Act of 1996.

PART 4

AMENDMENT OF ACT OF 1997

56. Amendment of section 19 of Act of 1997.
57. Amendment of section 21 of Act of 1997.
58. Amendment of section 24 of Act of 1997.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

PART 5

MISCELLANEOUS

Section

59. Saving for regulations, orders and bye-laws.
60. Amendment of section 5 of Air Pollution Act 1987.
61. Amendment of section 34 of Planning and Development Act 2000.

SCHEDULE 1

NEW FIRST SCHEDULE TO ACT OF 1992

SCHEDULE 2

REPEALS AND REVOCATIONS

SCHEDULE 3

NEW THIRD SCHEDULE TO ACT OF 1996

SCHEDULE 4

NEW FOURTH SCHEDULE TO ACT OF 1996

ACTS REFERRED TO

Air Pollution Act 1987	1987, No. 6
Companies Acts 1963 to 2001	
Electoral Act 1992	1992, No. 23
Environmental Protection Agency Act 1992	1992, No. 7
European Communities Act 1972	1972, No. 27
European Parliament Elections Act 1997	1997, No. 2
Finance Act 1992	1992, No. 9
Finance Act 1993	1993, No. 13
Finance (Excise Duties) (Vehicles) Act 1952	1952, No. 24
Finance (No. 2) Act 1992	1992, No. 28
Fisheries (Consolidation) Act 1959	1959, No. 14
Harbours Act 1946	1946, No. 9
Health (Eastern Regional Health Authority) Act 1999	1999, No. 13
Litter Pollution Act 1997	1997, No. 12
Litter Pollution Acts 1997 and 2001	
Local Government Act 2001	2001, No. 37
Local Government (Financial Provisions) (No. 2) Act 1983	1983, No. 21
Local Government (Sanitary Services) Acts 1878 to 2001	
Local Government (Water Pollution) Act 1977	1977, No. 1
Local Government (Water Pollution) Acts 1977 and 1990	
Local Government (Water Pollution) (Amendment) Act 1990	1990, No. 21
Minerals Development Acts 1940 to 1999	
Planning and Development Act 2000	2000, No. 30
Planning and Development Acts 2000 to 2002	
Presidential Elections Act 1993	1993, No. 28
Referendum Act 1994	1994, No. 12
Údarás na Gaeltachta Act 1979	1979, No. 5
Waste Management Act 1996	1996, No. 10
Waste Management Acts 1996 and 2001	
Waste Management (Amendment) Act 2001	2001, No. 36

EUROPEAN COMMUNITIES REGULATIONS REFERRED TO

European Communities (Environmental Impact Assessment) (Amendment) Regulations 1994	S.I. No. 84 of 1994
--	---------------------



Number 27 of 2003

PROTECTION OF THE ENVIRONMENT ACT 2003

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF DIRECTIVE 96/61/EC OF 24 SEPTEMBER 1996 OF THE COUNCIL OF THE EUROPEAN COMMUNITIES CONCERNING INTEGRATED POLLUTION PREVENTION AND CONTROL AND CERTAIN OTHER ACTS ADOPTED BY THE INSTITUTIONS OF THE EUROPEAN COMMUNITIES, FOR THAT AND OTHER PURPOSES TO AMEND THE ENVIRONMENTAL PROTECTION AGENCY ACT 1992 AND THE WASTE MANAGEMENT ACT 1996, TO AMEND THE LITTER POLLUTION ACT 1997 AND TO PROVIDE FOR RELATED MATTERS.

[14th July, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Protection of the Environment Act 2003. Short title and collective citations.

(2) The Act of 1992 and *Part 2* of this Act may be cited together as the Environmental Protection Agency Acts 1992 and 2003.

(3) The Waste Management Acts 1996 and 2001 and *Part 3* of this Act may be cited together as the Waste Management Acts 1996 to 2003.

(4) The Litter Pollution Acts 1997 and 2001 and *Part 4* of this Act may be cited together as the Litter Pollution Acts 1997 to 2003.

2.—This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. Commencement.

3.—(1) Each enactment mentioned in *column (2)* of *Part 1* of *Schedule 2* to this Act is repealed to the extent specified in *column (3)* of that Part. Repeals and revocations.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.1 S.3 (2) Each statutory instrument mentioned in *column (2)* of *Part 2* of *Schedule 2* to this Act is revoked to the extent specified in *column (3)* of that Part.

Definitions. 4.—In this Act—

“Act of 1992” means the Environmental Protection Agency Act 1992;

“Act of 1996” means the Waste Management Act 1996;

“Act of 1997” means the Litter Pollution Act 1997;

“Minister” means the Minister for the Environment, Heritage and Local Government.

PART 2

AMENDMENT OF ACT OF 1992

CHAPTER 1

AMENDMENT OF SECTIONS 3, 4, 5, 6, 7, 9, 13, 14, 63 AND PART III
OF ACT OF 1992

Amendment of section 3 of Act of 1992. 5.—The following sections are substituted for section 3 of the Act of 1992:

“Interpretation. 3.—(1) In this Act, except where the context otherwise requires—

‘activity’ means any process, development or operation specified in the First Schedule and carried out in an installation;

‘the Act of 1996’ means the Waste Management Act 1996;

‘the Act of 2000’ means the Planning and Development Act 2000;

‘the Agency’ shall be construed in accordance with section 19(1);

‘atmosphere’ means the gaseous envelope surrounding the earth, and includes air;

‘authorised person’ means a person who is appointed in writing by the Minister, a local authority, the Agency or such other person as may be prescribed to be an authorised person for the purposes of this Act or any Part or section thereof;

‘development’ has the meaning assigned to it by section 3 of the Act of 2000;

‘the Directive’ shall be construed in accordance with section 3A(1);

‘disposal’, in relation to waste, has the meaning assigned to it by the Act of 1996;

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

‘emission’ means, in relation to an activity referred to in Part IV or IVA, any direct or indirect release of substances, heat or noise from individual or diffuse sources in the activity into the atmosphere, water or land, and includes— Pt.2 S.5

- (a) an emission into the atmosphere of a pollutant within the meaning of the Air Pollution Act 1987,
- (b) the release of a greenhouse gas or a precursor of a greenhouse gas into the atmosphere,
- (c) a discharge of polluting matter, sewage effluent or trade effluent within the meaning of the Local Government (Water Pollution) Act 1977, to waters or sewers within the meaning of that Act, or
- (d) waste,

but does not include a radioactive substance within the meaning of Council Directive 96/29/Euratom¹, a genetically modified micro-organism within the meaning of Council Directive 90/219/EEC² or a genetically modified organism within the meaning of Directive 2001/18/EC of the European Parliament and of the Council³;

‘emission limit value’ means the mass, expressed in terms of a specific parameter, concentration or level of an emission, or both a specific concentration and level of an emission, which may not be exceeded during one or more periods of time;

‘employee of the Agency’ does not include the Director General or other Director of the Agency;

‘enactment’ includes any instrument made under an enactment;

‘environmental impact statement’ has the meaning assigned to it by the Act of 2000;

‘environmental protection’, ‘environmental pollution’, ‘environmental medium’ and ‘environmental quality standard’ have the meanings respectively assigned to them by section 4;

‘established activity’ means—

- (a) an activity which on 29 October 1999, or such other date as may be prescribed in relation to the activity, was being carried on and did not involve or have an association with unauthorised development within the meaning of the Act of 2000, or
- (b) an activity—
 - (i) in respect of which permission under section 34 of the Act of 2000 had been

¹ O.J. No. L159, 29.06.1996, p.1.

² O.J. No. L117, 08.05.1990, p.1.

³ O.J. No. L106, 17.04.2001, p.1.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.5

granted, or an application for such permission had been made, before 30 October 1999, or such other date as may be prescribed in relation to the activity, and

(ii) which on 29 October 2000, or such other date as may be prescribed in relation to the activity—

(I) was being carried on, and

(II) did not involve or have an association with unauthorised development within the meaning of the Act of 2000;

‘functions’ includes powers and duties;

‘greenhouse gas’ means—

(a) carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, any hydrofluorocarbon or any perfluorocarbon, and

(b) such other gases as may be prescribed,

in so far as the emission of any such gas contributes to global climate change;

‘installation’ means a stationary technical unit or plant where the activity concerned referred to in the First Schedule is or will be carried on, and shall be deemed to include any directly associated activity, whether licensable under this Part or not, which has a technical connection with the first-mentioned activity and is carried out on the site of that activity;

‘land’ includes soil;

‘local authority’ means—

(a) in the case of a city, the city council, and

(b) in the case of a county, the county council,

and references to the functional area of a local authority shall be construed accordingly;

‘the Minister’ means the Minister for the Environment, Heritage and Local Government;

‘monitoring’ includes the inspection, measurement, sampling or analysis for the purposes of this Act of any emission, or of any environmental medium in any locality, whether periodically or continuously;

‘noise’ includes vibration;

‘occupier’, in relation to any installation or premises, includes the owner, a lessee, any person entitled to occupy the installation or premises and any other person having, for the time being, control of the installation or premises;

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

‘person in charge’ includes an occupier of an installation or premises or a manager, supervisor or operator of an activity; Pt.2 S.5

‘planning authority’ has the meaning assigned to it by the Act of 2000;

‘plant’ includes any equipment, appliance, apparatus, machinery, works, building or other structure or any land or any part of any land which is used for the purposes of, or incidental to, any activity specified in the First Schedule;

‘premises’ includes any messuage, building, vessel, structure or land (whether or not there are structures on the land or whether or not the land is covered with water) or any hereditament of any tenure, together with any out-buildings and curtilage;

‘prescribed’ means prescribed by regulations by the Minister under this Act;

‘previous Part IV’ shall be construed in accordance with section 82(1);

‘public authority’ means—

- (a) a Minister of the Government,
- (b) the Commissioners of Public Works in Ireland,
- (c) a local authority for the purposes of the Local Government Act 2001,
- (d) a harbour authority within the meaning of the Harbours Act 1946,
- (e) (i) a health board,
(ii) the Eastern Regional Health Authority,
or
(iii) an Area Health Board established under the Health (Eastern Regional Health Authority) Act 1999,
- (f) a board or other body (but not including a company under the Companies Acts 1963 to 2001) established by or under statute,
- (g) a company under the Companies Acts 1963 to 2001, in which all the shares are held—
 - (i) by or on behalf of a Minister of the Government,
 - (ii) by directors appointed by a Minister of the Government, or
 - (iii) by a board or other body referred to in paragraph (f) or by a company to which subparagraph (i) or (ii) applies,
- (h) such other body as may be prescribed for the purposes of any provisions of this Act;

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.5

‘public place’ includes any place to which the public have access, whether by right or by permission, or whether subject to, or free of charge;

‘recovery’, in relation to waste, has the meaning assigned to it by the Act of 1996;

‘sanitary authority’ means a sanitary authority for the purposes of the Local Government (Sanitary Services) Acts 1878 to 2001;

‘soil’ means the top layer of the land surface of the earth that is composed of disintegrated rock particles, humus, water and air;

‘statutory undertaker’ has the meaning assigned to it by the Act of 2000;

‘vessel’ means a waterborne craft of any type, whether self propelled or not, and includes an air cushion craft and any structure in or on water;

‘waste management plan’ means a waste management plan or a hazardous waste management plan within the meaning of the Act of 1996 that is for the time being in force;

‘waters’ has the meaning assigned to it by the Local Government (Water Pollution) Act 1977;

‘works’, in relation to sections 106 and 107, has the meaning assigned to it by the Act of 2000.

(2) In this Act a reference to—

(a) the date on which a licence or revised licence is granted is a reference to the date on which the licence or revised licence is sealed with the seal of the Agency, and

(b) the date on which a decision by the Agency to refuse a licence or a revised licence is made is a reference to the date on which that decision, as reduced to writing, is so sealed.

(3) In this Act a reference to a section, Part or Schedule, is a reference to a section or Part of, or a Schedule to, this Act, unless it is indicated that reference to some other enactment is intended.

(4) In this Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(5) In this Act a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by or under this or any subsequent enactment.

(6) The activities to which this Act applies include activities operated by or in the charge of the State.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

Community act given effect to by certain amendments of this Act.

3A.—(1) The purposes for which the amendments of this Act by the *Protection of the Environment Act 2003* are made include the purpose of giving effect to Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control¹ (in this Act referred to as ‘the Directive’).

Pt.2 S.5

(2) The Agency shall be the competent authority for the purposes of the Directive.

(3) As competent authority for the purposes of the Directive, the Agency shall, amongst other things—

- (a) keep itself informed of developments in best available techniques,
- (b) maintain such data and information, provide for the supply of data to the Commission of the European Communities and undertake such reporting as may be necessary for the proper implementation of relevant Community acts (including compliance with the requirements of Articles 15 and 16 of the Directive),
- (c) when requested to do so by the Minister, participate in the Committee to assist the Commission of the European Communities on the basis provided for in Article 19 of the Directive.

Power to amend First Schedule in certain circumstances.

3B.—The Minister may by regulations amend the First Schedule if either or both of the following conditions is or are satisfied—

- (a) as a result of an act adopted by an institution of the European Communities, the continued operation of that Schedule and section 82 would, unless such amendment were to be made, not be in conformity with that act,
- (b) the amendment proposed to be made does not, in the opinion of the Minister, involve any deviation from the principles or policies of that Schedule and section 82.”.

6.—The following section is substituted for section 4 of the Act of 1992:

Amendment of section 4 of Act of 1992.

“Environmental protection, environmental pollution, environmental medium and environmental quality standard.

4.—(1) In this Act ‘environmental protection’ includes—

- (a) the prevention, limitation, elimination, abatement or reduction of environmental pollution, and
- (b) the preservation of the quality of the environment as a whole.

¹ O.J. No. L257, 10.10.1996, p.26.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.6

(2) In this Act ‘environmental pollution’ means the direct or indirect introduction to an environmental medium, as a result of human activity, of substances, heat or noise which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment, and includes—

- (a) ‘air pollution’ for the purposes of the Air Pollution Act 1987,
- (b) the condition of waters after the entry of polluting matter within the meaning of the Local Government (Water Pollution) Act 1977,
- (c) in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would, to a significant extent, endanger human health or harm the environment and, in particular—
 - (i) create a risk to the atmosphere, waters, land, plants or animals,
 - (ii) create a nuisance through noise, odours or litter, or
 - (iii) adversely affect the countryside or places of special interest,
- (d) noise which is a nuisance, or would endanger human health or damage property or harm the environment.

(3) In this Act ‘environmental medium’ includes the atmosphere, waters and land.

(4) In this Act ‘environmental quality standard’ means the set of requirements which must be fulfilled at a given time by a given environment or environmental medium or any part thereof, as specified in any enactment or enactments, or in any act or acts adopted by an institution of the European Communities.”.

Amendment of section 5 of Act of 1992.

7.—The following section is substituted for section 5 of the Act of 1992:

“Best available techniques.

5.—(1) A reference in this Act to best available techniques shall be construed as a reference to the most effective and advanced stage in the development of an activity and its methods of operation, which indicate the practical suitability of particular techniques for providing, in principle, the basis for emission limit values designed to prevent or eliminate or, where that is not practicable, generally to reduce an emission and its impact on the environment as a whole.

(2) In subsection (1)—

Pt.2 S.7

- (a) ‘best’, in relation to techniques, means the most effective in achieving a high general level of protection of the environment as a whole;
- (b) ‘available techniques’ means those techniques developed on a scale which allows implementation in the relevant class of activity specified in the First Schedule, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced within the State, as long as they are reasonably accessible to the person carrying on the activity;
- (c) ‘techniques’ includes both the technology used and the way in which the installation is designed, built, managed, maintained, operated and decommissioned.

(3) (a) For the purposes of subsection (1), the Agency—

- (i) may from time to time as occasion requires, and
- (ii) shall in accordance with any regulations made by the Minister,

specify best available techniques to provide, in principle, the basis for emission limit values for an activity or activities of a particular class or description, and regard shall be had in the administration of this Act to any such specifications. The Agency, in preparing any such specification, may, by publication of a notice in such manner as it thinks appropriate, invite submissions or observations to be made to it in relation to the terms of the proposed specification.

(b) In specifying best available techniques in accordance with paragraph (a) or otherwise determining best available techniques for the purposes of this Act, the Agency shall, having regard to the likely costs and advantages of measures and to the principles of precaution and prevention, consider in particular—

- (i) the use of low-waste technology,
- (ii) the use of less hazardous substances,
- (iii) the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate,

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.7

- (iv) comparable processes, facilities or methods of operation, which have been tried with success on an industrial scale,
- (v) technological advances and changes in scientific knowledge and understanding,
- (vi) the nature, effects and volume of the emissions concerned,
- (vii) the commissioning dates for new or existing activities,
- (viii) the length of time needed to introduce the best available techniques,
- (ix) the consumption and nature of raw materials (including water) used in the process and their energy efficiency,
- (x) the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it,
- (xi) the need to prevent accidents and to minimise the consequences for the environment, and
- (xii) the information published by the Commission of the European Communities pursuant to any exchange of information between Member States and the industries concerned on best available techniques, associated monitoring, and developments in them, or by international organisations,

and such other matters as may be prescribed.

(4) Whenever the Agency prepares a specification under subsection (3), it shall, as soon as may be, cause—

- (a) a copy of such specification to be sent to the Minister, each local authority, An Bord Pleanála and such other bodies, if any, as may be prescribed,
- (b) notice of the preparation of the specification to be published in *Iris Oifigiúil*,
- (c) notice of the preparation of the specification to be given to every person who made to the Agency submissions or observations concerning the specification in response to an invitation of the Agency made under subsection (3)(a), and

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(d) a copy of the specification to be made available to every person who makes application for such a copy on payment of such fee (if any) as the Agency shall fix not exceeding the reasonable cost of making such a copy.”. Pt.2 S.7

8.—Section 6 of the Act of 1992 is amended—

Amendment of section 6 of Act of 1992.

(a) by inserting in subsection (3) after “Every regulation made under this Act”, “(other than regulations made under section 99)”, and

(b) by inserting the following subsection after subsection (3):

“(4) Where it is proposed to make regulations under section 99, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.”.

9.—Section 7 of the Act of 1992 is amended in subsection (2) by substituting “In addition to and not in substitution for the power conferred by section 3B, the Minister may” for “The Minister may”. Amendment of section 7 of Act of 1992.

10.—Section 9 of the Act of 1992 is amended—

Amendment of section 9 of Act of 1992.

(a) by substituting in subsection (1)(a) “€3,000” for “£1,000”,

(b) by substituting in subsection (1)(b) “€15,000,000” for “£10,000,000”,

(c) by inserting in subsection (2) after “environment”, “, and any remediation required,”, and

(d) by substituting in subsection (3) “€1,000” for “£200”, and “€130,000” for “£100,000”.

11.—Section 13(4) of the Act of 1992 is amended—

Amendment of section 13 of Act of 1992.

(a) in paragraph (a), by inserting after “photographs”, “, record such information on data loggers, make such tape, electrical, video or other recordings”,

(b) in paragraph (b), by substituting “, make such copies of documents and records (including records held in electronic form) found therein and take such samples” for “and take such samples”,

(c) in paragraph (c), by substituting “such information,” for “such information, or”,

(d) in paragraph (d), by substituting “(including records held in electronic form) and documents, or” for “and documents,”, and

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.11

(e) by inserting the following paragraph after paragraph (d):

“(e) remove and retain such documents and records (including records held in electronic form) for such period as may be reasonable for further examination.”.

Amendment of section 14 of Act of 1992.

12.—Section 14(1) of the Act of 1992 is amended—

(a) by deleting “or” after paragraph (d),

(b) by substituting in paragraph (e) “development, or” for “development.”, and

(c) by inserting the following paragraph after paragraph (e):

“(f) by such other means as may be prescribed.”.

Amendment of section 63 of Act of 1992.

13.—The following section is substituted for section 63 of the Act of 1992:

“Performance of statutory functions by local authorities.

63.—(1) The Agency may request a local authority to furnish, within a specified period, to it information in relation to the performance by the authority, either generally or in a specific case, of a statutory function of that authority in relation to environmental protection and the authority shall comply with such a request.

(2) The Agency may, having notified the local authority of its intention to do so, carry out an assessment of the performance by a local authority, either generally or in a specific case, of a statutory function of that authority in relation to environmental protection; for that purpose the authority shall comply with any request for the furnishing to the Agency of information, records or reports or the results of any monitoring by the authority, or, in connection with the foregoing, the affording to the Agency of access to any premises occupied by the authority, made by the Agency during the course of such assessment.

(3) Having exercised its powers under subsection (1) or (2), and having considered any information furnished to, or otherwise coming into the possession of, it in consequence of that exercise, the Agency may, with a view to ensuring the satisfactory performance by the local authority concerned of the function in question, do all or any of the following—

(a) issue such advice and recommendations to the authority as it considers necessary,

(b) provide, on such terms and conditions as may be agreed, such assistance, support or guidance as the Agency considers, in consultation with the authority, would be helpful,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(c) without prejudice to any of its powers under this Act or any other enactment, issue to the authority the terms of a direction ('the proposed direction') it proposes to issue, under subsection (5), to the authority requiring it to carry out, cause to be carried out, or arrange for, within a specified period, such action related to the function in question as the Agency considers necessary for the purposes of environmental protection. Pt.2 S.13

(4) The proposed direction shall specify a period within which the local authority may make observations to the Agency in relation to the proposal to make the direction (and the authority may make such observations within that period accordingly).

(5) After the expiration of the period referred to in subsection (4) and consideration of any observations made by the local authority under that subsection, the Agency may confirm, with or without modification, or decide not to confirm its proposal to make the direction concerned, and, in a case where the proposal is confirmed, the Agency shall issue to the authority the direction concerned accordingly and the authority shall comply with the direction within the period specified therein.

(6) Notwithstanding anything in this section, where the Agency is of the opinion that the failure of a local authority to perform in a satisfactory manner a statutory function of the authority in relation to environmental protection is resulting in significant environmental pollution, or in a real and imminent risk of such pollution, the Agency may direct the authority to carry out, cause to be carried out, or arrange for, within a specified period, such action related to the function in question as the Agency considers necessary for the purposes of preventing, limiting, eliminating, abating or reducing such pollution, and the authority shall comply with such a direction.

(7) Where a local authority fails to comply with a direction issued under subsection (5) or (6), the Agency may carry out, cause to be carried out, or arrange for, such action related to the function in question as it considers necessary to ensure compliance with the direction and the costs of such action may be recovered by the Agency from the authority as a simple contract debt in any court of competent jurisdiction.

(8) A local authority shall be guilty of an offence if it—

(a) fails to comply with a request under subsection (1) or (2), or

(b) fails to comply with a direction under subsection (5) or (6).

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.13

(9) The Minister may, with the consent of such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister, make regulations enabling the Agency to exercise, in relation to a public authority (other than a local authority within the meaning of this section) that, in the opinion of the Minister, performs a statutory function in relation to environmental protection, the powers conferred on the Agency by this section in relation to a local authority.

(10) Nothing in this section shall be construed as enabling the Agency to exercise any power or control under this section in relation to the making of a decision on an application for a permission under section 34 of the Act of 2000.

(11) In this section, 'local authority' has the meaning assigned to it by the Local Government Act 2001."

Environmental inspections.

14.—The following section is inserted after section 81 of the Act of 1992:

"Regulations in relation to environmental inspections.

81A.—(1) The Minister may, for the purposes of environmental protection, make regulations providing for the carrying out by the Agency or a local authority of environmental inspections in connection with the performance of a statutory function of the Agency or a local authority in relation to environmental protection.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision for all or any of the following—

- (a) the organisation and carrying out of environmental inspections,
- (b) the preparation of plans for environmental inspections, the procedures to be followed in the preparation of such plans, the scope and contents of such plans, arrangements for their review, and the period in respect of which they are to apply,
- (c) the frequency of site visits and the matters to be examined in the course of such visits,
- (d) the preparation of reports following site visits and the making of the reports publicly available, and the time within which each of those things is to be done,
- (e) the investigation of incidents giving rise, or likely to give rise, to environmental pollution.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(3) In this section—

Pt.2 S.14

‘environmental inspections’ shall be construed in accordance with European Parliament and Council Recommendation of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States ⁽¹⁾;

‘local authority’ has the meaning assigned to it by the Local Government Act 2001;

‘site visit’ means a visit to a site at which there is being, or has been, carried on any activity (whether an activity within the meaning of this Act or not), being a visit which the Agency or the local authority, as the case may be, may make in exercise of the powers conferred on it by any enactment (other than this section).”.

CHAPTER 2

INTEGRATED POLLUTION PREVENTION AND CONTROL UNDER ACT OF
1992

15.—The following Part is substituted for Part IV of the Act of 1992:

Substitution of new Part for Part IV of Act of 1992.

“PART IV

INTEGRATED POLLUTION PREVENTION AND CONTROL

Licences.

82.—(1) In this section ‘previous Part IV’ means this Part as it had effect before the amendment of it by *section 15* of the *Protection of the Environment Act 2003*.

(2) A person shall not carry on an activity, other than an established activity or an activity to which subsection (3) applies, unless a licence or revised licence under this Part is in force in relation to the activity.

(3) (a) A person shall not continue to carry on an activity (other than an established activity) the carrying on of which—

(i) commenced on or after 30 October 1999 but before the commencement of *section 15* of the *Protection of the Environment Act 2003*, and

(ii) was not licensable under the previous Part IV but is licensable under this Part,

unless, within the period of 6 months from the commencement of that section, a licence under this Part is in force in relation to it.

⁽¹⁾ O.J. No. L118, 27.04.2001, p.41.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

- (b) Paragraph (a) is without prejudice to paragraph (c).
- (c) The carrying on of an activity to which paragraph (a) relates shall, in the period before a licence in relation to the activity is granted or refused, be deemed not to have contravened the provisions of this Part provided that, within the period of 6 months referred to in paragraph (a), an application has been made for a licence in respect of that activity and the requirements of regulations made under section 89 in relation to the application for the licence have been complied with by the applicant therefor.
- (4) (a) The Minister may, by order, provide that an established activity of any class specified in the order shall not be carried on, on or after such date as may be specified in the order, unless a licence or revised licence under this Part is in force in relation to the activity.
- (b) Paragraph (a) is in addition to the circumstances specified in section 98 in which a licence is required under that section in respect of an established activity.
- (5) In the period (following the specification of a date by an order under subsection (4)) before a licence in relation to the established activity concerned is granted or refused, the requirements of any other legislation relevant to the activity shall continue to apply.
- (6) Notwithstanding the specification of a date by an order under subsection (4), the carrying on of an established activity to which the order relates shall, in the period before a licence in relation to the activity is granted or refused, be deemed not to have contravened the provisions of this Part provided that, before that specified date, an application has been made for a licence in respect of that activity and the requirements of regulations made under section 89 in relation to the application for the licence have been complied with by the applicant therefor.
- (7) Every licence and revised licence granted under the previous Part IV and in force immediately before the commencement of *section 15* of the *Protection of the Environment Act 2003* shall, without prejudice to subsections (10) and (11), section 92 and the other provisions of this Act, continue in force; for the avoidance of doubt, the provisions of this Part, and not of the previous Part IV, shall apply to such a licence.
- (8) Every application made under the previous Part IV for a licence, or the review of a licence or a revised licence, and every review of a licence or a revised licence commenced by the Agency of its own

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

volition under the said Part IV, and not finally dealt with and determined or completed before the commencement of *section 15* of the *Protection of the Environment Act 2003*, shall continue to be dealt with by the Agency, and be determined or completed by it, as if the application were an application for a licence, or the review of a licence or a revised licence under this Part or, as the case may be, the review were a review commenced by the Agency of its own volition under this Part. Pt.2 S.15

(9) Every order made under subsection (2) (being subsection (2) of this section as it had effect in the previous Part IV) and in force immediately before the commencement of *section 15* of the *Protection of the Environment Act 2003*, shall continue in force as if it were an order made under subsection (4).

(10) The Agency shall, not later than 30 September 2007, have done the following (which, by virtue of this subsection, it has power to do)—

(a) examined the terms of every licence and revised licence to which subsection (7) applies and for the time being in force and determined whether, having regard to the provisions of the Directive and subsection (11), the licence or revised licence requires to be reviewed under this Part or be the subject of the exercise of the powers conferred by subsection (11), and

(b) if—

(i) it has determined that the licence or revised licence requires to be so reviewed, commenced such a review and exercised the powers conferred on it by this Part consequent on such a review, or

(ii) it has determined that the licence or revised licence does not require to be so reviewed and subsection (11) does not apply and, accordingly, that no further action is required, declared in writing that it is of that opinion.

(11) If the bringing into conformity with the Directive of a licence or revised licence to which subsection (7) applies can, in the opinion of the Agency, be achieved by amending one or more of the conditions of the licence (and the making of those amendments will not significantly alter the character of the licence) then, unless the Agency considers it ought nevertheless, in the public interest or because of other special considerations, carry out the review and exercise the powers referred to in subsection (10)(b)(i) in relation to the licence, the Agency shall have made, not later than 30 September 2007, those amendments of the conditions of the licence or revised licence (which, by virtue of this subsection, it has power to do).

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

Determination
of applications
for licences.

83.—(1) Where an application is made to the Agency in the prescribed manner for a licence under this Part it may, subject to section 99A and to compliance with any regulations under section 89, grant the licence subject to such conditions as it considers appropriate or refuse the application.

(2) Unless it considers that it is unnecessary to do so, the Agency shall carry out or cause to be carried out such investigations as it thinks appropriate or as may be prescribed—

- (a) prior to, and for the purposes of determining, any application made to it under this Part,
- (b) as part of the review of a licence or revised licence commenced by the Agency under section 90, or
- (c) for the purposes of section 82(10) or (11),

and may require the applicant or the licensee, as the case may be, to defray or contribute towards the cost of any such investigation.

(3) In considering an application for a licence or a revised licence, or the review of a licence or a revised licence under this Part, the Agency shall have regard to—

- (a) any relevant air quality management plan under section 46 of the Air Pollution Act 1987, or water quality management plan under section 15 of the Local Government (Water Pollution) Act 1977, or waste management plan,
- (b) any relevant noise regulations under section 106,
- (c) any special control area order under section 39 of the Air Pollution Act 1987, in operation in relation to the area concerned,
- (d) the policies and objectives of the Minister or the Government in relation to the prevention, elimination, limitation, abatement or reduction of emissions for the time being extant,
- (e) (i) the environmental impact statement (if any) submitted with the application,
 - (ii) any submissions or observations made to the Agency in relation to the environmental impact statement,
 - (iii) any further information or particulars submitted in relation to the environmental impact statement in compliance with a notice given under regulations under section 89, and

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

- (iv) where appropriate, the comments of other Member States of the European Communities in relation to the effects on the environment of the proposed activity,

Pt.2 S.15

insofar as the statement, submissions, comments, observations, information or particulars relate to the effects on the environment of emissions from the activity,

and

- (f) such other matters related to the prevention, elimination, limitation, abatement or reduction of emissions as it considers necessary.

- (4) (a) In granting a licence or revised licence, the Agency shall, subject to section 86(3), specify in the licence or the revised licence emission limit values for environmental pollutants likely to be emitted from the activity in significant quantities, having regard to their nature and their potential to transfer from one environmental medium to another.

- (b) The Minister may make regulations for the purposes of this subsection.

- (c) Without prejudice to the generality of paragraph (b), regulations under this subsection may specify the principal polluting substances to which the Agency is to have regard in fulfilling its duty under paragraph (a).

- (5) The Agency shall not grant a licence or revised licence for an activity—

- (a) unless it is satisfied that—

- (i) any emissions from the activity will not result in the contravention of any relevant air quality standard specified under section 50 of the Air Pollution Act 1987, and will comply with any relevant emission limit value specified under section 51 of the Air Pollution Act 1987,

- (ii) any emissions from the activity will comply with, or will not result in the contravention of, any relevant quality standard for waters, trade effluents and sewage effluents and standards in relation to treatment of such effluents prescribed under section 26 of the Local Government (Water Pollution) Act 1977,

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

- (iii) any emissions from the activity or any premises, plant, methods, processes, operating procedures or other factors which affect such emissions will comply with, or will not result in the contravention of, any relevant standard including any standard for an environmental medium prescribed under regulations made under the European Communities Act 1972, or under any other enactment,
- (iv) any noise from the activity will comply with, or will not result in the contravention of, any regulations under section 106,
- (v) any emissions from the activity will not cause significant environmental pollution,
- (vi) the best available techniques will be used to prevent or eliminate or, where that is not practicable, generally to reduce an emission from the activity,
- (vii) having regard to Part III of the Act of 1996, production of waste in the carrying on of the activity will be prevented or minimised or, where waste is produced, it will be recovered or, where that is not technically or economically possible, disposed of in a manner which will prevent or minimise any impact on the environment,
- (viii) energy will be used efficiently in the carrying on of the activity,
- (ix) necessary measures will be taken to prevent accidents in the carrying on of the activity and, where an accident occurs, to limit its consequences for the environment and, in so far as it does have such consequences, to remedy those consequences,
- (x) necessary measures will be taken upon the permanent cessation of the activity (including such a cessation resulting from the abandonment of the activity) to avoid any risk of environmental pollution and return the site of the activity to a satisfactory state, and
- (xi) the applicant or licensee or transferee, as the case may be, is a fit and proper person to hold a licence,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

and, where appropriate, the Agency shall attach conditions relating to the matters specified in the foregoing subparagraphs to the licence or revised licence, Pt.2 S.15

and

(b) where an environmental quality standard requires stricter conditions to be attached to the licence or revised licence than would otherwise be determined by reference to best available techniques either—

(i) without attaching to the licence or revised licence conditions of an appropriate kind for the purpose of that standard, or

(ii) where—

(I) the proposed licensee or the licensee proposes, for the purpose of that standard, to take steps that are different from those that would be required by the imposition of conditions under subparagraph (i), and

(II) the Agency is satisfied that those steps, or those steps with such modifications of them as it considers appropriate, are appropriate for the purpose of that standard,

without attaching conditions to the licence or revised licence requiring those steps, or those steps as so modified, to be taken.

(6) The Agency may, before it does any of the following things, namely—

(a) decides whether to—

(i) grant a licence or a revised licence, or

(ii) effect a transfer of a licence or a revised licence,

or

(b) completes a review of a licence or a revised licence,

require the applicant for the licence, the licensee in the case of a review (whether commenced by the Agency of its own volition or not), or the proposed transferee, as the case may be, to—

(i) furnish to it such particulars in respect of such matters affecting his ability to meet the financial commitments or liabilities that the Agency reasonably considers will

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

be entered into or incurred by him in carrying on the activity to which the licence or revised licence relates or will relate, as the case may be, in accordance with the terms of the licence or in consequence of ceasing to carry on that activity as it may specify, and

- (ii) make, and furnish evidence of having so made, such financial provision as it may specify (which may include the entering into a bond or other form of security) as will, in the opinion of the Agency, be adequate to discharge the said financial commitments or liabilities.

(7) A person who, pursuant to a requirement made of him under subsection (6), furnishes to the Agency any particulars or evidence which he knows to be false or misleading in a material respect shall be guilty of an offence.

(8) The Minister may make regulations for the purpose of subsection (6).

(9) Without prejudice to the generality of subsection (8), regulations under that subsection may specify by reference to the type of activity to which the licence or revised licence concerned relates or will relate—

- (a) the nature of the financial provision that the Agency may require a person to make under subsection (6)(ii),
- (b) the matters to be had regard to by the Agency in determining the amount of financial provision that it may require a person to make under subsection (6)(ii).

(10) A person shall not be entitled solely by reason of a licence or revised licence under this Part to make, cause or permit an emission to any environmental medium.

Provisions supplemental to, and consequential on, section 83.

84.—(1) Where a licence or revised licence is required under this Part in respect of an activity, a licence under—

- (a) Part III of the Air Pollution Act 1987,
- (b) section 4 or 16 of the Local Government (Water Pollution) Act 1977, or
- (c) section 171 of the Fisheries (Consolidation) Act 1959,

shall not be granted in relation to such activity.

(2) Where a licence or revised licence has been granted under this Part in respect of an activity, a licence under—

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

- (a) Part III of the Air Pollution Act 1987, Pt.2 S.15
- (b) section 4 or 16 of the Local Government (Water Pollution) Act 1977, or
- (c) section 171 of the Fisheries (Consolidation) Act 1959,

shall cease to have effect in relation to such activity.

(3) It shall be a good defence—

- (a) to a prosecution for an offence under any enactment other than this Part, or
- (b) to proceedings under—
 - (i) section 10 or 11 of the Local Government (Water Pollution) Act 1977,
 - (ii) section 20 of the Local Government (Water Pollution) (Amendment) Act 1990,
 - (iii) section 28, 28A or 28B of the Air Pollution Act 1987,
 - (iv) section 57 or 58 of the Act of 1996, or
 - (v) section 99H,

to prove that the act complained of is authorised by a licence or revised licence granted under this Part.

(4) For the purpose of this Part, a person shall be regarded as a fit and proper person if—

- (a) neither that person nor any other relevant person has been convicted of an offence under this Act, the Act of 1996, the Local Government (Water Pollution) Acts 1977 and 1990 or the Air Pollution Act 1987 prescribed for the purposes of this subsection,
- (b) in the opinion of the Agency, that person or, as appropriate, any person or persons employed by him to direct or control the carrying on of the activity to which the licence or revised licence relates or will relate has or have the requisite technical knowledge or qualifications to carry on that activity in accordance with the licence or revised licence and the other requirements of this Act, and
- (c) in the opinion of the Agency, that person is likely to be in a position to meet any financial commitments or liabilities that the Agency reasonably considers have been, or will be entered into or incurred by him in carrying on the activity to which the licence or revised licence relates or will

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

relate, as the case may be, in accordance with the terms thereof or in consequence of ceasing to carry on that activity.

(5) The Agency may, if it considers it proper to do so in any particular case, regard a person as a fit and proper person for the purposes of this Part notwithstanding that that person or any other relevant person is not a person to whom subsection (4)(a) applies.

(6) The references in subsections (4) and (5) to a relevant person are references to a person whom the Agency determines to be relevant for the purposes of considering the application or review concerned having had regard to any criteria that the Minister by regulations provides it is to have regard to in determining such a matter.

Transboundary
environmental
impacts.

85.—(1) Where—

- (a) an activity in respect of which an application for a licence or the review of a licence or a revised licence has been made to the Agency, or
- (b) an activity the subject of a licence or revised licence a review of which under section 90 the Agency proposes to conduct,

is likely to have a significant adverse effect on the environment in another Member State of the European Communities, the Minister shall inform that other state of the application or the review.

(2) Where another Member State of the European Communities requests the State to provide to it information in relation to an activity licensable under this Part which, in the opinion of the first-mentioned state, is likely to have a significant adverse effect on that state's environment, the Minister shall request the Agency to provide that state with information in relation to the activity.

(3) Where it comes to the notice of the Agency that an activity or a proposed activity in another Member State of the European Communities is likely to have a significant adverse effect on the environment in the State, the Agency shall inform the Minister of the matter and, when requested to do so by him, assess the matter and advise the Minister of the effect on the environment in the State of that activity.

(4) The Minister may by regulations—

- (a) provide for specified procedures to be followed, additional to those specified by or under any other provision of this Act, with respect to—
 - (i) the determination of an application for a licence or for the review of a licence or a revised licence, and

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

- (ii) the review by the Agency, of its own volition, of a licence or a revised licence, Pt.2 S.15

where such licence relates to an activity emissions from which are likely to have a significant adverse effect on the environment in another Member State of the European Communities,

- (b) provide for specified procedures to be followed by persons in the State in circumstances where it comes to the notice of such persons that emissions from an activity in another Member State of the European Communities, being an activity the operation of which requires a permit under the Directive, are likely to have a significant adverse effect on the environment in the State.

(5) Without prejudice to the generality of subsection (4), regulations under that subsection may make provision for the following—

- (a) in respect of an activity to which subsection (1) or (2) applies—
- (i) requiring the Agency to notify the Minister that the activity is being carried on or is proposed to be carried on;
 - (ii) requiring the Agency to submit information to the Minister regarding the activity;
 - (iii) requiring the Agency to provide information to the other state concerned, its competent authority for the purposes of the Directive (in this paragraph referred to as the ‘competent authority of that state’) or other persons in that state;
 - (iv) requiring the Agency to consult with the competent authority of that state;
 - (v) requiring the Agency to take into consideration any comments from the state concerned, the competent authority of that state or any person in that state;
 - (vi) enabling the attachment of conditions to a licence or revised licence in order to reduce or eliminate the possible adverse effects on the environment of another Member State of the European Communities;
 - (vii) extending the period in which a decision is to be made under this Act or any other step is to be taken;

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

(viii) requiring the Agency to inform the other state concerned of the decision under this Act and to provide to it information in relation to the decision;

(b) in respect of an activity to which subsection (3) applies—

(i) requiring the Agency to request the competent authority, for the purposes of the Directive, of the other state concerned (in this paragraph referred to as the ‘competent authority of the other state concerned’) to provide to it information regarding the activity or proposed activity;

(ii) requiring the Agency to consult with the competent authority of the other state concerned;

(iii) requiring the Agency to publish notices in relation to information provided to it pursuant to a request referred to in subparagraph (i);

(iv) requiring the Agency to invite comments in relation to information as aforesaid and to forward such comments to the competent authority of the other state concerned in relation to the activity or proposed activity;

(v) enabling the Agency to make submissions or observations to the competent authority of the other state concerned in relation to the activity or proposed activity.

(6) The Minister may by regulations provide that this section shall apply to a Member State of the EEA as it applies to a Member State of the European Communities.

(7) In subsection (6) ‘Member State of the EEA’ means a state that is a contracting party to the Agreement on the European Economic Area signed at Oporto on the 2nd day of May, 1992, as amended for the time being.

Conditions attached to a licence.

86.—(1) Without prejudice to the generality of section 83(1), conditions attached to a licence or revised licence granted under this Part—

(a) shall—

(i) in accordance with section 83(4) and subject to subsection (3), include emission limit values for environmental pollutants likely to be emitted

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

from an activity in significant quantities, Pt.2 S.15

- (ii) specify requirements for the purpose of minimising pollution, including minimising the occurrence of pollution over long distances or in the territory of other states, and to ensure a high level of protection for the environment as a whole,
- (iii) if necessary, specify requirements concerning protection of the soil and groundwater, and the management of waste generated by an activity,
- (iv) specify appropriate requirements for the purpose of monitoring emissions, including the taking and analysis of samples, the making of measurements in accordance with specified methodologies and frequencies, the evaluation of the results of such monitoring in accordance with specified procedures and the keeping of records and the furnishing of information to the Agency or to any other specified person in relation to such monitoring and evaluation (and such requirements may include a requirement that the licensee confirm whether or not he has complied with the conditions attached to the licence or revised licence and, if he has not complied with any such condition, a requirement that he indicate in what respect he has not complied with the condition),
- (v) specify the measures to be taken other than in the circumstances that prevail during normal operating circumstances and, in particular, measures to be taken if there is a breakdown of any plant or other equipment or procedures which may affect emissions from the activity, including measures to be taken in relation to start-up, shutdown, leaks, malfunctions or momentary stoppages,
- (vi) specify that the Agency is to be informed without delay of any incident or accident significantly affecting the environment, and
- (vii) specify the measures to be taken, including as appropriate the duration of such measures, on and following the permanent cessation of an activity (including such a cessation resulting from the abandonment of the activity);

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

- (b) may (to the extent that the matter is not provided for by a condition under paragraph (a))—
- (i) specify as appropriate the nature, composition, temperature, volume, level, rate, method of treatment and location of an emission,
 - (ii) specify the periods during which an emission may, or may not, be made,
 - (iii) specify limits to the effects of an emission,
 - (iv) specify the concentration of an environmental pollutant in an environmental medium or a deposition or discharge rate which shall not be exceeded,
 - (v) specify any matters relating to the design, construction or dimensions of pipes, chimneys, flues, stacks or other outlets through which an emission is to be made,
 - (vi) specify the means (including the provision, operation, maintenance and supervision of plant and other facilities and the use of specified procedures or codes of practice) to be used for controlling an emission,
 - (vii) specify requirements or limits in relation to the amount or composition of any substance produced by or utilised in the activity in any period,
 - (viii) require the provision, operation and maintenance of meters, gauges, man-holes, inspection chambers and other apparatus and other means for monitoring the nature, extent and effects of emissions,
 - (ix) specify the type of fuel to be, or not to be, used, as the case may be,
 - (x) specify measures to be taken after an emission, which is not in accordance with other conditions attached to the licence or revised licence, has taken place,
 - (xi) specify requirements in relation to the recovery or disposal of waste arising from the activity on land other than land on which the installation is situate and whether in the ownership or occupation of the licensee or not (including requirements with respect

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

to the furnishing of information to the Agency in relation to the land for the time being used, or land proposed to be used, for the purpose of such recovery or disposal), Pt.2 S.15

- (xii) require the making of payments to the Agency in relation to costs incurred in relation to determining whether there has been compliance with the conditions attached to the licence or revised licence or not and in relation to steps taken for the purpose of the monitoring of, or otherwise in relation to, emissions,
- (xiii) require the payment to the Agency of a charge or charges prescribed under or calculated in accordance with section 99,
- (xiv) require the payment to the sanitary authority concerned of a charge in relation to a discharge to a sewer as provided for under section 99E,
- (xv) specify such other conditions or requirements, including requirements in relation to environmental management systems, which the Agency considers necessary for the purposes of the Directive,
- (xvi) specify the latest date by which a condition attached to the licence or revised licence is to be complied with,
- (xvii) provide for derogations of a temporary nature from the requirements of subsections (1)(a)(ii) and (3)(c) if a rehabilitation plan, submitted to and approved by the Agency, is implemented in order to ensure that the said requirements will be complied with within 6 months from the date of its first being implemented and the plan will lead to a reduction of emissions,
- (xviii) specify, in cases where there are likely to be significant emissions to the environment, appropriate requirements for the purpose of monitoring the ambient environment, including the taking and analysis of samples, the making of measurements in accordance with specified methodologies and frequencies, the evaluation of the results of such monitoring in accordance with specified procedures and the keeping of records and the furnishing of information to the Agency or to any other specified person in relation to such monitoring and evaluation.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

(2) In determining the conditions to be attached to a licence or a revised licence in respect of an activity to which paragraph 6.1 or 6.2 of the First Schedule applies, the Agency shall—

(a) for the purposes of subsection (1)(a)(i), take account of practical considerations appropriate to that activity,

(b) for the purposes of subsection (1)(a)(iv), take account of costs and benefits.

(3) (a) Emission limit values for substances shall, save where the Agency directs otherwise, apply at the point where the emissions leave the installation where the activity is being carried on, any dilution being disregarded in making any determination of them.

(b) Emission limit values may, where appropriate, be supplemented or replaced by equivalent parameters or technical measures.

(c) Without prejudice to section 83(5)(b), emission limit values, and equivalent parameters and technical measures shall be based on the best available techniques, without specifying the use of any technique or specific technology, but taking into account the technical characteristics of the activity concerned, its geographical location and the local environmental conditions.

(4) Without prejudice to section 83(5)(b), the Minister may by regulations, after consultation with any other Minister of the Government who, in the opinion of the Minister, is concerned and the Agency—

(a) require either—

(i) the Agency, in the exercise of its powers under this Part, to attach, or

(ii) the Agency, in the exercise of those powers, to consider the attachment of,

the conditions referred to in subparagraph (i) or (ii), as appropriate, of paragraph (b) to a licence or a revised licence granted by it in respect of a specified class or classes of activity (and, accordingly, such conditions shall or may, as appropriate, be attached in place of the conditions that could otherwise be attached in accordance with the preceding provisions of this section),

(b) specify the conditions that are to be the subject of—

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(i) the requirement under paragraph Pt.2 S.15
(a)(i), and

(ii) the requirement under paragraph
(a)(ii),

and, in each case, those conditions shall comply
with Article 9(8) of the Directive,

(c) provide for any matters consequential on, or
incidental to, the foregoing,

(d) in addition to conditions that may be, or are
required to be, attached to a licence or
revised licence by reason of the foregoing
or any other provision of this Part, enable
the Agency to attach to a licence or
revised licence in respect of a specified
class or classes of activity such conditions
as the Agency considers appropriate in
the circumstances.

(5) Nothing in subsection (4) shall be construed as
enabling the Minister to exercise any power or control
in relation to the performance by the Agency,
with respect to a particular licence, of its functions
under this Part.

(6) A person who fails to comply with any condition
attached to a licence or revised licence shall be
guilty of an offence.

(7) The Agency, or the sanitary authority, as the
case may be, may recover the amount of any payment
due to it arising from a condition attached to a licence
or revised licence as a simple contract debt in any
court of competent jurisdiction.

(8) Where a permission under section 34 of the Act
of 2000 has been granted or an application has been
made for such permission in relation to development
comprising or for the purposes of an activity, the
Agency—

(a) may consult with the planning authority in
whose functional area the activity is or
will be situate in relation to any develop-
ment which is necessary to give effect to
any conditions to be attached to a licence
or revised licence and which the Agency
considers is not the subject of a per-
mission or an application for a permission
under section 34 of the Act of 2000, and

(b) may attach to the licence or revised licence
such conditions related to the above-men-
tioned development as may be specified
by the planning authority for the purposes
of the proper planning and sustainable
development of the area or stricter con-
ditions as the Agency may consider neces-
sary for the prevention, limitation, elimin-
ation, abatement or reduction of
emissions.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

(9) Where a planning authority is consulted in accordance with subsection (8)(a), the Agency may specify a period (which period shall not in any case be less than 3 weeks from the date of the request) within which observations must be made.

(10) The Agency may, at any time after expiration of the period specified by it under subsection (9) for making observations, make its decision on the application or review.

(11) Notwithstanding the requirements of Part III of the Act of 2000, works consisting of, or incidental to, the carrying out of development referred to in paragraph (a) of subsection (8) in respect of which conditions have been attached under paragraph (b) of that subsection to the licence or revised licence concerned shall be exempted development within the meaning, and for the purposes, of the Act of 2000.

Processing of applications for licences or reviews of licences.

87.—(1) Without prejudice to the requirements of any regulations under section 85 or 89—

(a) where an application is to be made to the Agency for a licence under section 83, or the review of a licence or a revised licence under section 90, the applicant shall notify in writing the planning authority in whose functional area the activity is or will be situate and such other person (if any) as may be prescribed, and shall publish or give such notices as may be prescribed under section 89, and

(b) where the Agency proposes to review a licence or revised licence under section 90 of its own volition, it shall publish or give such notice as may be prescribed under section 89, and shall notify in writing the licensee and the planning authority in whose functional area the activity is situate and such other person (if any) as may be prescribed, of its intention to review the licence or revised licence.

(2) Before making its decision under section 83 on an application for a licence, or under section 90 on the review of a licence or revised licence (including such a review conducted by it of its own volition), the Agency shall notify—

(a) the planning authority in whose functional area the activity is or will be situate,

(b) the applicant or the licensee, as the case may be,

(c) any person who made a written submission in relation to the application or the review, and

(d) such other persons as may be prescribed, Pt.2 S.15

and that notification shall indicate the manner in which the Agency proposes to determine the application or the review and, where it is proposed to grant a licence or revised licence, specify where a copy of the proposed licence or proposed revised licence may be obtained.

(3) A notification provided for under subsection (2) shall, without prejudice to the requirements of any regulations under section 85, be given within the period of 8 weeks beginning on the date of receipt by the Agency of the application for a licence under section 83 or for the review of a licence or revised licence under section 90 or, in the case of a review of a licence by the Agency under section 90 of its own volition—

(a) unless paragraph (b) applies, on the date of publication of the notice under subsection (1)(b), in relation to the review,

(b) if the Agency has required under section 90(7) documents, particulars or other information to be furnished, on the date on which that requirement is complied with or, if that requirement is not complied with within the period specified in the requirement in that behalf, on the date immediately following the expiry of that period.

(4) The Agency shall, in relation to an application for a licence, or the review of a licence or revised licence—

(a) in case no objection is taken against the proposed determination as indicated under subsection (2), or

(b) in case an objection or objections is or are taken against the proposed determination as indicated under subsection (2) and the objection or objections is or are withdrawn,

make its decision in accordance with the proposed determination as indicated under subsection (2) and, where it is proposed to grant a licence or revised licence, grant the licence or revised licence as soon as may be after the expiration of the appropriate period.

(5) Any person may, subject to compliance with the requirements of any regulations under sections 89 and 99A at any time before the expiration of the appropriate period, object to the proposed determination as indicated under subsection (2), and shall include with the objection the grounds for the objection.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

(6) (a) A person making an objection under subsection (5) may request an oral hearing of the objection.

(b) (i) A request for an oral hearing of an objection shall be made in writing to the Agency and shall be accompanied by such fee (if any) as may be payable in respect of such request in accordance with regulations under section 99A.

(ii) A request for an oral hearing of an objection which is not accompanied by such fee (if any) as may be payable in respect of such request shall not be considered by the Agency.

(c) A request for an oral hearing of an objection shall be made before the expiration of the appropriate period, and any request received by the Agency after the expiration of that period shall not be considered by it.

(7) An objection, or a request for an oral hearing under subsection (6), shall be made—

(a) by sending the objection or request by prepaid post to the headquarters of the Agency, or

(b) by leaving the objection or request with an employee of the Agency, at the headquarters of the Agency, during office hours, or

(c) by such other means as may be prescribed.

(8) (a) Where a request for an oral hearing of an objection is made in accordance with subsection (7), or otherwise where an objection has been made, the Agency shall have an absolute discretion to hold an oral hearing in relation to the objection and the related matters and, if it decides to hold such a hearing, it shall give notice in writing of that decision to—

(i) the applicant, or in the case of a review, the licensee,

(ii) the local authority in whose functional area the activity the subject matter of a licence application or review will be or is situated,

(iii) any person who requested an oral hearing, and

(iv) such other person as may be prescribed.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(b) Where the Agency decides not to hold an oral hearing under this subsection, it shall give notice in writing of its decision and of the reasons for the decision to the person who requested the oral hearing. Pt.2 S.15

(9) It shall be a duty of the Agency to ensure that a decision by it to hold an oral hearing, and a decision by it on the application for a licence or on the review referred to in subsection (2) of a licence or revised licence whether or not an oral hearing has been held, shall be given as expeditiously as may be and for that purpose the Agency shall take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the consideration of objections.

(10) A person shall not by any application for judicial review or in any other legal proceedings whatsoever question the validity of a decision of the Agency to grant or refuse a licence or revised licence (including a decision of it to grant or not to grant such a licence on foot of a review conducted by it of its own volition) unless the proceedings are instituted within the period of 8 weeks beginning on the date on which the licence or revised licence is granted or the date on which the decision to refuse or not to grant the licence or revised licence is made.

(11) The provisions of this section shall not, to such extent as may be prescribed, apply to an application for a licence, or to the review (including a review by the Agency of its own volition) of a licence or revised licence, to discharge to a sewer.

(12) In this section, 'the appropriate period' means the period of 28 days beginning on the day on which notification is sent under subsection (2) in respect of the matter concerned.

(13) When calculating the appropriate period or any other time limit under this Act or in any regulations made under this Act, the period between the 24th day of December and the 1st day of January, both days inclusive, shall be disregarded.

Oral hearing
and written
report.

88.—(1) (a) An oral hearing provided for in section 87 shall be conducted by a person or persons appointed for that purpose by the Agency.

(b) Subject to any regulations under subsection (5), the manner in which a hearing aforesaid is conducted shall be at the discretion of the person or persons appointed under this subsection but it shall be the duty of that person or those persons, as the case may be, to ensure that the hearing is conducted without undue formality.

(2) The person or persons appointed under subsection (1) may take evidence on oath or affirmation at

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

the oral hearing and for that purpose may administer oaths or affirmations, and a person giving evidence at such a hearing shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(3) The person or persons appointed under subsection (1) shall make a written report on the objection or the objections made under section 87(5) and the hearing to the Agency and shall include in the report a recommendation relating to the grant or refusal of a licence or a revised licence and, where appropriate, the conditions to be attached to the licence or revised licence.

(4) The Agency shall consider a report made under subsection (3) before making a decision on the application for a licence, or on the review of a licence or revised licence.

(5) The Minister may make regulations in relation to the conduct of an oral hearing and the procedures at such a hearing.

Regulations
regarding
licences.

89.—(1) The Minister may make regulations in relation to—

- (a) applications for the grant of licences, or for the review of licences or revised licences,
- (b) the review of licences or revised licences by the Agency of its own volition, and
- (c) the granting of licences or revised licences.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision for all or any of the following—

- (a) the form and content of application and of licence,
- (b) the time within which an application for a licence shall be made relative to publication of a notice under section 87(1) and relative to an application for a permission under Part III of the Act of 2000,
- (c) the publication by applicants, licensees or the Agency of such notices as may be specified,
- (d) specifying the submissions, plans, documents and other information and particulars, including environmental impact statements, to be forwarded to the Agency or other specified person by applicants, licensees, objectors, or other persons within such periods as may be specified,
- (e) requiring applicants, licensees, objectors or other persons to furnish to the Agency or any other specified person, within such period as may be specified, such

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

additional information or particulars relating to applications, including environmental impact statements, or reviews as the Agency may request, Pt.2 S.15

- (f) without prejudice to the requirements of any regulations under section 85, extending the period within which a notification to which section 87(3) refers shall be published—
 - (i) to 8 weeks beginning on the date on which a request for additional information, particulars or evidence under paragraph (e) or (g) is complied with,
 - (ii) to any period with the consent of the applicant or licensee,
 - (iii) to 8 weeks beginning on the day on which any exemption under section 172(3)(a) of the Act of 2000 in relation to development to which the application relates has been granted by An Bord Pleanála,
 - (g) requiring the production, within such period as may be specified, of such evidence as the Agency may request for the purposes of verifying any information and particulars given by an applicant, licensee, objector or other person,
 - (h) procedures to be followed by the Agency in the processing of applications or reviews, including procedures for consultation in relation to an environmental impact statement whether or not an oral hearing is held, and the times within which such procedures shall be carried out,
 - (i) the publishing of decisions on applications or reviews and the reasons therefor and of any specified documents or other information in relation thereto, or
 - (j) requiring an applicant or licensee to defray or contribute towards the cost of any investigation carried out, caused to be carried out, or arranged for, by the Agency in relation to an application or review.
- (3) (a) A person who in relation to an application for a licence, or to a review of a licence or revised licence, under this Part, makes a statement in writing which to his knowledge is false or misleading in a material respect, shall be guilty of an offence.
- (b) Where a person is convicted of an offence under this subsection, any licence or revised licence granted to that person, or to some other person on whose behalf the

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

convicted person was authorised to act, consequent on the application or review in relation to which the information was furnished, shall stand revoked from the date of the conviction.

(4) Regulations under this section may contain—

- (a) such incidental, supplementary, consequential and transitional provisions as appear to the Minister to be necessary for the purposes or in consequence of, or to give full effect to, the regulations,
- (b) such provisions as appear to the Minister to be necessary for the purposes or in consequence of the requirements of Council Directive 85/337/EC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment¹.

(5) A defrayment or contribution the payment of which is required under regulations made under this section shall be payable on demand and, in default of being so paid, shall be recoverable as a simple contract debt in any court of competent jurisdiction.

Review of
licences.

90.—(1) The Agency—

- (a) shall, subject to subsections (4) and (5) and section 99I(7), either periodically or after such period as may be prescribed (but not before the expiry of 3 years from the date on which the licence or revised licence was granted), review a licence or revised licence, and
- (b) may review a licence or revised licence at any time with the consent or on the application of the licensee.

(2) As soon as may be after it has completed a review under this section, the Agency may—

- (a) in the case of a licence or revised licence—
 - (i) refuse to grant a revised licence, or
 - (ii) amend the licence by altering any or all of the conditions thereto (and a licence that is so amended is referred to in this Act as a ‘revised licence’), or
- (b) in the case of—
 - (i) a licence, grant to the licensee a licence (in this Act also referred to as a ‘revised licence’) the conditions of which are, in such respects as the

¹ O.J. No. L175, 05.07.1985, p.40.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

Agency thinks appropriate, different from those of the first-mentioned licence and the revised licence shall have effect in lieu of the first-mentioned licence, Pt.2 S.15

- (ii) a revised licence, exercise, in relation to it, a like power to that which it may exercise under subparagraph (i) in relation to a licence and a licence granted under this subparagraph is in this Act also referred to as a 'revised licence' and such a licence shall have effect in lieu of the first-mentioned revised licence.

(3) The reference where it first occurs in subparagraph (ii) of subsection (2)(b) to a revised licence includes—

- (a) a reference to a licence or revised licence in relation to which the powers under subsection (2)(a)(ii) have been exercised, and
- (b) a reference to a revised licence previously granted or, as the case may be, last previously granted under subparagraph (ii) of subsection (2)(b).

(4) Notwithstanding anything in subsection (1), a licence or revised licence—

- (a) shall be reviewed by the Agency if the Agency considers—
 - (i) that emissions from the activity to which the licence or revised licence relates are, or are likely to be, of such significance that the existing emission limit values, or equivalent parameters or technical measures specified in the licence or revised licence need to be reviewed or new such values, parameters or measures, as the case may be, need to be specified in the licence or revised licence,
 - (ii) that substantial changes in best available techniques make it possible to reduce emissions significantly from the said activity without imposing excessive costs,
 - (iii) that the operational safety of the said activity requires techniques, other than those currently being used in respect of it, to be used, or
 - (iv) that such a review is required by virtue of any act adopted by an institution of the European Communities or any agreement entered into by the State, or any enactment passed or made

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

after the licence or revised licence
was granted or last reviewed under
this section,

(b) may be reviewed by the Agency if—

- (i) there is a proposal to make a substantial change to the nature or extent of an emission,
- (ii) there has been a substantial change, which could not have reasonably been foreseen when the licence or revised licence was granted, in the condition of the environment or an environmental medium in the area in which the activity to which the licence or revised licence relates is situate,
- (iii) evidence, which was not available when the licence or revised licence was granted, has become available, or a new standard is prescribed relating to the contents or nature of the emission concerned or the effects of the emission on the environment.

(5) If—

- (a) a special control area order under section 39 of the Air Pollution Act 1987, affecting any emission from the activity to which the licence relates comes into operation in relation to the area in which the activity is situate,
- (b) an air quality standard is specified in regulations made under section 50 of the Air Pollution Act 1987, in relation to any emission from the activity to which the licence relates,
- (c) a relevant emission limit value is specified in regulations under section 51 of the Air Pollution Act 1987, in relation to any emission from the activity to which the licence relates,
- (d) regulations under section 26 of the Local Government (Water Pollution) Act 1977, relate to an effluent the discharge of which is authorised by such a licence or to the waters to which such effluent is discharged,
- (e) a relevant standard is prescribed under regulations made under the European Communities Act 1972, or any other enactment, or
- (f) relevant regulations under section 106 are made in relation to any noise emissions

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

from the activity to which the licence Pt.2 S.15
relates,

the Agency shall, where necessary and notwithstanding anything in subsection (1), as soon as may be after the regulations are made or the order comes into operation, as the case may be, review the licence or revised licence.

(6) In the review of a licence or revised licence under this section, the Agency shall have regard to—

- (a) any change in environmental quality in the area in which the activity to which the licence or revised licence relates is situate, and
- (b) the development of technical knowledge in relation to environmental pollution and the effects of such pollution,

since the licence or revised licence was granted or last reviewed.

(7) For the purposes of a review under this section, the Agency may, by notice served on the licensee, require the licensee to furnish to it, within such period as it specifies in the requirement, such documents, particulars or other information as it so specifies.

Register of
licences.

91.—(1) The Agency shall maintain a register (in this Act referred to as the ‘register of licences’) for the purposes of this Part and shall make therein all such entries and additions as may, from time to time, be prescribed.

(2) The register of licences shall be kept at the headquarters of the Agency and shall be made available for inspection by any person free of charge during office hours.

(3) When a request is made to the Agency for a copy of an entry in the register of licences, the copy shall be issued to the person requesting it on the payment by him to the Agency of such fee (if any) as the Agency shall fix not exceeding the reasonable cost of making the copy.

(4) Every document purporting to be a copy of an entry in the register of licences and purporting to be certified by an officer of the Agency to be a true copy of the entry shall, without proof of the signature of the person purporting so to certify or that he was such officer, be received in evidence in any legal proceedings and shall, unless the contrary is shown, be deemed to be a true copy of the entry and be evidence of the terms of the entry.

(5) Evidence of an entry in the register of licences may be given by production of a copy thereof certified pursuant to this section and it shall not be necessary to produce the register of licences itself.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

(6) Every entry in the register of licences relating to an activity in the functional area of a planning authority shall be notified to that planning authority by the Agency as soon as may be and the planning authority shall maintain a copy of these notifications in a register which shall be made available for inspection by any person free of charge during office hours.

Limit on duration of licence.

92.—(1) Where, in the opinion of the Agency, the carrying on of the activity to which a licence or revised licence relates has not been substantially commenced within the period of 3 years beginning on the date on which the licence was granted or, as may be appropriate, the period referred to in paragraph (a) or (b) of subsection (2), and the Agency notifies the licensee of that opinion, then that licence shall cease to have effect on the giving of that notice.

(2) The Agency may, having regard to the nature of the activity to which a licence or revised licence to be granted or granted by it will relate or relates, as the case may be, and any arrangements necessary to be made or made in connection with the carrying on of the activity and any other relevant consideration—

(a) specify for the purposes of subsection (1) a period of more than 3 years beginning on the date on which the licence or revised licence is to be granted,

(b) in the case of a licence or revised licence granted by it, on an application which complies with such requirements (if any) as may be prescribed being made by the licensee in that behalf, extend for the purposes of subsection (1) the period referred to in that subsection or specified by it under paragraph (a), as may be appropriate.

(3) Where the activity to which a licence or revised licence relates ceases to be carried on then, unless the activity is resumed within the period of 3 years beginning on the date of that cessation, the licence shall cease to have effect on the expiry of the said period.

(4) The cesser of a licence's or a revised licence's effect under this section shall in no way affect or diminish such conditions, requirements or obligations applying to or falling on the licensee as are specified in or arise under the licence.

Benefit of licences.

93.—Where a licence or revised licence is granted under this Part, the grant of the licence or revised licence shall, except as may be otherwise provided by the licence or revised licence and subject to section 94 and the other provisions of this Part, enure for the benefit of the activity and of all persons for the time being interested therein.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

Transfer of
licences.

94.—(1) A licence or revised licence under this Part may be transferred from the licensee to another person in accordance with this section. Pt.2 S.15

(2) Where the licensee desires that his licence or revised licence be transferred to another person (hereafter in this section referred to as ‘the proposed transferee’), the licensee and the proposed transferee shall jointly make an application to the Agency requesting that such a transfer be effected by the Agency.

(3) An application under subsection (2) shall be made in such form and include such information as may be prescribed and shall be accompanied by such fee as may be prescribed under section 99A and by the licence or revised licence concerned.

(4) The Agency may require the provision of such further information by the licensee or the proposed transferee as it considers appropriate for the purposes of dealing with an application made by them under this section.

(5) If, on consideration of an application under subsection (2), and any relevant information provided in respect thereof, the Agency is satisfied—

- (a) that the proposed transferee would, if he were an applicant for the licence, be regarded by it as a fit and proper person to be granted under section 83 a like licence to the licence or revised licence concerned,
- (b) that the proposed transferee has complied with any requirements under section 83(6), and
- (c) regarding such other matters as may be prescribed,

it shall effect a transfer of the licence or revised licence to the proposed transferee in such manner as may be prescribed.

(6) A person to whom a licence or revised licence is transferred under this section shall be deemed to have assumed and accepted all liabilities, requirements and obligations provided for in or arising under the licence or revised licence, regardless of how and in respect of what period, including a period prior to the transfer of the licence or revised licence, they may arise.

Surrender of
licences.

95.—(1) A licence or a revised licence granted under this Part may be surrendered by the licensee, but only if the Agency accepts the surrender.

(2) A licensee who desires to surrender his licence or revised licence shall make an application for that

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

purpose to the Agency, in such form, giving such information and accompanied by such evidence as may be prescribed and accompanied by such fee as may be prescribed under section 99A.

(3) Upon receiving an application for the surrender of a licence or revised licence, the Agency—

(a) shall inspect the installation at which the activity to which the licence or revised licence relates is carried on ('the relevant installation'), and

(b) may require the applicant to furnish to it such further information or evidence as it may specify.

(4) For the purpose of subsection (3), the Agency may, by notice in writing served on the person, require a person who has made an application to it under subsection (2) to carry out, or arrange to have carried out, in such manner as may be specified in the notice, such monitoring, sampling and investigations, in addition to those which may be required under a condition attached to the licence or revised licence concerned, as the Agency considers necessary, and so specifies, and any requirement so made shall be regarded as a condition attaching to that licence or revised licence.

(5) Where the Agency proposes to accept the surrender of a licence or a revised licence, it shall consult with such persons and in accordance with such procedures as may be prescribed.

(6) Having regard to such information or evidence as is furnished to it under paragraph (b) of subsection (3) and to the results of an inspection under paragraph (a) of that subsection and of any monitoring, sampling and investigation required to be carried out under subsection (4), the Agency shall assess the condition of the relevant installation, so far as that condition is the result of the use of the installation for an activity, (whether the activity, the subject of the licence concerned or, if the installation, in contravention of the licence, was used for the carrying on of any other activity within the meaning of this Act, that activity) and the likely effect on the environment or any environmental medium of any emissions from the relevant installation that may occur.

(7) If the Agency is satisfied that the condition of the relevant installation is not causing or likely to cause environmental pollution and the site of the activity is in a satisfactory state, it shall accept the surrender of the licence or revised licence, but otherwise shall refuse to accept the surrender of the licence or revised licence.

(8) A decision of the Agency under subsection (7) shall be conveyed to—

(a) the applicant concerned,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(b) the local authority in whose functional area Pt.2 S.15
the activity, the subject matter of the
licence or revised licence, has been carried
on, and

(c) any person concerned that it has consulted
under subsection (5),

by notice in writing, as soon as may be after the
decision is made and where the decision is a decision
to accept the surrender of a licence or revised licence,
that licence or revised licence shall cease to have
effect upon the service of the said notice.

(9) The making of an application for the surrender
of a licence or revised licence under this section, or
the cesser of the activity to which a licence relates,
shall in no way affect or diminish such conditions,
requirements or obligations applying to or falling on
the licensee as are specified in or arise under the
licence or revised licence.

Amendments of
licence of
clerical or
technical nature.

96.—(1) The Agency may amend a licence or
revised licence for the purposes of—

(a) correcting any clerical error therein,

(b) facilitating the doing of any thing pursuant
to a condition attached to the licence
where the doing of that thing may reason-
ably be regarded as having been contem-
plated by the terms of the condition or the
terms of the licence taken as a whole but
which was not expressly provided for in
the condition, or

(c) otherwise facilitating the operation of the
licence and the making of the amendment
does not result in the relevant require-
ments of section 83(5) ceasing to be
satisfied.

(2) None of the requirements of section 90 or of
any other provision of this Part shall apply to the
exercise of the power under subsection (1) but the
Agency shall, where appropriate, consult with the
licensee before exercising the power.

(3) The Agency shall, as soon as may be after the
exercise of the power under subsection (1), notify par-
ticulars of the amendment effected by that exercise to
each person who made an objection to the Agency
under section 87(5) in relation to any exercise of the
powers under section 83 or 90 as respects the licence
or revised licence concerned.

Revocation or
suspension of
licence in certain
circumstances.

97.—(1) The Agency may revoke, or suspend the
operation of, a licence or revised licence if it appears
to the Agency that—

(a) the licensee no longer satisfies the require-
ments specified in section 84(4) for his
being regarded as a fit and proper person,
and

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

(b) the circumstances occasioning his no longer satisfying those requirements are, in the opinion of the Agency, of such seriousness as to warrant the revocation of the licence or the suspension of its operation.

(2) References in this Act to the cessation of the activity to which a licence or revised licence relates shall be construed as including references to such a cessation in consequence of the revocation of the licence.

(3) None of the requirements of section 90 or of any other provision of this Part shall apply to the exercise of the power under subsection (1) but where the Agency proposes to exercise the power it shall afford the licensee and any other person whom it considers ought to be afforded such an opportunity an opportunity to make representations to it in relation to the matter.

(4) The cesser of a licence's or a revised licence's effect under this section shall in no way affect or diminish such conditions, requirements or obligations (being conditions, requirements or obligations that apply to, or fall on, the licensee by virtue of the licence) as may be specified by the Agency in exercising the powers under this section.

(5) The licensee or the former licensee may appeal to the High Court against a revocation or suspension of a licence or revised licence under this section and, on the hearing of the appeal, the High Court may confirm or annul the revocation or suspension or, in the case of a suspension, vary the period for which the suspension shall operate.

(6) The Minister may by regulations make such incidental, consequential or supplementary provision as may appear to him to be necessary to give full effect to any of the provisions of this section.

Alterations of activity.

98.—(1) The person in charge of—

(a) an activity in respect of which a licence or revised licence is in force or required under this Part, or

(b) an established activity which for the time being is not required to be licensed under this Act,

shall give notice in writing to the Agency of any proposal to effect any alteration to, or reconstruction in respect of, the activity if such alteration or reconstruction would, or is likely to, change or increase emissions from the activity or cause new emissions therefrom.

(2) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration or reconstruction referred to in subsection (1)

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

which would not, in the opinion of the Agency, substantially change or increase emissions from the activity or cause significant new emissions therefrom, the Agency, notwithstanding any other provision of this Act, may— Pt.2 S.15

- (a) if there is a licence or revised licence in force in respect of the activity concerned, review that licence under section 90 and exercise the powers under paragraph (a) or (b) of subsection (2) of that section in relation to it,
- (b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence, or
- (c) determine that no further action is necessary in relation to the matter,

and, save in a case falling within paragraph (c), the person in charge shall not effect the alteration or reconstruction unless and until the powers under paragraph (a) or (b) of that subsection (2) have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows, the alteration or reconstruction to be effected.

(3) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration or reconstruction referred to in subsection (1) which would, in the opinion of the Agency, substantially change or increase emissions from the activity or cause significant new emissions therefrom, the Agency, notwithstanding any other provision of this Act, shall—

- (a) if there is a licence or revised licence in force in respect of the activity concerned, either review that licence under section 90 and exercise the powers under paragraph (a) or (b) of subsection (2) of that section in relation to it or direct the person in charge to apply for a new licence in substitution for that licence, or
- (b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence,

and the person in charge shall not effect the alteration or reconstruction unless and until the powers under paragraph (a) or (b) of that subsection (2) have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows, the alteration or reconstruction to be effected.

(4) Where the Agency decides pursuant to subsection (2) or (3) to review a licence or revised licence, or to direct a person to apply for a new licence or, as the case may be, a licence, the Agency shall—

- (a) within 1 month of the receipt by it of the notice under this section, or the date on which the Agency otherwise becomes

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

aware of the matters referred to at subsection (1), inform the person accordingly, and

- (b) proceed to complete the review of the licence or revised licence and exercise the appropriate powers under subsection (2) of section 90 in relation to it, or determine the application for a new licence or licence, as the case may be.

(5) Not later than the end of 3 months from the commencement of *section 15* of the *Protection of the Environment Act 2003*, a person in charge of an established activity shall, if—

- (a) an alteration or reconstruction in respect of that activity was effected on or after 30 October 1999 but before the commencement of that *section 15*,
- (b) that alteration or reconstruction was not required to be notified to the Agency under section 92(1) of the previous Part IV, and
- (c) that alteration or reconstruction has changed or increased, or is likely to change or increase, emissions from that activity or is likely to cause new emissions therefrom,

give notice in writing of that alteration or reconstruction to the Agency and such a notice shall be dealt with by the Agency as if it were a notice received by it under subsection (1).

(6) If a notice is given to the Agency under and in accordance with subsection (5) in relation to the activity concerned, the activity may continue to be carried on save where (if such be the case), in consequence of the exercise of any of the powers referred to in subsection (2) or (3), it becomes unlawful or unlawful, otherwise than in specified circumstances, to carry on the activity.

Charges in relation to emissions.

99.—(1) The Agency may, in accordance with regulations made by the Minister, with the consent of the Minister for Finance and the Minister for Enterprise, Trade and Employment, under this section, make charges in relation to such emissions to the environment from such activities as may be specified in the regulations.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision for all or any of the following purposes—

- (a) specifying the emissions in relation to which a charge under this section may be imposed,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

- (b) specifying the manner in which such a charge is to be imposed, Pt.2 S.15
- (c) specifying the method by which the amount of such charge is to be calculated,
- (d) enabling the Agency to make different charges under this section in respect of different emissions and in different circumstances,
- (e) specifying the manner in which representations may be made to the Agency regarding the imposition of a charge under this section and providing for the procedures to be followed in respect of such representations,
- (f) providing for the amendment, revocation or review of charges imposed under this section.

(3) The Agency may recover the amount of any charges made by it under this section from the person by whom they are payable as a simple contract debt in any court of competent jurisdiction.

Fees.

99A.—(1) The Minister may make regulations providing for the payment to the Agency, or such other public authority or other body as may be specified, of fees in relation to—

- (a) applications for licences under section 83,
- (b) applications for reviews of licences or revised licences under section 90,
- (c) reviews carried out pursuant to determinations under section 82(10)(b),
- (d) examinations carried out under section 82(10)(a),
- (e) an objection made to the Agency under section 87(5),
- (f) a request for an oral hearing under section 87,
- (g) an application made to the Agency in relation to the extension for the purposes of section 92 of a period mentioned in that section,
- (h) applications for the transfer of licences or revised licences under section 94,
- (i) applications for the surrender of licences or revised licences under section 95,

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

- (j) the operation of an accreditation scheme or an analytical quality control programme under section 66,
- (k) the operation of a labelling scheme under section 78,
- (l) the operation of a system of control for the prevention or limitation of noise under section 106, or
- (m) the operation of a system of control over genetically modified organisms under section 111,

and the regulations may provide for different fees or for exemption from the payment of fees or for the waiver, remission or refund (in whole or in part) of fees in different circumstances or classes of circumstances or for different cases or classes of cases and for the manner in which fees are to be disposed of.

(2) Where under regulations under this section a fee is payable in respect of any application or matter, the application or matter shall be invalid and shall not be decided or otherwise dealt with, as may be appropriate, by the Agency or such other public authority or other body as may be concerned unless the Agency or other public authority or other body, as the case may be, is in receipt of the fee.

(3) Regulations under paragraph (a), (b) or (c) of subsection (1) shall not be made otherwise than with the consent of the Minister for Finance and the Minister for Enterprise, Trade and Employment.

Special cases.

99B.—(1) The Minister may, by order, as respects any process, development or operation that is not specified in the First Schedule, do both of the following, namely, provide that—

- (a) any requirement under—
 - (i) Part III of the Air Pollution Act 1987,
 - (ii) section 4 or 16 of the Local Government (Water Pollution) Act 1977, or
 - (iii) section 171 of the Fisheries (Consolidation) Act 1959,

as appropriate, that a licence under such an enactment be in force for the carrying on of the process, development or operation shall cease to apply to it,

and

- (b) a licence under this Part shall be required for the carrying on of it,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

and where such an order is made the provisions of this Act shall apply in relation to the process, development or operation concerned as if it were an activity for so long as the order remains in force. Pt.2 S.15

(2) Without prejudice to the generality of subsection (1), an order under this section may be made—

- (a) because of the location of the process, development or operation, or the quality of the environment in the area in which the process, development or operation will be carried out,
- (b) because, at the time of the enactment of this Act or the most recent amendment of the First Schedule, no such process, development or operation existed in the State, or
- (c) because evidence related to any impact on the environment of such process, development or operation which was not available has become available.

Monitoring of environmental quality and emissions.

99C.—(1) The Agency shall, in relation to an activity, carry out, cause to be carried out, or arrange for, such monitoring of—

- (a) environmental quality, and
- (b) the nature, extent and effects of emissions to the environment,

as the Agency may consider necessary for the performance of its functions under this Part.

(2) The Agency may, as it considers necessary, by notice served on the person, require the person in charge of an activity from which there is an emission to the environment to carry out such monitoring of the nature, extent and effect of the emission and of the quality of any environmental medium likely to be affected by such emission, and to keep and to supply to the Agency such records of the monitoring, as the Agency considers necessary.

(3) The Agency shall carry out, cause to be carried out, or arrange for, such monitoring or other measures as it considers necessary to verify the monitoring or records of such monitoring provided for under subsection (2).

(4) The Agency shall, if so directed by the Minister, supply to him or to any person specified by him, at such intervals and in such manner as the Minister may direct, records of any monitoring carried out under this section.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

Mass balances of
specified
substances.

99D.—(1) The Minister may, for the purposes of—

- (a) determining the extent of, and making available to members of the public information in relation to, the release of substances to environmental media resulting from the use or consumption of any specified class or classes of substance in any specified class or classes of process, development or operation (whether or not comprising an activity to which this Part applies),
- (b) determining, and making available information in relation to, the relationship ('the mass balance') between such a release of a substance and the use or consumption of a substance aforesaid in a process, development or operation aforesaid,

make regulations requiring a person who carries out a process, development or operation aforesaid to make such determination of, and provide to the Agency or specified public authorities, or publish, such information in relation to, the matters referred to in paragraphs (a) and (b) as may be specified in the regulations.

(2) Without prejudice to the generality of subsection (1), regulations under this section may provide for all or any of the following:

- (a) requiring the person concerned to make on specified dates or at specified intervals measurements, calculations, estimates or projections of the release of substances to environmental media,
- (b) prescribing the methods or procedures to be used in the making of such measurements, calculations, estimates or projections,
- (c) requiring records or registers in a specified form to be kept by the person concerned of, or in which there shall be entered by him, specified particulars as respects the release of substances to environmental media and the use or consumption of any substance in a process, development or operation that gives rise to such a release,
- (d) the intervals and the manner in which information as respects the matters aforesaid shall be provided by the person concerned to the Agency or other public authorities or be published,
- (e) matters consequential on, or incidental to, the foregoing.

(3) The Agency and any prescribed public authority shall each publish information that has been provided to it pursuant to regulations under this

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

section in such manner and subject to such conditions as may be prescribed. Pt.2 S.15

Discharges to
sewers.

99E.—(1) Where the Agency proposes to grant a licence (including a revised licence) which involves a discharge of any trade effluent or other matter (other than domestic sewage or storm water) to a sewer, it shall obtain the consent of the sanitary authority in which the sewer is vested, or by which the sewer is controlled, to such a discharge being made.

(2) Where consent is sought in accordance with subsection (1), the Agency may specify a period (which period shall not in any case be less than 4 weeks from the date on which the consent is sought) within which the consent may be granted subject to, or without, conditions or refused; any consent purporting to be granted (whether subject to or without conditions) after the expiry of that period, or any decision given purporting to refuse consent after that expiry, shall be invalid and in those circumstances the Agency may proceed to grant the licence concerned as if the requirements of subsection (1) had been satisfied.

(3) Subject to subsection (4), a consent under subsection (1) may be granted subject to or without conditions and if it is granted subject to conditions the Agency shall include in the licence or revised licence concerned conditions corresponding to them or, as the Agency may think appropriate, conditions more strict than them.

(4) The conditions that may be attached to a consent by a sanitary authority under this section are the following and no other conditions, namely conditions—

(a) relating to—

- (i) the nature, composition, temperature, volume, level, rate, and location of the discharge concerned and the period during which the discharge may, or may not, be made,
- (ii) the provision, operation, maintenance and supervision of meters, gauges, manholes, inspection chambers and other apparatus and other means for monitoring the nature, extent and effect of emissions,
- (iii) the taking and analysis of samples, the keeping of records and furnishing of information to the sanitary authority,

(b) providing for the payment by the licensee to the sanitary authority concerned of such amount or amounts as may be determined by the sanitary authority having regard to the expenditure incurred or to be incurred

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

by it in monitoring, treating and disposing of discharges of trade effluent, sewage effluent and other matter to sewers in its functional area or a specified part of its functional area,

(c) specifying a date not later than which any conditions attached under this section shall be complied with,

(d) relating to, providing for or specifying such other matter as may be prescribed.

(5) A sanitary authority may request the Agency to review a licence or revised licence to which this section relates—

(a) at intervals of not less than 3 years from the date on which the licence or the revised licence is granted, or

(b) at any time with the consent, or on the application, of the person making, causing or permitting the discharge, or

(c) at any time if—

(i) the sanitary authority has reasonable grounds for believing that the discharge authorised by the licence or revised licence is, or is likely to be, injurious to public health or is likely to render the waters to which the sewer concerned discharges unfit for use for domestic, commercial, industrial, fishery (including fish-farming), agricultural or recreational uses or is, or is likely to be otherwise, a serious risk to the quality of the waters,

(ii) there has been a material change in the nature or volume of the discharge,

(iii) there has been a material change in relation to the waters to which the sewer concerned discharges, or

(iv) further information has become available since the date on which the licence or revised licence was granted relating to polluting matter present in the discharge concerned or relating to the effects of such matter,

and the Agency shall consider and may comply with such request and shall have regard to any submission on the matter received from the sanitary authority.

Application of
other Acts.

99F.—(1) Notwithstanding section 34 of the Act of 2000, or any other provision of that Act, where a licence or revised licence under this Part has been

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

granted or is or will be required in relation to an activity, a planning authority or An Bord Pleanála shall not, where it decides to grant a permission under section 34 of that Act in respect of any development comprising or for the purposes of the activity, subject the permission to conditions which are for the purposes of— Pt.2 S.15

- (a) controlling emissions from the operation of the activity, including the prevention, elimination, limitation, abatement, or reduction of those emissions, or
- (b) controlling emissions related to or following the cessation of the operation of the activity.

(2) Where a licence or revised licence under this Part has been granted or is or will be required in relation to an activity, a planning authority or An Bord Pleanála may, in respect of any development comprising or for the purposes of the activity, decide to refuse a grant of permission under section 34 of the Act of 2000, where the authority or An Bord Pleanála considers that the development, notwithstanding the licensing of the activity under this Part, is unacceptable on environmental grounds, having regard to the proper planning and sustainable development of the area in which the development is or will be situate.

- (3) (a) Before making a decision in respect of a development comprising or for the purposes of an activity, a planning authority or An Bord Pleanála may request the Agency to make observations within such period (which period shall not in any case be less than 3 weeks from the date of the request) as may be specified by the authority or the Board in relation to the development, including in relation to any environmental impact statement submitted.
- (b) When making its decision, the authority or An Bord Pleanála, as the case may be, shall have regard to the observations, if any, received from the Agency within the period specified under paragraph (a).

(4) The planning authority or An Bord Pleanála may, at any time after the expiry of the period specified by the authority or An Bord Pleanála under subsection (3)(a) for making observations, make its decision on the application or appeal.

(5) The Minister may by regulations make such incidental, consequential or supplementary provision as may appear to him to be necessary or proper to give full effect to any of the provisions of this section.

(6) Without prejudice to the generality of subsection (5), regulations under this section may provide

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

for matters of procedure in relation to the request for or the making of observations from or by the Agency under this section and related matters.

(7) The making of observations by the Agency under this section shall not prejudice any other function of the Agency under this Act.

(8) Notwithstanding the provisions of the Minerals Development Acts 1940 to 1999, where a licence or revised licence under this Part has been granted or is or will be required in relation to an activity, a lease granted by the Minister for Communications, Marine and Natural Resources under the said Acts in respect of the same activity shall not contain conditions which are for the purpose of the prevention, elimination, limitation, abatement or reduction of emissions to the environment from the activity.

(9) Without prejudice to the preceding subsections, where a licence or revised licence under this Part is granted in relation to an activity and—

(a) a permission under section 34 of the Act of 2000, or

(b) a lease under the Minerals Development Acts 1940 to 1999,

has been granted in respect of the same activity or in relation to development for the purposes of it, any conditions attached to that permission or contained in that lease, as the case may be, shall, so far as they are for the purposes of the prevention, elimination, limitation, abatement or reduction of emissions to the environment, cease to have effect.

(10) The grant of a permission or lease under any of the Acts of the Oireachtas referred to in this section in relation to any activity shall not prejudice, affect or restrict in any way the application of any provision of this Act to such activity.

Transitional
arrangements.

99G.—(1) Without prejudice to the requirements of the Directive, where the Agency proposes to grant a licence or revised licence in respect of an established activity for which a licence has been granted under—

(a) Part III of the Air Pollution Act 1987,

(b) section 4 or 16 of the Local Government (Water Pollution) Act 1977, or

(c) section 171 of the Fisheries (Consolidation) Act 1959,

the Agency shall, if the licence or revised licence under this Part is being granted during the period of 3 years from the grant of a licence referred to in paragraph (a), (b) or (c), have regard to the conditions (if any) attached to such licence and the costs in relation

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

to the activity which would be incurred if different conditions were attached to the licence or revised licence to be granted by the Agency. Pt.2 S.15

(2) On and after the commencement of *section 15* of the *Protection of the Environment Act 2003*, the Agency shall ensure that an activity for which a licence is required under this Part is carried on in accordance with the enactments mentioned in subsection (1) until a licence under this Part is granted in respect of the activity and any reference to a local authority, sanitary authority or the Minister for Communications, Marine and Natural Resources in any licence or any conditions attached to a licence granted under the above-mentioned enactments in relation to such activity shall be deemed to be a reference to the Agency.

(3) The Minister may, for the purposes of subsection (2), make regulations providing that such functions conferred by the enactments mentioned in subsection (1) as are specified in the regulations shall, to such extent as may be so specified, be performable by the Agency in lieu of the local authority, sanitary authority or the Minister for Communications, Marine and Natural Resources in relation to the activities concerned.

(4) Where, immediately before the commencement of *section 15* of the *Protection of the Environment Act 2003*, there is an application for a licence or a review of a licence under an enactment mentioned in paragraph (a), (b) or (c) of subsection (1) in respect of an activity for which a licence under this Part is required, and the application or review has yet to be determined, the application or review shall be dealt with and decided under this Part by the Agency as if it were an application to the Agency for a licence under this Part and the local authority or sanitary authority or the Minister for Communications, Marine and Natural Resources, as the case may be, shall furnish the Agency, within a period of 1 month from the commencement of that section or 14 days from the date of a request from the Agency for any documents or information, whichever shall be the later, with all such documents and information in its or his possession as it may require for this purpose.

(5) The day or the last of the days, as may be appropriate, on which all the documents and information referred to in subsection (4) are furnished to the Agency in accordance with that subsection by the local authority, sanitary authority or the Minister for Communications, Marine and Natural Resources, as the case may be, shall, in relation to an application for a licence, be deemed to be the date of an application for a licence under this Part.

(6) Notwithstanding the provisions of this section, this Part shall not apply to an activity where an appeal to An Bord Pleanála under section 34 of the Air Pollution Act 1987, or section 8 or 20 of the Local Government (Water Pollution) Act 1977, as inserted

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.15

by the Local Government (Water Pollution) (Amendment) Act 1990, has been or may still be made, until the time for making the appeal has expired or the appeal has been determined or withdrawn and the licence (if any) granted, as the case may be.

Powers of High Court or Circuit Court in relation to activities in contravention of this Act.

99H.—(1) Where, on application by any person to the High Court or the Circuit Court, that Court is satisfied that an activity is being carried on in contravention of the requirements of this Act, it may by order—

- (a) require the person in charge of the activity to do, refrain from or cease doing any specified act (including to refrain from or cease making any specified emission),
- (b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this section shall be by motion, and the High Court or the Circuit Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(3) (a) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the activity concerned is being carried on.

(b) The Circuit Court shall have jurisdiction to hear and determine an application under this section which it is satisfied it is appropriate for it to deal with as a court of local and limited jurisdiction and, for the purpose of the court's satisfying itself of that matter, the matters to which it shall have regard include—

- (i) the nature and extent of the environmental pollution, if any, which is alleged is being caused by the activity concerned, and
- (ii) the estimated cost of complying with the order to which the application relates.

(c) If, in relation to an application under this section to the Circuit Court, that court becomes of the opinion, during the hearing of the application, that it is not appropriate for the Circuit Court to deal with the application, it may, if it so thinks fit, transfer the application to the High Court.

(d) Paragraph (c) is without prejudice to the jurisdiction of the Circuit Court to determine an application under this section

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

which, at the time of the making of the application, it was satisfied it had jurisdiction to deal with. Pt.2 S.15

(e) Where an application is transferred under paragraph (c) to the High Court, the High Court shall be deemed to have made any order made under subsection (2) by the court from which it is so transferred in the proceedings in relation to the application.

(4) An application for an order under this section may be made whether or not there has been a prosecution for an offence under this Act in relation to the activity concerned and shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the activity concerned.

(5) Without prejudice to the powers of the High Court or the Circuit Court to enforce an order under this section, a person who fails to comply with an order under this section shall be guilty of an offence.”.

CHAPTER 3

GROUNDWATER PROTECTION

16.—The following Part is inserted in the Act of 1992 after Part IV: Insertion of Part IVA in Act of 1992.

“PART IVA

WATER POLLUTION

Groundwater Protection. 99I.—(1) In this Part, unless where the context otherwise requires—

‘aquifer’ means a stratum or combination of strata that stores or transmits groundwater;

‘the Directive’ means Council Directive 80/68/EEC of 17 December 1979 on the control of groundwater against pollution by certain dangerous substances¹;

‘hazardous substance’ means a substance specified in the Annex to the Directive.

(2) This Part applies to an activity which gives rise to, or could give rise to, an emission containing a hazardous substance which is discharged to an aquifer.

(3) In addition to the requirements imposed on it by Part IV to attach conditions, the Agency shall attach to any licence or revised licence that may be granted by it in relation to an activity to which this Part applies such conditions as are, in the opinion of the Agency, necessary to give effect to Articles 3, 4, 5, 6, 8, 9 and 10 of the Directive.

¹ O.J. No. L20, 26.01.1980, pp 43-48.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.2 S.16

(4) Without prejudice to section 83(2), the Agency shall, in considering an application for a licence or the review of a licence or a revised licence in relation to an activity to which this Part applies, have regard to the results of investigations carried out in accordance with subsection (6).

(5) Without prejudice to section 83(5), the Agency shall not grant a licence or revised licence in relation to an activity to which this Part applies unless it is satisfied that the activity will be carried on in a manner which complies with the requirements of the Directive.

(6) Before making its decision under section 83(1) on an application for a licence, or under section 90 on the review of a licence, the Agency shall carry out or cause to be carried out (by the applicant or otherwise) such investigations as it considers necessary in order to comply with the requirements of Articles 4, 5 and 7 of the Directive.

(7) Notwithstanding subsection (1)(a) of section 90, a licence or revised licence granted by the Agency in relation to an activity to which this Part applies shall be reviewed by the Agency under that section at intervals which do not exceed 4 years.”.

CHAPTER 4

AMENDMENT OF SECTION 111 OF, AND FIRST SCHEDULE TO, ACT OF 1992

Amendment of
section 111 of Act
of 1992.

17.—Section 111 of the Act of 1992 is amended—

(a) by substituting the following subsection for subsection (1):

“(1) The Minister, after consultation with the Minister for Enterprise, Trade and Employment and any other Minister of the Government who in the opinion of the Minister is concerned, may—

(a) for the purposes of—

(i) environmental protection,

(ii) the prevention of danger to health or damage to property, or

(iii) the preservation of amenities,

and

(b) without prejudice to the generality of the foregoing, for the purposes of giving full effect to any act adopted by an institution of the European Communities that relates to any of the matters mentioned in this section,

make regulations for the control, management, regulation or prohibition of any process or action or class of processes or actions, involving a genetically modified organism.”,

and

(b) by deleting subsection (4).

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

18.—The Schedule set out in *Schedule 1* to this Act is substituted for the First Schedule to the Act of 1992.

Pt.2
Substitution of new
First Schedule to
Act of 1992.

PART 3

AMENDMENT OF ACT OF 1996

19.—Section 2 of the Act of 1996 is amended by inserting the following in the Table to that section:

Amendment of
section 2 of Act of
1996.

“Council Directive 96/61/EC of 24 September, 1996 concerning integrated pollution prevention and control¹

European Parliament and Council Directive 2000/53/EC of 18 September, 2000 on end-of-life vehicles²

European Parliament and Council Directive 2000/76/EC of 4 December, 2000 on the incineration of waste³”.

20.—(1) Section 5(1) of the Act of 1996 is amended—

Amendment of
section 5 of Act of
1996.

(a) by substituting the following definition for the definition of “authorised person”:

“‘authorised person’ means a person who is appointed in writing by—

(a) the Minister,

(b) a local authority,

(c) the Agency,

(d) the Commissioner of the Garda Síochána (or a member of the Garda Síochána nominated by that Commissioner for the purposes of appointing authorised persons under this Act), or

(e) such other person as may be prescribed,

to be an authorised person for the purposes of this Act or any Part or section thereof;”

(b) by inserting the following definition after the definition of “emission into the atmosphere”:

“‘emission limit value’ means the mass, expressed in terms of a specific parameter, concentration or level of an emission, or both a specific concentration and level of an emission, which may not be exceeded during one or more periods of time;”

and

(c) by inserting the following definition after the definition of “waste licence”:

“‘waste service’ means any service, facility, approval or other thing which a local authority may or is required to render, supply, grant, issue or otherwise provide in the

¹ O.J. No. L257, 10.10.1996, p.26.

² O.J. No. L269, 21.10.2000, p.34.

³ O.J. No. L332, 28.12.2000, p.91.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.20

performance of any of its functions under this Act to any person or in respect of any premises;”.

(2) Section 5 of the Act of 1996 is amended by inserting the following subsection after subsection (1):

“(1A) In this Act, a reference to—

- (a) the date on which a waste licence is granted is a reference to the date on which the licence is sealed with the seal of the Agency, and
- (b) the date on which a decision by the Agency to refuse a waste licence is made is a reference to the date on which that decision, as reduced to writing, is so sealed.”.

(3) Section 5 of the Act of 1996 is amended by substituting the following subsection for subsection (2):

“(2) (a) A reference in this Act to ‘best available techniques’ shall be construed as meaning the most effective and advanced stage in the development of an activity and its methods of operation, which indicate the practical suitability of particular techniques for providing, in principle, the basis for emission limit values designed to prevent or eliminate, or where that is not practicable, generally to reduce an emission and its impact on the environment as a whole.

(b) For the purposes of paragraph (a)—

- (i) ‘best’, in relation to techniques, means the most effective in achieving a high general level of protection of the environment as a whole;
- (ii) ‘available techniques’ means those techniques developed on a scale which allows implementation in the relevant class of activity specified in the Third and Fourth Schedules, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced within the State, as long as they are reasonably accessible to the person carrying on the activity;
- (iii) ‘techniques’ includes both the technology used and the way in which the installation is designed, built, managed, maintained, operated and decommissioned.

(c) In determining the best available techniques, special consideration shall be given to the matters for the time being specified in Annex IV of Council Directive 96/61/EC of 24 September, 1996 concerning integrated pollution prevention and control and such other matters as may be prescribed.”.

Amendment of Act of 1996 consequent on section 20.

21.—The Act of 1996 is amended (other than in section 5(2)) by substituting “best available techniques” for “best available technology not entailing excessive costs” in each place where those words appear.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

22.—Section 10 of the Act of 1996 is amended—

Pt.3

- (a) in subsection (1)(a), by substituting “€3,000” for “£1,500”,
(b) in subsection (1)(b), by substituting “€15,000,000” for “£10,000,000”,
(c) in subsection (2), by substituting “€3,000” for “£1,500”,
(d) in subsection (3), by substituting “€1,000” for “£200”, and “€130,000” for “£100,000”, and
(e) in subsection (4), by inserting after “extent of environmental pollution”, “, and any remediation required.”.

Amendment of section 10 of Act of 1996.

23.—The following section is inserted after section 11 of the Act of 1996:

Evidence of consent of landowners in certain cases.

“Presumption in certain prosecutions.

11A.—In a prosecution for an offence under section 32(6) or 39(9) relating to the recovery or disposal of waste on, in, over or under any land where it is proved that, by reason of—

- (a) the nature of the particular recovery or disposal activity that was carried on,
(b) the period of time over which it appears that activity was carried on,
(c) the characteristics of the land and the degree of use or control it appears the owner of the land made of, or exercised in relation to, the land at the relevant time or times, or
(d) any other relevant circumstances,

it is a reasonable inference that that recovery or disposal was carried on with the consent of the owner of the land then, it shall be presumed, until the contrary is shown, that that recovery or disposal was carried on with that owner’s consent.”.

24.—(1) Section 14(1) of the Act of 1996 is amended by substituting the following paragraph for paragraph (b):

Amendment of section 14 of Act of 1996.

“(b) at any time halt (if necessary) and board any vehicle and have it taken, or require the driver of the vehicle to take it, to a place designated by the authorised person, and such a vehicle may be detained at that place by the authorised person for such period as he or she may consider necessary for the purpose.”.

(2) Section 14(4) of the Act of 1996 is amended—

- (a) by inserting in paragraph (a), after “photographs”, “, record such information on data loggers, make such tape, electrical, video or other recordings”,

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.24

- (b) by substituting in paragraph (b), “make such copies of documents and records (including records in electronic form) found therein and take such samples” for “and take such samples”, and
- (c) by inserting in paragraph (f), after “such records and documents”, “, including records held in electronic form”.

Amendment of section 16 of Act of 1996.

25.—Section 16(1) of the Act of 1996 is amended—

- (a) by substituting in paragraph (d) “that address,” for “that address, or”,
- (b) by substituting in paragraph (e) “near the premises, or” for “near the premises.”, and
- (c) by inserting the following paragraph after paragraph (e):
 - “(f) by such other means as may be prescribed.”.

Amendment of section 22 of Act of 1996.

26.—(1) In this section “Act of 2001” means the Waste Management (Amendment) Act 2001.

(2) Section 22 of the Act of 1996 is amended—

- (a) in subsection (1), by deleting in the definition of “waste management plan” “or subsection (10)(f)” (inserted by the Act of 2001),
- (b) in subsection (10), by substituting the following paragraph for paragraphs (d), (e) and (f) (inserted by the Act of 2001):
 - “(d) On and from the commencement of *section 26(2)(b)* of the *Protection of the Environment Act 2003*, the review, variation or replacement of a waste management plan shall be an executive function.”,
- (c) by substituting the following subsection for subsection (10A)(inserted by the Act of 2001):

“(10A) (a) The development plan for the time being in force in relation to the functional area of a local authority shall be deemed to include the objectives for the time being contained in the waste management plan in force in relation to that area.

- (b) (i) In the event of there being a conflict between an objective deemed to be included in a development plan by virtue of paragraph (a) (the ‘first-mentioned objective’) and an objective otherwise included in the development plan (the ‘second-mentioned objective’), the first-mentioned objective shall override the second-mentioned objective, irrespective of whether or not the development plan is subsequent to the waste management plan referred to in that paragraph.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(ii) A reference in subparagraph (i) to— Pt.3 S.26

(I) an objective deemed to be included in a development plan by virtue of paragraph (a) shall be construed as including a reference to an objective deemed to be included in a development plan by virtue of this subsection before the amendment of it by *section 26* of the *Protection of the Environment Act 2003*,

(II) an objective otherwise included in a development plan shall be construed as including a reference to an objective otherwise included in a development plan before the amendment of this subsection by that *section 26*.

(10AA) An application for permission under Part III of the Planning and Development Act 2000 shall not be refused by a planning authority or An Bord Pleanála solely on the ground that the development to which the application relates is not specifically referred to in the waste management plan in force in relation to the functional area of the planning authority if the planning authority or the Board, as the case may be, considers the development will facilitate the achievement of the objectives of that waste management plan.”,

and

(d) by inserting the following subsection after subsection (10C) (inserted by the Act of 2001):

“(10D) (a) In performing their functions under the Planning and Development Acts 2000 to 2002, and, in particular, their functions under Part III and sections 175 and 179 of the Planning and Development Act 2000, planning authorities and An Bord Pleanála shall ensure that such measures as are reasonably necessary are taken to secure appropriate provision for the management of waste (and, in particular, recyclable materials) within developments, including the provision of facilities for the storage, separation and collection of such waste (and, in particular, such materials) and the preparation by the appropriate persons of suitable plans for the operation of such facilities.

(b) The Minister may issue guidelines as to the steps that may be taken to comply with this subsection.”.

27.—(1) In this section—

“Act of 2001” has the same meaning as it has in *section 26* of this Act;

Further amendment of section 22 of Act of 1996: minor textual corrections.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.27

“relevant subsection” means subsection (10C) (inserted by the Act of 2001) of section 22 of the Act of 1996.

(2) Each division of the relevant subsection prefixed with the figure “1”, “2” or “3” in brackets shall be read and operate, and be construed as always having been intended to be read and operate, as a paragraph prefixed with, as appropriate, the letter “a”, “b” or “c” in brackets.

(3) Each subdivision of a foregoing division, being the division prefixed with the figure “1” or “3” in brackets, shall be read and operate, and be construed as always having been intended to be read and operate, as a subparagraph prefixed with, as appropriate, the figure “i” or “ii” in brackets.

(4) The reference in the relevant subsection, in the third division thereof, to “subsection (2)” shall be read, and be construed as always having been intended to be read, as a reference to “paragraph (b)”.

Amendment of section 29 of Act of 1996.

28.—Section 29(4) of the Act of 1996 is amended in paragraph (h) by inserting, after “purchaser thereof”, “(or, as appropriate, any person who acquires the product or substance subsequent to its first being purchased)”.

Amendment of section 32 of Act of 1996.

29.—Section 32(6) of the Act of 1996 is amended—

(a) by inserting in paragraph (b), after “under this Act”, “, a permit, authorisation or certificate referred to in section 39(5)(c) (inserted by Statutory Instrument No. 166 of 1998)”,

(b) by inserting the following paragraph after paragraph (b):

“(c) In a prosecution for a contravention of subsection (1), where it is proved that—

(i) a waste collection permit or waste licence under this Act, a permit, authorisation or certificate referred to in section 39(5)(c) or a licence or revised licence under Part IV of the Act of 1992 was required for the carrying on of the activity concerned, and

(ii) such a permit, licence, authorisation or certificate was not in force in respect of the carrying on of that activity or was not being complied with in any respect,

then it shall be presumed, until the contrary is shown, that the carrying on of that activity was likely to cause environmental pollution.”.

Amendment of section 33 of Act of 1996.

30.—Section 33(6) of the Act of 1996 is amended—

(a) by inserting in paragraph (a), after “is not complied with”, “(and, for the avoidance of doubt, such a provision includes the provision referred to in section 35(3)(gg))”, and

(b) by inserting the following paragraphs after paragraph (a):

“(aa) if any provision of an order under section 75(10) in relation to the waste is not complied with, or

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(aaa) if that person has failed to pay a charge made under section 75 or the Local Government (Financial Provisions) (No. 2) Act 1983 in respect of the collection of the waste concerned, or”.

Pt.3 S.30

31.—Section 34 of the Act of 1996 is amended—

Amendment of section 34 of Act of 1996.

(a) by substituting the following subsection for subsection (4):

“(4) A local authority shall not grant a waste collection permit unless it is satisfied that the activity in question would not, if carried on in accordance with such conditions as may be attached to the permit, cause environmental pollution, and that the grant of the permit is consistent with the objectives of the relevant waste management plan or the hazardous waste management plan as the case may be.”,

and

(b) by substituting the following paragraph for paragraph (c) of subsection (13) (inserted by the Waste Management (Amendment) Act 2001):

“(c) If a body stands prescribed for the purposes aforesaid, then this section shall have effect, in so far as it relates to such a body, as if the following subsection was substituted for subsection (4):

“(4) A body standing prescribed for the purposes of subsection (1)(a)(iii) shall not grant a waste collection permit unless it is satisfied that the activity in question would not, if carried on in accordance with such conditions as may be attached to the permit, cause environmental pollution, and that the grant of the permit is consistent with the objectives of the relevant waste management plan or the hazardous waste management plan as the case may be.”.

32.—Section 35(3) of the Act of 1996 is amended by inserting the following paragraph after paragraph (g):

Amendment of section 35 of Act of 1996.

“(gg) that waste placed for collection shall bear evidence, in such a manner or form as is provided in the bye-laws, of the payment of any charge that has been made under section 75 in respect of the collection of the waste.”.

33.—Section 39 of the Act of 1996 is amended—

Amendment of section 39 of Act of 1996.

(a) by substituting the following subsections for subsections (4) and (5):

“(4) The Minister may by regulations provide that subsection (1) shall not apply in respect of the recovery or disposal in a specified manner of a specified class or classes of waste, if and for so long as the person carrying out the recovery or disposal of the waste, as the case may be, complies with specified conditions in relation to the carrying out of such recovery or disposal.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.33

(5) Without prejudice to the generality of subsection (4), regulations under that subsection may specify conditions in relation to the following matters—

- (a) the quantity of waste concerned which may be recovered or disposed of in a particular period,
- (b) the use of the best available techniques to prevent or eliminate or, where that is not practicable, to limit, abate or reduce, an emission from the recovery or disposal activity concerned,
- (c) a requirement that the person concerned obtain from a local authority or the Agency a waste permit or such other authorisation or certificate as may be prescribed in respect of the carrying on by him or her of the activity concerned,
- (d) the specification of controls to be exercised or measures to be taken by a local authority or the Agency in relation to the carrying on of an activity in respect of which such a permit, authorisation or certificate is required (which controls and measures a local authority or the Agency is hereby empowered to exercise or take, as the case may be),
- (e) a requirement regarding the payment to a local authority or the Agency of a fee of a specified amount in respect of an application for such a permit, authorisation or certificate, or of such charges as are necessary to defray or contribute towards the cost of any investigation carried out or caused to be carried out by the local authority or the Agency in relation to such application,
- (f) where a question arises as to whether or not a particular waste recovery or disposal activity falls within regulations under subsection (4), enabling the Agency to determine that question and providing that that determination of the Agency shall be final,
- (g) such other matters as the Minister considers are appropriate to ensure that the recovery or disposal activity concerned will not cause environmental pollution.”,

and

- (b) in subsection (7), by substituting in paragraph (a) (inserted by the Waste Management (Amendment) Act 2001) “paragraph 7.7.1, 7.7.2 or 11.1” for “paragraph 11.1”.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

34.—The following section is inserted after section 39 of the Act of 1996:

“Licensing under this Part and Part IV of Act of 1992.

39A.—(1) The purpose of this section is to provide that, in relation to activities which are related to one another in the manner mentioned in this section, a single licence under either this Part or Part IV of the Act of 1992, but not a licence under both those Parts, will be required for the carrying on of those activities and that this Part or that Part IV applies, accordingly, to those activities.

(2) This section has effect in relation to the following activities, namely—

- (a) the recovery or disposal of waste (‘the first activity’), and
- (b) an activity specified in the First Schedule to the Act of 1992 (‘the second activity’),

where the first activity is carried on in a facility connected or associated with the second activity.

(3) If the Agency is of the opinion that the carrying on of the second activity will be subsidiary to the carrying on of the first activity and declares, in writing, that it is of that opinion then, notwithstanding anything in this Part or Part IV of, or the First Schedule to, the Act of 1992—

- (a) the second activity (irrespective of whether it would otherwise be so regarded) shall be regarded as an activity falling within section 39(1) and, accordingly—
 - (i) the carrying on of it and of the first activity, shall require, and may be the subject of the grant of, a waste licence under that section, and
 - (ii) the provisions of this Part shall otherwise apply in relation to any such activity,
- and
- (b) neither the carrying on of the first activity, if it would otherwise be regarded, nor of the second activity shall be regarded as requiring the grant of a licence under Part IV of the Act of 1992.

(4) If the Agency is of the opinion that the carrying on of the first activity will be subsidiary to the carrying on of the second activity and declares, in writing, that it is of that opinion then, notwithstanding anything in this Part or Part IV of the Act of 1992—

Pt.3
Relationship
between Act of
1996 and Act of
1992.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.34

- (a) the first activity (irrespective of whether it would otherwise be so regarded) shall be regarded as an activity falling within section 82 of the Act of 1992 and, accordingly—
 - (i) the carrying on of it and of the second activity, shall require, and may be the subject of the grant of, a licence under Part IV of that Act, and
 - (ii) the provisions of that Part shall otherwise apply in relation to any such activity,

and

- (b) neither the carrying on of the second activity, if it would otherwise be regarded, nor of the first activity shall be regarded as requiring the grant of a waste licence under section 39(1).

(5) For the purposes of this section ‘subsidiary’ means subsidiary having regard to one or, as the Agency may consider appropriate, more than one, of the following, namely—

- (a) the primary purpose of the activities concerned,
- (b) the size of each of the activities concerned relative to one another and any change in that regard likely to occur during the time the proposed licence will be in force,
- (c) the relative likely effects on the environment of each of the activities,
- (d) whether one of the activities concerned is incidental to, or consequential on, the other.

(6) A declaration under subsection (3) or (4)—

- (a) may be made by the Agency of its own volition, and
- (b) shall be made by the Agency, on a request being made to it under subsection (7), if the conditions specified in that subsection are complied with.

(7) A person, before making an application for a waste licence under section 39(1) or a licence under section 82 of the Act of 1992 in relation to the carrying on of 2 or more activities, may request the Agency to make a declaration under subsection (3) or (4) in relation to those activities and the Agency shall accede to that request if the following conditions are complied with—

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

- (a) the Agency is satisfied of the *bona fides* of the request, Pt.3 S.34
- (b) the person has supplied sufficient particulars to the Agency with respect to the activities, and
- (c) the Agency determines that it is appropriate to accede to the request,

but, in the case of an application for a declaration under subsection (3), the Agency may, instead, make a declaration under subsection (4) and, in the case of an application for a declaration under subsection (4), the Agency may, instead, make a declaration under subsection (3), where, in either case, it considers it appropriate to make the declaration under the other subsection.

(8) Nothing in this section operates to disapply section 39(1), or section 82 of the Act of 1992, as the case may be, if the activities referred to in this section cease to be related to one another in the manner mentioned in this section.

(9) For the avoidance of doubt, this section shall apply and, in particular, a declaration under it may be made in respect of an application made before the commencement of *section 34* of the *Protection of the Environment Act 2003*, for a waste licence under section 39 or for a licence or revised licence under section 82 of the Act of 1992.

(10) The Minister may by regulations make such incidental, consequential or supplementary provision as may appear to him or her to be necessary or proper to give full effect to any of the provisions of this section.”

35.—Section 40 of the Act of 1996 is amended—

Amendment of
section 40 of Act of
1996.

- (a) by substituting the following clause for clause (I) of subsection (2)(b)(ii):

“(I) any environmental impact statement which is submitted to the Agency under and in accordance with a requirement of, or made pursuant to, regulations under section 45, in so far as the said statement relates to the risk of environmental pollution from the waste activity concerned,”

- (b) by substituting the following subparagraphs for subparagraphs (iii) and (iv) of subsection (2)(b):

“(iii) such other matters related to the prevention, limitation, elimination, abatement or reduction of environmental pollution from the activity concerned as it considers necessary,

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.35

- (iv) the policies and objectives of the Minister or the Government in relation to waste management for the time being extant, and
- (v) such other matters as may be prescribed.”,

(c) by deleting subsection (3),

(d) by inserting the following paragraph after paragraph (b) of subsection (4):

“(bb) if the activity concerned involves the landfill of waste, the activity, carried on in accordance with such conditions as may be attached to the licence, will comply with Council Directive 1999/31/EC on the landfill of waste,”,

(e) by inserting the following paragraph after paragraph (c) of subsection (4):

“(cc) the activity concerned is consistent with the objectives of the relevant waste management plan or the hazardous waste management plan, as the case may be, and will not prejudice measures taken or to be taken by the relevant local authority or authorities for the purpose of the implementation of any such plan,”,

(f) by substituting in paragraph (e) of subsection (4) “section 53,” for “section 53.”,

(g) by inserting the following paragraphs after paragraph (e) of subsection (4):

“(f) energy will be used efficiently in the carrying on of the activity concerned,

(g) any noise from the activity concerned will comply with, or will not result in the contravention of, any regulations under section 106 of the Act of 1992,

(h) necessary measures will be taken to prevent accidents in the carrying on of the activity concerned and, where an accident occurs, to limit its consequences for the environment,

(i) necessary measures will be taken upon the permanent cessation of the activity concerned (including such a cessation resulting from the abandonment of the activity) to avoid any risk of environmental pollution and return the site of the activity to a satisfactory state.”,

and

(h) by inserting in subsection (7)(a), after “this Act”, “, the Act of 1992, the Local Government (Water Pollution) Acts 1977 and 1990 or the Act of 1987”.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

36.—Section 41 of the Act of 1996 is amended—

Pt.3

(a) in subsection (2)(a), by substituting the following subparagraph for subparagraph (vii):

Amendment of section 41 of Act of 1996.

“(vii) require the monitoring of such environmental media as, in the opinion of the Agency, may be affected by or as a result of the activity concerned, and require the Agency to be informed of the results of such monitoring and, without delay, of any incident or accident which causes, or is likely to cause, environmental pollution,”

(b) in subsection (6), by inserting after “complies”, “, or is capable of compliance,”.

37.—The following section is inserted after section 42 of the Act of 1996:

Reckoning of certain periods.

“Calculation of appropriate period and other time limits over holidays.

42A.—When calculating the appropriate period (within the meaning of section 42) or any other time limit under this Act or in any regulations made under this Act, the period between the 24th day of December and the 1st day of January, both days inclusive, shall be disregarded.”.

38.—The following section is inserted after section 42A (inserted by section 37 of this Act) of the Act of 1996:

Additional power to amend waste licences.

“Amendments of waste licence of clerical or technical nature.

42B.—(1) The Agency may amend a waste licence for the purposes of—

(a) correcting any clerical error therein,

(b) facilitating the doing of any thing pursuant to a condition attached to the licence where the doing of that thing may reasonably be regarded as having been contemplated by the terms of the condition or the terms of the licence taken as a whole but which was not expressly provided for in the condition, or

(c) otherwise facilitating the operation of the licence and the making of the amendment does not result in the relevant requirements of section 40(4) ceasing to be satisfied.

(2) None of the requirements of section 46 or of any other provision of this Part shall apply to the exercise of the power under subsection (1) but the Agency shall, where appropriate, consult with the holder of the licence before exercising the power.

(3) The Agency shall, as soon as may be after the exercise of the power under subsection (1), notify particulars of the amendment effected by that exercise to each person who

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.38

made an objection to the Agency under section 42(3) in relation to any exercise of the powers under section 40 or 46 as respects the waste licence concerned.”.

Amendment of section 44 of Act of 1996. **39.**—The following section is substituted for section 44 of the Act of 1996:

“Conduct of oral hearing and written report thereon.

44.—(1) (a) An oral hearing under section 42 shall be conducted by a person or persons appointed for that purpose by the Agency.

(b) Subject to any regulations under subsection (4), the manner in which a hearing aforesaid is conducted shall be at the discretion of the person or persons appointed under this subsection but it shall be the duty of the person or persons to ensure that the hearing is conducted without undue formality.

(2) The person or persons appointed under subsection (1) may take evidence on oath or affirmation at the oral hearing and for that purpose may administer oaths or affirmations, and a person giving evidence at such a hearing shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

(3) The person or persons appointed under subsection (1) shall make a written report on the objection or objections made under section 42(3) and the hearing to the Agency and shall include in the report a recommendation relating to the grant of a waste licence or a revised waste licence, as the case may be (including the conditions to be attached to such a licence) or to the refusal of such a licence.

(4) (a) The Minister may make regulations in relation to the conduct of an oral hearing under section 42 and the procedures at such a hearing.

(b) Without prejudice to the generality of paragraph (a), regulations under this subsection shall provide for all of the following—

(i) matters that may be raised at an oral hearing;

(ii) the persons who may be heard at an oral hearing;

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

- (iii) enabling the person or persons conducting an oral hearing to require any person to attend the hearing and give evidence in relation to any matter in question at the hearing; Pt.3 S.39
- (iv) the publication or giving of notice of the holding of an oral hearing;
- (v) the alteration of the time and place of the holding of an oral hearing;
- (vi) the provision of submissions, plans, documents or other information and particulars to persons;
- (vii) the adjournment or re-opening of an oral hearing, and the publication or giving of notice regarding such an adjournment or re-opening;
- (viii) the replacement of a person or persons appointed to conduct an oral hearing or the conduct of a new oral hearing;
- (ix) the withdrawal of a request for an oral hearing, and matters consequential thereon.”.

40.—The following section is substituted for section 46 of the Act of 1996: Amendment of
section 46 of Act of
1996.

“46.—(1) Without prejudice to subsections (2) and (5), the Agency may review a waste licence—

- (a) on any of the grounds referred to in subsection (3),
- (b) with the consent of, or upon an application in that behalf being made by, the holder of the licence,
- (c) upon receipt of a notification under subsection (6),
or
- (d) at a time not less than 3 years from the date on which the licence was granted.

(2) The Agency shall review a waste licence if—

- (a) it considers—
 - (i) that pollution arising from or as a result of the activity to which the waste licence relates is of such significance that the existing limit values specified in the waste licence need to be revised or new such values need to be specified in the waste licence,

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.40

- (ii) that substantial changes in best available techniques make it possible to reduce emissions from the said activity significantly without imposing excessive costs,
 - (iii) that the operational safety of the said activity requires techniques, other than those currently being used in respect of it, to be used,
- or
- (b) new requirements (whether in the form of standards or otherwise) are prescribed, by or under any enactment or Community act, being requirements that relate to—
 - (i) the conduct or control of the activity to which the waste licence relates,
 - (ii) the content or nature of an emission concerned, or
 - (iii) the effects of the activity on such an emission.

(3) The grounds mentioned in subsection (1)(a) are:

- (a) there has been a material change in the nature of the activity to which the waste licence relates, or in the nature or extent of an emission concerned, or of the location in which the said activity is carried on or an adjacent area,
- (b) there has been a material change, which could not reasonably have been foreseen when the waste licence was granted, in the condition of the environment in the area in which the activity to which the licence relates is carried on,
- (c) evidence, which was not available when the waste licence was granted and would have materially affected the decision of the Agency to grant the licence subject to the conditions to which it was granted, has become available.

(4) In the review of a waste licence under this section, the Agency shall have regard to—

- (a) any change in the quality of the environment in the area in which the activity to which the waste licence relates is carried on, and
- (b) the development of technical knowledge in relation to environmental pollution and the effects of such pollution,

since the waste licence was granted or last reviewed.

- (5) (a) The Agency may review a waste licence upon receipt of a notification under section 40(13), or on otherwise becoming aware of the cessation of the activity to which the licence relates, or following a refusal by it to accept the surrender of the licence under section 48(7).

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(b) In a review under this subsection, the Agency shall determine such measures as are in its opinion necessary for the purpose of, as appropriate—

(i) the closure, restoration, remediation or after-care of any facility concerned for the recovery or disposal of waste,

(ii) environmental protection,

and may grant a revised waste licence accordingly, including such conditions as it deems appropriate as respects the matters aforesaid.

(6) A holder of a waste licence shall give notice in writing to the Agency of any proposal to effect a change in the nature, extent or function of an activity or facility to which that licence relates if the effecting of that change could have consequences for the environment.

(7) A change referred to in subsection (6) shall not be effected unless either—

(a) by notice in writing served on the holder concerned, the Agency states that the activity concerned could, if the change were to be effected, continue to be carried on in conformity with this Act without a review of the licence concerned under subsection (1) having to be carried out first and a revised licence granted thereunder, or

(b) a review of the licence concerned under subsection (1) is carried out first and a revised licence is granted thereunder that permits the activity concerned to continue to be carried on in conformity with this Act after the change has been effected.

(8) As soon as may be after it has completed a review of a waste licence under this section, the Agency may—

(a) grant to the holder thereof a waste licence ('a revised waste licence') the terms and conditions of which are, in such respects as the Agency thinks appropriate, different from those of the first-mentioned licence and the revised waste licence shall have effect in lieu of the first-mentioned licence, or

(b) refuse to grant to that holder such a licence.

(9) Without prejudice to the generality of subsection (2)(b), the Minister may by regulations—

(a) prescribe specific circumstances in which the obligation under that provision to review a waste licence granted in respect of a specified class or classes of waste activity shall arise, the grounds for such review, the time within which such review shall be carried out, and relevant procedures to be followed, and

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.40

(b) require the taking by the Agency of specified measures consequent upon the completion of such a review.

(10) Subsection (9) shall not be construed as enabling the Minister to exercise any power or control in relation to the performance in particular circumstances by the Agency or a local authority of a function conferred on it by or under this Act in relation to a waste recovery or disposal activity.”.

Power to revoke or suspend waste licence.

41.—The following section is inserted after section 48 of the Act of 1996:

“Revocation or suspension of waste licence in certain circumstances.

48A.—(1) The Agency may revoke, or suspend the operation of, a waste licence if it appears to the Agency that—

(a) the holder of the licence no longer satisfies the requirements specified in section 40(7) for his or her being regarded as a fit and proper person, and

(b) the circumstances occasioning his or her no longer satisfying those requirements are, in the opinion of the Agency, of such seriousness as to warrant the revocation of the licence or the suspension of its operation.

(2) References in this Act to the cessation of the activity to which a waste licence relates shall be construed as including references to such a cessation in consequence of the revocation of the licence.

(3) None of the requirements of section 46 or of any other provision of this Part shall apply to the exercise of the power under subsection (1) but where the Agency proposes to exercise the power it shall afford the holder of the licence, and any other person whom it considers ought to be afforded such an opportunity, an opportunity to make representations to it in relation to the matter.

(4) The cesser of a waste licence’s effect under this section shall in no way affect or diminish such conditions, requirements or obligations (being conditions, requirements or obligations that apply to, or fall on the holder of such licence by virtue of the licence) as may be specified by the Agency in exercising the powers under this section.

(5) The holder or former holder of the licence may appeal to the High Court against a revocation or suspension of a waste licence under this section and, on the hearing of the appeal, the High Court may confirm or annul the revocation or suspension or, in the case of a suspension, vary the period for which the suspension shall operate.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(6) The Minister may by regulations make such incidental, consequential or supplementary provision as may appear to him or her to be necessary to give full effect to any of the provisions of this section.”. Pt.3 S.41

42.—Section 49 of the Act of 1996 is amended by inserting the following subsections after subsection (2): Amendment of section 49 of Act of 1996.

“(3) Where the activity to which a waste licence relates ceases to be carried on then, unless the activity is resumed within the period of 3 years beginning on the date of that cessation, the licence shall cease to have effect on the expiry of the said period.

(4) The cesser of a waste licence’s effect under this section shall in no way affect or diminish the conditions, requirements or obligations that apply to, or fall on, the holder of such licence by virtue of the licence.”.

43.—The following section is inserted after section 53 of the Act of 1996: Operator of landfill facility to impose charge for disposals.

“Operator of landfill facility to impose charge for disposals.

53A.—(1) The operator of a landfill facility (other than an internal landfill facility), or such other facility for the disposal of waste as may be prescribed for the purposes of this subsection, shall impose charges in respect of the disposal of waste at the facility.

(2) Subject to subsection (3), different amounts of charges may be imposed under subsection (1) in respect of different disposals of waste at the facility concerned.

(3) The amount or amounts of charges imposed under subsection (1) shall be such as the operator of the facility concerned determines is likely to ensure that the result specified in subsection (4) is achieved.

(4) The result referred to in subsection (3) is that the aggregate of the amount of charges imposed by the operator, in relation to the facility concerned, during the relevant period will not be less than the amount that would meet the total of the following costs (irrespective of whether those costs, or any of them, have been or will be met from other financial measures available to the operator), namely—

(a) the costs incurred by the operator in the acquisition or development, or both (as the case may be), of the facility,

(b) the costs of operating the facility during the relevant period

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.43

(including the costs of making any financial provision under section 53), and

(c) the estimated costs, during a period of not less than 30 years or such greater period as may be prescribed, of the closure, restoration, remediation or aftercare of the facility.

(5) The operator of the facility concerned shall prepare a statement in writing in respect of the determination he or she makes under subsection (3) in each year of the amounts of charges and that statement shall specify the method he or she has employed in making that determination and the assumptions and any relevant accounting principles he or she has used for the purpose of that method.

(6) A copy of a statement prepared under subsection (5) shall be furnished by the operator to the Agency not later than 1 month following the end of the year to which the statement relates.

(7) An operator who fails to comply with subsection (6) shall be guilty of an offence.

(8) The Agency shall not grant a licence or revised licence in respect of the disposal of waste at a facility referred to in subsection (1) unless it is satisfied that the proposed licensee or licensee will take or will continue to take steps to comply with this section.

(9) The Minister may by regulations make such incidental, consequential or supplementary provision as may appear to him or her to be necessary or proper to give full effect to any of the provisions of this section.

(10) In this section—

‘internal landfill facility’ means a landfill facility that is used solely for the disposal of waste produced by an activity (other than one involving the sorting, mixing or segregation of waste or the recovery of materials from waste) and is operated by or on behalf of the person carrying on that activity;

‘relevant period’ means such period as the Agency determines to be appropriate for the purposes of Article 10 of the Council Directive 99/31/EC¹ in relation to the facility concerned and specifies in writing for the purposes of this section.”

¹ O.J. No. L182, 16.07.1999, p.1.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

44.—The following Part is inserted after section 53A (inserted by section 43 of this Act) of the Act of 1996:

Pt.3
Insertion of Part
VA in Act of 1996
(end-of-life
vehicles).

“PART VA

RECOVERY OF END-OF-LIFE VEHICLES

Interpretation and
supplemental (Part
VA).

53B.—(1) In this Part—

‘Act of 1952’ means the Finance (Excise Duties) (Vehicles) Act 1952;

‘Act of 1992’ means the Finance Act 1992;

‘appropriate treatment and recovery’, in relation to a vehicle, means the treatment and recovery of the vehicle in accordance with the requirements of section 39;

‘authorised recovery facility’ means a facility at which the appropriate treatment and recovery of vehicles may take place;

‘Directive’ means the European Parliament and Council Directive 2000/53/EC of 18 September, 2000 on end-of-life vehicles;

‘end-of-life vehicle’ means a specified vehicle which is discarded or is to be discarded by its registered owner as waste;

‘mechanically propelled vehicle’ has the same meaning as it has in Chapter IV of Part II of the Act of 1992;

‘producer’, in relation to a vehicle, means the person who imports into, or manufactures in, the State the vehicle;

‘registered’, in relation to a vehicle, shall be construed in accordance with section 131 of the Act of 1992;

‘registered owner’ has the meaning assigned to it by the Road Vehicles (Registration and Licensing) (Amendment) Regulations 1992 (S.I. No. 385 of 1992) as amended for the time being, but, if those regulations should be revoked, it shall have the meaning assigned to it by such regulations corresponding to those regulations as may be for the time being in force;

‘specified vehicle’ means—

- (a) a category A vehicle or a category B vehicle within the meaning of Chapter IV of Part II of the Act of 1992, other than such a vehicle that falls within a class of vehicle specified in regulations under subsection (2) as being a class of vehicle excepted from this definition, and

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.44

- (b) a vehicle that falls within a class of vehicle specified in regulations under subsection (2) as being a class of vehicle included in this definition.

(2) The Minister may make regulations specifying a class of mechanically propelled vehicle to be a class of vehicle excepted from, or included in, the definition of 'specified vehicle' in this section (and such specification shall be made only where the Minister considers it necessary or expedient to do so in consequence of a Community act).

Producer responsibility for free treatment and recovery of end-of-life vehicles.

53C.—(1) The Minister may make regulations imposing the obligation specified in subsection (2) with effect from—

- (a) the commencement of *section 43 of the Protection of the Environment Act 2003* where the vehicle mentioned in that subsection is a vehicle registered on or after 1 July 2002,
- (b) 1 January 2007 where the vehicle mentioned in that subsection is a vehicle registered before, on or after 1 July 2002.

(2) The obligation mentioned in subsection (1) is an obligation on the producer of the vehicle concerned to ensure that the registered owner of an end-of-life vehicle can deposit the vehicle at an authorised treatment facility for the purpose of its being the subject of appropriate treatment and recovery without (subject to section 53D(4)) any cost being incurred by the owner in respect of such deposit, treatment or recovery.

(3) Regulations under this section may provide for—

- (a) the making of arrangements by producers of specified vehicles for the purpose of ensuring that the foregoing obligations of each of them under the regulations are fulfilled,
- (b) the provision by producers of the financial resources (the 'resources') necessary to ensure that those foregoing obligations are fulfilled,
- (c) the following matters in relation to the provision of the resources—
- (i) the conferral of powers on a specified person or persons (who or each of whom is

referred to in this section as a 'collection authority') with respect to securing and recovering the resources, Pt.3 S.44

- (ii) requiring the making of a declaration to a collection authority by a producer and specifying the particulars to be included in such a declaration,
- (iii) the time at which an amount of resources shall be made available by a producer and the form and manner in which they shall be made available,
- (iv) requiring specified records to be kept by specified persons in respect of matters connected with the making available of the resources and specifying the form of such records,
- (v) enabling the making available of resources by specified producers to be deferred in specified circumstances,
- (vi) requiring specified records and accounts to be kept by a collection authority in respect of resources made available or to be made available to it,
- (vii) enabling the refund of resources made available by specified producers to be made to them,
- (viii) enabling a collection authority to enter into arrangements with one or more specified persons whereby that person or those persons remit to the collection authority amounts by way of financial resources within a specified period of time after liability in respect of the making available of those amounts arises,
- (ix) providing for the payment into the Environment Fund by a collection authority of amounts received by it by way of resources (subject to the deduction from such amounts of any amounts

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.44

specified as being capable of being deducted therefrom for the purpose of defraying expenses incurred by it in securing or recovering the resources),

- (d) the exemption of a person from all or any of the requirements of regulations under this section who is certified by an association or body corporate that is formed or established for the purpose of the carrying on of relevant activities, that is to say, ensuring that end-of-life vehicles can be deposited by their registered owners for the purpose of their being the subject of appropriate treatment and recovery in accordance with subsection (2), and is approved by the Minister in accordance with regulations under paragraph (a), to be either—
- (i) a member or shareholder of that association or body corporate, as the case may be, or
 - (ii) participating, in a satisfactory manner, in a scheme for the carrying on of the relevant activities referred to in this paragraph or complying with any requirements specified by that association or body corporate, as the case may be, in relation to the carrying on of those activities,
- (e) (i) the granting by the Minister of approvals for the purpose of regulations under paragraph (d) and the conditions which he or she may attach to such approvals, including conditions relating to—
- (I) the financial and administrative arrangements to be made by the association or body corporate concerned,
 - (II) the relevant activities referred to in paragraph (d) to be carried on by the association or body corporate concerned and the manner in which they are to be carried on,

- (III) targets to be achieved by the association or body corporate concerned with respect to the carrying on of those activities by it, Pt.3 S.44
- (ii) enabling the Minister to vary as he or she thinks fit any condition attached to an approval aforesaid or to revoke such an approval in specified circumstances,
- (iii) the means by which an association or body corporate shall determine, for the purpose of regulations under paragraph (d), whether a person is participating, in a satisfactory manner, in a scheme referred to in that paragraph or, as the case may be, is complying with requirements referred to in that paragraph,
- (iv) the grant and revocation by an association or body corporate of a certificate for the purpose of regulations under paragraph (d) and the notifications to be given by it in respect of such a grant or revocation to the person concerned and other specified persons,
- (f) the exemption of a producer from all or any of the requirements of regulations under this section (being a producer who is not otherwise so exempted by virtue of regulations under paragraph (d)) where he or she shows to the satisfaction of the Minister or another person specified for this purpose that he or she has put arrangements in place to ensure that each end-of-life vehicle produced by him or her can be deposited by the registered owner thereof for the purpose of its being the subject of appropriate treatment and recovery in accordance with subsection (2),
- (g) any matters consequential on, or incidental to, the foregoing.

(4) A person who fails to comply with a provision of regulations under this section shall be guilty of an offence.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.44

Requirement to
deposit
mechanically
propelled vehicle
for recovery, etc.

53D.—(1) In this section—

‘essential components of a vehicle’ means the engine and coachwork of a vehicle;

‘national vehicle records’ means the records established and maintained under section 60 of the Finance Act 1993.

(2) Where the registered owner of a mechanically propelled vehicle decides to discard the vehicle as waste he or she shall deposit the vehicle at an authorised treatment facility for the purpose of its being the subject of appropriate treatment and recovery.

(3) Subject to subsection (4), that deposit, treatment and recovery shall, if the vehicle is a specified vehicle, occur without any cost being incurred by the registered owner.

(4) The Minister may make regulations providing that—

(a) subsection (3) shall not apply where the specified vehicle to be deposited—

(i) does not contain the essential components or other specified components of a vehicle,

(ii) contains waste which has been added to the vehicle, or

(iii) was not the subject of a licence taken out under section 1 of the Act of 1952 or, as the case may be, section 21(3) of the Finance (No. 2) Act 1992 for such period or periods as may be specified preceding the deposit,

(b) subsection (3), in so far as it provides that the deposit of the specified vehicle shall occur without any cost being incurred by the registered owner, shall not apply unless specified conditions are complied with.

(5) Subject to any regulations under this section, the operator of an authorised treatment facility shall—

(a) issue, in relation to the vehicle, a certificate (in this section referred to as a ‘certificate of destruction’) to the registered owner on the deposit by him or her of a mechanically propelled

vehicle at the facility for appropriate treatment and recovery, Pt.3 S.44

(b) notify, in such form as the Minister may determine, the Minister of the fact of that certificate having been issued and of such particulars contained in it as the Minister may determine (and the form that is so determined may be a form that is not legible if it is capable of being converted into a legible form).

(6) The Minister shall note on the national vehicle records such of the particulars contained in certificates of destruction as he or she considers appropriate and which have been notified to him or her under subsection (5)(b).

(7) The operator of an authorised treatment facility shall not transfer a mechanically propelled vehicle which has been deposited with him or her in accordance with subsection (2) to any other person save for the purpose of its being the subject of appropriate treatment and recovery at another authorised treatment facility.

(8) A mechanically propelled vehicle in respect of which a certificate of destruction has been issued shall not be subsequently—

- (a) registered,
- (b) licensed under section 1 of the Act of 1952 or section 21(3) of the Finance (No. 2) Act 1992,
- (c) used in a public place, or
- (d) exported.

Regulations for purposes of section 53D, etc.

53E.—(1) The Minister may make—

- (a) regulations for the purposes of section 53D, and
- (b) regulations providing for such supplementary, consequential or incidental provisions as the Minister considers necessary or expedient for the purpose of giving full effect to the provisions of the Directive to which that section relates.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision in relation to all or any of the following matters—

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.44

- (a) requiring specified documentation, information and particulars to be submitted by the registered owner of a mechanically propelled vehicle on the occasion of the vehicle being deposited at an authorised treatment facility pursuant to section 53D(2),
- (b) requiring specified documentation, information and particulars to be submitted by the operator of an authorised treatment facility to specified persons on the occasion of a mechanically propelled vehicle being deposited at that facility pursuant to section 53D(2),
- (c) requiring specified documentation, information and particulars to be submitted by the operator of an authorised treatment facility to specified persons on the occasion of a mechanically propelled vehicle's appropriate treatment and recovery at that facility being completed,
- (d) specifying the period within which a mechanically propelled vehicle deposited at an authorised treatment facility pursuant to section 53D(2) must undergo appropriate treatment and recovery,
- (e) the form of a certificate of destruction,
- (f) the keeping and preservation of records and information relating to certificates of destruction issued by operators of authorised treatment facilities,
- (g) the recognition in the State of certificates of destruction (being certificates issued under the laws of another Member State of the European Union implementing the Directive) in respect of mechanically propelled vehicles registered in the State,
- (h) specifying the persons to whom specified information and particulars derived from national vehicle records may be provided,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(i) any matters consequential on, or Pt.3 S.44
incidental to, the foregoing.

Offences for failure
to comply with
section 53D, etc.

53F.—A person who fails to comply
with—

(a) subsection (2), (3), (5), (7) or (8) of
section 53D, or

(b) a provision of regulations under
section 53E,

shall be guilty of an offence.”.

45.—Section 54 of the Act of 1996 is amended—

Amendment of
section 54 of Act of
1996.

(a) in subsection (4)(a), by substituting “may” for “shall”, and

(b) in subsection (5), by inserting after “subsection (4)(a)”,
“that were the subject of consultation in accordance with
that provision and in respect of which a condition has
been attached to a waste licence in accordance with sub-
section (4)”.

46.—The following section is inserted after section 55 of the Act
of 1996:

Extension to
Agency of powers
under section 55 of
Act of 1996.

“Powers under
section 55 also
exercisable by
Agency.

55A.—On and from the commencement of
section 46 of the *Protection of the Envir-
onment Act 2003*, the powers under section
55 shall, in addition to being exercisable by a
local authority, be exercisable by the Agency
(but, as respects the Agency, without the
limitation imposed on subsection (1)(a) of
that section by subsection (1)(b) thereof)
and, accordingly, for that purpose—

(a) the references in subsection (1)(a)
of that section to a local authority
shall be construed as including
references to the Agency and
that subsection, in its application
to the Agency, shall have effect
as if the words, ‘as respects its
functional area,’ were omitted,
and

(b) each subsequent reference in that
section to a local authority shall,
where the power under that sub-
section (1)(a) has been exercised
by the Agency in relation to a
particular matter, be construed,
in relation to that matter, as a ref-
erence to the Agency.”.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3

Extension to Agency of powers under section 56 of Act of 1996 and clarification of that section.

47.—The following section is inserted after section 56 of the Act of 1996:

“Powers under section 56 also exercisable by Agency and clarification of that section.

56A.—(1) On and from the commencement of *section 47* of the *Protection of the Environment Act 2003*, the powers under section 56 of the Act of 1996 shall, in addition to being exercisable by a local authority, be exercisable by the Agency and, accordingly, for that purpose—

(a) the references in subsection (1) of that section to a local authority shall be construed as including references to the Agency and that subsection, in its application to the Agency, shall have effect as if the words ‘in its functional area’ were omitted, and

(b) each subsequent reference in that section to a local authority shall, where the power under that subsection (1) has been exercised by the Agency in relation to a particular matter, be construed, in relation to that matter, as a reference to the Agency.

(2) Nothing in this section shall be construed as imposing on a local authority or the Agency, either directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.”.

Amendment of section 57 of Act of 1996.

48.—Section 57(1) of the Act of 1996 is amended—

(a) by inserting after “cause environmental pollution”, “or section 34 or 39(1) to be contravened”,

(b) by inserting in paragraph (a), after “such pollution”, “or contravention”, and

(c) by inserting in paragraph (c), after “costs”, “, including costs incurred by the Agency in relation to the carrying out of relevant inspections or surveys and the taking of relevant samples and the analysis of the results of any such activities,”.

Amendment of section 58 of Act of 1996.

49.—Section 58(1) of the Act of 1996 is amended by inserting in paragraph (a) after “environmental pollution”, “or section 34 or 39(1) to be contravened”.

Amendment of section 72 of Act of 1996.

50.—Section 72 (inserted by the Waste Management (Amendment) Act 2001) of the Act of 1996 is amended by inserting the following subsections after subsection (4):

“(4A) Where any amount of levy becomes payable in accordance with regulations made under this section and is not paid,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

simple interest on the amount shall be paid by the person liable to pay the levy and such interest shall be calculated from the date on which the levy became payable and at a rate of 0.0322 per cent for each day or part of a day during which the amount remains unpaid. Pt.3 S.50

(4B) Interest due in accordance with subsection (4A) shall be payable to the collection authority specified in the regulations under subsection (2) and the provisions of those regulations relating to the recovery of the levy shall apply to the interest as if it were levy.

(4C) For the purposes of subsection (4A), levy includes any estimated amount which has been included in a notice served by a collection authority on the person liable to pay the levy concerned provided such estimated amount has, in accordance with regulations under subsection (2), become due and payable to the collection authority.

(4D) Interest paid in accordance with subsection (4A) shall be treated as levy for the purposes of paragraph (1) of subsection (6) and section 74(7).

(4E) The Minister may by order amend the rate of interest specified in subsection (4A).”.

51.—Section 74 (inserted by the Waste Management (Amendment) Act 2001) of the Act of 1996 is amended by substituting the following subsection for subsection (7): Amendment of section 74 of Act of 1996.

“(7) Subject to, and in accordance with, regulations under section 53C, 72 or 74, there shall be paid into the Environment Fund the amounts specified in those regulations of financial resources or levy collected or recovered thereunder.”.

52.—The following section is inserted after section 74 of the Act of 1996: Charges for waste services.

“Charges for waste services.

75.—(1) A local authority may make a charge in respect of the provision of any waste service by, or on behalf of, that authority.

(2) A charge made by a local authority under subsection (1) shall be of such an amount as the authority considers appropriate and shall be payable by and recoverable from the person for whom the service is provided, or, where the service is provided in respect of premises—

(a) in case the premises are not owned by a local authority and comprise more than one dwelling, the owner of the premises, and

(b) in any other case, the occupier of the premises,

and different such charges may be made by such an authority in respect of persons, premises or services of different classes or descriptions or,

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.52

where the service relates to the collection, recovery or disposal of waste (without prejudice to any other basis for making a charge) in respect of different quantities, volumes or types of waste.

(3) A local authority may, if it is satisfied that it is appropriate so to do on grounds of personal hardship, waive all or portion of a charge made by it under subsection (1).

(4) Where a charge (or portion thereof) is waived under subsection (3), the liability of a person to pay that charge (or portion thereof) and any obligation on the local authority by whom the waiver was made to collect the charge (or portion thereof) shall cease.

(5) (a) An amount payable to a local authority on foot of a charge made under subsection (1) shall be payable either in advance or in such instalments payable on or by such dates as the authority shall determine, and, in default of being paid within two months of becoming payable, may be recovered by the authority as a simple contract debt in any court of competent jurisdiction.

(b) In any proceedings by a local authority pursuant to this subsection a certificate purporting to be signed by an officer of the authority authorised by it for purposes of this subsection and stating any matters relating to the liability of the defendant in the proceedings to pay an amount due on foot of a charge made under this section shall be sufficient evidence of those matters until the contrary is shown.

(c) Such a certificate shall be admitted in evidence in those proceedings without proof of the signature on it, that the signatory was an officer of the authority concerned or that he or she was authorised by it for the purposes of this subsection.

(d) The Minister may make regulations in relation to form and content of the certificate referred to in paragraph (b).

(6) For the avoidance of doubt, subsection (5) authorises a local authority to determine that an amount referred to in that subsection shall be payable in advance of the particular occasion on which a waste service provided by it on a regular basis is provided to a person or in respect of premises and, in particular, that the amount so payable shall be the amount it determines should

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

be payable in respect of each occasion of the service being provided by it. Pt.3 S.52

(7) Where a sum is due to a local authority by a person in respect of a charge made under subsection (1) and, at the same time, another sum is due by that authority to that person, the former sum may be set off against the latter either, as may be appropriate, in whole or in part.

(8) Notwithstanding the provisions of any order made under any other enactment, the making of a charge in respect of the provision of a waste service and any exercise of the power of waiver under subsection (3) shall each be an executive function.

(9) A local authority shall not, by resolution, under section 140 of the Local Government Act 2001 give a direction or require any act, matter or thing to be done or effected where the effect of such direction or requirement would be contrary to, or inconsistent with, this section and any such resolution purporting to be passed under the said section 140 which contravenes this subsection shall be void.

(10) (a) The manager of a local authority may make an order prescribing that waste placed for the purposes of its being collected by or on behalf of the local authority shall bear evidence, in such a manner or form as is provided in the order, of the payment of any charge that has been made under this section in respect of the collection of the waste.

(b) In so far as there is any inconsistency between the provisions of an order under this subsection and bye-laws made by the local authority concerned under section 35(1) the provisions of the order shall prevail.

(c) The manager of a local authority may by order amend or revoke an order made by him or her under this subsection (including an order under this paragraph).

(11) In this section—

‘dwelling’ includes a part of any premises let as a separate dwelling, whether or not the person to whom it is let shares with any other person any accommodation, amenity or facility in connection therewith or any other portion of the premises;

‘owner’ means, in relation to a premises, a person, other than a mortgagee not in possession, who, whether in his or her own right or as trustee or agent for any other person, is entitled to receive the rack rent of the premises or, where

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.3 S.52

the premises are not let at a rack rent, would be so entitled if they were so let.”.

Transitional provisions relating to waste licences.

53.—The following section is inserted after section 75 (inserted by section 52 of this Act) of the Act of 1996:

“Transitional provisions consequent on *Protection of the Environment Act 2003*.

76.—(1) Every waste licence and revised waste licence granted under this Act and in force immediately before the commencement of section 53 of the *Protection of the Environment Act 2003* shall, without prejudice to subsections (3) and (4), section 49 and the other provisions of this Act, continue in force; for the avoidance of doubt, the provisions of this Act as they stand amended by the *Protection of the Environment Act 2003*, and not as they stood before such amendment, shall apply to such a waste licence.

(2) Every application made under this Act for a waste licence, or the review of a waste licence or a revised waste licence, and every review of a waste licence or revised waste licence commenced by the Agency of its own volition under this Act and not finally dealt with and determined or completed before the commencement of section 53 of the *Protection of the Environment Act 2003*, shall continue to be dealt with by the Agency, and be determined or completed by it, as if the application were an application for a waste licence, or the review of a waste licence or a revised waste licence under this Act as it stands amended by the *Protection of the Environment Act 2003* or, as the case may be, the review were a review commenced by the Agency of its own volition under this Act as it stands so amended.

(3) The Agency shall, not later than 30 September 2007, have done the following (which, by virtue of this subsection, it has the power to do)—

(a) examined the terms of every waste licence and revised waste licence to which subsection (1) applies and for the time being in force and determined whether, having regard to the provisions of Council Directive 96/61/EC of 24 September 1996 and subsection (4), the waste licence or revised waste licence requires to be reviewed under this Part or be the subject of the exercise of the powers conferred by subsection (4), and

(b) if—

(i) it has determined that the waste licence or revised waste licence requires to be

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

so reviewed, commenced Pt.3 S.53
such a review and exercised
the powers conferred on it
by this Part consequent on
such a review, or

- (ii) it has determined that the waste licence or the revised waste licence does not require to be so reviewed and subsection (4) does not apply and, accordingly, that no further action is required, declared in writing that it is of that opinion.

(4) If the bringing into conformity with Council Directive 96/61/EC of 24 September 1996 of a waste licence or revised waste licence to which subsection (1) applies can, in the opinion of the Agency, be achieved by amending one or more conditions of the licence (and the making of those amendments will not significantly alter the character of the licence) then, unless the Agency considers it ought nevertheless, in the public interest or because of other special considerations, carry out the review and exercise the powers referred to in subsection (3)(b)(i) in relation to the licence, the Agency shall have made, not later than 30 September 2007, those amendments of the conditions of the waste licence or revised waste licence (which, by virtue of this subsection, it has power to do).”.

54.—The Schedule set out in *Schedule 3* to this Act is substituted for the Third Schedule to the Act of 1996. Substitution of new Third Schedule to Act of 1996.

55.—The Schedule set out in *Schedule 4* to this Act is substituted for the Fourth Schedule to the Act of 1996. Substitution of new Fourth Schedule to Act of 1996.

PART 4

AMENDMENT OF ACT OF 1997

56.—Section 19 of the Act of 1997 is amended— Amendment of section 19 of Act of 1997.

(a) by substituting the following subsection for subsection (1):

“(1) Where any structure or other land, door, gate, window, tree, pole or post is in or is visible from a public place, a person who is not the owner, occupier or person in charge thereof shall not—

(a) exhibit or cause to be exhibited thereon any article or advertisement, or

(b) carry out or cause to be carried out any defacement thereof by writing or other marks,

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.4 S.56

unless, in either case, the person is authorised in advance to do so in writing by such owner, occupier or person in charge or by or under any enactment, and, in addition, in the case of paragraph (a), the article or advertisement—

- (i) if it relates to a meeting or an event, carries the name and address of the person who is promoting or arranging the meeting or event, and
- (ii) in any other case, carries the name and address of the person on whose behalf it is exhibited.”,

(b) by substituting the following subsections for subsection (2):

“(2) A person shall not place advertising material on a mechanically propelled vehicle in a public place otherwise than by securing the material by some mechanical means to the body of the vehicle.

(2A) For the purposes of subsection (2)—

‘body’, in relation to a mechanically propelled vehicle, does not include—

- (a) any windscreen wiper, wiperblade, mirror or aerial, or
- (b) any other part of the vehicle concerned that is not specifically designed or adapted for the purpose of securing to it the material concerned;

‘mechanical means’ does not include any means relying on or involving any pressure (of whatever amount or in whatever direction) exerted by—

- (a) any windscreen wiper or wiperblade, or
- (b) any other part of the vehicle that is not specifically designed or adapted for the purpose of employing pressure in order to secure the material concerned to the body of the vehicle;

‘place advertising material on a mechanically propelled vehicle’ does not include paint, emboss, inscribe or apply by any method of transfer letters, figures or images on or to the body of the vehicle or place in the interior of the vehicle any such material.”,

and

(c) by substituting the following subparagraph for subparagraph (ii) of subsection (7)(b):

- “(ii) relates to a presidential election within the meaning of the Presidential Elections Act 1993, a general election or a bye-election, within the meaning, in each case, of the Electoral Act 1992, a local election within the meaning of the Local Government Act 2001,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

a referendum, within the meaning of the Referendum Act 1994, an election of representatives to the European Parliament under the European Parliament Elections Act 1997, or an election of members of *Údarás na Gaeltachta* under the *Údarás na Gaeltachta Act 1979*,”.

Pt.4 S.56

57.—The following section is substituted for section 21 of the Act of 1997:

Amendment of section 21 of Act of 1997.

“Power of local authorities to make bye-laws in relation to litter.

21.—(1) A local authority may make bye-laws for the purposes of preventing the creation of, and controlling, litter within its functional area.

(2) Without prejudice to the generality of subsection (1), bye-laws made under that subsection may make provision for all or any of the following matters:

- (a) the prohibition or regulation of the distribution to the public of advertising material or specified categories of advertising material,
- (b) the regulation of the movement, location, use and operation of mobile outlets so as to secure the prevention or removal of litter at or in the vicinity of such outlets,
- (c) requiring occupiers of specified premises or classes of premises to take such measures as are deemed necessary by the local authority to prevent or limit the creation of litter at or in the vicinity of such premises and provide for its removal,
- (d) requiring the promoters or organisers of events at which large numbers of persons are likely to be present to take measures to prevent or limit the creation of litter at the events and provide for its removal,
- (e) requiring the owners or managers of specified businesses or classes of business to wash, clean and brush down the public area outside of premises in which their business is carried on or cause those things to be done,
- (f) the regulation of the provision and use of supermarket trolleys, including the imposition of duties on the owners or managers of retail outlets in cases where supermarket trolleys from those outlets are abandoned.

(3) A bye-law under subsection (1) shall not apply to—

- (a) the distribution of advertising material by means of a direct delivery to a place having an address, or

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Pt.4 S.57

(b) the distribution of advertising material relating to a presidential election within the meaning of the Presidential Elections Act 1993, a general election or a bye-election, within the meaning, in each case, of the Electoral Act 1992, a local election within the meaning of the Local Government Act 2001, a referendum, within the meaning of the Referendum Act 1994, an election of representatives to the European Parliament under the European Parliament Elections Act 1997, or an election of members of *Údarás na Gaeltachta* under the *Údarás na Gaeltachta Act 1979*.

(4) A bye-law under subsection (1) shall be made in accordance with, and shall be construed for the purposes of its enforcement as if it were made under, Part 19 of the Local Government Act 2001.

(5) Bye-laws made under subsection (1) may contain such incidental, supplementary and consequential provisions as appear to the local authority making them to be necessary.”.

Amendment of section 24 of Act of 1997.

58.—The following section is substituted for section 24 of the Act of 1997:

“Punishment for offences.

24.—(1) A person guilty of an offence under this Act shall be liable—

(a) on conviction on indictment, to a fine not exceeding €130,000, or

(b) on summary conviction, to a fine not exceeding €3,000.

(2) If the contravention in respect of which a person is convicted of an offence under this Act is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence he or she shall be liable—

(a) on conviction on indictment, to a fine not exceeding €10,000, or

(b) on summary conviction, to a fine not exceeding €600.”.

PART 5

MISCELLANEOUS

Saving for regulations, orders and bye-laws.

59.—(1) Any regulation, order or bye-law that—

(a) has been made under a provision of the Act of 1992, the Act of 1996 or the Act of 1997 that has been amended, or has been repealed and re-enacted with or without modifications, by a provision of this Act, and

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

(b) is in force immediately before the commencement of that provision of this Act, Pt.5 S.59

shall, subject to *subsection (2)* of this section, continue in force as if made under that provision as so amended or re-enacted and may be amended or revoked accordingly.

(2) *Subsection (1)* of this section does not apply to the extent that the regulation, order or bye-law concerned is inconsistent with the provision of the relevant enactment as so amended or re-enacted.

(3) References in this section to an order do not include references to an order mentioned in section 82(9) of Part IV (inserted by *section 15* of this Act) of the Act of 1992 (which section 82(9) makes separate provision for the continuance in force of such an order).

60.—Section 5 of the Air Pollution Act 1987 is amended by substituting the following subsection for subsection (4A) (inserted by the Act of 1992): Amendment of section 5 of Air Pollution Act 1987.

“(4A) Directions under subsection (3) shall not be issued in relation to an activity for the purposes of the Environmental Protection Agency Act 1992, or in relation to any process, development or operation as regards which an order has been made, and remains in force, under section 99B of the said Act.”.

61.—Section 34(2) of the Planning and Development Act 2000, is amended, in paragraph (c), by substituting “Subject to section 99F of the Environmental Protection Agency Act 1992,” for “Subject to section 98 (as amended by section 256 of this Act) of the Environmental Protection Agency Act 1992,”. Amendment of section 34 of Planning and Development Act 2000.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Section 18.

SCHEDULE 1

NEW FIRST SCHEDULE TO ACT OF 1992

“FIRST SCHEDULE

ACTIVITIES TO WHICH PART IV APPLIES

Interpretation

If 2 or more activities falling within the same paragraph under a particular heading of this Schedule are carried on in the same installation by the same person, then, for the purpose of any threshold specified in that paragraph, the capacities of those activities shall be aggregated.

1 Minerals and Other Materials

- 1.1.1 The production of asbestos.
- 1.1.2 The extraction, production and processing of raw asbestos, not included in paragraph 1.1.1.
- 1.2 The extraction of aluminium oxide from an ore, not included in paragraph 5.13.
- 1.3 The extraction and processing (including size reduction, grading and heating) of minerals within the meaning of the Minerals Development Acts 1940 to 1999, where an activity involves—
 - (a) a metalliferous operation, or
 - (b) any other operation where either the level of extracted or processed minerals is greater than 200,000 tonnes per annum or the total operational yield is greater than 1,000,000 tonnes,and storage of related mineral waste.
- 1.4 The extraction of peat in the course of business which involves an area exceeding 50 hectares.

2 Energy

- 2.1 The operation of combustion installations with a rated thermal input equal to or greater than 50 MW.

3 Metals

- 3.1.1 The production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour.
- 3.1.2 The initial melting or production of iron or steel, not included in paragraph 3.1.1.
- 3.2.1 The processing of ferrous metals:
 - (a) hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour,
 - (b) smitheries with hammers the energy of which exceeds 50 kilojoule per hammer, where the calorific power used exceeds 20 MW,

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

- (c) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour. SCH. 1
- 3.2.2 The processing of iron and steel in forges, drawing plants and rolling mills where the production area exceeds 500 square metres, not included in paragraph 3.2.1.
- 3.3.1 The operation of ferrous metal foundries with a production capacity exceeding 20 tonnes per day.
- 3.3.2 The production, recovery, processing or use of ferrous metals in foundries having melting installations with a total capacity exceeding 5 tonnes, not included in paragraph 3.3.1.
- 3.4.1 The—
- (a) production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes,
- (b) smelting, including the alloyage, of non-ferrous metals, including recovered products, (refining, foundry casting, etc.) with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals.
- 3.4.2 The production, recovery or processing of non-ferrous metals, their compounds or other alloys including antimony, arsenic, beryllium, chromium, lead, magnesium, manganese, phosphorus, selenium, cadmium or mercury, by thermal, chemical or electrolytic means in installations with a batch capacity exceeding 0.5 tonnes, not included in paragraph 3.4.1.
- 3.5 The reaction of aluminium or its alloys with chlorine or its compounds, not included in paragraph 5.13.
- 3.6.1 The roasting or sintering of metal ore (including sulphide ore).
- 3.6.2 The calcining of metallic ores in plants with a capacity exceeding 1,000 tonnes per year.
- 3.7 Swaging by explosives where the production area exceeds 100 square metres.
- 3.8 The pressing, drawing and stamping of large castings where the production area exceeds 500 square metres.
- 3.9 Boilermaking and the manufacture of reservoirs, tanks and other sheet metal containers where the production area exceeds 500 square metres.
- 4 Mineral Fibres and Glass**
- 4.1 The processing of asbestos, and the manufacture and processing of asbestos-based products.
- 4.2.1 The melting of mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

SCH. 1

4.2.2 The manufacture of glass fibre or mineral fibre, not included in paragraph 4.2.1 or 4.3.

4.3 The manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day or 5,000 tonnes per year.

4.4 The production of industrial diamonds.

5 Chemicals

Production, for the purposes of the activities mentioned in paragraph 5.12 to 5.17, means the production on an industrial scale by chemical processing of substances or groups of substances mentioned in any of those paragraphs.

5.1 The manufacture of chemicals in an integrated chemical installation, not included in paragraphs 5.12 to 5.17.

5.2 The manufacture of olefins and their derivatives or of monomers and polymers including styrene and vinyl chloride, not included in paragraphs 5.12 to 5.17.

5.3 The manufacture, by way of chemical reaction processes, of organic or organo-metallic chemical products other than those specified in paragraph 5.2 and not included in paragraphs 5.12 to 5.17.

5.4 The manufacture of inorganic chemicals, not included in paragraphs 5.12 to 5.17.

5.5 The manufacture of artificial fertilisers, not included in paragraphs 5.12 to 5.17.

5.6 The manufacture of pesticides, pharmaceutical or veterinary products and their intermediates, not included in paragraphs 5.12 to 5.17.

5.7 The manufacture of paints, varnishes, resins, inks, dyes, pigments or elastomers where the production capacity exceeds 1,000 litres per week, not included in paragraphs 5.12 to 5.17.

5.8 The formulation of pesticides, not included in paragraphs 5.12 to 5.17.

5.9 The chemical manufacture of glues, bonding agents and adhesives, not included in paragraphs 5.12 to 5.17.

5.10 The manufacture of vitamins involving the use of heavy metals, not included in paragraphs 5.12 to 5.17.

5.11 The storage, in quantities exceeding the values shown, of any one or more of the following chemicals (other than as part of any other activity) and not included in paragraphs 5.12 to 5.17—

methyl acrylate (20 tonnes); acrylonitrile (20 tonnes); toluene di-isocyanate (20 tonnes); anhydrous ammonia (100 tonnes); anhydrous hydrogen fluoride (1 tonne).

5.12 The production of basic organic chemicals, such as:

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

- (a) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic), SCH. 1
- (b) oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins,
- (c) sulphurous hydrocarbons,
- (d) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates,
- (e) phosphorus-containing hydrocarbons,
- (f) halogenic hydrocarbons,
- (g) organometallic compounds,
- (h) basic plastic materials (polymers, synthetic fibres and cellulose-based fibres),
- (i) synthetic rubbers,
- (j) dyes and pigments,
- (k) surface-active agents and surfactants.
- 5.13 The production of basic inorganic chemicals, such as:
- (a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride,
- (b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids,
- (c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide,
- (d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate,
- (e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide.
- 5.14 The production of phosphorous-based, nitrogen-based or potassium-based fertilisers (simple or compound fertilisers).
- 5.15 The production of basic plant health products and of biocides.
- 5.16 The use of a chemical or biological process for the production of basic pharmaceutical products.
- 5.17 The production of explosives.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

SCH. 1

6 Intensive Agriculture

6.1 The rearing of poultry in installations, whether within the same complex or within 100 metres of the same complex, where the capacity exceeds 40,000 places.

6.2 The rearing of pigs in an installation, whether within the same complex or within 100 metres of the same complex, where the capacity exceeds—

750 places for sows in a breeding unit, or
285 places for sows in an integrated unit, or
2,000 places for production pigs.

In this paragraph—

‘breeding unit’ means a piggery in which pigs are bred and reared up to 30kg in weight;

‘integrated unit’ means a piggery in which pigs are bred and reared to slaughter;

‘production pig’ means any pig over 30kg in weight which is being fattened for slaughter;

‘sow’ means a female pig after its first farrowing.

7 Food and Drink

7.1 The manufacture of vegetable and animal oils and fats where the capacity for processing raw materials exceeds 40 tonnes per day, not included in paragraph 7.8.

7.2.1 The treatment and processing of milk, the quantity of milk received being greater than 200 tonnes per day (average value on a yearly basis).

7.2.2 The manufacture of dairy products where the processing capacity exceeds 50 million gallons of milk equivalent per year, not included in paragraph 7.2.1.

7.3.1 Brewing (including cider and perry production) in installations where the production capacity exceeds 25 million litres per year, not included in paragraph 7.8.

7.3.2 Distilling in installations where the production capacity exceeds the equivalent of 1,500 tonnes per year measured as pure alcohol, not included in paragraph 7.8.

7.3.3 Malting in installations where the production capacity exceeds 100,000 tonnes per year, not included in paragraph 7.8.

7.4.1 The operation of slaughterhouses with a carcass production capacity greater than 50 tonnes per day.

7.4.2 The slaughter of animals in installations where the daily capacity exceeds 1,500 units and where units have the following equivalents—

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

1 sheep = 1 unit,

SCH. 1

1 pig = 2 units,

1 head of cattle = 5 units,

and not included in paragraph 7.4.1.

7.5 The manufacture of fish-meal and fish-oil, not included in paragraph 7.8.

7.6 The manufacture of sugar, not included in paragraph 7.8.

7.7.1 The disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tonnes per day.

7.7.2 The processing (including rendering) of animal carcasses and by-products, not included in paragraph 7.7.1.

7.8 Treatments or processes for the purposes of the production of food products from—

(a) animal raw materials (other than milk) with a finished product production capacity greater than 75 tonnes per day,

(b) vegetable raw materials with a finished product production capacity greater than 300 tonnes per day (average value on a quarterly basis).

8 Wood, Paper, Textiles and Leather

8.1 The production of paper pulp, paper or board (including fibre-board, particle-board and plywood) with a production capacity exceeding 20 tonnes per day.

8.2 The production of pulp from timber or other fibrous materials.

8.3 The treatment or protection of wood, involving the use of preservatives, with a capacity exceeding 10 tonnes of wood per day.

8.4 The manufacture of synthetic fibres, not included in paragraph 5.12.

8.5.1 The pre-treatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tonnes per day.

8.5.2 The dyeing, treatment or finishing (including moth-proofing and fireproofing) of fibres or textiles (including carpet) where the capacity exceeds 1 tonne per day of fibre, yarn or textile material, not included in paragraph 8.5.1.

8.6.1 The tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.

8.6.2 The fell-mongering of hides and tanning of leather in installations where the capacity exceeds 100 skins per day, not included in paragraph 8.6.1.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

SCH. 1

9 Fossil Fuels

- 9.1 The extraction, other than offshore extraction, of petroleum, natural gas, coal or bituminous shale.
- 9.2 The handling or storage of crude petroleum, not included in paragraph 9.3.1 or 9.3.2.
- 9.3.1 The operation of mineral oil and gas refineries.
- 9.3.2 The refining of petroleum or gas, not included in paragraph 9.3.1.
- 9.4.1 The operation of coke ovens.
- 9.4.2 The operation of coal gasification and liquefaction plants.
- 9.4.3 The production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization.
- 9.4.4 The pyrolysis, carbonisation, gasification, liquefaction, dry distillation, partial oxidation or heat treatment of coal, lignite, oil or bituminous shale, other carbonaceous materials or mixtures of any of these in installations with a processing capacity exceeding 500 tonnes per day, not included in paragraph 9.4.1, 9.4.2 or 9.4.3.

10 Cement

- 10.1 The production of cement.

11 Waste

- 11.1 The recovery or disposal of waste in a facility, within the meaning of the Act of 1996, which facility is connected or associated with another activity specified in this Schedule in respect of which a licence or revised licence under Part IV is in force or in respect of which a licence under the said Part is or will be required.

12 Surface Coatings

- 12.1 Operations involving coating with organo-tin compounds, not included in paragraph 12.2.1 or 12.2.2.
- 12.2.1 The surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tonnes per year.
- 12.2.2 The manufacture or use of coating materials in processes with a capacity to make or use at least 10 tonnes per year of organic solvents, and powder coating manufacture with a capacity to produce at least 50 tonnes per year, not included in paragraph 12.2.1.
- 12.3 The surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m³.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

13 Other Activities

SCH. 1

- 13.1 The testing of engines, turbines or reactors where the floor area exceeds 500 square metres.
- 13.2 The manufacture of integrated circuits and printed circuit boards.
- 13.3 The production of lime in a kiln.
- 13.4.1 The manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, or with a kiln capacity exceeding 4 m³ and a setting density per kiln exceeding 300 kg/m³.
- 13.4.2 The manufacture of coarse ceramics including refractory bricks, stoneware pipes, facing and floor bricks and roof tiles, not included in paragraph 13.4.1.”.

SCHEDULE 2

Section 3.

REPEALS AND REVOCATIONS

PART 1

Enactments Repealed

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 10 of 1996	Waste Management Act 1996	Section 64; Section 65(1); Subsections (2) and (4) of section 68.
No. 30 of 2000	Planning and Development Act 2000	Section 256.

PART 2

Statutory Instruments Revoked

S.I. Number and Year (1)	Citation (2)	Extent of Revocation (3)
S.I. No. 84 of 1994	European Communities (Environmental Impact Assessment) (Amendment) Regulations 1994	Part III.

[No. 27.] *Protection of the Environment Act* [2003.]
2003.

Section 54.

SCHEDULE 3

NEW THIRD SCHEDULE TO ACT OF 1996

“THIRD SCHEDULE

WASTE DISPOSAL ACTIVITIES

1. Deposit on, in or under land (including landfill).
2. Land treatment, including biodegradation of liquid or sludge discards in soils.
3. Deep injection of the soil, including injection of pumpable discards into wells, salt domes or naturally occurring repositories.
4. Surface impoundment, including placement of liquid or sludge discards into pits, ponds or lagoons.
5. Specially engineered landfill, including placement into lined discrete cells which are capped and isolated from one another and the environment.
6. Biological treatment not referred to elsewhere in this Schedule which results in final compounds or mixtures which are disposed of by means of any activity referred to in paragraphs 1 to 5 or paragraphs 7 to 10 of this Schedule.
7. Physico-chemical treatment not referred to elsewhere in this Schedule which results in final compounds or mixtures which are disposed of by means of any activity referred to in paragraphs 1 to 5 or paragraphs 8 to 10 of this Schedule (including evaporation, drying and calcination).
8. Incineration on land or at sea.
9. Permanent storage, including emplacement of containers in a mine.
10. Release of waste into a water body (including a seabed insertion).
11. Blending or mixture prior to submission to any activity referred to in a preceding paragraph of this Schedule.
12. Repackaging prior to submission to any activity referred to in a preceding paragraph of this Schedule.
13. Storage prior to submission to any activity referred to in a preceding paragraph of this Schedule, other than temporary storage, pending collection, on the premises where the waste concerned is produced.”.

[2003.] *Protection of the Environment Act* [No. 27.]
2003.

SCHEDULE 4

Section 55.

NEW FOURTH SCHEDULE TO ACT OF 1996

“FOURTH SCHEDULE

WASTE RECOVERY ACTIVITIES

1. Solvent reclamation or regeneration.
2. Recycling or reclamation of organic substances which are not used as solvents (including composting and other biological processes).
3. Recycling or reclamation of metals and metal compounds.
4. Recycling or reclamation of other inorganic materials.
5. Regeneration of acids or bases.
6. Recovery of components used for pollution abatement.
7. Recovery of components from catalysts.
8. Oil re-refining or other re-uses of oil.
9. Use of any waste principally as a fuel or other means to generate energy.
10. The treatment of any waste on land with a consequential benefit for an agricultural activity or ecological system.
11. Use of waste obtained from any activity referred to in a preceding paragraph of this Schedule.
12. Exchange of waste for submission to any activity referred to in a preceding paragraph of this Schedule.
13. Storage of waste intended for submission to any activity referred to in a preceding paragraph of this Schedule, other than temporary storage, pending collection, on the premises where such waste is produced.”.