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ENVIRONMENTAL PROTECTION AGENCY ACT, 1992

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[No. 7.] *Environmental Protection Agency Act, 1992.* [1992.]

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Criminal Procedure Act, 1967	1967, No. 12
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European Communities Act, 1972	1972, No. 27
Fisheries (Consolidation) Act, 1959	1959, No. 14
Harbours Act, 1946	1946, No. 9
Health Act, 1970	1970, No. 1
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Local Authorities (Works) Act, 1949	1949, No. 17
Local Government Act, 1941	1941, No. 23
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Local Government (Roads and Motorways) Act, 1974	1974, No. 6
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Local Government (Water Pollution) Act, 1977	1977, No. 1
Local Government (Water Pollution) (Amendment) Act, 1990	1990, No. 21
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Public Health (Ireland) Act, 1878	1878, c. 52
Safety, Health and Welfare at Work Act, 1989	1989, No. 7
The Dublin Corporation Waterworks Act, 1861	1861, c. 172
Unfair Dismissals Act, 1977	1977, No. 10
Waterworks Clauses Act, 1847	1847, c. 17
Waterworks Clauses Act, 1863	1863, c. 93

European Communities Regulations Referred to

European Communities (Asbestos Waste) Regulations, 1990	S.I. No. 30 of 1990
European Communities (Control of Water Pollution by Asbestos) Regulations, 1990	S.I. No. 31 of 1990
European Communities (Environmental Impact Assessment) (Motorways) Regulations, 1988	S.I. No. 221 of 1988
European Communities (Environmental Impact Assessment) Regulations, 1989	S.I. No. 349 of 1989
European Communities (Quality of Water Intended for Human Consumption) Regulations, 1988	S.I. No. 81 of 1988
European Communities (Toxic and Dangerous Waste) Regulations, 1982	S.I. No. 33 of 1982
European Communities (Transfrontier Shipment of Hazardous Waste) Regulations, 1988	S.I. No. 248 of 1988
European Communities (Waste) Regulations, 1979	S.I. No. 390 of 1979
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ENVIRONMENTAL PROTECTION AGENCY ACT, 1992

AN ACT TO MAKE FURTHER AND BETTER PROVISION FOR THE PROTECTION OF THE ENVIRONMENT AND THE CONTROL OF POLLUTION, TO ESTABLISH AN ENVIRONMENTAL PROTECTION AGENCY, FOR THESE AND OTHER PURPOSES TO INCREASE CERTAIN EXISTING MONETARY PENALTIES AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID. [23rd April, 1992]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—This Act may be cited as the Environmental Protection Agency Act, 1992. Short title.

2.—(1) *Part I* (other than *section 18 (1)*), *Part II* (other than *section 43*), *Part III*, *Part IV* (other than *section 93*) and *Part VI* will come into operation on the passing of this Act. Commencement.

(2) The remaining provisions of this Act shall come into operation on such day or days as may be fixed therefor by any order or orders of the Minister, either generally or with reference to any particular purpose or provision or with reference to a particular area or areas, and different days may be so fixed for different purposes and different provisions of this Act and for different areas.

3.—(1) In this Act, unless the context otherwise requires— Interpretation.

“activity” means any process, development or operation specified in the *First Schedule*;

“the Act of 1963” means the Local Government (Planning and Development) Act, 1963;

“authorised person” means a person who is—

- (a) appointed in writing by a Minister, a local authority or the Agency or by such other person or body as may be prescribed, as the case may be, to be an authorised person

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for the purposes of this Act or any Part or section thereof, or

(b) appointed in writing to be an authorised person pursuant to regulations under this Act by a person specified in those

regulations; “development” has the meaning assigned to it by section 3 of the Act of 1963;

“disposal”, in relation to waste, includes the collection, sorting, carriage, treatment, storage and tipping above or under ground, and the transformation operations necessary for its recovery, reuse or recycling;

“emission” means—

- (a) an emission into the atmosphere of a pollutant within the meaning of the Air Pollution Act, 1987,
- (b) 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,
- (c) the disposal of waste, or
- (d) noise;

“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 medium”, “environmental pollution” and “environmental protection” have the meanings respectively assigned to them by *section 4*;

“established activity” means an activity—

- (a) in respect of which a permission under Part IV of the Act of 1963 is granted prior to such day (in this paragraph and in *paragraph (b)* referred to as “the relevant day”) as may be prescribed by the Minister and which on the relevant day has not ceased to have effect, in accordance with the provisions of sections 2 and 4 of the Local Government (Planning and Development) Act, 1982, or
- (b) which is, on the day immediately prior to the relevant day, or was, at any time during the period of twelve months ending on the day immediately prior to the relevant day, carried on, other than an activity which involves or is associated with an unauthorised structure or an unauthorised use within the meaning of the Act of 1963;

“functions” includes powers and duties;

“local authority” means—

- (a) in the case of the administrative county of Dublin, other than the borough of Dún Laoghaire, the council of the county of Dublin,
- (b) in the case of the borough of Dún Laoghaire, the corporation of the borough,
- (c) in the case of a county borough, the corporation of the county borough, and

(d) in the case of any other administrative county, the council of the county,

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

“the Minister” means the Minister for the Environment;

“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 premises, includes the owner, a lessee, any person entitled to occupy the premises and any other person having, for the time being, control of the premises;

“person in charge” includes an occupier of a premises or a manager, supervisor or operator of an activity;

“planning authority” has the meaning assigned to it by the Act of 1963;

“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 made by the Minister;

“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, 1941,
- (d) a harbour authority within the meaning of the Harbours Act, 1946,
- (e) a health board established under the Health Act, 1970,
- (f) a board or other body established by or under statute,
- (g) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or
- (h) a company in which all the shares are held by a board, company, or other body referred to in *paragraph (f) or (g) of this definition*;

“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;

“sanitary authority” means a sanitary authority for the purposes of the Local Government (Sanitary Services) Acts, 1878 to 1964;

“statutory undertaker” has the meaning assigned to it by the Act of 1963;

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“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 plan prepared under Article 4 (2) of the European Communities (Waste) Regulations, 1979, or a special waste plan within the meaning assigned to it under the European Communities (Toxic and Dangerous Waste) Regu-

lations, 1982; “works”, in relation to *sections 90, 106 and 107*, has the meaning assigned to it by the Act of 1963.

(2) In this Act a reference to a section, Part or Schedule, is a reference to a section, Part or Schedule of this Act, unless there is an indication that a reference to any other enactment is intended.

(3) 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 there is an indication that a reference to some other provision is intended.

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

(5) This Act applies, *inter alia*, to activities operated by or in the charge of the State.

Environmental protection, environmental pollution and environmental medium.

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.

(2) In this Act “environmental pollution” means—

- (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) the disposal of waste in a manner which would endanger human health or harm the environment and, in particular—
 - (i) create a risk to waters, the atmosphere, land, soil, plants or animals,
 - (ii) cause a nuisance through noise or odours, or
 - (iii) adversely affect the countryside or places of special interest,

or

- (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, land, soil and waters;

“waters” has the meaning assigned to it by the Local Government (Water Pollution) Act, 1977.

5.—(1) Subject to *subsection (3)*, a reference in this Act to the use of the best available technology not entailing excessive costs to prevent or eliminate, or where that is not practicable, to limit, abate or reduce an emission from an activity, shall be construed as meaning the provision and proper maintenance, use, operation and supervision of facilities which, having regard to all the circumstances, are the most suitable for the purposes.

Best available technology not entailing excessive costs.

(2) For the purposes of *subsection (1)*, regard shall be had to—

(a) in the case of an activity other than an established activity—

- (i) the current state of technical knowledge,
- (ii) the requirements of environmental protection, and
- (iii) the application of measures for these purposes, which do not entail excessive costs, having regard to the risk of significant environmental pollution which, in the opinion of the Agency, or any other licensing authority in relation to *section 111*, exists;

(b) in any other case, in addition to the matters specified in *paragraph (a)*—

- (i) the nature, extent and effect of the emission concerned,
- (ii) the nature and age of the existing facilities connected with the activity and the period during which the facilities are likely to be used or to continue in operation, and
- (iii) the costs which would be incurred in improving or replacing the facilities referred to in *subparagraph (ii)* in relation to the economic situation of activities of the class concerned.

(3) (a) The Agency may, from time to time as occasion demands, specify the best available technology not entailing excessive costs for preventing, limiting, eliminating, abating or reducing such emissions as may be specified either from 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.

(b) Where the Agency specifies the best available technology not entailing excessive costs in relation to an emission from an activity as provided for in *paragraph (a)*, a direction issued under *section 5 (3)* of the Air Pollution Act, 1987, related to such emission shall cease to have effect in relation to such emission.

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

(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,

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(b) notice of the issue of the specification to be published in *Iris Oifigiúil*, and

(c) 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 the copy.

(5) Section 5 of the Air Pollution Act, 1987, is hereby amended by the insertion of the following subsection after subsection (4):

“(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 95* of the said Act.”.

(6) In this section—

“facilities” includes plant and premises;

“an emission from an activity” includes a release of a genetically modified organism as defined in *section 111*;

“activity” includes any process or action involving a genetically modified organism.

Regulations.

6.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or in relation to any matter referred to in this Act as the subject of regulations or for the purpose of giving full effect to this Act.

(2) Regulations made under this Act may make different provisions in relation to different areas, different circumstances and different classes of cases.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Orders.

7.—(1) The Minister may, by order, revoke or amend any order made by him under this Act, other than an order under *section 2, 19 (2) or 32 (1)*.

(2) The Minister may, by order, after consultation with the Agency, revoke or amend the *First Schedule* or the *Second Schedule*.

(3) Where it is proposed to make an order under *subsection (2)* or under *section 21 (6) (a), 100, 101 or 102* a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(4) Every order made under this Act, other than an order made under *subsection (2) or (3)*, shall be laid before each House of the Oireachtas as soon as may be after it is made.

8.—(1) Any person who contravenes any provision of this Act or of any regulation made under this Act or of any order made under this Act or of any notice served under this Act shall be guilty of an offence. Offences.

(2) Where an offence under this Act is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or any other officer of such body, such person shall also be guilty of an offence.

(3) In this section, a reference to the contravention of a provision includes, where appropriate, a reference to a refusal, or a failure, to comply with that provision.

9.—(1) A person guilty of an offence under this Act shall be liable— Penalties.

(a) on summary conviction, to a fine not exceeding £1,000, or to imprisonment for any term not exceeding twelve months or, at the discretion of the court, to both such fine and such imprisonment, or

(b) on conviction on indictment, to a fine not exceeding £10,000,000 or to imprisonment for a term not exceeding ten years or, at the discretion of the court, to both such fine and such imprisonment.

(2) In imposing any penalty under *subsection (1)* the court shall, in particular, have regard to the risk or extent of damage to the environment arising from the act or omission constituting the offence.

(3) Where a person, after conviction of an offence under this Act, continues to contravene the provision, he shall be guilty of an offence on every day on which the contravention continues and for each such offence he shall be liable to a fine, on summary conviction, not exceeding £200 or, on conviction on indictment, not exceeding £100,000.

10.—Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under this Act, prosecuted by the Agency, it shall, on the application of the Agency (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Agency and such payment may be enforced by the Agency, as if it were due to it on foot of a decree or order made by the court in civil proceedings. Payment of certain fines to Agency.

11.—(1) An offence under this Act may be prosecuted summarily by the Agency. Prosecution of offences.

(2) Notwithstanding *subsection (1)*, the Minister may, by regulations, provide that an offence under this Act, specified in the regulations, may be prosecuted summarily by such person (including the Minister) as may be so specified.

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(3) Notwithstanding the provisions of section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced—

- (a) at any time within twelve months from the date on which the offence was committed, or
- (b) at any time within six months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings, comes to such person's knowledge,

whichever is the later: provided that no such proceedings shall be initiated later than five years from the date on which the offence concerned was committed.

(4) For the purposes of this section, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence relating to the offence came to his knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purposes of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

Cost of
prosecutions.

12.—Where a person is convicted of an offence under this Act committed after the commencement of this section, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Agency the costs and expenses, measured by the court, incurred by the Agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of directors, employees, consultants and advisers.

Powers of
authorised person.

13.—(1) An authorised person shall, for any purpose connected with this Act, be entitled, at all reasonable times, to enter any premises and to bring therein such other persons (including members of the Garda Síochána) or equipment as he may consider necessary for the purpose.

(2) Subject to *subsection (6)*, an authorised person shall not, other than with the consent of the occupier, enter into a private dwelling unless he has given to the occupier of the dwelling not less than 24 hours notice in writing of his intended entry.

(3) Every authorised person shall be furnished with a certificate of his appointment and, when exercising any power conferred on him by or under this Act, the authorised person shall, if requested by any person affected, produce the certificate to that person.

(4) Whenever an authorised person enters any premises pursuant to this section, he may therein—

- (a) make such plans, take such photographs and carry out such inspections,
- (b) make such tests and take such samples,

- (c) require from the occupier of the premises or any person employed on the premises or from any other person on the premises such information, or
- (d) inspect such plant, vehicles, records and documents,

as he, having regard to all the circumstances, considers necessary for the purposes of, and exercising any power conferred on him by or under, this Act.

- (5) Any person who—
 - (a) refuses to allow an authorised person to enter any premises or to take any person or equipment with him in the exercise of his powers under this section,
 - (b) obstructs or impedes an authorised person in the exercise of any of the powers conferred on him by this section,
 - (c) gives, either to an authorised person or to the Agency, information which is false or misleading in a material respect, or
 - (d) fails or refuses to comply with any requirement of this section,

shall be guilty of an offence.

(6) Where an authorised person in the exercise of his powers under this section is prevented from entering any premises, or where he has reason to believe that evidence related to a suspected offence under this Act may be removed or destroyed, the authorised person or the person by whom he was appointed may apply to the District Court for a warrant authorising such entry.

(7) The Minister may make regulations for the purposes of this section.

(8) Without prejudice to the generality of *subsection (7)*, regulations under this section may provide for all or any of the following matters—

- (a) the taking of samples and the carrying out of tests, examinations and analyses,
- (b) the specification of the classes of persons to be responsible for taking such samples and for the carrying out of such tests, examinations and analyses, or
- (c) the specification of the certificate or other evidence to be given of the result of any such test, examination or analysis and the class or classes of person by whom such certificate or evidence is to be given.

(9) Any certificate or other evidence given or to be given in respect of any prescribed test, examination or analysis of any sample shall in relation to that sample be evidence, without further proof, of the result of the test, examination or analysis unless the contrary is shown.

14.—(1) Any notice required to be served or given by or under this Act shall be addressed to the person concerned and served or given in one of the following ways—

- (a) by addressing it to him by name and delivering it to him,

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- (b) by leaving it at the address at which he ordinarily resides,
- (c) by sending it by post in a prepaid registered letter addressed to him at the address at which he ordinarily resides,
- (d) if an address for the service of notices has been furnished by him, by leaving it at, or sending it by prepaid registered post addressed to him to, that address, or
- (e) where the address at which he ordinarily resides cannot be ascertained by reasonable inquiry and notice is required to be served on, or given to, him in respect of any premises, process, works or development, by delivering it to a person over the age of 16 years employed thereon or resident in the premises, or by affixing it in a conspicuous position on or near the premises, process, works or development.

(2) Where the name of the person concerned cannot be ascertained by reasonable inquiry, a notice under this Act may be addressed to “the occupier”, “the owner” or “the person in charge”, as the case may be.

(3) For the purposes of this section, a company registered under the Companies Acts, 1963 to 1990, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A person shall not at any time during the period of three months after a notice is affixed under *subsection (1) (e)* remove, damage or deface the notice without lawful authority.

Immunity of Agency.

15.—No action or other proceedings shall lie or be maintainable against the Agency or any body referred to in *section 44* or *45* for the recovery of damages in respect of any injury to persons, damage to property or other loss alleged to have been caused or contributed to by a failure to perform or to comply with any of the functions conferred on the said Agency or body.

Indemnification of Director General, directors and other persons.

16.—Where the Agency is satisfied that the Director General or other director or authorised person appointed by the Agency, or any other employee of the Agency has discharged his duties in relation to the enforcement of the relevant statutory provisions in a *bona fide* manner, it shall indemnify the Director General or other director or authorised person of the Agency or any other employee of the Agency, against all actions or claims howsoever arising in respect of the discharge by him of his duties.

Expenses of Minister.

17.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Amendment of Act of 1963 and Air Pollution Act, 1987.

18.—(1) Section 51 of the Act of 1963 is hereby repealed.
(2) The Air Pollution Act, 1987, is hereby amended as provided for in the *Third Schedule*.

PART II

Environmental Protection Agency

19.—(1) There shall be a body to be known as An Ghníomhaireacht um Chaomhnú Comhshaoil or, in the English language, the Environmental Protection Agency (in this Act referred to as the Agency) to perform the functions assigned to it by or under this Act.

Establishment of Environmental Protection Agency.

(2) The Agency shall stand established on such day as the Minister by order appoints.

(3) The Agency shall consist of a Director General and four other directors.

20.—(1) The Agency shall be a body corporate with perpetual succession and a seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land.

Incorporation of Agency.

(2) The Agency shall provide itself with a seal.

(3) The seal of the Agency shall be authenticated by the signature of the Director General or of some other director or of a person, being an employee of the Agency or a person whose services are availed of by, or supplied to, the Agency under *section 44*, authorised by the Agency to act in that behalf.

(4) Judicial notice shall be taken of the seal of the Agency and every document purporting to be an instrument made by the Agency and to be sealed with the seal (purporting to be authenticated in accordance with *subsection (3)*) of the Agency shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

21.—(1) The Director General shall be appointed by the Government.

Director General.

(2) A committee shall be established consisting of—

- (a) the Secretary to the Government,
- (b) the Secretary of the Department of the Environment,
- (c) the Chairperson of the Council of An Taisce — the National Trust for Ireland,
- (d) the Managing Director of the Industrial Development Authority,
- (e) the General Secretary of the Irish Congress of Trade Unions, and
- (f) the Chief Executive of the Council for the Status of Women.

(3) Where the Minister makes a request under *subsection (7), (9) or (10)* or *section 24* and—

- (a) any of the persons aforesaid signifies at any time his unwillingness or inability to act for any period as a member of the committee, or

- (b) any of the persons aforesaid is through ill-health or otherwise unable so to act for any period,

the Minister may appoint in the case of—

- (i) the Secretary of the Government, some other officer of the Taoiseach who is an established civil servant for the purposes of the Civil Service Regulation Act, 1956,
- (ii) the Secretary of the Department of the Environment, some other officer of the Minister for the Environment, who is an established civil servant for the purposes of the Civil Service Regulation Act, 1956,
- (iii) in any other case, some other person from the organisation or body referred to in *subsection (2)* to which the person referred to at *paragraph (a)* or *(b)* belongs,

to be a member of the committee in his place and such person shall remain a member of the committee until such time as the selection by the committee pursuant to the request is made.

(4) Where the Minister makes a request under *subsection (7)*, *(9)* or *(10)* or *section 24* and at the time of making the request any of the offices specified in *subsection (2)* is vacant, the Minister may appoint a person to be a member of the committee and such person shall remain a member of the committee until such time as the selection by the committee pursuant to the request is made.

(5) Where pursuant to *subsection (3)* or *(4)*, the Minister appoints a person to be a member of the committee, he shall, as soon as may be, cause a notice of the appointment to be published in *Iris Oifigiúil*.

(6) (a) The Minister may, by order, amend *subsection (2)*.

(b) Where an order under this subsection is for the time being in force, *subsection (2)* shall be construed and have effect subject to the terms of the order.

(7) (a) The committee shall, whenever so requested by the Minister, select three candidates, or if in the opinion of the committee there is not a sufficient number of suitable applicants, such lesser number of candidates as the committee shall determine, for appointment to be the Director General and shall inform the Minister of the names of the candidates, or, as may be appropriate, the name of the candidate, selected.

(b) In selecting candidates the committee shall have regard to the special knowledge and experience and other qualifications, including any qualifications which the Minister may by order specify, or personal qualities which the committee consider appropriate to enable a person effectively to perform the functions of the Director General.

(8) Except in the case of a reappointment under *subsection (13)*, the Government shall not appoint a person to be the Director General unless the person was among those or, as may be appropriate, was the candidate selected by the committee, pursuant to a request under *subsection (7)* in relation to that appointment.

(9) Notwithstanding *subsection (7)* or *(8)*, if the Government decide not to appoint to be the Director General any of the candidates or, as the case may be, the candidate selected by the committee pursuant to a particular request—

- (a) the Government shall appoint a person to be the Director General who was among those or, as the case may be, was the candidate, selected by the committee pursuant to a previous request (if any) in relation to that appointment, or
 - (b) the Minister shall make a further such request to the committee and the Government shall appoint to be the Director General a person who was among the candidates or, as the case may be, was the candidate selected by the committee pursuant to that request or pursuant to another such request made in relation to that appointment.
- (10) Notwithstanding *subsection (7) or (8)*, if the committee is unable to select any suitable candidate pursuant to a particular request—
- (a) the Government shall appoint a person to be the Director General who was among those or, as the case may be, was the candidate, selected by the committee pursuant to a previous request (if any) in relation to that appointment, or
 - (b) the Minister shall make a further such request to the committee and the Government shall appoint to be the Director General a person who was among the candidates or, as the case may be, was the candidate selected by the committee pursuant to that request or pursuant to another such request made in relation to that appointment.
- (11) The Minister may make regulations as regards—
- (a) the publication of notice that a request has been received by the committee under *subsection (7), (9) or (10)*,
 - (b) applications for selection,
 - (c) any other matter which the Minister considers expedient for the purposes of this section.
- (12) The Director General shall be appointed in a wholetime capacity and shall not at any time during his term of office hold any other office or employment in respect of which emoluments are payable.
- (13) Subject to the provisions of this section—
- (a) the term of office of the Director General shall be seven years,
 - (b) the Director General may be reappointed by the Government for a second or subsequent term of office of seven years or less if, at the time of his reappointment, he is the outgoing Director General.
- (14) (a) The Director General may resign his office by letter addressed to the Minister.
- (b) The Director General shall vacate the office of Director General on attaining the age of sixty-five years.
- (15) (a) The Director General shall be paid, out of moneys at the disposal of the Agency, such remuneration as the Minister, with the consent of the Minister for Finance, may determine.

- (b) Subject to the provisions of this section, the Director General shall hold office on such terms and conditions (including terms relating to allowances for expenses) as the Minister, with the consent of the Minister for Finance, may determine.

(16) The Director General may be removed from office by the Government if, in their opinion, he has become incapable through ill-health of effectively performing his duties, or for stated misbehaviour, or if his removal appears to the Government to be necessary or desirable for the effective performance by the Agency of its functions and, in case the Director General is removed from office under this subsection, the Government shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for the removal.

Deputy Director
General.

22.—(1) The Agency shall appoint from among the directors a person to be Deputy Director General of the Agency and such appointment shall be for such period, not exceeding the current term of his office of director, as shall be specified in the appointment.

(2) If at any time the Deputy Director General ceases to be a director, he shall also cease to be Deputy Director General.

(3) The Deputy Director General may, in addition to his remuneration as a director, be paid such additional remuneration (if any) as the Minister, with the consent of the Minister for Finance, may determine.

(4) The Deputy Director General may resign his office by letter addressed to the Agency.

General functions
of Director General
and Deputy
Director General.

23.—It shall be the function of the Director General or, where he is not available or where the office of Director General is vacant, of the Deputy Director General—

- (a) to ensure the efficient discharge of the business of the Agency, and
- (b) to arrange the distribution of the business of the Agency among its directors.

Directors.

24.—(1) The directors of the Agency shall be appointed by the Government.

(2) The Minister may, after consultation with the Director General (where a Director General is in office) or the Deputy Director General (where a Deputy Director General is in office) if there is no Director General in office, by order specify qualifications for all posts, or any particular post, of director.

- (3) (a) Where a director is to be appointed pursuant to *subsection (1)*, the committee provided for in *section 21* shall, whenever so requested by the Minister, select three candidates, or if in the opinion of the committee there is not a sufficient number of suitable applicants, such lesser number of candidates as the committee shall determine, for appointment to be the director and shall inform the Minister of the names of the candidates, or, as may be appropriate, the name of the candidate, selected.

(b) In selecting candidates the committee shall have regard to the special knowledge and experience, including relevant experience in environmental matters, and other qualifications, including any qualifications which the Minister may by order specify, or personal qualities which the committee consider appropriate to enable a person effectively to perform the functions of the director.

(4) Except in the case of a reappointment under *subsection (9)*, the Government shall not appoint a person to be a director unless the person was among those or, as may be appropriate, was the candidate selected by the committee, pursuant to a request under *subsection (3)* in relation to that appointment.

(5) Notwithstanding *subsection (3)* or *(4)*, if the Government decide not to appoint to be a director any of the candidates or, as the case may be, the candidate selected by the committee pursuant to a particular request—

(a) the Government shall appoint a person to be a director who was among those, or as the case may be, was the candidate, selected by the committee pursuant to a previous request (if any) in relation to that appointment, or

(b) the Minister shall make a further such request to the committee and the Government shall appoint to be a director a person who was among the candidates or, as the case may be, was the candidate selected by the committee pursuant to that request or pursuant to another such request made in relation to that appointment.

(6) Notwithstanding *subsection (3)* or *(4)*, if the Committee is unable to select any suitable candidate pursuant to a particular request—

(a) the Government shall appoint a person to be a director who was among those, or as the case may be, was the candidate, selected by the committee pursuant to a previous request (if any) in relation to that appointment, or

(b) the Minister shall make a further such request to the committee and the Government shall appoint to be a director a person who was among the candidates or, as the case may be, was the candidate selected by the committee pursuant to that request or pursuant to another such request made in relation to that appointment.

(7) The Minister may make regulations as regards—

(a) the publication of notice that a request has been received by the committee under *subsection (3)* or *(5)*,

(b) applications for selection,

(c) any other matter which the Minister considers expedient for the purposes of this section.

(8) Each director shall be appointed in a wholetime capacity and shall not at any time during his term of office hold any other office or employment in respect of which emoluments are payable.

(9) Subject to the provisions of this section—

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- (a) a director shall hold office for such term (not exceeding five years) as shall be specified by the Government when appointing him,
 - (b) a director may be reappointed by the Government for a second or subsequent term of office for five years or less if at the time of his reappointment he is an outgoing director.
- (10) (a) A director may resign his office by letter addressed to the Minister.
- (b) A director shall vacate his office of director on attaining the age of sixty-five years.
- (11) (a) A director shall be paid, out of moneys at the disposal of the Agency, such remuneration as the Minister, with the consent of the Minister for Finance, may determine.
- (b) Subject to the provisions of this section, each director shall hold office on such terms and conditions (including terms relating to allowances for expenses) as the Minister, with the consent of the Minister for Finance, may determine.
- (12) A director may be removed from office by the Government if, in their opinion, he has become incapable through ill-health of effectively performing his duties, or for stated misbehaviour, or if his removal appears to the Government to be necessary or desirable for the effective performance by the Agency of its functions, and in case a director is removed from office under this subsection, the Government shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for the removal.

Meetings and
procedure of
Agency.

- 25.—**(1) The Agency shall hold such and so many meetings as may be necessary for the performance of its functions.
- (2) The Director General and each director shall have one vote at a meeting of the Agency.
- (3) At a meeting of the Agency—
- (a) the Director General shall, if present, chair the meeting,
 - (b) if and for so long as the Director General is not present, or if the office of Director General is vacant, the Deputy Director General shall, if present, chair the meeting,
 - (c) in any other case, the directors who are present shall choose one of their number to chair the meeting.
- (4) Every question at a meeting of the Agency shall be determined by a majority of votes of the directors present and, in the event that voting is equally divided and there are more than two directors present, the person chairing the meeting shall have a casting vote.
- (5) Subject to the requirements of this Act and any regulations made thereunder the Agency shall regulate its own procedure and business.
- (6) (a) Subject to *paragraph (b)*, the Agency may perform or exercise any of its functions through or by any director of the Agency or other person or body who, in either case, has been duly authorised by the Agency in that behalf.

(b) *Paragraph (a)* shall not be construed as enabling the Agency to authorise a person who is not a director of the Agency finally to determine a decision on the granting, whether with or without conditions, or a refusal, of a licence or revised licence or on any prescribed matter.

26.—(1) The quorum for a meeting of the Agency shall be not less than two. Agency's quorum, vacancies, etc.

(2) Subject to *subsection (1)*, the Agency may act notwithstanding a vacancy or vacancies in the office of Director General or among the directors.

(3) Where a vacancy occurs in the office of Director General, or among the directors, the Minister shall, as soon as may be, take steps to fill the vacancy.

(4) (a) Where, owing to the illness of the Director General or of a director, or for any other reason, a sufficient number of directors of the Agency is not available to enable the Agency effectively to perform its functions, the Minister may, as an interim measure, appoint from among the officers of the Minister who are established civil servants for the purposes of the Civil Service Regulation Act, 1956, one or more persons to be a director and, where necessary, one to be Deputy Director General.

(b) A person shall not be appointed to be a director or Deputy Director General under this subsection for a term in excess of six months and may not be reappointed on more than three occasions.

27.—(1) There shall be a committee (hereinafter called the Advisory Committee) to perform the functions assigned to it by or under this Act. Advisory Committee.

(2) The number of members of the Advisory Committee shall, subject to *subsection (11)*, be twelve.

(3) (a) The Director General, or the Deputy Director General if and for so long as the Director General is not present or if the office of the Director General is vacant, shall, *ex officio*, be a member and shall chair the meetings of the Advisory Committee.

(b) In the event of the offices of Director General and Deputy Director General being vacant the Minister shall designate one of the other directors of the Agency to be a member of the Advisory Committee and to chair its meetings until either the Director General or the Deputy Director General is appointed.

(4) The directors other than the Director General shall be entitled to attend and be heard at meetings of the Advisory Committee but shall not be eligible to vote.

(5) The Minister may prescribe for the purposes of *subsection (6)*—

(a) organisations which in his opinion are representative of persons whose professions or occupations relate to environmental protection,

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- (b) organisations which in his opinion are concerned with environmental protection,
 - (c) organisations which in his opinion are concerned with the promotion of economic or other development,
 - (d) organisations which in his opinion are concerned with the promotion in relation to the community of social, economic or general interests,
 - (e) organisations which in his opinion are representative of persons concerned with environmental education or research.
- (6) The members of the Advisory Committee shall be appointed by the Minister as follows—
- (a) not less than one shall be so appointed from among persons selected by the organisations which for the time being stand prescribed under a particular paragraph of *subsection (5)*, subject to seven persons being appointed in all,
 - (b) four other members shall be appointed by the Minister.
- (7) The organisations prescribed under a particular paragraph of *subsection (5)* shall, whenever so requested by the Minister, select such number (not being less than four) of candidates as the Minister may specify for appointment and shall inform the Minister of the names of the candidates selected.
- (8) Except in the case of an appointment pursuant to *subsection (6) (b)* and subject to *subsection (10)*, the Minister shall not appoint a person to be a member of the Advisory Committee unless the person was among those selected pursuant to a request under *subsection (7)* in relation to that appointment.
- (9) Notwithstanding *subsection (7)* or *(8)*—
- (a) if the appropriate organisations prescribed under a particular paragraph of *subsection (5)* refuse or fail to select any candidate pursuant to a particular request under *subsection (7)*, or
 - (b) if the Minister decides not to appoint as a member any of the candidates selected by such organisations pursuant to the request,
- then either—
- (i) the Minister shall appoint as a member a person who was among those selected by such organisations pursuant to a previous request (if any) under that subsection in relation to that appointment, or
 - (ii) the Minister shall make a further such request and he shall appoint as a member a person who was among those selected pursuant to that request or pursuant to another such request made in relation to that appointment.
- (10) Where a request is made pursuant to *subsection (7)*, failure or refusal by any or all of the organisations of whom the request is made to select the number of candidates specified in the request shall not preclude the appointment as a member of a person who was selected in relation to that appointment either by any of the aforesaid organisations or by any other organisation.
- (11) The Advisory Committee may act notwithstanding vacancies in its membership.

(12) A member of the Advisory Committee shall be appointed for such term (not exceeding three years) as shall be specified by the Minister when appointing him (on such terms and conditions as the Minister, with the consent of the Minister for Finance, determines) and a member whose term of office expires by the effluxion of time shall be eligible for reappointment.

(13) A member of the Advisory Committee shall be paid, out of moneys at the disposal of the Agency, such allowances for expenses as the Minister, with the consent of the Minister for Finance, determines.

(14) The Advisory Committee may regulate, by standing orders or otherwise, its procedure or business.

(15) The Minister may fix the date, time and place of the first meeting of the Advisory Committee.

(16) The Minister may make regulations as regards—

(a) the period within which the Minister is to be informed in accordance with *subsection (7)*,

(b) any other matter which the Minister considers expedient for the purposes of this section.

(17) (a) A member of the Advisory Committee may resign from office by letter addressed to the Minister.

(b) The Minister may remove from office a member of the Advisory Committee if in the opinion of the Minister he has become incapable through ill-health of effectively performing his duties or for stated misbehaviour or his removal appears to the Minister to be necessary or desirable for the effective performance by the Advisory Committee of its functions.

28.—(1) (a) It shall be the duty of the Advisory Committee to make recommendations to the Agency or to the Minister relating to the functions of the Agency. Functions of Advisory Committee.

(b) The Agency or the Minister, as may be appropriate, shall have regard to any recommendations made by the Advisory Committee.

(2) Without prejudice to the generality of *subsection (1)*, the Advisory Committee may make recommendations—

(a) to the Agency in relation to—

(i) general staff requirements of the Agency but excluding decisions in relation to particular posts, individual employees, pay, grading and conditions,

(ii) the provision of services, including laboratory facilities, required by the Agency,

(iii) the provision of services, including laboratory facilities, by the Agency,

(iv) standards, guidelines and codes of practice in relation to environmental protection,

(v) the research programme of the Agency, its financing and priorities,

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- (vi) the annual work programme of the Agency and priorities for different elements of the work programme,
- (vii) the organisation and promotion of training conferences and related matters for the purposes of environmental protection,
- (viii) any other matters related to the functions of the Agency,

(b) to the Minister in relation to—

- (i) the assignment of specific functions to the Agency,
- (ii) the financing of the Agency,
- (iii) the activities or classes of activities for which the Agency should have licensing functions under *Part IV*,
- (iv) the assignment to the Agency of responsibility for specific environmental matters,
- (v) any other matter which, in the opinion of the Advisory Committee, is relevant to the effective performance by the Agency of its functions.

(3) The Minister may consult the Advisory Committee on any matter arising in relation to his functions with respect to environmental protection.

(4) The Advisory Committee shall be entitled to be informed at its meetings by the Director General, or a person appointed by him for the purpose, about the work of the Agency but (subject to *section 110*) not in relation to the detail of particular cases, and provided always that disclosure of such information shall not be in breach of *section 39*.

(5) Subject to *section 110*, the Advisory Committee shall not as of right be entitled—

- (a) to receive specific information in relation to the processing of an application for, or the review of, an individual licence or revised licence under *Part IV*, or
- (b) to have any recommendations regarding such a licence taken into account.

Staff of the Agency. **29.**—(1) The Agency may appoint such persons to be employees of the Agency as it may determine subject to the consent of the Minister and the Minister for Finance as to numbers and grading.

(2) (a) An employee of the Agency shall be paid, out of moneys at the disposal of the Agency, such remuneration and allowances for expenses as the Agency, with the consent of the Minister and the Minister for Finance, may determine.

(b) An employee of the Agency referred to in *paragraph (a)* shall hold his employment on such other terms (including terms specifying the duration of such employment) and conditions as the Agency, with the consent of the Minister and the Minister for Finance, may determine.

30.—(1) The Minister may, from time to time, following consultation with the Agency and any other Minister of the Government who in the opinion of the Minister is concerned, request a public authority to designate for employment by the Agency employees of that authority whose principal duties relate to a function assigned or transferred to the Agency under this Act, or to be so assigned or transferred to the Agency, and the authority shall comply with such request.

Transfer of staff of public authorities.

(2) A public authority may, with the consent of the Minister who shall consult with the Agency on the matter, designate for employment by the Agency any person employed by the public authority.

(3) A public authority shall not designate an employee under *subsection (1) or (2)*, without having notified in writing the employee and any recognised trade unions or staff associations concerned, of its intention to do so and considered any representations made by him, or by them or by any of them, in relation to the matter within such time as may be specified in the notification.

(4) The Agency shall, with the consent of the Minister who shall consult with the Agency on the matter, accept into its employment a person designated under *subsection (1) or (2)* for employment by the Agency.

(5) Acceptance into the employment of the Agency of a person designated under this section shall have effect on such day as may be specified by the Minister after consultation with the Agency and any other Minister of the Government who in the opinion of the Minister is concerned.

31.—(1) The terms and conditions relating to tenure which are granted by the Agency in relation to a person accepted into its employment under *section 30 or 32* shall not, while the person is in the employment of the Agency, be less favourable to him than those prevailing immediately before his acceptance into such employment save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned; and if a dispute arises between the Agency and any such person as to terms and conditions prevailing immediately before his acceptance into the employment of the Agency, the matter shall be determined by the Minister for Finance, after consultation with the Minister.

Conditions related to transfer of staff.

(2) Save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned, a person referred to in *subsection (1)* shall not, while in the employment of the Agency, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (other than those relating to tenure) than the scale of pay to which he was entitled and the terms and conditions of service (other than those relating to tenure) to which he was subject immediately before the day on which he was so accepted.

(3) Until such time as the scale of pay and the terms and conditions of service (other than those relating to tenure) of a person referred to in *subsection (1)* are varied by the Agency, following consultation with any recognised trade unions and staff associations concerned, the scales of pay to which such a person was entitled and the terms and conditions of service (other than those relating to tenure), restrictions, requirements and obligations to which the person was subject immediately before such acceptance shall continue to apply and may be applied or imposed by the Agency, while the person is in the employment of the Agency; no such variation shall

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operate to worsen the scale of pay or the terms or conditions of service aforesaid applicable to an employee immediately before he was accepted into the employment of the Agency, save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned.

(4) Previous service of any person in a public authority from which he was accepted into the employment of the Agency under *section 30* or *32* shall be reckonable for the purposes of, but subject to any other exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 1991, the Holidays (Employees) Acts, 1973 and 1991, the Minimum Notice and Terms of Employment Acts, 1973 to 1991, and the Unfair Dismissals Acts, 1977 and 1991.

Dissolution of An Foras Forbartha Teoranta.

32.—(1) The National Institute for Physical Planning and Construction Research Limited (An Foras Forbartha Teoranta) shall, on such date as may be specified by order of the Minister, made with the consent of the Minister for Finance, be dissolved by virtue of this section.

(2) An order under *subsection (1)* may provide for any consequential or ancillary matter or any other matter which the Minister considers necessary or expedient including, in particular—

- (a) the transfer of staff of An Foras Forbartha Teoranta to the Agency,
- (b) the transfer or distribution of property, rights and liabilities to the Agency, the Environmental Research Unit established under the Environmental Research Unit (Establishment) Order, 1988, the Minister, or any other public authority specified in the order,
- (c) the preservation of continuing contracts related to environmental protection made by An Foras Forbartha Teoranta,
- (d) the continuance of pending legal proceedings,
- (e) the superannuation of former staff of An Foras Forbartha Teoranta.

(3) The Minister shall not make an order under *subsection (2) (a)* without having notified in writing any recognised trade unions or staff associations concerned of his intention to do so and considered any representations made by them or by any of them in relation to the matter within such time as may be specified in the notification.

(4) The Agency shall accept into its employment in accordance with the terms of this Act a person who is transferred under *subsection (2) (a)*.

Superannuation of Director General and directors.

33.—(1) The Minister may, with the consent of the Minister for Finance, make a scheme or schemes for the granting of pensions, gratuities or other allowances to or in respect of the Director General and other directors ceasing to hold office.

(2) A scheme under this section may provide that the termination of the appointment of the Director General or of a director during that person's term of office shall not preclude the award to him under the scheme of a pension, gratuity or other allowance.

(3) The Minister may, with the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section, including a scheme under this subsection.

(4) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity, or allowance payable in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.

(5) A scheme under this section shall be carried out by the Agency in accordance with its terms.

(6) No pension, gratuity or other allowance shall be granted by the Agency to or in respect of any person referred to in *subsection (1)* ceasing to hold office otherwise than in accordance with a scheme under this section.

(7) Every scheme made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next twenty-one days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

34.—(1) The Agency may, with the consent of the Minister and the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of such persons appointed under *section 29* to, or accepted under *section 30* or *32* into, whole-time employment of the Agency. Superannuation of staff of Agency.

(2) A scheme under *subsection (1)* shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) The Agency may, with the consent of the Minister and the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.

(4) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister, who shall refer it to the Minister for Finance, whose decision shall be final.

(5) No superannuation benefit shall be granted by the Agency on the resignation, retirement or death of an employee of the Agency otherwise than in accordance with a scheme under this section.

(6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next twenty-one days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) A scheme or schemes under *subsection (1)* shall, as respects a person accepted into whole-time employment of the Agency under *section 30* or *32*, provide for the granting to or in respect of him of superannuation benefits upon and subject to terms and conditions

that are not less favourable to him than the terms and conditions applied to him immediately before the day on which he was so accepted into the employment of the Agency in relation to the grant of such benefits.

(8) Where, during the period between the establishment day and the coming into operation of a scheme under this section, superannuation benefits would have been granted to or in respect of a person accepted into wholtime employment of the Agency under *section 30* or *32*, in respect of his employment with the public authority concerned, the superannuation benefits shall be granted and paid to or in respect of the person by the Agency and, for that purpose, his pensionable service with the Agency shall be aggregated with his previous pensionable service.

(9) In this section and in *sections 35* and *36* “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

Membership of
House of
Oireachtas or
European
Parliament.

35.—(1) Where the Director General or other director of the Agency—

- (a) accepts nomination as a member of Seanad Éireann,
- (b) is nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or
- (c) is regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act, 1977, as having been elected to such Parliament to fill a vacancy,

he shall thereupon cease to be the Director General or a director of the Agency, as the case may be.

(2) Where a person who is an employee of the Agency—

- (a) accepts nomination as a member of Seanad Éireann,
- (b) is nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or
- (c) is regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act, 1977, as having been elected to such Parliament to fill a vacancy,

he shall thereupon stand seconded from employment by the Agency and shall not be paid by, or be entitled to receive from, the Agency any remuneration or allowances in respect of the period commencing on such acceptance, nomination or election, as the case may be, and ending when he fails to be elected to, withdraws his candidature for, or ceases to be a member of, either such House or such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or is a member of the European Parliament shall, while he is so entitled or is such a member, be disqualified from becoming the Director General or a director of the Agency or an employee of the Agency.

(4) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Agency for the purposes of any superannuation benefits.

36.—(1) Where the Director General or other director of the Agency becomes a member of a local authority he shall thereupon cease to be the Director General or a director of the Agency, as the case may be. Membership of a local authority.

(2) Subject to *subsection (4)*, where a person who is an employee of the Agency becomes a member of a local authority, he shall be released on special leave and shall not be paid by, or be entitled to receive from, the Agency any remuneration or allowances in respect of the period of his membership of the local authority.

(3) A person who is for the time being a member of a local authority shall be disqualified from becoming the Director General or a director of the Agency or an employee of the Agency.

(4) The Minister may by order designate a class, description or grade of employment to which the provisions of *subsection (2)* or *(3)* shall not apply while such order is in force.

(5) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Agency for the purposes of any superannuation benefits.

(6) In this section “local authority” has the meaning assigned to it by the Local Government Act, 1941.

37.—(1) It shall be the duty of a person to whom this section applies to give to the Agency a declaration in the prescribed form, signed by him and containing particulars of every interest of his which is an interest to which this section applies and for so long as he continues to be a person to whom this section applies it shall be his duty where there is a change regarding any such interest or where he acquires any other interest to which this section applies, to give to the Agency a new declaration in the prescribed form. Declaration of interests.

(2) (a) This section applies to—

- (i) the Director General or other director, and
- (ii) an employee of the Agency or any other person whose services are availed of by the Agency and who is of a class, description or grade prescribed for the purposes of this section.

(b) This section applies to the following interests—

- (i) any estate or interest which a person to whom this section applies has in any land or in any activity,
- (ii) any business of dealing in or developing land, or any activity, in which such a person is engaged or employed and any such business carried on by a company or other body of which he, or any nominee of his, is a member,
- (iii) any profession, business or occupation in which such a person is engaged, whether on his own behalf or otherwise, and which relates to dealing in or developing land or to an activity.

(3) A person to whom this section applies and who has an interest to which this section applies shall be regarded as complying with the requirements of *subsection (1)* if, and only if, he gives to the Agency a declaration mentioned in that subsection within the period of twenty-eight days beginning—

- (a) in case the person is such a person on the commencement of this section, on such commencement,
- (b) in case the person becomes such a person after the commencement of this section, on the day on which he becomes such a person,
- (c) in case there is a change regarding an interest particulars of which are contained in a declaration already given by the person or where the person acquires any other interest to which this section applies, on the day on which the change occurs or the other such interest is acquired.

(4) For the purposes of this section, a person shall be regarded as having an estate or interest in land or an activity if he, or any nominee of his, is a member of a company or other body which has an estate or interest in the land or the activity.

(5) For the purposes of this section, a person shall not be regarded as having an interest to which this section applies if the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering or discussing, or in voting on, any question with respect to any matter arising or coming before the Agency or in performing any function in relation to any such matter.

(6) Where a person to whom this section applies has an interest to which this section applies by reason only of the beneficial ownership of shares in a company or other body by him or by his nominee and the total nominal value of those shares does not exceed the lesser of—

- (a) one thousand pounds, or
- (b) one-hundredth part of the total nominal value of either the issued share capital of the company or body, or where that capital is issued in shares of more than one class, the issued share capital of the class or classes of shares in which he has an interest,

subsection (1) of this section shall not have effect in relation to that interest.

(7) The Agency shall for the purposes of this section keep a register (which register is in this section referred to as the register of interests) and shall enter therein the particulars contained in declarations given to the Agency pursuant to this section.

(8) The register of interests shall be available for inspection by any person at the Agency's headquarters during office hours and a copy of the register or any entry in the register may be obtained by any person on the payment to the Agency of such fee (if any) as the Agency shall fix not exceeding the reasonable cost of making the copy.

(9) Where a person ceases to be a person to whom this section applies, any particulars entered in the register of interests as a result of a declaration being given by the person to the Agency pursuant to this section shall be removed, as soon as may be after the expiration of the period of five years beginning on the day on which the person ceases to be such a person, from the said register by the Agency.

(10) Subject to *subsection (11)*, a person who fails to comply with *subsection (1)* or who, when purporting to comply with the requirements of the said *subsection (1)*, gives particulars which are false or which to his knowledge are misleading in a material respect, shall be guilty of an offence.

(11) In any proceedings for an offence under this section it shall be a defence for the defendant to prove that at the relevant time he believed, in good faith and upon reasonable grounds, that—

- (a) the relevant particulars were true,
- (b) there was no matter as regards which he was then required to make a declaration under *subsection (1)*, or
- (c) that the matter in relation to which the offence is alleged was not one as regards which he was so required to make such declaration.

(12) In this section “land” includes land covered by water.

38.—(1) Where the Director General, other director, an employee of the Agency, a member of the Advisory Committee or of a committee or consultative group established by the Agency, a consultant, adviser or other person engaged by the Agency or a person whose services are availed of by, or supplied to, the Agency under *section 44* or who exercises or performs any function on behalf of the Agency under an agreement under *section 45*, has a pecuniary or other beneficial interest in, or material to, any matter which falls to be considered by the Agency, committee or consultative group or the person concerned, he shall comply with the following requirements—

Disclosure of interests.

- (a) he shall disclose to the Agency, committee or consultative group, as the case may be, the nature of his interest in advance of any consideration of the matter,
- (b) he shall neither influence nor seek to influence a decision in relation to the matter,
- (c) he shall take no part in any consideration of the matter,
- (d) if he is a director of the Agency, or a member of a committee or consultative group he shall withdraw from the meeting for so long as the matter is being discussed or considered by the Agency, committee or consultative group and shall not vote or otherwise act as such director or member in relation to the matter.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or any member of his household, or any nominee of his or of any member of his household, is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
- (b) he or any member of his household is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,

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- (c) he or any member of his household is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates,
- (d) any member of his household has a beneficial interest in, or material to, such a matter.

(3) For the purposes of this section a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only of an interest of his or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him to comply with the requirements of *subsection (1)*, the question shall be determined by the Agency and particulars of the determination shall be recorded in the minutes of the meeting concerned.

(5) Where a disclosure is made to the Agency, a committee or consultative group pursuant to *subsection (1)*, particulars of the disclosure shall be recorded in the minutes of the meeting concerned.

Disclosure of
confidential
information.

39.—(1) A person shall not disclose confidential information obtained by him in his capacity as Director General, other director, an employee of the Agency, a member of the Advisory Committee or of a committee or consultative group established by the Agency, a consultant, adviser or other person engaged by the Agency, or a person whose services are availed of by, or supplied to, the Agency under *section 44* or who exercises or performs any function on behalf of the Agency under an agreement under *section 45*, unless he is duly authorised to do so.

(2) In this section—

“confidential information”, without prejudice to the provisions of *section 110*, includes information that is expressed by the Agency to be confidential either as regards particular information or as regards information of a particular class or description;

“duly authorised” means authorised by the Agency or by some person authorised in that behalf by the Agency for the purposes of this section.

Prohibition of
certain
communications.

40.—(1) A person shall not communicate with the Director General, other director, an employee of the Agency, a member of the Advisory Committee or of a committee or consultative group established by the Agency, a consultant, adviser or other person engaged by the Agency, or a person whose services are availed of by, or supplied to, the Agency under *section 44* or who exercises or performs any function on behalf of the Agency under an agreement under *section 45*, for the purpose of influencing improperly his consideration of any matter which falls to be considered or decided by the Agency, committee or consultative group.

(2) If any person referred to in *subsection (1)* to whom a communication is made becomes of opinion that the communication is

in contravention of that subsection, it shall be his duty not to entertain the communication further and he shall inform forthwith the Agency in writing of the substance of such communication and the Agency shall acknowledge in writing the receipt of such information.

41.—(1) The Agency may from time to time appoint such and so many committees and consultative groups for such period and subject to such terms of reference as it thinks proper. Committees and consultative groups.

(2) The Agency may, subject to *section 25 (6)*, delegate to a committee appointed under this section any of its functions which, in its opinion, can be better or more conveniently performed by a committee.

(3) The Agency shall appoint a person to chair the meetings of a committee or consultative group under this section and a person to act in the absence of the person so appointed.

(4) The Agency may at any time dissolve a committee or consultative group appointed under this section or remove a member of a committee or consultative group from such membership.

(5) Each member of a committee or consultative group appointed under this section shall be paid, out of moneys at the disposal of the Agency, such allowances for expenses as the Minister, with the consent of the Minister for Finance, determines.

(6) A committee or consultative group appointed under this section may regulate, by standing orders or otherwise, its procedure or business.

42.—(1) The Agency may from time to time engage such consultants or advisers as it may consider necessary for the discharge of its functions and any fees due to a consultant or adviser engaged pursuant to this section shall be paid by the Agency out of moneys at its disposal. Consultants and advisers.

(2) Any person may notify the Agency in writing of his willingness to be engaged by the Agency as a consultant or adviser pursuant to this section and such person when so notifying the Agency shall give to the Agency particulars of his qualifications and experience.

(3) The Agency shall maintain a list of the persons who duly give to the Agency a notification pursuant to *subsection (2)*.

(4) The Agency shall, in engaging a consultant or adviser under this section, have regard to the list maintained under *subsection (3)*, but nothing in this subsection shall be construed as precluding the Agency from engaging as a consultant or adviser a person whose name is not on the said list.

(5) The Agency shall include in its annual report a statement of the names of the persons (if any) engaged pursuant to this section during the year to which the report relates.

43.—(1) The Agency shall establish such number of units (in this Act referred to as regional environmental units) as may be approved of by the Minister and shall, as far as is practicable, arrange for the performance of its functions, or particular functions, through such units. Establishment of regional environmental units.

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(2) Each regional environmental unit shall comprise such number and types of employees and such facilities for the performance of its functions as the Agency considers necessary.

Provision of services to Agency.

44.—(1) For the purposes of enabling the Agency to perform its functions on and from the appropriate day, the Minister may, as an interim measure, supply to the Agency any services, including services of staff, required by the Agency and the Agency may avail of such services for which arrangements are made under this section.

(2) A local authority or any other public authority may supply to the Agency any services required by the Agency, including services of staff, for the performance of any of its functions under this Act on such terms and conditions as may be agreed.

Agreements between Agency and other public authorities.

45.—(1) Subject to *section 25 (6)*, where—

(a) the Agency is of the opinion that any function or any service which may be exercised or performed by it should be exercised or performed on its behalf, whether generally or in a particular case, by a public authority, and

(b) the public authority is able and willing so to exercise or perform the function or service,

the Agency and the public authority may enter into an agreement that the function or service shall be so exercised or performed on behalf of the Agency by the public authority, and it shall thereupon become so exercisable or performable by the public authority.

(2) Where—

(a) consequent upon an agreement under *subsection (1)* a function or service becomes exercisable or performable by a public authority, and

(b) the Agency would, if it exercised or performed the function or service, be authorised by law to do any act or thing in relation to such exercise or performance,

the public authority shall be authorised to do that act or thing in relation to the exercise or performance by it of the function or service as if it were the Agency.

(3) The Agency shall furnish the Minister with a copy of an agreement to which this section applies.

(4) Any agreement under this section may contain such terms and conditions (including terms as to payment or otherwise) as may be decided between the parties to the agreement.

(5) Entry into an agreement under this section by a local authority shall be a reserved function.

(6) In this section—

“local authority” has the meaning assigned to it by the Local Government Act, 1941;

“reserved function” means—

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- (a) with respect to the council of a county (or an elective body for the purposes of the County Management Acts, 1940 to 1991) a reserved function for the purposes of the County Management Acts, 1940 to 1991,
- (b) with respect to the corporation of a county borough, a reserved function for the purposes of the Acts relating to the management of the county borough.

46.—The Minister may in each financial year, after consultation with the Agency in relation to its proposed work programme and expenditure for that year, make grants of such amounts as may be sanctioned by the Minister for Finance out of moneys provided by the Oireachtas towards the expenditure incurred by the Agency in the performance of its functions.

Grants to Agency.

47.—The Agency may, for the purposes of the performance of its functions, borrow money, but shall not do so without the consent of the Minister and the Minister for Finance.

Borrowing by Agency.

48.—(1) The Agency may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor.

Acceptance of gifts by Agency.

(2) The Agency shall not accept a gift if the trusts or conditions attached to it would be inconsistent with, or prejudice, the effective performance of its functions.

(3) The Agency shall publish in its annual report details of all gifts accepted by it during the period of the report.

49.—(1) The Agency may determine charges or scales of charges in relation to the provision by it of services.

Charges for services.

(2) The Agency may make such charges as it considers appropriate in accordance with the scales of charges provided for under *subsection (1)* in consideration of the provision by it of services.

(3) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to it under *subsection (2)*.

50.—(1) The Agency shall keep, in such form as may be approved of by the Minister with the consent of the Minister for Finance, all proper and usual accounts of all moneys received or expended by it.

Accounts and audits.

(2) Accounts kept in pursuance of this section shall be submitted annually to the Comptroller and Auditor General for audit at such times as the Minister, with the consent of the Minister for Finance, directs and those accounts when so audited, shall (together with the report of the Comptroller and Auditor General thereon), be presented to the Minister, who shall cause copies of the audited accounts and the report to be laid before each House of the Oireachtas.

51.—(1) As soon as may be after the end of each financial year, but not later than six months thereafter, the Agency shall cause a

Annual report and information to Minister.

report on the performance of its functions during that year to be laid before each House of the Oireachtas.

(2) The Agency shall supply the Minister with such information relating to the performance of its functions as he shall from time to time request.

PART III

Functions of the Agency

Functions generally. **52.**—(1) The functions of the Agency shall, subject to the provisions of this Act, include—

- (a) the licensing, regulation and control of activities for the purposes of environmental protection,
- (b) the monitoring of the quality of the environment, including the establishment and maintenance of data bases of information related to the environment and making arrangements for the dissemination of such information and for public access thereto,
- (c) the provision of support and advisory services for the purposes of environmental protection to local authorities and other public authorities in relation to the performance of any function of those authorities,
- (d) the promotion and co-ordination of environmental research, the provision of assistance and advice in relation to such research and the carrying out, causing to be carried out, or arranging for, such research,
- (e) liaison with the European Environment Agency provided for under Council Regulation 1210/90/EEC¹,
- (f) such other functions in relation to environmental protection as may be assigned or transferred to it by the Minister under *section 53* or *54* including functions arising from any obligations under any treaty governing the European Communities or an act adopted by the institutions of those Communities or other international convention or agreement to which the State is, or becomes, a party.

(2) In carrying out its functions, the Agency shall—

- (a) keep itself informed of the policies and objectives of public authorities whose functions have, or may have, a bearing on matters with which the Agency is concerned,
- (b) have regard to the need for a high standard of environmental protection and the need to promote sustainable and environmentally sound development, processes or operations,
- (c) have regard to the need for precaution in relation to the potentially harmful effect of emissions, where there are, in the opinion of the Agency, reasonable grounds for believing that such emissions could cause significant environmental pollution,

¹ O.J. No. L120/1 of 11 May, 1990.

- (d) have regard to the need to give effect, insofar as it is feasible, to the “polluter pays” principle, as set out in Council Recommendation 75/436/EURATOM, ECSC, EEC of 3 March, 1975¹, regarding cost allocation and action by public authorities on environmental matters,
- (e) ensure, in so far as is practicable, that a proper balance is achieved between the need to protect the environment (and the cost of such protection) and the need for infrastructural, economic and social progress and development.

53.—(1) The Minister may, following consultation with the Agency and any other Minister of the Government who in the opinion of the Minister is concerned, by regulations assign to the Agency such additional functions and, consequentially, modify any existing function in relation to environmental protection as from time to time he considers appropriate. Assignment of additional functions.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may assign to the Agency any function which relates to environmental protection and which arises from, or is necessary for, the implementation of any provision of the treaties governing the European Communities or any act adopted by the institutions of those Communities or other international convention or agreement to which the State is, or becomes, a party.

(3) Any regulations made pursuant to this section may provide for the assignment to the Agency of such ancillary, incidental and supplementary functions as, in the opinion of the Minister, are necessary for, or in connection with, the implementation of any provision of the treaties governing the European Communities or any act adopted by the institutions of those Communities or other international convention or agreement to which the State is, or becomes, a party.

(4) (a) A charge may be made by the Agency, subject to regulations under this section, in connection with, incidental to, or for the purposes of, the effective performance of any function assigned to it under this section.

(b) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from any such person any amount due and owing to it under *paragraph (a)*.

54.—(1) The Minister may, following consultation with the Agency, make regulations providing that any function relating to environmental protection conferred on a public authority under any enactment specified in the *Second Schedule* shall, where the Minister is satisfied that the function could be more effectively performed by the Agency, in addition to or in lieu of being performed by that authority, be performed by the Agency with effect from a date specified in the regulations. Transfer of functions.

(2) Regulations under *subsection (1)* shall not be made save with the agreement of any other Minister of the Government directly responsible for the function concerned or under whose aegis the public authority responsible for the function operates.

(3) Whenever regulations under this section are in force in relation to a particular function, a reference in any enactment to the public authority concerned shall be construed as including a reference to the Agency and the function to which the regulations relate shall be a function of the Agency.

¹ O.J. No. L194/1 of 25 July, 1975.

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(4) Regulations under this section may contain such incidental, supplementary, consequential and transitional provisions (including provisions modifying any provision of this Act or of any other enactment) as appear to the Minister to be necessary for the purposes or in consequence of, or to give full effect to, the regulations.

Advisory functions
in relation to
Ministers of the
Government.

55.—(1) The Agency may, of its own volition, and shall when requested by a Minister of the Government, give information or advice or make recommendations for the purposes of environmental protection to any such Minister on any matter relating to his functions or responsibilities and that Minister shall have regard to any such information or advice given or recommendations made.

(2) Without prejudice to the generality of *subsection (1)*, the Agency—

(a) may, and shall when requested by a Minister of the Government—

(i) prepare and submit to the Minister concerned an assessment of any proposal for, or any proposal for the amendment or the implementation of, any treaty governing the European Communities or any act of the institutions of those Communities or other international convention or agreement to which the State is, or may become, a party having a bearing on environmental protection,

(ii) advise the Minister concerned in relation to any proposals for legislative change, or on any other policy matters, concerning environmental protection and related matters,

(iii) submit to the Minister concerned any proposals it may consider appropriate for amendment of any enactment, or for new enactments, concerning environmental protection,

(iv) prepare and submit information to, or advise, the Minister concerned in relation to guidelines, standards and other matters including management of coastal areas in relation to environmental protection,

(v) report on and make recommendations to the Minister concerned on particular environmental issues or problems,

(b) may, and shall when requested by the Minister, make recommendations to the Minister in relation to any modification or extension of the functions of the Agency which it considers appropriate.

(3) The Minister may, by order made after consultation with any other Minister of the Government concerned, provide that a function performable by the Agency under *subsection (1)* or *subsection (2)* (a) shall be performable also in relation to any other public authority for which that other Minister is responsible.

(4) The Agency may, for any Minister of the Government or any public authority designated by order under *subsection (3)* or for any other person or body, organise and promote, or assist in organising and promoting, conferences, seminars, lectures, demonstrations,

training courses or publications for persons involved in environmental protection.

56.—(1) The Agency may, and shall when requested by the Minister, give information or advice or make recommendations for the purposes of environmental protection, to a local authority or to local authorities generally in relation to the performance of any of its or their functions and the authority or authorities shall have regard to any such information or advice given or recommendations made.

Advisory functions in relation to local authorities.

(2) Without prejudice to the generality of *subsection (1)*, information, advice or recommendations under this section may relate to—

- (a) the provision of laboratory facilities and equipment, and related services,
- (b) the preparation of legal proceedings in respect of any contravention of an enactment relating to environmental protection,
- (c) the standards, conditions or criteria to be applied, or the guidelines, codes of practice or procedures to be followed, for the purposes of environmental protection in relation to any development, process or practice either generally or of a particular class,
- (d) the management of coastal areas for the purposes of environmental protection,
- (e) the monitoring of emissions and environmental quality,
- (f) methods of sampling, measuring and analysis, and the equipment to be used for such sampling, measurement and analysis.

(3) The Agency may organise and promote, or assist in organising and promoting, conferences, seminars, lectures, demonstrations, training courses or publications for staff of local authorities involved in environmental protection or for members of local authorities.

(4) In this section “local authority” has the meaning assigned to it by the Local Government Act, 1941.

57.—(1) The Agency shall provide such general support and assistance for the purposes of environmental protection to local authorities in relation to the performance of any of their functions as it considers necessary and feasible.

Assistance to local authorities.

(2) The Agency may, for the purposes of *subsection (1)*, make arrangements with a local authority, on such terms and conditions as may be agreed, for the provision of services, including services relating to staffing and equipment, to that local authority.

(3) In this section “local authority” has the meaning assigned to it by the Local Government Act, 1941.

58.—(1) (a) The Agency may require a sanitary authority to submit to it in such manner and at such times as it may direct, such information as the Agency may specify

Drinking water.

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about the monitoring of the quality of water intended for human consumption pursuant to the European Communities (Quality of Water Intended for Human Consumption) Regulations, 1988, or any enactment amending or replacing those regulations or any other enactment relating to drinking water as may be prescribed.

- (b) The Agency shall carry out, cause to be carried out, or arrange for, such monitoring as it considers necessary to verify information (including monitoring results) transmitted to it under *paragraph (a)*.

(2) The Agency shall, in relation to each year, prepare and submit to the Minister a report on the monitoring, and an assessment of the results, referred to in *subsection (1)*, and shall include in the report such recommendations as seem to it to be appropriate.

(3) Each report under *subsection (2)* shall be laid by the Minister before each House of the Oireachtas and shall be published by the Agency.

Sewage or other effluents.

59.—(1) The Minister may, for the purposes of environmental protection and, in particular, for the purpose of giving full effect to Council Directive 91/271/EEC¹, make regulations for the collection, treatment, discharge or disposal of sewage or other effluents to waters from—

- (a) any plant or drainage pipe vested in or controlled or used by a sanitary authority for the treatment of drinking water, or
- (b) any plant, sewer or drainage pipe vested in or controlled or used by a sanitary authority for the treatment and disposal of sewage or other effluents.

(2) Without prejudice to the generality of *subsection (1)*, regulations may provide for all or any of the following—

- (a) the time within which specified systems or classes of systems for the collection and treatment of sewage effluents shall be provided,
- (b) the design, construction and maintenance of collection and treatment systems,
- (c) standards or other requirements for effluents specified in *subsection (1)*,
- (d) criteria for the designation of areas or classes of areas or waters or classes of waters by such person as may be specified and the times within which such designations shall be made or reviewed for the purposes of *subsection (3)*,
- (e) monitoring of sewage or other effluents and of waters to which sewage or other effluents are discharged,
- (f) re-use and disposal of effluents.

(3) Standards or other requirements prescribed under *subsection (2)* may relate to—

¹ O.J. No. L135/40 of 30 May, 1991.

- (a) all, or specified classes of, or specified volumes of, effluents,
- (b) effluents in designated areas or classes of areas or specified plant, sewers or drainage pipes, or specified classes of plant, sewers or drainage pipes, or
- (c) effluents discharged to designated waters or classes of waters,

and different standards or other requirements may be prescribed in relation to different effluents or classes of effluents, different areas or classes of areas, different waters or classes of waters or different plant, sewers or drainage pipes or classes of plant, sewers or drainage pipes.

(4) In prescribing standards or other requirements under *subsection (2)* the Minister shall have regard to any criteria specified and published by the Agency under *section 60*.

(5) The Minister may make regulations providing for the grant of an authorisation to a sanitary authority by the Agency in respect of the discharge of:

- (a) all, or specified classes of, or specified volumes of, effluents,
- (b) effluents in designated areas or classes of areas or specified plant, sewers or drainage pipes, or specified classes of plant, sewers or drainage pipes, or
- (c) effluents discharged to designated waters or classes of waters,

requiring compliance by such sanitary authority with such standards or other requirements as have been specified under *subsection (2) (c)*.

(6) Where a standard or other requirement is prescribed under *subsection (2)*, the sanitary authority shall, where necessary, take steps as soon as is practicable, or within such period as may be prescribed for compliance with such standard or other requirement, to ensure that the said effluent complies with the standard or other requirement.

(7) It shall be a good defence to a prosecution for an offence under any enactment other than this Act that the act constituting the alleged offence was in compliance with a standard or other requirement specified under *subsection (2) (c)* or an authorisation granted under this section.

(8) Section 26 of the Local Government (Water Pollution) Act, 1977, is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) Regulations under this section shall not relate to sewage or other effluents from any works, apparatus, treatment plant, sewer or drainage pipe vested in, or controlled or used by, a sanitary authority for the disposal of sewage or other effluents to any waters.”.

60.—(1) The Agency may, and shall if so directed by the Minister, specify and publish criteria and procedures, which in the opinion of the Agency are reasonable and desirable for the purposes of environmental protection, in relation to the management, maintenance, supervision, operation or use of all or specified classes of plant, sewers or drainage pipes vested in or controlled or used by a sanitary

Agency functions in relation to water or sewage treatment.

authority for the treatment of drinking water or for the treatment or disposal of any sewage or other effluent to any waters and a sanitary authority shall, in the performance of its functions, have regard to such criteria and procedures.

(2) Without prejudice to *subsection (1)*, specified criteria and procedures may relate to—

- (a) site selection,
- (b) the location of effluent discharges, the periods during which discharges may be made or may not be made and the design and construction of outlets for discharges,
- (c) the provision and maintenance of meters, gauges, other apparatus, manholes and inspection chambers.

Monitoring in relation to sanitary authorities' effluents.

61.—(1) (a) A sanitary authority in which is vested or which has control over, or the use of, any plant, sewer or drainage pipe from which effluent is discharged to waters and in respect of which standards or other requirements have been prescribed or an authorisation issued under *section 59*, or criteria and procedures have been specified under *section 60*, shall carry out, cause to be carried out, or arrange for, such monitoring of the effluent or of the waters concerned or in connection with the management or operation of the plant, sewer or drainage pipe—

- (i) as may be necessary or prescribed under *section 59 (2) (e)* to assess compliance with standards or other requirements prescribed, or authorisation issued, under *section 59*, or
- (ii) as the Agency shall direct in relation to criteria and procedures specified under *section 60*, and shall transmit the results of such monitoring to the Agency in such manner and at such times as the Agency shall direct.

(b) The Agency shall carry out, cause to be carried out, or arrange for, such monitoring as it considers necessary to verify results transmitted to it under *paragraph (a)*.

(2) Where the Agency—

- (a) is of the opinion that the monitoring being carried out in accordance with the provisions of *subsection (1) (a) (i)* is inadequate for the purposes of assessing compliance with standards or other requirements prescribed, or authorisation issued, under *section 59*, or
- (b) is not satisfied with the response of a sanitary authority to a direction under *subsection (1) (a) (ii)*,

it shall consult with the sanitary authority concerned, and, if the Agency is still dissatisfied with the response following such consultation, the Agency shall carry out, cause to be carried out, or arrange for, the monitoring concerned and the costs of the monitoring may

be recovered by the Agency from the sanitary authority as a simple contract debt in any court of competent jurisdiction.

(3) The Agency shall, from time to time, or at such intervals not exceeding two years and in such manner as may be prescribed for the purposes of monitoring compliance with specified standards or other requirements prescribed or authorisations issued under *section 59*, prepare and publish reports on the quality of effluents being discharged from plant, sewers or drainage pipes vested in, or controlled or used by, sanitary authorities and shall include in such reports such recommendations as it considers appropriate.

62.—(1) The Agency shall, as soon as is practicable, for the purposes of environmental protection, specify and publish criteria and procedures for the selection, management, operation and termination of use of landfill sites for the disposal of domestic and other wastes. Landfill sites for waste disposal.

(2) Without prejudice to the generality of *subsection (1)*, specified criteria and procedures may relate to—

- (a) site selection,
- (b) design and bringing into operation of sites,
- (c) impacts on the environment,
- (d) leachate management, treatment and control,
- (e) control and recovery of landfill gas,
- (f) operational guidelines, including classification of wastes and establishment of acceptance criteria for landfill,
- (g) acceptance of different classes of wastes at different classes of sites,
- (h) fire, pest and litter control,
- (i) appropriate recovery, reuse and recycling facilities,
- (j) co-disposal of industrial and other wastes,
- (k) monitoring of leachate, other effluents and emissions,
- (l) termination of use and subsequent monitoring.

(3) (a) A local authority which manages or operates a landfill site to which specified criteria and procedures apply shall carry out, cause to be carried out, or arrange for, such monitoring in connection with the management or operation of the landfill site as the Agency shall direct, and shall transmit the results of such monitoring and such information on the management or operation of the site to the Agency in such manner and at such times as the Agency shall direct.

(b) The Agency shall carry out, cause to be carried out, or arrange for, such monitoring as it considers necessary to verify results transmitted to it under *paragraph (a)*.

(4) Where the Agency is not satisfied with the response of a local authority to a direction under *subsection (3) (a)*, it shall consult with the local authority concerned, and, if the Agency is still dissatisfied with the response following such consultation, the Agency shall carry out, cause to be carried out, or arrange for, the monitoring concerned and the costs of the monitoring may be recovered by the Agency from the local authority as a simple contract debt in any court of competent jurisdiction.

(5) Where criteria and procedures specified under this section relate to a landfill site managed or operated by a local authority, the authority shall, where necessary, take steps as soon as is practicable to ensure that the management or operation of such landfill site complies with the specified criteria and procedures.

(6) The Agency shall, from time to time, prepare and publish reports on the management and operation of local authority landfill sites and shall include in such reports such recommendations as it considers appropriate.

(7) In this section “local authority” means a public waste collector for the purposes of the European Communities (Waste) Regulations, 1979.

Performance of
statutory functions
by local authorities.

63.—(1) Where the Agency is of opinion that a local authority has failed to perform a statutory function of that authority in relation to environmental protection, or has performed that function in an unsatisfactory manner, the Agency may request a report within a specified period from the authority in relation to the matter and the local authority shall comply with the request.

(2) The Agency, having considered any report of the local authority may, with a view to ensuring the satisfactory performance of the function in question—

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

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

(3) (a) Where the Agency is of the opinion that the response of the local authority to advice or recommendations issued or assistance or support offered under *subsection (2)* is inadequate for the purposes of environmental protection it may, without prejudice to any of its powers under this Act or any other enactment, direct the local authority to carry out, cause to be carried out, or arrange for, such action related to the function in question as the Agency considers necessary for the purposes of environmental protection within such period as may be specified.

(b) Where a local authority fails without reasonable cause to comply with a direction under *paragraph (a)* the Agency shall 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 local authority as a simple contract debt in any court of competent jurisdiction.

- (c) The Agency shall not give a direction under *paragraph (a)* unless the local authority, with due regard to its other statutory functions, has the necessary funds to comply with the direction or those funds can reasonably be made available by it.

(4) 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 Part IV of the Act of 1963.

(5) In this section “local authority” has the meaning assigned to it by the Local Government Act, 1941.

64.—(1) The Agency shall, after consultation with such persons or bodies (if any) as may be prescribed, prepare a national programme for the collection, analysis and publication of information on the levels, volumes and flows of water in rivers, lakes and groundwaters in the State (in this Act referred to as “hydrometric data”), and a copy of such programme shall, as soon as may be, be sent by the Agency to the Minister. Hydrometric programme.

(2) A programme under this section may, after consultation with the persons or bodies (if any) referred to in *subsection (1)*, be revised from time to time by the Agency and shall be reviewed at least every five years.

(3) It shall be the duty of the Agency to take appropriate steps to ensure that a programme under this section is implemented and for that purpose the Agency may—

- (a) direct a local authority to provide, operate and maintain such gauges and other equipment as it may specify and to furnish specified information to the Agency in such manner and at such times as it may specify,
- (b) make arrangements with any public authority, or other person or body to provide, operate and maintain such gauges and other equipment as it may specify and to furnish specified information to the Agency in such manner and at such times as it may specify,
- (c) provide, operate and maintain gauges and other equipment for recording hydrometric data.

(4) Where the Agency is not satisfied with the response of a local authority to a direction under *subsection (3) (a)*, it shall consult with the local authority concerned, and, if the Agency is still dissatisfied with the response following such consultation, the Agency shall carry out, cause to be carried out, or arrange for, the monitoring concerned and the costs of the monitoring may be recovered by the Agency from the local authority as a simple contract debt in any court of competent jurisdiction.

65.—(1) The Agency shall, after consultation with such persons or bodies (if any) as may be prescribed, prepare programmes for monitoring the quality of the environment and a copy of each such programme shall, as soon as may be, be sent by the Agency to the Minister and shall be published by the Agency. Environmental monitoring programme.

(2) A programme under this section shall specify—

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- (a) the nature and extent of the monitoring to which the programme relates and the reasons why, in the opinion of the Agency, the monitoring should be carried out,
 - (b) the persons or bodies (including the Agency) by which the intended monitoring is to be carried out,
 - (c) the resources, including equipment, other facilities and staff, required to carry out the monitoring and the cost thereof,
 - (d) the arrangements which the Agency considers appropriate for access to, dissemination of, and publication of the results of the monitoring.
- (3) It shall be the duty of the Agency to take appropriate steps to ensure that a programme under this section is implemented and for that purpose the Agency may—
- (a) give such directions as it considers appropriate to any local authority in relation to the carrying out of monitoring by that authority,
 - (b) make arrangements with any public authority, or other person or body, for the carrying out of specified monitoring,
 - (c) carry out, cause to be carried out, or arrange for, such monitoring as it may consider necessary for the purposes of the programme,
 - (d) assist any person or body in the carrying out of any part of the approved monitoring programme.
- (4) The Minister may make regulations specifying the monitoring, or classes of monitoring in relation to which the Agency shall consult with him and obtain his agreement prior to giving any directions under *subsection (3) (a)*.
- (5) Where the Agency is not satisfied with the response of a local authority to a direction under *subsection (3) (a)*, it shall consult with the local authority concerned, and, if the Agency is still dissatisfied with the response following such consultation, the Agency shall carry out, cause to be carried out, or arrange for, the monitoring concerned and the costs of the monitoring may be recovered by the Agency from the local authority as a simple contract debt in any court of competent jurisdiction.
- (6) The Agency may, after consultation with the persons or bodies (if any) referred to in *subsection (1)*, amend or revoke a programme.

Establishment of an accreditation scheme.

- 66.**—(1) (a) The Agency may, for the purposes of assessing analytical performance and ensuring the validity and comparability of environmental data, establish, or arrange for the establishment of, an analytical quality control programme involving its own laboratories, laboratories provided and operated by local authorities, and such other laboratories as it deems appropriate from which data are submitted to the Agency in connection with the performance of any of its functions.

- (b) The Agency may require any such laboratory to furnish it with such data as it may request for the purposes of any such programme.
- (c) Without prejudice to the generality of *paragraph (a)*, the Agency may establish different analytical quality control programmes for different laboratories or for different tests.

(2) The Agency may require any laboratory which supplies environmental data to the Agency or in connection with any function under this Act to be accredited in accordance with Irish Standard I.S./EN 45001: 1989 — General Criteria for the Operation of Testing Laboratories — or equivalent and with such other or further standards as may be set, from time to time, by the National Standards Authority of Ireland or equivalent standards.

(3) The Agency may provide for the imposition of charges and the payment of fees in connection with the provision of services or any procedural matters under this section.

(4) The Agency shall maintain a register of laboratories which comply with the requirements of *subsection (1)* or which are required to be accredited under *subsection (2)*.

(5) The register shall include a list of tests to which such compliance or accreditation relates and shall be available for inspection by any person free of charge at the Agency's headquarters during office hours.

67.—The Agency shall keep and maintain, or cause to be kept and maintained, such records, including such summary records, of the results of any monitoring carried out, caused to be carried out, or arranged by it under this Act as it considers necessary for the purposes of any of its functions and shall, subject to *section 39*, make such records available, or cause such records to be made available, for inspection by the public at all reasonable times, and, as the Agency considers appropriate, publish, or cause to be published, such records.

Access to monitoring results.

68.—(1) The Agency shall exercise general supervision over the monitoring carried out by local authorities (and such other public authorities as may be prescribed) for the purposes of any enactment relating to environmental protection.

Monitoring activities of public authorities.

(2) The Agency shall keep itself informed of the nature and extent of the monitoring carried out by each local authority and by each public authority prescribed under *subsection (1)*.

(3) For the purposes of *subsection (2)*, the Agency may require a local authority or other public authority prescribed under *subsection (1)* to provide information within a specified period on—

- (a) the number and location of places within an area at which monitoring is being carried out and the frequency of such monitoring,
- (b) the manner in which samples and measurements are taken and analyses are carried out,
- (c) the equipment being used for the purposes of taking such samples and measurements or of carrying out such analyses,

(d) the results of such monitoring,

and the authority shall not unreasonably withhold the information sought.

(4) The Agency may, for the purposes of *subsection (1)*, of its own volition, or at the request of a local authority or other public authority prescribed under *subsection (1)*, advise the authority in relation to—

(a) the number and location of places within an area at which monitoring should be carried out and the frequency of such monitoring,

(b) the manner in which samples and measurements are to be taken and analyses are to be carried out,

(c) the equipment to be used for the purposes of taking such samples and measurements or of carrying out such analyses,

(d) the manner in which the results of such monitoring should be published or otherwise made available.

(5) The Agency may provide such services including general support, back-up, advice and assistance, as it considers necessary for the discharge by a local authority or other public authority prescribed under *subsection (1)* of its monitoring operations.

(6) The Agency may make arrangements with a local authority or other public authority prescribed under *subsection (1)* on such terms and conditions as may be agreed, for the provision of services under *subsection (5)*.

(7) The Agency shall, at intervals not exceeding three years, prepare and publish a report on the monitoring operations of local authorities and other public authorities prescribed under *subsection (1)* and may, at more frequent intervals, report on monitoring operations related to particular environmental issues, or to particular areas, or to particular local authorities or to particular public authorities prescribed under *subsection (1)*.

(8) A report under *subsection (7)* shall be laid by the Minister before each House of the Oireachtas.

Environmental
quality data storage
system.

69.—(1) The Agency shall, after consultation with such persons or bodies (if any) as may be prescribed, establish and maintain, or arrange to have established and maintained, a data base related to environmental quality.

(2) Without prejudice to the generality of *subsection (1)*, the data base shall include information on—

(a) ambient air quality,

(b) the quality of inland waters, estuarial and coastal waters, and groundwaters,

(c) soil quality,

(d) noise levels,

(e) inventories of emissions to the environment, and

(f) such other matters as may be prescribed.

(3) For the purposes of this section, the Agency may require any public authority to make available to it, in such manner and at such times as it may specify, any information related to environmental quality in the control or possession of that authority and the authority shall not unreasonably withhold such information.

(4) (a) The Agency may make arrangements for information related to environmental quality held by any person or body to be supplied to it in such manner and on such terms and conditions as may be agreed and for such information to be included in the data base.

(b) The Agency may compile and maintain a register of sources of data related to environmental quality and the register shall be available for inspection by any person free of charge at the Agency's headquarters during office hours.

(5) The Agency shall, subject to *subsection (4)* and *section 39* and on such terms and conditions as it thinks fit, make arrangements for public access to information contained in a data base prepared under this section.

70.—The Agency shall—

(a) within a period of five years after it is established and in every fifth year thereafter, or

(b) within such other periods as may be prescribed,

prepare and publish a report on the quality and condition of the environment in the State.

State of the environment reports.

71.—(1) The functions of the Agency in relation to environmental research shall include the matters specified in this section.

Environmental research.

(2) (a) The Agency shall advise the Minister on the need for environmental research and shall, at such intervals as the Minister may specify (or, where for the time being no intervals are specified by the Minister, at such intervals as it thinks fit) prepare programmes of such research.

(b) Programmes under this section shall specify—

(i) the subjects in relation to which research is necessary and the objectives of such research,

(ii) the manner in which and the persons or bodies by which such research could be carried out,

(iii) the estimated cost of particular research projects or operations.

(c) Programmes under this section shall be prepared after consultation with such persons or bodies as may be prescribed.

(3) (a) The Agency shall, from time to time, prepare and publish registers of environmental research projects and operations being carried out, or proposed to be carried out, in the State and which shall be available for inspection

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by any person free of charge at the Agency's headquarters during office hours.

- (b) The Agency shall, insofar as is practicable, co-ordinate environmental research in the State and, for that purpose, may advise any public authority or any other person or body at the request of such person or body in relation to the allocation of financial support or other facilities for such research.

(4) The Agency may assist by money or in kind, or by the provision of services and facilities (including the services of staff), any person or body carrying out, or proposing to carry out, environmental research.

(5) The Agency may carry out, cause to be carried out, or arrange for, environmental research in accordance with a programme prepared under *subsection (2)*.

(6) The Agency shall, in consultation with the Minister, establish and maintain liaison with the Commission of the European Communities and any other international organisation in relation to programmes of environmental research carried out, promoted, or assisted by the Commission or such other organisation, and shall promote and facilitate, as far as possible, participation in such programmes by persons and bodies in the State.

Environmental
impact assessment.

72.—(1) (a) Subject to Article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989, and subsections (3) and (3A) of section 4 of the Local Government (Roads and Motorways) Act, 1974, or to any provision amending or replacing that Article or those subsections, the Agency may, and shall at the request of the Minister, or of any other Minister of the Government in relation to those matters for which that Minister is the competent authority, prepare guidelines on the information to be contained in environmental impact statements in respect of development to which this section applies.

(b) The Agency shall, in preparing such guidelines, consult with the Minister and with any other Minister who in the opinion of the Agency is concerned.

(2) Guidelines under *subsection (1)* may relate to all development, or to any particular class of development, to which this section applies.

(3) (a) Regard shall be had, in the preparation of an environmental impact statement in respect of development to which this section applies, to any guidelines under *subsection (1)* which relate to the development concerned.

(b) A competent authority to which an environmental impact statement is submitted in respect of development to which this section applies shall, in considering the said statement, have regard to any guidelines under *subsection (1)* which relate to the development concerned.

(4) (a) A copy of an environmental impact statement prepared in respect of any development or class of development to which this section applies other than an activity for which a licence or revised licence under *Part IV* is required, shall be sent to the Agency by the person or body on

whose behalf the environmental impact statement is prepared, at such time as may be prescribed.

- (b) (i) The Agency may, having considered an environmental impact statement received pursuant to *paragraph (a)*, make to the competent authority concerned such submissions or observations as it considers appropriate within such period as may be prescribed.
- (ii) Where an environmental impact statement received by the Agency pursuant to *paragraph (a)* relates to development other than development by a State authority within the meaning of Article 23 of the European Communities (Environmental Impact Assessment) Regulations, 1989, a copy of any submissions or observations submitted to the competent authority under *subparagraph (i)* shall be sent by the Agency to the person or body by whom the environmental impact statement was sent pursuant to *paragraph (a)*.
- (c) A competent authority which receives submissions or observations from the Agency under *paragraph (b) (i)* shall, notwithstanding the provisions of any other enactment as to the matters to which that authority is to have regard in dealing with a case involving an environmental impact statement, have regard to such submissions or observations.

(5) The Agency shall be consulted and regard shall be had to its views, in the case of any development to which this section applies, before—

- (a) a decision is made on an application for an exemption from a requirement of any enactment to prepare an environmental impact statement, or
- (b) a State authority within the meaning of Article 23 of the European Communities (Environmental Impact Assessment) Regulations, 1989, decides that Article 23 (1) (a) shall not apply in relation to the proposed development.

(6) Any submissions or observations made by the Agency under *subsection (4) (b) (i)* or *subsection (5)* shall be available for inspection by any person free of charge at the Agency's headquarters during office hours.

(7) This section shall apply to—

- (a) development which is of a class for the time being specified under Article 24 of the European Communities (Environmental Impact Assessment) Regulations, 1989, or under any enactment amending or replacing that Article, and
- (b) a motorway which has the meaning assigned to it by the Local Government (Roads and Motorways) Act, 1974.

(8) In this section, unless the context otherwise requires—

“competent authority” means—

- (a) a Minister of the Government or other public authority or body to which an environmental impact statement in respect of development to which this section applies is required by or under any enactment to be submitted, or

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- (b) a State authority within the meaning of Article 23 of the European Communities (Environmental Impact Assessment) Regulations, 1989, by which an environmental impact statement in respect of development to which this section applies is required to be prepared;

“environmental impact statement” includes an “environmental impact study” for the purposes of the European Communities (Environmental Impact Assessment) (Motorways) Regulations, 1988.

Environmental approval.

73.—(1) The Minister shall, with the consent of the Minister for the Marine, make regulations providing, in relation to all or any leases, licences, permits, or other authorisations which the Minister for the Marine is empowered under law to grant, or to the renewal of any such leases, licences, permits or other authorisations, that such leases, licences, permits or other authorisations, or specified classes thereof, shall, for the purposes of environmental protection, be subject to the approval of the Agency and such approval may be given either without conditions or subject to such conditions related to the purposes of environmental protection as the Agency shall specify.

(2) Any conditions attached to an approval of the Agency under *subsection (1)* shall be attached by the Minister for the Marine to the grant by him of the relevant authorisation.

(3) The Minister for the Marine shall, following consultation with the Minister, by regulations specify the procedures under which the approval of the Agency under this section shall be obtained, including the period within which the Agency shall give a decision with regard to an approval, and different procedures or different periods may be prescribed in relation to different leases, licences, permits, or other authorisations or to different classes thereof.

(4) The Minister for the Marine may, where he is of opinion that it is in the public interest to do so and with the consent of the Minister, by order provide that any class of case not provided for by regulations under *subsection (1)*, should, for the purposes of environmental protection, be subject to the approval of the Agency and the requirements of *subsection (1)* shall apply to such class of case so long as the relevant order remains in force.

(5) An order under *subsection (4)* may, following the agreement of the Minister, include such matters as may be prescribed under *subsection (3)* in relation to the class of case concerned.

(6) The Minister for the Marine may, by order, with the consent of the Minister, amend or revoke an order under *subsection (4)*.

Environmental audit.

74.—(1) In this section, “environmental audit” means in relation to any process, development or operation, a systematic, documented and objective periodic assessment of the organisational structure, management systems, processes and equipment pertaining to, or incidental to, that process, development or operation, for the purposes of environmental protection and, in particular for the purposes of—

- (a) facilitating management control of practices which may have an impact on environmental protection,

- (b) assessing compliance with enactments related to environmental protection and with such environmental conditions as may be attached to any licence or permit granted or issued in connection with the aforesaid process, development or operation, and
 - (c) minimising the impact of the process, development or operation on the environment.
- (2) (a) The Agency may promote the carrying out of environmental audits.
- (b) The Agency may, and shall at the request of the Minister, prepare and publish guidelines on the carrying out of environmental audits, and such guidelines may relate to all processes, developments or operations or to any particular class of process, development or operation or to processes, developments or operations in particular areas or classes of areas.
- (3) Without prejudice to the generality of *subsection (2)*, guidelines may relate to—
- (a) the aims of an environmental audit,
 - (b) the expertise to be included in an environmental audit team,
 - (c) the criteria to be considered and procedures to be followed in carrying out an environmental audit.
- (4) For the purposes of promoting the carrying out of environmental audits, the Agency may, in relation to any process, development or operation or classes of processes, developments or operations—
- (a) provide such assistance and support, on such terms and conditions as may be agreed with any person or body, for the purposes of developing and carrying out environmental audits or pilot or demonstration projects, and
 - (b) organise and promote, or assist in organising and promoting, conferences, seminars, lectures, demonstrations, training courses or publications.

75.—(1) The Agency shall, in relation to any environmental medium and without prejudice to its functions under *section 103*, specify and publish quality objectives which the Agency considers reasonable and desirable for the purposes of environmental protection. Environmental quality objectives.

- (2) Without prejudice to *subsection (1)*, the Agency may—
- (a) prepare guidelines or recommendations on the manner and the period within which quality objectives could be achieved,
 - (b) identify the public authorities or other bodies which may contribute to the achievement of such objectives,
 - (c) assess the resources, including staff and funding, which would be required to achieve such objectives, or

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- (d) arrange for the dissemination of information on any of the matters provided for by this subsection or any other relevant matter to the Minister or any other Minister of the Government or other public authority or other body which in the opinion of the Agency may contribute to the achievement of such objectives.

(3) Without prejudice to the operation or effect of any standard, limit value, order or other matter specified or prescribed or otherwise in force by or under any enactment, the Minister and any other Minister of the Government and any other public authority shall take into account any quality objective drawn up and published by the Agency in the formulation of policy, in the setting of standards or in the exercise of any of their other functions concerning environmental protection.

Codes of practice.

76.—(1) The Agency may—

- (a) prepare and publish codes of practice, or
- (b) approve of a code of practice or any part of a code of practice drawn up by any other body,

for the purpose of providing practical guidance with respect to compliance with any enactment or otherwise for the purposes of environmental protection.

(2) The Agency shall, before publishing or approving of a code of practice or approving of any part of a code of practice, consult and have regard to any views of the Minister and any other Minister of the Government or other person or body that appears to the Agency to be appropriate, or that may be prescribed.

(3) Where the Agency publishes or approves of a code of practice or approves of any part of a code of practice it shall publish a notice to that effect in *Iris Oifigiúil*, specifying the enactment or matter in relation to which the code is published or approved of and the date from which the code shall have effect.

(4) The Agency may, following consultation with the Minister and any other Minister of the Government or any other person or body that appears to the Agency to be appropriate, or that may be prescribed—

- (a) revoke or revise the whole or part of any code of practice prepared and published by it, or
- (b) withdraw its approval of any code of practice or any part of a code of practice.

(5) Where the Agency revokes or revises, or withdraws its approval of, a code of practice or any part of a code of practice it shall publish a notice to that effect in *Iris Oifigiúil*.

Evidence of code of practice.

77.—A document under the seal of the Agency purporting to be a code, or part of a code, of practice published or approved of by the Agency under *section 76*, shall be received in evidence without further proof.

78.—(1) The Agency shall, if it considers it necessary or desirable to do so, having regard to any act of an institution of the European Communities relating to a Community labelling scheme, establish or arrange for the establishment of a scheme or schemes for the use of a special symbol or symbols on the labels of specified products or in connection with specified services which meet specified criteria and standards as to their impact on the environment.

Labelling of products and services.

(2) Without prejudice to the generality of *subsection (1)*, the Agency may—

- (a) set the criteria and standards under which a special symbol can be used on the labels of products or in connection with services,
- (b) provide for procedures and other matters in relation to the use, or an application or an appeal against a refusal for the use, or for the withdrawal, of a special symbol including fees relating to such use or to accompany such applications,
- (c) carry out, cause to be carried out, or arrange for, the testing and analysis of products or services related to their use of a special symbol to ensure compliance with the said criteria and standards,
- (d) provide for charges for the carrying out of tests or analyses,
- (e) carry out, cause to be carried out, or arrange for, monitoring of the use of a special symbol,
- (f) determine the product categories or services to which such a scheme would apply,
- (g) prepare and publish periodic reports on the scheme,
- (h) publicise details of the scheme.

(3) The Agency shall consult with such public authorities and such other persons and bodies, as may be prescribed, in the preparation, amendment or revocation of a scheme under this section.

(4) It shall be an offence—

- (a) to use a symbol provided for in a scheme under this section, or under a Community environmental labelling scheme in force in the State, or a similar symbol, on the labelling of a product or in connection with a service which has not been approved under the scheme or for which the approval has been withdrawn or, if approved, no longer meets the standards and criteria of the scheme, or
- (b) for a person to make a statement or claim in writing or otherwise in connection with the use, or an application or an appeal against a refusal for the use, or for the withdrawal, of a special symbol which to his knowledge is false or misleading in a material respect.

(5) The Agency may amend or revoke a scheme under *subsection (1)*.

General policy directives.

79.—(1) The Minister may, whenever he thinks proper, give such general directives in writing to the Agency as to policy in relation to environmental protection.

(2) In performing its functions the Agency shall have regard to any directives given by the Minister under this section.

(3) Nothing in this section shall be construed as enabling the Minister to exercise any power or control in relation to the performance in particular circumstances by the Agency of a function assigned to it by or under this Act.

(4) Where the Minister gives a directive under this section he shall—

(a) as soon as may be cause a copy of the directive to be laid before each House of the Oireachtas,

(b) cause a notice of the issue of the directive to be published in *Iris Oifigiúil* and in at least one daily newspaper circulating in the State, and

(c) cause a copy of the directive to be transmitted to the Agency and to each planning authority.

(5) A notice under *subsection (4) (b)* shall specify where a copy of the directive to which it relates may be obtained and the fee (if any) payable in respect of such copy which shall not exceed the reasonable cost of making the copy.

Consultation by the Agency.

80.—The Agency shall consult with such public authorities, persons or bodies as it considers necessary or as may be prescribed in relation to the performance of its functions under this Act or such of those functions as may be prescribed and shall have regard to any views given or recommendations made by such public authority, person or body.

Consultation with the Agency.

81.—The Agency shall be consulted by such public authorities prior to the discharge of such functions related to the environment as the Minister, following consultation with any other Minister of the Government who in the opinion of the Minister is concerned, may, by regulations, specify and such public authorities shall have regard to the views of the Agency prior to carrying out the functions specified.

PART IV

Integrated Pollution Control

Licences.

82.—(1) A person shall not carry on an activity, other than an established activity, on or after such day as may be prescribed unless a licence or revised licence under this Part is in force in relation to the activity.

(2) 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.

(3) Where an order under *subsection (2)* comes into operation, 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 the date specified in the order an application has been made for a licence in respect of that activity and the requirements of regulations made under *section 87* in relation to the application for the licence have been complied with by the applicant therefor.

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 94* and to compliance with any regulations under *section 87*, grant the licence subject to, or without, conditions or refuse the application. Grant of licences.

(2) In considering an application for a licence or the review of a licence or 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, and
- (d) such other matters related to the prevention, limitation, elimination, abatement or reduction of environmental pollution as it considers necessary.

(3) The Agency shall not grant a licence or revised licence for an activity unless it is satisfied that—

- (a) 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,
- (b) 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,

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- (c) 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,
- (d) any noise from the activity will comply with, or will not result in the contravention of, any regulations under *section 106*,
- (e) any emissions from the activity will not cause significant environmental pollution, and
- (f) the best available technology not entailing excessive costs will be used to prevent or eliminate or, where that is not practicable, to limit, abate or reduce an emission from the activity,

and, where appropriate, the Agency shall attach conditions relating to the matters specified in the foregoing paragraphs to the licence or revised licence.

(4) 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.

(5) Where a licence or revised licence is required under this Part in respect of an activity—

(a) a licence 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, or

(b) a permit under—

- (i) the European Communities (Toxic and Dangerous Waste) Regulations, 1982, or
- (ii) the European Communities (Waste) Regulations, 1979,

shall not be granted in relation to such activity.

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

(a) a licence under—

- (i) Part III of the Air Pollution Act, 1987,
- (ii) section 4 or 16 of the Local Government (Water Pollution) Act, 1977, or

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(iii) section 171 of the Fisheries (Consolidation) Act, 1959, or

(b) a permit under—

(i) the European Communities (Toxic and Dangerous Waste) Regulations, 1982, or

(ii) the European Communities (Waste) Regulations, 1979,

shall cease to have effect in relation to such activity.

(7) 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, or

(iii) section 28, 28A or 28B of the Air Pollution Act, 1987,

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

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

Conditions attached to a licence.

(a) specify the nature, composition, temperature, volume, level, rate, method of treatment and location of an emission,

(b) specify the periods during which an emission may, or may not, be made,

(c) specify limits to the effects of an emission,

(d) specify the concentration of a pollutant in an environmental medium or a deposition or discharge rate which shall not be exceeded,

(e) specify any matters relating to the design, construction, dimensions of pipes, chimneys, flues, stacks or other outlets through which an emission is to be made,

(f) 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,

(g) specify requirements or limits in relation to the amount or composition of any substance produced by or utilised in the activity in any period,

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- (h) require the provision, operation and maintenance of meters, gauges, manholes, inspection chambers and other apparatus and other means for monitoring the nature, extent and effects of emissions,
 - (i) require the taking and analysis of samples, the making of measurements, the keeping of records and the furnishing of information to the Agency or to any other person or body who may be specified, including confirmation by the licensee of compliance with the conditions attached to a licence or revised licence and indicating any breaches of such conditions,
 - (j) specify the measures to be taken if there is a breakdown of any plant or other equipment or procedures which may affect emissions from the activity concerned,
 - (k) specify the type of fuel to be, or not to be, used, as the case may be,
 - (l) specify the nature of any treatment to be applied to waste and the manner in which it shall be held or disposed of,
 - (m) 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 or after an activity ceases operation,
 - (n) require the making of payments to the Agency in relation to costs incurred in monitoring, or otherwise in relation to, emissions,
 - (o) require the payment to the Agency of a charge or charges prescribed under or calculated in accordance with *section 93*,
 - (p) require the payment to the sanitary authority concerned of a charge in relation to a discharge to a sewer as provided for under *section 97*,
 - (q) specify the latest date for complying with any conditions which are attached.
- (2) It shall be an offence not to comply with any condition attached to a licence or revised licence.
- (3) 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.
- (4) Where a permission under Part IV of the Act of 1963 has been granted or an application has been made for such permission in relation to an activity, the Agency—
- (a) shall consult with the planning authority in whose functional area the activity is or will be situate in relation to any development 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 permission or an application for a permission under Part IV of the Act of 1963, and

- (b) may attach to the licence or revised licence such conditions related to the above-mentioned development as may be specified by the planning authority for the purposes of the proper planning and development of the area or stricter conditions as the Agency may consider necessary for the prevention, limitation, elimination, abatement or reduction of pollution.

85.—(1) (a) Where an application is to be made to the Agency for a licence under *section 83* the applicant shall notify 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 87*.

Processing of applications for licences or reviews of licences.

- (b) Where the Agency proposes to review a licence or revised licence under *section 88*, it shall publish or give such notice as may be prescribed under *section 87*, 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 (1)* on an application for a licence, or under *section 88 (2)* on the review of a licence or revised licence, 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, and
- (c) any person who made a written submission in relation to the application or the review,

indicating the manner in which it proposes to determine the application or the review and, where it is proposed to grant a licence or revised licence, specifying where a copy of the proposed licence or proposed revised licence may be obtained.

(3) A notification provided for under *subsection (2)* shall be given within two months of the date of the application for a licence under *section 83* or the date of the publication of a notice under *subsection (1) (b)*, as the case may be.

(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 87* and *94* at any time before the

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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.

(6) Where an objection has been lodged, the Agency shall have an absolute discretion to hold an oral hearing and, if it so decides, the Agency shall notify, in writing, the applicant or, in the case of a review, the licensee, the planning authority in whose functional area the activity the subject of a licence application or review will be or is situated and all those from whom objections in compliance with *subsection (5)* were received.

(7) 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 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.

(8) 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 unless the proceedings are instituted within the period of two months commencing on the date on which the decision is given.

(9) 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 of a licence or revised licence to discharge to a sewer.

(10) In this section—

“the appropriate period” means—

(a) in the case of the applicant or the licensee, the period of 28 days beginning on the day of the giving of the notification under *subsection (2)*,

(b) in any other case, the period of 21 days beginning on the day of the giving of the notification under *subsection (2)*.

Oral hearing and
written report.

86.—(1) An oral hearing provided for in *section 85* shall be conducted by a person appointed for that purpose by the Agency.

(2) The person appointed under *subsection (1)* shall make a written report on the hearing to the Agency and shall include in the report a recommendation relating to the grant or refusal of a licence or to the grant of a revised licence and, where appropriate, the conditions (if any) to be attached to the licence or revised licence.

(3) The Agency shall consider a report made under *subsection (2)* before making a decision on the application for a licence or on the review of a licence or revised licence.

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

Regulations
regarding licences.

87.—(1) The Minister may make regulations in relation to applications for licences or for the review of licences or revised licences and the grant and review 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 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 85 (1)* and relative to an application for a permission under Part IV of the Act of 1963,
 - (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 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 additional information or particulars relating to applications or reviews as the Agency may request,
 - (f) extending the period within which a notification to which *section 85 (3)* refers shall be published—
 - (i) to two months from 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,
 - (g) requiring the production, within such period as may be specified, of evidence to verify 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, 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 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 such incidental, supplementary, consequential and transitional provisions (including provisions modifying the European Communities (Environmental Impact Assessment) Regulations, 1989, and the European Communities (Environmental Impact Assessment) (Motorways) Regulations, 1988) as appear to the Minister to be necessary for the purposes or in consequence of, or to give full effect to, the first mentioned regulations.

(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.

88.—(1) The Agency may review a licence or revised licence granted under this Part at any time with the consent or on the application of the licensee, or at a time not less than three years from the date on which the licence or revised licence was granted.

(2) As soon as may be after it has completed a review under this section, the Agency may grant a revised licence in substitution for the licence reviewed.

(3) Without prejudice to *subsection (1)*, a licence or revised licence may be reviewed by the Agency if—

- (a) the Agency considers that any emission from the activity to which the licence or revised licence relates constitutes a significant risk of environmental pollution,
- (b) there has been a material change in the nature or the extent of an emission,
- (c) there has been a material change, which could not have reasonably been foreseen when the licence or revised licence was granted, in the condition of the environment in the area in which the activity to which the licence or revised licence relates is situate, or
- (d) evidence, which was not available when the licence or revised licence was granted, has become available, or new standards relating to the contents or nature of the emission concerned or the effects of the emission on the environment or the means for the better control of the emissions are prescribed.

(4) 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,

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- (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 from the activity to which the licence relates,

the Agency shall, where necessary, and as soon as may be after the regulations are made, the order comes into operation or the directions are given, as the case may be, review the licence or revised licence.

(5) 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.

89.—(1) The Agency shall, as soon as may be after the coming into operation of this Part, establish and 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. Register of licences.

(2) The register of licences shall be kept at the offices 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.

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(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.

90.—(1) Subject to *subsection (2)*, where an activity to which a licence or revised licence under this Part relates—

(a) has not commenced within three years after the date on which the licence or revised licence was granted, or

(b) has ceased for a period of not less than three years,

the licence or revised licence shall cease to have effect.

(2) Without prejudice to *subsection (1)*, the Agency may, having regard to the nature of the works and arrangements necessary in connection with the activity and any other relevant consideration—

(a) specify a period being a period of more than three years during which the licence or revised licence is to have effect,

(b) on an application which complies with the requirements (if any) which may be prescribed, extend the period so specified.

Change of
ownership of
activity.

91.—(1) 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, enure for the benefit of the activity and of all persons for the time being interested therein.

(2) Where a licensee ceases to hold, or transfers to another person, his interest in the activity to which the licence or revised licence relates, he shall forthwith give notice to that effect to the Agency, specifying, in the case of the transfer of his interest, the name of the person to whom his interest in the activity has been transferred.

Alterations of
activity.

92.—(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 if he proposes to effect any alteration to, or reconstruction in respect of, the activity and such alteration or reconstruction would, or is likely to, materially 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)*, the Agency, notwithstanding any other provision of this Act, may—

- (a) if there is a licence or revised licence in force in respect of the activity concerned, either review that licence under *section 88* 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 the person in charge to apply for a licence,

and the person in charge shall not effect the alteration or reconstruction until the review has been completed or the new licence or licence, as the case may be, has been granted.

(3) Where the Agency decides pursuant to *subsection (2)* 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, within one month of the receipt by it of the notice under this section, or the date on which the Agency otherwise becomes aware of the matters referred to at *subsection (1)* inform the person accordingly and if such person is not so informed *subsection (2)* shall cease to have effect in relation to the alteration or reconstruction specified in the notice or of which the Agency otherwise became aware.

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

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

- (a) specify the emissions in relation to which a charge under this section may be imposed,
- (b) specify the manner in which such a charge is to be imposed,
- (c) specify the method by which the amount of such charge is to be calculated,
- (d) enable the Agency to make different charges under this section in respect of different emissions and in different circumstances,
- (e) specify the manner in which representations may be made to the Agency regarding the imposition of a charge under this section and provide for the procedures to be followed in respect of such representations,
- (f) provide 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.

94.—(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— Fees.

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- (a) licences under *section 83* or reviews of licences under *section 88*,
- (b) the operation of an accreditation scheme or an analytical quality control programme under *section 66*,
- (c) the operation of a labelling scheme under *section 78*,
- (d) the operation of a system of control for the prevention or limitation of noise under *section 106*, or
- (e) 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 *subsection (1) (a)* shall be subject to the consent of the Minister for Finance and the Minister for Industry and Commerce.

Special cases.

95.—(1) The Minister may, by order, require that any process, development or operation not specified in the *First Schedule* shall be licensable by the Agency under this Part in lieu of being the subject of—

- (a) a licence 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,
- or
- (b) a permit under—
 - (i) the European Communities (Toxic and Dangerous Waste) Regulations, 1982, or
 - (ii) the European Communities (Waste) Regulations, 1979,

and in such case 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 relevant order remains in force.

(2) Without prejudice to the generality of *subsection (1)*, an order 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) evidence related to any impact on the environment of such process, development or operation which was not available has become available.

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

Monitoring of environmental quality and emissions.

- (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, 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 require the making of such measurements, calculations or estimates, and the keeping of such records, as may be prescribed in relation to emissions of prescribed substances by such activities as may be prescribed and shall make such records available or cause such records to be made available for inspection by the public at all reasonable times and publish or cause to be published such records.

(5) 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.

97.—(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 it is controlled.

Discharges to sewers.

(2) A sanitary authority may consent to a discharge under *subsection (1)* subject to such conditions as it considers appropriate and the Agency shall include such conditions or stricter conditions in the licence or revised licence.

(3) Without prejudice to the generality of *subsection (2)*, conditions attached to a consent by a sanitary authority under this section may—

(a) relate to—

- (i) the nature, composition, temperature, volume, level, rate, method of treatment and location of a discharge and the period during which a 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) provide 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 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) specify a date not later than which any conditions shall be complied with.

(4) 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 three years from the date of the licence or the last review of the licence,

(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 of the grant of the licence or revised licence 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.

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98.—(1) Notwithstanding section 26 of the Act of 1963, or any other provision of the Local Government (Planning and Development) Acts, 1963 to 1991, 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 shall not, in respect of any development comprising or for the purposes of the activity—

Application of other Acts.

- (a) decide to refuse a permission or an approval under Part IV of the Act of 1963 for the reason that the development would cause environmental pollution, or
- (b) decide to grant such permission subject to conditions which are for the purposes of the prevention, limitation, elimination, abatement or reduction of environmental pollution from the activity,

and, accordingly—

- (i) a planning authority in dealing with an application for a permission or for an approval for any such development shall not consider any matters relating to the risk of environmental pollution from the activity;
- (ii) An Bord Pleanála shall not consider any appeal made to it against a decision of a planning authority in respect of such an application, or any submissions or observations made to it in relation to any such appeal, so far as the appeal, or the submissions or observations, as the case may be, relates or relate to the risk of environmental pollution from the activity.

(2) Notwithstanding the provisions of the Minerals Development Acts, 1940 to 1979, 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 Energy under the said Acts in respect of the same activity shall not contain conditions which are for the purpose of the prevention, limitation, elimination, abatement or reduction of environmental pollution from the activity.

(3) Without prejudice to *subsections (1) and (2)*, where a licence or revised licence under this Part is granted in relation to an activity and—

- (a) a permission under Part IV of the Act of 1963, or
- (b) a lease under the Minerals Development Acts, 1940 to 1979,

has been granted in respect of the same activity, 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, limitation, elimination, abatement or reduction of environmental pollution, cease to have effect.

(4) The grant of a permission or lease under any of the Acts referred to in *subsections (1) and (2)* 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.

99.—(1) Where the Agency proposes to grant a licence or revised licence in respect of an established activity for which—

Transitional arrangements.

- (a) a licence has been granted under—
 - (i) Part III of the Air Pollution Act, 1987,

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- (ii) section 4 or 16 of the Local Government (Water Pollution) Act, 1977, or
- (iii) section 171 of the Fisheries (Consolidation) Act, 1959,

or

(b) a permit has been issued under—

- (i) the European Communities (Toxic and Dangerous Waste) Regulations, 1982, or
- (ii) the European Communities (Waste) Regulations, 1979,

the Agency shall, if the licence or revised licence under this Part is being granted during the period of three years from the grant of a licence under *paragraph (a)* or the issue of a permit under *paragraph (b)*, have regard to the conditions (if any) attached to such licence or permit and the costs in relation to the activity which would be incurred if different conditions were attached to the licence or revised licence to be granted by the Agency.

(2) On and after the commencement of this section 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 the Marine in any licence or permit or any conditions attached to a licence or permit issued 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 any provision of the enactments mentioned in *subsection (1)* as are specified in the regulations shall, to such extent as may be so specified, be exercisable by the Agency in lieu of the local authority, sanitary authority or the Minister for the Marine in relation to the activities concerned.

(4) Where, immediately before the commencement of *section 82*, there is an application for a licence or permit, or a review of a licence or permit, to which *subsection (1)* relates in respect of an activity for which a licence under that section 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, or a review by the Agency of a licence, under this Part and the local authority or sanitary authority or the Minister for the Marine, as the case may be, shall furnish the Agency, within a period of one month from the commencement of *section 82* or fourteen 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 the Marine, as the case may be, shall, in relation to an application for a licence or permit, 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 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) issued, as the case may be.

PART V
General Pollution Control

100.—(1) The Minister may, by order, provide that any provision of the Local Government (Water Pollution) Act, 1977, specified in the order shall, to such extent as may be so specified, apply in relation to the Agency.

Extension to Agency of certain powers under Local Government (Water Pollution) Act, 1977.

(2) An order under *subsection (1)* in relation to a particular provision may provide that—

- (a) a function conferred on a local authority or sanitary authority by the provision may, in addition to or in lieu of that authority, be exercised by the Agency,
- (b) anything required by the provision to be done in relation to a local authority or a sanitary authority may, in addition to or in lieu of that authority, be done in relation to the Agency,
- (c) a reference in the provision to a local authority or to a sanitary authority may include or be substituted by a reference to the Agency.

(3) An order under this section may contain such incidental and consequential provisions as the Minister considers appropriate, including provision for the modification of any provision of the Local Government (Water Pollution) Act, 1977, as it applies in relation to the Agency.

101.—(1) The Minister may, by order, provide that any provision of the Air Pollution Act, 1987, specified in the order shall, to such extent as may be so specified, apply in relation to the Agency.

Extension to Agency of certain powers under Air Pollution Act, 1987.

(2) An order under *subsection (1)* in relation to a particular provision may provide that—

- (a) a function conferred on a local authority by the provision may, in addition to or in lieu of that authority, be exercised by the Agency,
- (b) anything required by the provision to be done in relation to a local authority may, in addition to or in lieu of that authority, be done in relation to the Agency,
- (c) a reference in the provision to a local authority may include or be substituted by a reference to the Agency.

(3) An order under this section may contain such incidental and consequential provisions as the Minister considers appropriate, including provision for the modification of any provision of the Air Pollution Act, 1987, as it applies in relation to the Agency.

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Management plans.

102.—(1) Without prejudice to the generality of *sections 100 and 101*, the Minister may, by order, provide that the Agency may make an air quality management plan under section 46 of the Air Pollution Act, 1987, or a water quality management plan under section 15 of the Local Government (Water Pollution) Act, 1977.

(2) An order under this section may contain such incidental and consequential provisions as the Minister considers appropriate, including provision for the modification of sections 46, 47 and 48 of the Air Pollution Act, 1987, or section 15 of the Local Government (Water Pollution) Act, 1977, as they apply in relation to the Agency and in particular—

- (i) the procedures to be followed by the Agency in making the plan,
- (ii) consultation by the Agency with any local authority concerned in regard to the making of a plan,
- (iii) provisions relating to the consent of a local authority before a plan is made,
- (iv) provisions for the determination of matters where the Agency considers that the consent of a local authority is unreasonably withheld,
- (v) provisions relating to the recovery of the costs of making a plan from the local authorities concerned.

Emission limit values and quality standards.

103.—(1) The Agency may, at any time, and shall when requested by the Minister to do so, make recommendations to the Minister in relation to—

- (a) the specifying of air quality standards under section 50 of the Air Pollution Act, 1987,
- (b) the specifying of emission limit values under section 51 of the Air Pollution Act, 1987,
- (c) the prescribing of quality standards for waters, trade effluents and sewage effluents and standards in relation to methods of treatment of such effluents, under section 26 of the Local Government (Water Pollution) Act, 1977.

(2) Before making regulations for any of the purposes referred to in *subsection (1)* the Minister shall have regard to any recommendations made by the Agency pursuant to that subsection.

(3) Recommendations under *subsection (1)*, other than recommendations made at the request of the Minister, shall be published by the Agency.

Special reports and investigations.

104.—(1) The Agency may, and shall when requested by the Minister to do so, investigate the causes and circumstances surrounding any incident of environmental pollution and make a special report on such matter.

- (2) (a) The Agency may cause a special report, or part thereof, to be published in such manner as it thinks fit.

(b) Before publication of a special report or part of such report prepared at the request of the Minister, the Agency shall submit such report to the Minister.

(3) The Minister may make regulations on any matter of procedure in relation to the operation of this section.

105.—(1) (a) The Agency may, where after consultation with the Minister it considers it necessary to do so, arrange for an inquiry to be held into any incident of environmental pollution or any other matter related to environmental protection. Inquiries.

(b) The Minister may direct the Agency to arrange for an inquiry to be held into any specified incident of environmental pollution or any other matter related to environmental protection and the Agency shall comply with any such direction.

(2) The inquiry shall be conducted by a person appointed in that behalf by the Agency in such manner as the person thinks appropriate.

(3) The person conducting the inquiry may, for the purposes of the inquiry—

(a) investigate the circumstances in which the incident of environmental pollution or any other matter related to environmental protection occurred,

(b) enter (on production of the confirmation of his appointment if so demanded by the occupier or person in charge of the premises) at any reasonable time any premises, entry to which appears requisite for the said purposes,

(c) carry out such inspection and examination and do such things and make such enquiries as appear to him to be reasonably necessary for the said purposes and, in particular—

(i) require, by summons, any person to attend as a witness to give evidence,

(ii) require any person to produce such books, papers, other documents and any articles (being in that person's custody or under his control) which the person conducting the inquiry may consider relevant and retain such books, papers, documents and articles for such time as he may reasonably require them,

(iii) administer or cause to be administered an oath and take evidence under oath.

(4) If a person—

(a) on being duly summoned as a witness before an inquiry without just cause or excuse disobeys the summons,

(b) being in attendance as a witness refuses to take an oath or to make an affirmation when legally required by the person conducting the inquiry to do so, or to produce any documents or articles in his custody or control legally required by the person conducting the inquiry to be produced by him, or to answer any question to which the person conducting the inquiry may legally require an answer,

- (c) wilfully gives evidence which is material to the inquiry and which he knows to be false or does not believe to be true,
- (d) by act or omission, obstructs or hinders the person conducting the inquiry in the performance of his functions,
- (e) fails, neglects or refuses to comply with any requirement provided for under *subsection (3) (c) (ii)*, or
- (f) does or omits to do any other thing and if such doing or omission would, if the inquiry had been the High Court, have been contempt of that Court,

the person shall be guilty of an offence.

(5) A statement or admission made by a person before a person conducting an inquiry under this section shall not be admissible in evidence against that person in any criminal proceedings other than proceedings in relation to an offence under *subsection (4)*.

(6) Persons attending as witnesses at the inquiry shall be allowed such expenses to be paid out of moneys available to the Agency as would be allowed to witnesses attending before a court of record and, in case of dispute as to the amount to be allowed, the dispute shall be referred by the person conducting the inquiry to a taxing master of the High Court, who, on request signed by the person conducting the inquiry, shall ascertain and certify the proper amount of the expenses.

(7) The person conducting the inquiry shall make a report to the Agency stating the causes and circumstances of the subject of the inquiry and may add any observations which he thinks right to make.

(8) The Agency may cause the report of a person who conducted an inquiry under this section to be made public at such time and in such manner as it thinks fit.

(9) The Agency may require that all or part of the expenses incurred by the Agency in relation to an inquiry under this section shall be paid in whole or in part by any person who appears to the Agency to be, by reason of any act or default on the part of such person or on the part of any servant or agent of his, responsible in any degree for the subject of the inquiry.

(10) The Agency shall give notice of an inquiry under this section by a notice published in *Iris Oifigiúil* and in at least one daily newspaper circulating in the State setting out the terms of reference of the inquiry.

(11) The Minister may make regulations for the purposes of this section.

PART VI

Miscellaneous

106.—(1) The Minister may, following consultation with any Minister of the Government who in the opinion of the Minister is concerned and with the Agency, make regulations for the purpose of the prevention or limitation of any noise which may give rise to a nuisance or disamenity, constitute a danger to health, or damage property.

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

- (a) controlling sources of noise,
- (b)
 - (i) specifying maximum limits for noise either generally or in specified areas or classes of areas,
 - (ii) specifying maximum limits for noise emissions, from or into premises or classes of premises, either generally or at specified periods, or
 - (iii) specifying maximum limits of noise levels in prescribed premises,
- (c) regulating the operation, including licensing, of trades, processes or works, including the timing and control of movements of vehicles and the operation of engines and plant which are, or may be, sources of noise,
- (d) limiting or prohibiting the use of loudspeakers in or adjoining public places, including different provisions for different places or classes of places and at different times, and subject to such exceptions as may be specified,
- (e) the measurement of noise and the investigation of noise effects, or
- (f) the imposition of charges or the payment of fees for the purposes of the regulations or for services performed thereunder.

(3) The Act of 1963 is hereby amended by the addition at the end of Part IV of the Third Schedule of the entry: “14. Securing the reduction or prevention of noise.”.

107.—(1) Where it appears to—

- (a) a local authority in relation to any premises, processes or works, other than an activity for which a licence is required under *Part IV*, or
- (b) the Agency in relation to an activity for which a licence is required under *Part IV* but has not been issued,

Power of local authority or Agency to require measures to be taken to prevent or limit noise.

that it is necessary to do so for the prevention or limitation of noise, the local authority or the Agency, as the case may be, may serve a notice on the person in charge.

(2) A notice pursuant to this section shall indicate requirements for the prevention or limitation of the noise and may—

- (a) specify the measures which appear to the local authority or the Agency, as the case may be, to be necessary in order to prevent or limit the noise,
- (b) direct the person on whom the notice is served to take such measures as may be specified in the notice to prevent or limit the noise, and

- (c) specify a period, which the local authority or the Agency, as the case may be, considers reasonable in all the circumstances of the case, within which such measures are to be taken.

(3) A person on whom a notice under this section has been served may, within such period as may be specified in the notice, make such representations in writing as he thinks fit to the local authority or the Agency, as the case may be, concerning the terms of the notice, and the local authority or the Agency, as the case may be, having considered any such representations, may amend a provision of the notice (including the provision relating to *subsection (2) (c)*) or may confirm or revoke the notice, and shall inform the person of such amendment, confirmation or revocation.

(4) A person on whom a notice under this section has been served shall, within the period specified, comply with the requirements of the notice, or, as the case may be, the notice as amended.

(5) If a person on whom a notice under this section has been served by a local authority or the Agency, as the case may be, does not, within the period specified in the notice or in the notice as amended, as the case may be, comply with the requirements of the notice or the notice as amended, the local authority or the Agency, as the case may be, may take such steps as it considers reasonable and necessary to secure compliance with the notice and may recover any costs and expenses thereby incurred from the person on whom the notice was served as a simple contract debt in any court of competent jurisdiction.

(6) It shall be a good defence, in a prosecution for a contravention of this section in the case of noise caused in the course of a trade or business, for the accused to prove that—

- (a) he took all reasonable care to prevent or limit the noise to which the charge relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of operation, that, having regard to all the circumstances, were suitable for the purposes of such prevention or limitation, or
- (b) the noise is in accordance with—
- (i) the terms of a licence under this Act, or
- (ii) regulations under *section 106*.

(7) A register of notices issued, amended or revoked by the local authority or the Agency shall be kept at the office of the local authority or the Agency, as the case may be, and be available for public inspection free of charge during office hours and copies of entries shall be provided on request to any person on payment by him to the local authority or the Agency, as the case may be, of such fee (if any) as the local authority or the Agency, as the case may be, shall fix not exceeding the reasonable cost of making the copy.

Noise as a nuisance.

108.—(1) Where any noise which is so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place, a local authority, the Agency or any such person may complain to the District Court and the Court may order the person or body making,

causing or responsible for the noise to take the measures necessary to reduce the noise to a specified level or to take specified measures for the prevention or limitation of the noise and the person or body concerned shall comply with such order.

(2) It shall be a good defence, in the case of proceedings under *subsection (1)* or in a prosecution for a contravention of this section, in the case of noise caused in the course of a trade or business, for the accused to prove that—

(a) he took all reasonable care to prevent or limit the noise to which the complaint relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of operation, that, having regard to all the circumstances, were suitable for the purposes of such prevention or limitation, or

(b) the noise is in accordance with—

(i) the terms of a licence under this Act, or

(ii) regulations under *section 106*.

(3) Before a complaint is made to the District Court under *subsection (1)* the local authority or the person concerned, as the case may be, shall serve a notice in the prescribed form of the intention to make such a complaint, within such time as may be specified in the notice, on the person alleged to have made or have caused or have been responsible for the noise.

(4) This section shall not apply to noise caused by—

(a) aircraft, or

(b) such statutory undertaker or local authority, as may be prescribed, in the exercise of powers conferred on it by or under any enactment in such circumstances as may be prescribed.

109.—The provisions of *sections 106, 107 and 108* shall be without prejudice to the provisions of the Safety, Health and Welfare at Work Act, 1989.

Safety, Health and Welfare at Work Act, 1989.

110.—(1) The Minister shall, following consultation with any other Minister of the Government who in the opinion of the Minister is concerned, make regulations for the making available by such public authorities as may be specified of specified information relating to the environment to any person upon request and, in particular, for the purpose of giving full effect to Council Directive 90/313/EEC¹.

Access to information on the environment.

(2) Without prejudice to the generality of *subsection (1)*, regulations may provide for all or any of the following—

(a) the type, format or subject matter of specified information or specified classes of information to be made available,

(b) the public authorities by whom information, or particular kinds of information, is to be made available,

(c) procedures, conditions and restrictions relating to the provision of information generally or of specified information,

¹ O.J. No. L158/56 of 23 June, 1990.

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- (d) classes of circumstances in which requests for information, or specified kinds of information, may be refused,
- (e) procedures for the review of a decision to refuse to provide, whether in whole or in part, information requested and the giving of directions to public authorities following such reviews, or
- (f) the making of charges for the provision of information by public authorities.

(3) In this section, “information relating to the environment” means any available information in written, visual, aural or data base form on the state of water, atmosphere, soil, fauna, flora, land and natural sites, and on actions (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely to so affect, these and on actions or measures designed to protect these, including administrative measures and environmental management programmes.

Genetically
modified organisms.

111.—(1) The Minister may, for the purposes of environmental protection, for the prevention of danger to health or damage to property or for the preservation of amenities, and, in particular, for the purpose of giving full effect to Council Directives 90/219/EEC¹ and 90/220/EEC², following consultation with the Minister for Industry and Commerce and any other Minister of the Government who in the opinion of the Minister is concerned, 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.

(2) Without prejudice to the generality of *subsection (1)*, regulations may provide for all or any of the following—

- (a) assignment of functions for the purposes of *subsection (1)*, to such person (including the Minister) as may be specified,
- (b) placing of duties, obligations or responsibilities on a person engaged in genetically modifying any organism or who is importing, acquiring, keeping, using or releasing to the environment any genetically modified organism or on any other person in relation to genetically modified organisms,
- (c) consultation with such person, whether in or outside the State, (if any) as may be specified,
- (d) licensing of a person engaged in genetically modifying any organism or who is importing, acquiring, keeping, using or releasing to the environment any genetically modified organism and prohibiting the engagement in any such actions of a person other than a licensed person,
- (e) regulating, including licensing, the establishment and operation of any process or action involving a genetically modified organism and prohibiting any such process or action unless a licence has been obtained,
- (f) the information including information on personnel, premises and waste management, to be furnished with an application for a licence and provision for seeking additional information as necessary to determine the application,

¹ O.J. No. L117/1 of 8 May, 1990.

² O.J. No. L117/15 of 8 May, 1990.

- (g) the conditions that may or shall be attached to a licence under *paragraph (d) or (e)* including—
 - (i) the period for which the licence shall be valid,
 - (ii) the organisms covered by the licence,
 - (iii) any limitations or prohibitions regarding any process or action involving any specified organisms,
 - (iv) the continuation of specified conditions after a licence expires, is cancelled or suspended, or after the process or action for which a person is licensed is completed,
 - (v) restrictions or limits on any releases to the environment or any emissions arising from any process or action involving a genetically modified organism or specifying the methods of treatment or disposal of any releases or emissions to any environmental medium, or
 - (vi) arrangements for monitoring and for making available to the Minister or such other person as may be specified the results of such monitoring,
- (h) specifying procedures for the grant, review, cancellation or suspension of a licence, for the making of representations relating to these matters and for the consideration of such representations,
- (i) the studies and assessments to be carried out on the nature of, or the process or action involving, a genetically modified organism, the possible risks to the environment from the organism or the process or action involving the organism and the potential effects of a release of such organism whether planned or accidental,
- (j) the precautions to be taken, including the setting up of bio-safety committees, the information to be provided to the public, emergency response arrangements (both on-site and off-site), the notification of emergency incidents to the proper authorities, the taking of urgent measures by those authorities for the purposes of environmental protection, for the prevention of danger to health or damage to property or for the preservation of amenities, and the recovery of the costs of such measures by those authorities, and the controls to be observed either generally or in relation to particular organisms or classes of organisms, processes or classes of processes or actions or classes of actions, involving a genetically modified organism,
- (k) providing for an application to the High Court by the Minister or such other person as may be prescribed under *subsection (1)* for an order prohibiting or restricting any process or action involving a genetically modified organism in such circumstances as may be specified,
- (l) prohibiting any specified process or action involving, or any importation, acquisition, keeping, using or releasing to the environment of, a specified genetically modified organism, or any specified genetic modification of an organism,

- (m) the grant of exemptions—
 - (i) to a specified class of persons,
 - (ii) for specified research or in specified circumstances, or
 - (iii) as regards specified organisms or classes of organisms, processes or classes of processes or actions or classes of actions involving specified organisms or classes of organisms,

from any of the requirements of the regulations in such circumstances as are specified in relation to specified processes or actions involving a genetically modified organism and subject to such conditions as may be specified,
- (n) requiring the giving of notice, the information to be included in such notice, and the period within which such notice shall be given, to the Minister or such other person, whether in or outside the State, as may be specified, regarding the introduction or modification of such process or action involving a genetically modified organism as may be specified,
- (o) the keeping of records and the provision of such information as may be specified to the Minister or such other person, whether in or outside the State, as may be specified,
- (p) the maintenance of a register including the information related to licences and other matters to be contained in such register, and the provision of public access to such register and any restrictions as regards confidential information,
- (q) the provision of advice and the preparation and publication, or approval of guidelines and codes of practice, or
- (r) the imposition of charges or the payment of fees for the purposes of the regulations or the services provided thereunder.

(3) It shall be an offence not to comply with any condition attached to a licence issued pursuant to regulations made under this section.

(4) The person in charge of any process or action involving a genetically modified organism shall use the best available technology not entailing excessive costs for the purposes of environmental protection, for the prevention of danger to health or damage to property, or for the preservation of amenities, arising from any process or action involving a genetically modified organism.

(5) Regulations under this section may contain such incidental, supplementary, consequential and transitional provisions (including provisions modifying any provision of this Act or of any other enactment) as appear to the Minister to be necessary for the purposes of, in consequence of, or to give full effect to, the regulations.

(6) For the purposes of this section an authorised person, in addition to the powers given under *section 13*, may require, in relation to any premises or part of a premises which he has power to enter or in relation to any process or action or part of a process or action on such premises, or in relation to anything in or on such premises, that it should be maintained without disturbance or in such

a manner as he may specify for so long as is reasonable in order to carry out his investigations or tests.

(7) In this section—

“genetically modified organism” means—

- (a) an organism derived from the formation of a combination of genetic material by artificial techniques, or
- (b) an organism inheriting such combination of genetic material, or
- (c) an organism that results from the replication of an organism described in *paragraph (a)*, or
- (d) such other matter as may be prescribed by the Minister;

“organism” means any multicellular, unicellular, subcellular or acellular entity capable of replication or of transferring genetic material whether by natural or artificial processes or such other matter as may be prescribed by the Minister;

“environment” includes atmosphere, land, soil, water and all living organisms;

“licence” includes a consent or any other form of authorisation and cognate words shall be construed accordingly.

112.—(1) The Agency may keep a register under any provision of this Act otherwise than in legible form so that the register is capable of being used to make a legible copy or reproduction (a “copy record”) of any entry in the register. Register kept in computer or other non-legible form and evidence of entries.

(2) In any proceedings a certificate signed by an officer of the Agency, stating that a copy record of an entry in a register under a specified provision of this Act has been made in accordance with *subsection (1)* shall be evidence of the fact of the making of the entry and that the copy or reproduction of the entry attached to the certificate is a true copy record of the entry until the contrary is shown.

(3) A document purporting to be a certificate under *subsection (2)* shall be deemed to be such a certificate without proof of the signature of the person purporting to sign the certificate or that such person was a proper person to so sign, until the contrary is shown.

(4) In any proceedings any copy record may be given in evidence and shall be *prima facie* evidence of any fact therein stated:

Provided that the court is satisfied of the reliability of the system used to make the copy record and the original entry on which it was based.

113.—(1) A person convicted of an offence for which a penalty, forfeiture or fine is provided in a section specified in *column (2)* of the Table to this section of an Act specified in *column (3)* of that Table at a particular reference number in *column (1)* of that Table shall, (subject to *subsection (2)*), in lieu of any monetary penalty, forfeiture or fine so provided, be liable to a fine not exceeding the maximum fine specified in *column (4)* of that Table at that reference Increase of certain penalties.

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number, and the sections and Acts specified in *columns* (2) and (3) of that Table shall be construed and have effect accordingly.

(2) (a) Where a penalty, forfeiture or fine is expressed in any section specified in *column* (2) of the Table as being for a day, each contravention to which it relates shall constitute a separate offence.

(b) Where an offence referred to in *subsection* (1) is described as a continuing or further offence the penalty for each day on which the contravention continues shall, in lieu of any other monetary penalty, forfeiture or fine provided in respect thereof, be a fine not exceeding £200.

(3) This section shall have effect in relation to offences committed after the commencement of this section.

TABLE

Ref No. (1)	Section (2)	Act (3)	Maximum Fine (4)
1.	55	Waterworks Clauses Act, 1847	£1,000
2.	58	Waterworks Clauses Act, 1847	£1,000
3.	60	Waterworks Clauses Act, 1847	£1,000
4.	50	The Dublin Corporation Waterworks Act, 1861	£1,000
5.	51	The Dublin Corporation Waterworks Act, 1861	£1,000
6.	17	Waterworks Clauses Act, 1863	£1,000
7.	18	Waterworks Clauses Act, 1863	£1,000
8.	19	Waterworks Clauses Act, 1863	£1,000
9.	20	Waterworks Clauses Act, 1863	£1,000
10.	70	Public Health (Ireland) Act, 1878	£1,000
11.	112	Public Health (Ireland) Act, 1878	£1,000
12.	114	Public Health (Ireland) Act, 1878	£200
13.	119	Public Health (Ireland) Act, 1878	£1,000
14.	171	Public Health (Ireland) Act, 1878	£1,000
15.	220	Public Health (Ireland) Act, 1878	£1,000
16.	272	Public Health (Ireland) Act, 1878	£1,000
17.	273	Public Health (Ireland) Act, 1878	£1,000
18.	31	Local Government (Sanitary Services) Act, 1948	£1,000
19.	33	Local Government (Sanitary Services) Act, 1948	£1,000
20.	34	Local Government (Sanitary Services) Act, 1948	£1,000
21.	37	Local Government (Sanitary Services) Act, 1948	£1,000
22.	42	Local Government (Sanitary Services) Act, 1948	£1,000
23.	44	Local Government (Sanitary Services) Act, 1948	£1,000
24.	46	Local Government (Sanitary Services) Act, 1948	£1,000
25.	47	Local Government (Sanitary Services) Act, 1948	£1,000
26.	4	Local Authorities (Works) Act, 1949	£1,000
27.	8	Local Government (Sanitary Services) Act, 1962	£1,000
28.	3	Local Government (Sanitary Services) Act, 1964	£1,000
29.	16	Local Government (Sanitary Services) Act, 1964	£1,000

Sections 3 and 82.

FIRST SCHEDULE

Activities to which *Part IV* applies

1. **Minerals and Other Materials**

1.1 The extraction, production and processing of raw asbestos.

1.2 The extraction of aluminium oxide from an ore.

1.3 The extraction and processing (including size reduction, grading and heating) of minerals within the meaning of the Minerals Development Acts, 1940 to 1979, 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 production of energy in combustion plant the rated thermal input of which is equal to or greater than 50MW other than any such plant which makes direct use of the products of combustion in a manufacturing process.

2.2 The burning of any fuel in a boiler or furnace with a nominal heat output exceeding 50MW.

3. **Metals**

3.1 The initial melting or production of iron or steel.

3.2 The processing of iron and steel in forges, drawing plants and rolling mills where the production area exceeds 500 square metres.

3.3 The production, recovery, processing or use of ferrous metals in foundries having melting installations with a total capacity exceeding 5 tonnes.

3.4 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.

3.5 The reaction of aluminium or its alloys with chlorine or its compounds.

3.6 The roasting, sintering or 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 The manufacture of glass fibre or mineral fibre.

4.3 The production of glass (ordinary and special) in plants with a capacity exceeding 5,000 tonnes per year.

4.4 The production of industrial diamonds.

5. **Chemicals**

5.1 The manufacture of chemicals in an integrated chemical installation.

5.2 The manufacture of olefins and their derivatives or of monomers and polymers, including styrene and vinyl chloride.

- 5.3 The manufacture, by way of chemical reaction processes, of organic or organo-metallic chemical products other than those specified at 5.2.
- 5.4 The manufacture of inorganic chemicals.
- 5.5 The manufacture of artificial fertilizers.
- 5.6 The manufacture of pesticides, pharmaceutical or veterinary products and their intermediates.
- 5.7 The manufacture of paints, varnishes, resins, inks, dyes, pigments or elastomers where the production capacity exceeds 1,000 litres per week.
- 5.8 The formulation of pesticides.
- 5.9 The chemical manufacture of glues, bonding agents and adhesives.
- 5.10 The manufacture of vitamins involving the use of heavy metals.
- 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)—

methyl acrylate (20 tonnes); acrylonitrile (20 tonnes); toluene di-isocyanate (20 tonnes); anhydrous ammonia (100 tonnes); anhydrous hydrogen fluoride (1 tonne).

6. **Intensive Agriculture**

- 6.1 The rearing of poultry in installations, whether within the same complex or within 100 metres of that complex, where the capacity exceeds 100,000 units and where units have the following equivalents—
 - 1 broiler = 1 unit,
 - 1 layer, turkey or other fowl = 2 units.
- 6.2 The rearing of pigs in installations, whether within the same complex or within 100 metres of that complex, where the capacity exceeds 1,000 units on gley soils or 3,000 units on other soils and where units have the following equivalents—
 - 1 pig = 1 unit,
 - 1 sow = 10 units.

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.
- 7.2 The manufacture of dairy products where the processing capacity exceeds 50 million gallons of milk equivalent per year.
- 7.3 Commercial brewing and distilling, and malting in installations where the production capacity exceeds 100,000 tonnes per year.
- 7.4 The slaughter of animals in installations where the daily capacity exceeds 1,500 units and where units have the following equivalents—
 - 1 sheep = 1 unit,
 - 1 pig = 2 units,
 - 1 head of cattle = 5 units.
- 7.5 The manufacture of fish-meal and fish-oil.
- 7.6 The manufacture of sugar.
- 7.7 The rendering of animal by-products.

8. Wood, Paper, Textiles and Leather

- 8.1 The manufacture of paper pulp, paper or board (including fibre-board, particle board and plywood) in installations with a production capacity equal to or exceeding 25,000 tonnes of product per year.
- 8.2 The manufacture of bleached pulp.
- 8.3 The treatment or protection of wood, involving the use of preservatives, with a capacity exceeding 10 tonnes per day.
- 8.4 The manufacture of synthetic fibres.
- 8.5 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.
- 8.6 The fell-mongering of hides and tanning of leather in installations where the capacity exceeds 100 skins per day.

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.
- 9.3 The refining of petroleum or gas.
- 9.4 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.

10. Cement

- 10.1 The production of cement.

11. Waste

- 11.1 The incineration of hazardous waste.
- 11.2 The incineration of hospital waste.
- 11.3 The incineration of waste other than that mentioned in 11.1 and 11.2 in plants with a capacity exceeding 1 tonne per hour.
- 11.4 The use of heat for the manufacture of fuel from waste.

12. Surface Coatings

- 12.1 Operations involving coating with organo-tin compounds.
- 12.2 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.
- 12.3 Electroplating operations.

13. Other Activities

- 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 The manufacture of coarse ceramics including refractory bricks, stoneware pipes, facing and floor bricks and roof tiles.

Section 54.

SECOND SCHEDULE

Enactments in respect of which Functions may be Transferred
to the Agency

Air Pollution Act, 1987 (Emission Limit Value for Use of Asbestos) Regulations, 1990.
Air Pollution Act, 1987 (Sulphur Content of Gas Oil) Regulations, 1989.
European Communities (Asbestos Waste) Regulations, 1990.
European Communities (Control of Water Pollution by Asbestos) Regulations, 1990.
European Communities (Lead Content of Petrol) Regulations, 1985 to 1988.
European Communities (Toxic and Dangerous Waste) Regulations, 1982.
European Communities (Transfrontier Shipment of Hazardous Waste) Regulations, 1988.
European Communities (Waste) Regulations, 1984.
Local Government (Water Pollution) Act, 1977 (Control of Cadmium Discharges) Regulations, 1985.
Local Government (Water Pollution) Act, 1977 (Control of Hexachlorocyclohexane and Mercury Discharges) Regulations, 1986.

Section 18.

THIRD SCHEDULE

Amendment of Air Pollution Act, 1987

1. The Air Pollution Act, 1987 ("the Act") shall be amended in accordance with the following paragraphs.

2. Section 7 (1) of the Act shall be amended by the substitution of the following for the definition of "pollutant":

“‘pollutant’ means any substance specified in the First Schedule or any other substance (including a substance which gives rise to odour) or energy which, when emitted into the atmosphere either by itself or in combination with any other substance, may cause air pollution;”.

3. Section 32 of the Act shall be amended by the substitution for subsection (3) of the following subsection:

“(3) A local authority shall not grant a licence in relation to industrial plant unless they are satisfied that—

- (a) the best practicable means will be used to prevent or limit any emissions from the plant,
- (b) any emissions from the plant will comply with any relevant emission limit value,
- (c) any emissions from the plant will not result in the contravention of any relevant air quality standard,
- (d) any emissions from the plant will not cause significant air pollution,

and, where appropriate, the local authority shall attach conditions relating to the matters specified in paragraphs (a), (b), (c) and (d) to the licence.”.

4. The Act shall be amended by the insertion of the following sections after section 28:

“Remedies for unauthorised emissions.

- 28A. (1) (a) Where there is an emission from any premises, other than an emission under and in compliance with a licence granted under this Act or an emission in compliance with an emission limit value specified under section 51 of this Act or an emission which is in accordance with directions specifying best practicable means issued by the Minister under subsection (3) of section 5 of this Act, any person may make application to the appropriate court which may make an order requiring the occupier of the premises concerned to do one or more of the following, that is to say:
- (i) to terminate the emission within such period as may be specified in the order, or
 - (ii) to mitigate or remedy any effects of the emission concerned in such manner and within such period as may be specified in the order, or
 - (iii) to pay to the applicant or such other person as may be specified in the order a specified amount to defray all or part of any costs incurred by the applicant or that other person in investigating, mitigating or remedying the effects of the emission concerned.
- (b) In this subsection ‘appropriate court’, in relation to an application under paragraph (a) means—
- (i) in case the estimated cost of complying with the order to which the application relates does not exceed £5,000, the District Court,
 - (ii) in case the estimated cost aforesaid does not exceed £30,000, the Circuit Court, and
 - (iii) in any case, the High Court.
- (c) (i) If, in relation to an application under this section to

the District Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed £5,000, it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated cost aforesaid.

- (ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed £30,000, it may, if it so thinks fit, by order transfer the application to the High Court.
 - (iii) This paragraph is without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an application under this section in relation to which it was, at the time of the making of the application, the appropriate court.
- (2) (a) An application for an order under this section shall be brought in a summary manner and the court when considering the matter may make such interim or interlocutory order as it considers appropriate.
- (b) Where an application is transferred under paragraph (c) of subsection (1), the court to which it is transferred shall be deemed to have made any order made under this subsection by the court from which it is so transferred in the proceedings in relation to the application.
- (3) (a) An order shall not be made by a court under this section unless the person named in the order has been given an opportunity of being heard by the court in the proceedings relating to the application for the order.
- (b) The court concerned may make such order as to the costs of the parties to or persons heard by the court in proceedings relating to an application for

an order under this section as it considers appropriate.

(4) (a) Where a person does not comply with an order under subsection (1), a local authority may, in respect of their functional area, take any steps specified in the order to mitigate or remedy the effects of the emission concerned.

(b) The amount of any expenditure incurred by a local authority in relation to steps taken by them under paragraph (a) shall be a simple contract debt owed to the authority and may be recovered by them from the person as a simple contract debt in any court of competent jurisdiction.

(5) (a) An application under subsection (1) to the District Court shall be made to the Justice of the District Court for the District Court district in which the premises concerned are situated or in which the emission concerned takes place.

(b) An application under subsection (1) to the Circuit Court shall be made to the Judge of the Circuit Court for the circuit in which the premises concerned are situated or in which the emission concerned takes place.

(6) An application under subsection (1) may be made whether or not there has been a prosecution for an offence under this Act in relation to the emission concerned.

Civil liability for pollution.

28B. (1) Where an emission causes injury, loss or damage to a person or to the property of a person, the person may, without prejudice to any other cause of action that he may have in respect of the injury, loss or damage, recover damages in any court of competent jurisdiction in respect of such injury, loss or damage—

(a) from the occupier of the premises from which the emission originated unless the emission was caused by an act of God or an act or omission of a third party over whose conduct such occupier had no control, being an act or omission that such occupier could not reasonably have foreseen and guarded against, or

(b) if the emission was occasioned by an act or omission of any person that, in the opinion of the court, constitutes a contravention by the person of a provision of this Act, from that person.

(2) Subsection (1) does not apply to an emission under and in compliance with a licence granted under this Act or an emission in compliance with an emission limit value specified under section 51 of this Act or an emission which is in accordance with directions specifying best practicable means issued by the Minister under subsection (3) of section 5 of this Act.”.