



Number 10 of 1996

WASTE MANAGEMENT ACT, 1996

ARRANGEMENT OF SECTIONS

PART I

Preliminary and General

Section

1. Short title and commencement.
2. Community acts given effect to by this Act.
3. Non-application of this Act.
4. Definitions of “waste”, “hazardous waste”, “disposal”, “recovery”.
5. Interpretation generally.
6. Repeals and revocations.
7. Regulations, orders and directions.
8. Orders in relation to *Third Schedule* or *Fourth Schedule*.
9. Offences by bodies corporate.
10. Penalties.
11. Prosecution of offences.
12. Cost of prosecutions.
13. Payment of certain fines to local authority, Agency or other persons.
14. Powers of authorised person.

Section

15. Monitoring and inspection.
16. Service of notices.
17. Time for the doing of certain things: Saturdays, Sundays, public holidays, etc.
18. Information.
19. Register to be maintained by each local authority and the Agency.
20. Expenses.
21. Transfer of functions from local authorities to Agency, etc.

PART II

Waste Management Planning

22. Waste management plans.
23. Publication of notices in relation to waste management plans and procedure on review of such plans.
24. Power of Minister in relation to waste management plans.
25. Duty of local authority on making, varying or replacing a waste management plan.
26. Hazardous waste management plan.

PART III

Measures to Reduce Production, and Promote Recovery, of Waste

27. Interpretation (*Part III*).
28. Waste prevention and minimisation.
29. Measures related to recovery of waste.
30. Public authority waste management.
31. Recovery of waste by local authorities.

PART IV

Holding, Collection and Movement of Waste

32. General duty of a holder of waste.
33. Collection of waste.

Section

34. Waste collection permits.
35. Presentation of waste for collection.
36. Regulations in relation to movement of waste.

PART V

Recovery and Disposal of Waste

37. Interpretation (*Part V*).
38. Waste management facilities.
39. Requirement to hold waste licence.
40. Grant of waste licences.
41. Conditions attached to a waste licence.
42. Application for a waste licence or review of a waste licence.
43. *Section 42*: supplementary provisions.
44. Conduct of oral hearing and written report thereon.
45. Regulations regarding waste licences.
46. Review of waste licences.
47. Transfer of waste licences.
48. Surrender of waste licences.
49. Limit on duration of waste licences.
50. Fees.
51. Recovery of sludges and agricultural waste.
52. Discharges to sewers.
53. Financial provisions regarding waste recovery and disposal.
54. Application of the Act of 1963 and related regulations.

PART VI

General Provisions Regarding Environmental Protection

55. Power of local authority to require measures to be taken in relation to the holding, recovery or disposal of waste.
56. Powers of local authority to take measures to prevent or limit environmental pollution caused by waste.
57. Powers of High Court in relation to the holding, recovery or disposal of waste.

Section

- 58. Remedies for unauthorised holding, recovery or disposal of waste.
- 59. Functions of local authorities in regard to waste.

PART VII

Miscellaneous

- 60. Policy directions by Minister in relation to waste licensing, the movement of waste and other matters.
- 61. Detention and forfeiture of certain vehicles and equipment.
- 62. Power to give effect to Community acts.
- 63. Agreements between Agency and other public authorities.
- 64. Mass balances of specified substances.
- 65. Amendment of Act of 1992 and Act of 1987.
- 66. Amendment of Local Government (Water Pollution) Act, 1977.
- 67. Immunity of the Agency and local authorities.
- 68. Adaptation of certain references and transitional provisions.
- 69. Transfer of functions in relation to waste licences.
- 70. Exclusion of certain enactments relating to public health.
- 71. Abandoned vehicles.

FIRST SCHEDULE

Categories of Waste

SECOND SCHEDULE

Hazardous Waste

Part I

Categories or Generic Types of Hazardous Waste

Part II

Constituents of Category II Waste which render it hazardous when it has the properties specified in Part III

Part III

Properties of Waste which render it hazardous

THIRD SCHEDULE

Waste Disposal Activities

FOURTH SCHEDULE

Waste Recovery Activities

FIFTH SCHEDULE

Repeals and Revocations

Part I

Enactments Repealed

Part II

Statutory Instruments Revoked

Acts Referred to

Air Pollution Act, 1987	1987, No. 6
Companies Acts, 1963 to 1990	
County Management Acts, 1940 to 1994	
Derelict Sites Act, 1990	1990, No. 14
Dublin Corporation Act, 1890	1890, 53 & 54 Vict., c. ccxlv
Dumping at Sea Act, 1981	1981, No. 8
Environmental Protection Agency Act, 1992	1992, No. 7
European Communities Act, 1972	1972, No. 27
Fisheries (Consolidation) Act, 1959	1959, No. 14
Foreshore Act, 1933	1933, No. 12
Harbours Act, 1946	1946, No. 9
Health Act, 1970	1970, No. 1
Holidays (Employees) Act, 1973	1973, No. 25
Litter Act, 1982	1982, No. 11
Local Government Act, 1941	1941, No. 23
Local Government Act, 1994	1994, No. 8
Local Government (Planning and Development) Act, 1963	1963, No. 28
Local Government (Planning and Development) Act, 1982	1982, No. 21
Local Government (Planning and Development) Acts, 1963 to 1993	

[No. 10.] *Waste Management Act, 1996.* [1996.]

Local Government (Water Pollution) Act, 1977	1977, No. 1
Local Government (Water Pollution) (Amendment) Act, 1990	1990, No. 21
Local Government (Water Pollution) Acts, 1977 and 1990	
Petty Sessions (Ireland) Act, 1851	1851, 14 & 15 Vict., c. 93
Public Health Acts Amendment Act, 1890	1890, 53 & 54 Vict., c. 59
Public Health Acts Amendment Act, 1907	1907, 7 Edw. 7, c. 53
Public Health (Ireland) Act, 1878	1878, 41 & 42 Vict., c. 52
Radiological Protection Act, 1991	1991, No. 9
Road Traffic Act, 1961	1961, No. 24
Road Traffic Act, 1968	1968, No. 25
Water Supplies Act, 1942	1942, No. 1

European Communities Regulations Referred to

European Communities (Asbestos Waste) Regulations, 1990	S.I. No. 30 of 1990
European Communities (Asbestos Waste) Regulations, 1994	S.I. No. 90 of 1994
European Communities (Batteries and Accumulators) Regulations, 1994	S.I. No. 262 of 1994
European Communities (Disposal, Processing and Placing on the Market of Animal By-Products) Regulations, 1994	S.I. No. 257 of 1994
European Communities (Environmental Impact Assessment) Regulations, 1989 and 1994	
European Communities (Toxic and Dangerous Waste) Regulations, 1982	S.I. No. 33 of 1982
European Communities (Transfrontier Shipment of Waste) Regulations, 1994	S.I. No. 121 of 1994
European Communities (Use of Sewage Sludge in Agriculture) Regulations, 1991	S.I. No. 183 of 1991
European Communities (Waste) Regulations, 1979	S.I. No. 390 of 1979
European Communities (Waste) Regulations, 1984	S.I. No. 108 of 1984
European Communities (Waste Oils) Regulations, 1992	S.I. No. 399 of 1992



Number 10 of 1996

WASTE MANAGEMENT ACT, 1996

AN ACT TO MAKE PROVISION IN RELATION TO THE PREVENTION, MANAGEMENT AND CONTROL OF WASTE; TO GIVE EFFECT TO PROVISIONS OF CERTAIN ACTS ADOPTED BY INSTITUTIONS OF THE EUROPEAN COMMUNITIES IN RESPECT OF THOSE MATTERS; TO AMEND THE ENVIRONMENTAL PROTECTION AGENCY ACT, 1992, AND TO REPEAL CERTAIN ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS. [20th May, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—(1) This Act may be cited as the Waste Management Act, 1996. Short title and commencement.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to a particular purpose or provision and different days may be so fixed for different purposes and different provisions:

Provided that if immediately before the expiration of the period of 2 years from the date of passing of this Act, this Act has not been commenced by an order under this section or any provision or provisions thereof remains or remain to be commenced by such an order (including as respects a particular purpose), this Act or the said provision or provisions shall come into operation (or, in the case of such provision or provisions

Pt.I S.1

that remains or remain to be commenced for a particular purpose, shall come into operation for that purpose) upon the expiration of the said period.

Community acts
given effect to by
this Act.

2.—The purposes for which the provisions of this Act are enacted include the purpose of giving effect to the Community acts specified in the Table to this section.

TABLE

Council Directive 75/439/EEC of 16 June, 1975 on the disposal of waste oils¹

Council Directive 75/442/EEC of 15 July, 1975 on waste²

Council Directive 76/403/EEC of 6 April, 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls³

Council Directive 80/68/EEC of 17 December, 1979 on the protection of groundwater against pollution caused by certain dangerous substances⁴

Council Directive 85/337/EEC of 27 June, 1985 on the assessment of the effects of certain public and private projects on the environment⁵

Council Directive 86/278/EEC of 12 June, 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture⁶

Council Directive 87/101/EEC of 22 December, 1986 amending Directive 75/439/EEC on the disposal of waste oils⁷

Council Directive 87/217/EEC of 19 March, 1987 on the prevention and reduction of environmental pollution by asbestos⁸

Council Directive 89/369/EEC of 8 June, 1989 on the prevention of air pollution from new municipal waste incineration plants⁹

Council Directive 91/156/EEC of 18 March, 1991 amending Directive 75/442/EEC on waste¹⁰

Council Directive 91/157/EEC of 18 March, 1991 on batteries and accumulators containing dangerous substances¹¹

Council Directive 91/271/EEC of 21 May, 1991 concerning urban waste water treatment¹²

Council Directive 91/689/EEC of 12 December, 1991 on hazardous waste¹³

Commission Directive 93/86/EEC of 4 October, 1993 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances¹⁴

Council Regulation (EEC) No. 259/93 of 1 February, 1993 on the supervision and control of shipments of waste within, into and out of the European Community¹⁵

European Parliament and Council Directive 94/62/EC of 20 December, 1994 on packaging and packaging waste¹⁶

¹ O.J. No. L 194/23, 25 July, 1975

² O.J. No. L 194/39, 25 July, 1975

³ O.J. No. L 108/41, 26 April, 1976

⁴ O.J. No. L 20/43, 26 January, 1980

⁵ O.J. No. L 175/40, 5 July, 1985

⁶ O.J. No. L 181/6, 4 July, 1986

⁷ O.J. No. L 42/43, 12 February, 1987

⁸ O.J. No. L 85/40, 28 March, 1987

⁹ O.J. No. L 163/32, 14 June, 1989

¹⁰ O.J. No. L 78/32, 26 March, 1991

¹¹ O.J. No. L 78/38, 26 March, 1991

¹² O.J. No. L 135/40, 30 May, 1991

¹³ O.J. No. L 377/20, 31 December, 1991

¹⁴ O.J. No. L 264/51, 23 October, 1993

¹⁵ O.J. No. L 30/1, 6 February, 1993

¹⁶ O.J. No. L 365/10, 31 December, 1994

3.—(1) This Act shall not apply to—

Pt.I

Non-application of
this Act.

- (a) an emission into the atmosphere, other than an emission from a facility for the holding, recovery or disposal of waste;
- (b) sewage and sewage effluent (other than sludge from a facility for the treatment of sewage);
- (c) the treatment of effluent or the discharge thereof to waters, other than the treatment of effluent at, or its discharge from, a facility for the holding, recovery or disposal of waste;
- (d) the dumping of waste at sea; or
- (e) a radioactive substance within the meaning of the Radiological Protection Act, 1991 (including a radioactive waste product).

(2) “Dumping” in *paragraph (d) of subsection (1)* has the meaning assigned to it by the Dumping at Sea Act, 1981.

4.—(1) (a) In this Act, “waste” means any substance or object belonging to a category of waste specified in the *First Schedule* or for the time being included in the European Waste Catalogue which the holder discards or intends or is required to discard, and anything which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste until the contrary is proved.

Definitions of
“waste”,
“hazardous waste”,
“disposal”,
“recovery”.

(b) A reference in this Act to waste shall be construed as including a reference to hazardous waste unless the contrary intention appears.

(2) (a) In this Act, “hazardous waste” means—

(i) hazardous waste for the time being mentioned in the list prepared pursuant to Article 1 (4) of Council Directive 91/689/EEC of 12 December, 1991¹, being either—

(I) Category I waste that has any of the properties specified in *Part III* of the *Second Schedule*, or

(II) Category II waste that—

(A) contains any of the constituents specified in *Part II* of the *Second Schedule*, and

(B) has any of the properties specified in *Part III* of the said Schedule,

(ii) such other waste, having any of the properties specified in *Part III* of the *Second Schedule*, as may be prescribed for the purposes of this definition.

(b) For the purposes of the definition in this subsection—

“Category I waste” means waste specified in any of the following paragraphs of *Part I* of the *Second Schedule*, namely *paragraphs 1 to 18*;

¹ O.J. No. L 377/20, 31 December, 1991

Pt.I S.4

“Category II waste” means waste specified in any of the following paragraphs of the said *Part I*, namely *paragraphs 19 to 40*.

(3) In this Act, “disposal”, in relation to waste, includes any of the activities specified in the *Third Schedule*, and “waste disposal activity” shall be construed accordingly.

(4) In this Act, “recovery”, in relation to waste, means any activity carried on for the purposes of reclaiming, recycling or re-using, in whole or in part, the waste and any activities related to such reclamation, recycling or re-use, including any of the activities specified in the *Fourth Schedule*, and “waste recovery activity” shall be construed accordingly.

(5) The Minister may make regulations varying the *First Schedule* or the *Second Schedule* by adding or deleting anything to or from either of the said Schedules.

Interpretation
generally.

5.—(1) In this Act, save where the context otherwise requires—

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

“the Act of 1987” means the Air Pollution Act, 1987;

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

“aftercare” means, in relation to a facility which has been used for the purpose of waste recovery or disposal, any measures that are necessary to be taken in relation to the facility for the purpose of preventing environmental pollution following the cessation of the activity in question at the facility;

“the Agency” means the Environmental Protection Agency established under section 19 of the Act of 1992;

“any Minister of the Government concerned” means any Minister of the Government (other than the Minister) who, having regard to the functions vested in him or her, in the opinion of the Minister might be concerned with or interested in the matter in question;

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

“authorised waste collector” means a holder of a waste collection permit that is in force;

“broker” means, in relation to waste, any person who on behalf of or as a service to any other person buys, sells or arranges for the purchase, sale or transfer from one person to another of waste or for the collection, recovery or disposal of waste;

“collection” means, in relation to waste, the gathering, sorting or mixing of waste for the purpose of its being transported, and includes the transport of waste and the acceptance of control of waste;

“commercial waste” means waste from premises used wholly or mainly for the purposes of a trade or business or for the purposes of sport, recreation, education or entertainment but does not include household, agricultural or industrial waste;

“Community act” means an act adopted by an institution of the European Communities;

“contravention” includes, in relation to any provision, a failure or refusal to comply with that provision, and “contravene” shall be construed accordingly;

“dealer” means, in relation to waste, any person who buys or sells waste on his or her own behalf or arranges on behalf of or as a service to any other person for the purchase, sale or transfer from one person to another of waste or for the collection, recovery or disposal of waste;

“emission” has the meaning assigned to it by the Act of 1992;

“emission into the atmosphere” means the emission of a pollutant, within the meaning of the Act of 1987, into the atmosphere;

“environmental impact statement” means a statement prepared under and in accordance with a requirement of, or made pursuant to, regulations under section 25 (as amended by the European Communities (Environmental Impact Assessment) Regulations, 1989 and 1994) of the Act of 1963 or regulations under *section 45*, of the effects, if any, which proposed development, if carried out, would have on the environment;

“environmental medium” has the meaning assigned to it by the Act of 1992;

“environmental pollution” means, in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would, to a significant extent, endanger human health or harm the environment, and in particular—

- (a) create a risk to waters, the atmosphere, land, soil, plants or animals,
- (b) create a nuisance through noise, odours or litter, or
- (c) adversely affect the countryside or places of special interest;

“established activity” means—

- (a) in relation to an activity the carrying on of which requires a waste licence, an activity—
 - (i) in respect of which a permission under Part IV of the Act of 1963 is granted before the date prescribed under *section 39 (1)* in respect of that activity (“the relevant date”) and which permission on that date 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
 - (ii) which is, immediately before the relevant date, being carried on or was, at any time during the period of 12 months ending on the said date, 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, and

- (b) in any other case, an activity which was being lawfully carried on immediately before the commencement of the provision concerned of this Act that requires the use of the best available technology not entailing excessive costs;

“European Communities” has the meaning assigned to it by the European Communities Act, 1972;

“European Waste Catalogue” means the list of waste set out in Commission Decision 94/3/EC of 20 December, 1993¹, (made pursuant to Article 1 (a) of Council Directive 75/442/EEC² on waste) and includes such list as amended from time to time;

“facility” means, in relation to the recovery or disposal of waste, any site or premises used for such purpose;

“functions” includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

“holder” means, in relation to waste, the owner, person in charge, or any other person having, for the time being, possession or control, of the waste;

“household waste” means waste produced within the curtilage of a building or self-contained part of a building used for the purposes of living accommodation;

“industrial waste” includes waste produced or arising from manufacturing or industrial activities or processes;

“land” includes any subsoil thereunder and structure thereon and land covered with water (whether inland or coastal);

“landfill” means a waste disposal facility used for the deposit of waste onto or under land;

“leachate” means any liquid percolating through deposited waste and emitted from or contained within a landfill;

“local authority” means—

- (a) in the case of a county borough, the corporation of the county borough, and

- (b) 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, whether periodically or continuously, for the purpose of this Act, of waste, a premises at which waste is produced, or a facility at

¹ O.J. No. L 15/5, 7 January, 1994

² O.J. No. L 194/39, 25 July, 1975

which waste is held, recovered or disposed of, and of any emissions therefrom, or any environmental medium which is affected by or which, in the opinion of the local authority concerned or the Agency may be affected by, such emissions;

“municipal waste” means household waste as well as commercial and other waste which, because of its nature or composition, is similar to household waste;

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

“packaging” means any material, container or wrapping, used for or in connection with the containment, transport, handling, protection, promotion, marketing or sale of any product or substance, including such packaging as may be prescribed;

“person in charge” includes, in relation to any premises, the occupier of the premises or a manager, supervisor or operator of an activity relating to the holding, disposal or recovery of waste which is carried on at the premises;

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

“plant” includes any equipment, appliance, apparatus, machinery, vehicle, skip, works, building or other structure used for the purposes of, or the provision of which is incidental to, the holding, disposal or recovery of waste;

“the polluter pays principle” means the principle 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;

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

“prescribed” means prescribed by regulations made by the Minister under this Act;

“producer” means, in relation to waste, any person whose activities produce waste or who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of waste;

“product” includes any naturally occurring or manufactured thing;

“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,

¹ O.J. No. L 194/1, 25 July, 1975

Pt.I S.5

(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;

“recycling” means, in relation to waste, the subjection of waste to any process or treatment to make it re-usable in whole or in part;

“reserved function” means—

(a) in relation to the council of a county, a reserved function for the purposes of the County Management Acts, 1940 to 1994,

(b) in relation to the corporation of a county borough, a reserved function for the purposes of the Acts relating to the management of the county borough;

“service station” means any installation where fuel is capable of being dispensed to motor vehicle fuel tanks from stationary storage tanks;

“sewage” and “sewage effluent” have the meanings assigned to them by the Local Government (Water Pollution) Act, 1977;

“scheduled activity” means any process, development or operation for the time being specified in the First Schedule to the Act of 1992;

“structure” means any building, erection, structure, excavation, or other thing, constructed, erected, or made on, in or under land, or any part of a structure so defined, and, where the context so admits, includes the land on, in, or under which the structure is situate;

“temporary storage of waste” shall be construed in accordance with *subsection (3)*;

“transport” includes, in relation to waste, the movement of waste by road, rail, air, sea or inland waterway but does not include the movement of waste from one place to another—

(a) by means of any pipe or similar apparatus which joins those two places, or

(b) on and within the site at which the waste is held for the time being;

“treatment” includes, in relation to waste, any thermal, physical, chemical or biological processes that change the characteristics of waste in order to reduce its volume or hazardous nature or facilitate its handling, disposal or recovery;

“vehicle” includes—

- (a) part of a vehicle,
- (b) an article designed as a vehicle but not capable of functioning as a vehicle,
- (c) a skip designed or used for carriage on a vehicle,
- (d) a load on a vehicle;

“waste collection permit” has the meaning assigned to it by *section 34*;

“waste licence” shall be construed in accordance with *section 37*;

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

(2) (a) 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 a reference to 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.

(b) For the purposes of this subsection, regard shall be had to—

(i) 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 environmental pollution that, in the opinion of the Agency, or the local authority concerned, exists;

(ii) in any other case, in addition to the matters aforesaid—

(A) the nature, extent and effect of the emission concerned,

(B) 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

(C) the costs which would be incurred in improving or replacing the facilities referred to in *clause (B)* of this subparagraph in relation to the economic situation of activities of the class concerned.

(3) In this Act, a reference to the temporary storage of waste shall, without prejudice to any particular provision that may be made pursuant to *section 39 (6)*, be construed as a reference to the storage of waste for a period not exceeding 6 months.

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

Pt.I S.5

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

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

Repeals and
revocations.

6.—(1) Each enactment mentioned in *column (2)* of *Part I* of the *Fifth Schedule* is hereby repealed to the extent specified in *column (3)* of the said Part.

(2) Each statutory instrument mentioned in *column (2)* of *Part II* of the *Fifth Schedule* is hereby revoked to the extent specified in *column (3)* of the said Part.

Regulations, orders
and directions.

7.—(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 for the purpose of enabling any provision of this Act to have full effect.

(2) Regulations made under this Act may make different provisions in relation to different areas, different circumstances, different classes of persons or waste and different waste management or other activities.

(3) A regulation under this Act (other than a regulation under *section 7 (6)*, *39 (8)* or *62*) or an order under this Act (other than an order under *section 1 (2)*, *8* or *69 (1)* or an order under *subsection (5)* amending or revoking an order under *section 8* or *69 (1)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(4) Where regulations under *section 7 (6)*, *39 (8)* or *62*, or an order under *section 8* or *69 (1)* or an order under *subsection (5)* amending or revoking such an order, is or are proposed to be made, a draft of the regulations or the order, as the case may be, shall be laid before each House of the Oireachtas and the regulations or order shall not be made until a resolution approving of the draft has been passed by each such House.

(5) (a) The Minister may by order amend or revoke an order made by him or her under this Act (including an order under this paragraph) and by direction amend or revoke a direction given by him or her under this Act (including a direction under this paragraph).

(b) The Agency may by direction amend or revoke a direction given by it under this Act (including a direction under this paragraph).

(c) An order or direction under this subsection shall be made or given in the like manner and its making or giving shall be subject to the like (if any) consents and conditions as the order or direction that it is amending or revoking.

(6) If in any respect any difficulty arises in bringing any provision of this Act into operation or in relation to the operation of any such provision, the Minister may by regulations do anything which appears to him or her to be necessary or expedient for removing that difficulty, for bringing that provision into operation, or for securing or facilitating its operation, and any such regulations may modify any provision of this or any other enactment so far as may be necessary or expedient for the purposes aforesaid but no regulations may be made under this subsection in relation to a provision of this Act after the expiration of 2 years from the commencement of that provision. Pt.I S.7

8.—The Minister may make an order amending the *Third Schedule* or the *Fourth Schedule* by adding or deleting anything to or from either of the said Schedules. Orders in relation to *Third Schedule* or *Fourth Schedule*.

9.—(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. Offences by bodies corporate.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

10.—(1) A person guilty of an offence under this Act (other than an offence referred to in *subsection (2)*) shall be liable— Penalties.

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months, or 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 10 years, or to both such fine and such imprisonment.

(2) A person guilty of an offence under *section 16 (5)*, *32 (6)* (where the offence consists of a contravention of regulations under *subsection (4)* of that section), *33 (8)*, *38 (7)* or *40 (13)* shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months, or to both such fine and such imprisonment.

(3) If the contravention in respect of which a person is convicted of an offence under this Act is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding £200 or (in the case of an offence to which *subsection (1)* applies) on conviction on indictment, to a fine not exceeding £100,000.

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

Pt.I

Prosecution of
offences.

11.—(1) Subject to *subsection (5)*, summary proceedings for an offence under this Act may be brought by a local authority (whether or not the offence is committed in the authority's functional area) or by the Agency.

(2) Notwithstanding *subsection (1)*, the Minister may, by regulations, provide that summary proceedings for an offence aforesaid specified in the regulations may be brought by such person (including the Minister) as is so specified.

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

- (a) at any time within 12 months from the date on which the offence was committed, or
- (b) if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months of the date on which he or she next enters the State, or
- (c) at any time within 6 months from the date on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings, comes to such person's knowledge,

whichever is the later, provided that no such proceedings shall be commenced later than 5 years from the date on which the offence concerned was committed.

(4) For the purpose of this section, a certificate signed by or on behalf of the person bringing the proceedings as to the date on which evidence relating to the offence concerned came to his or her knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose 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.

(5) Subject to any order under *section 69*, summary proceedings for an offence under this Act in respect of a failure to comply with a condition attached to a waste licence or any other requirements of or under this Act in relation to the carrying on of an activity, the subject of such a licence, may only be brought by the Agency.

Cost of
prosecutions.

12.—Where a person is convicted of an offence under this Act in proceedings brought by a local authority, the Agency, or a person specified under *section 11 (2)*, 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 local authority, Agency or other person, as the case may be, the costs and expenses, measured by the court, incurred by the local authority, Agency or other person 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, as the case may be.

13.—Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under this Act in proceedings brought by a local authority, the Agency or a person specified under *section 11 (2)* it shall, on the application of the local authority, the Agency or the said person, as the case may be (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the local authority, the Agency or the said person and such payment may be enforced by the local authority, the Agency or the said person, as the case may be, as if it were due to it or him or her on foot of a decree or order made by the court in civil proceedings.

Pt.I

Payment of certain fines to local authority, Agency or other persons.

14.—(1) An authorised person may, for any purpose connected with this Act—

Powers of authorised person.

(a) at all reasonable times, or at any time if he or she has reasonable grounds for believing that there may be a risk of environmental pollution arising from the carrying on of an activity at the premises or that such pollution is occurring, enter any premises and bring thereon such other persons (including members of the Garda Síochána) or equipment as he or she may consider necessary for the purpose, and

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

(2) Subject to *subsection (7)*, an authorised person shall not, other than with the consent of the occupier, enter into a private dwelling under this section unless he or she has given to the occupier of the dwelling not less than 24 hours notice in writing of his or her intended entry.

(3) Every authorised person shall be furnished with a certificate of his or her appointment and when exercising any power conferred on him or her 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 or boards any vehicle, pursuant to this section, the authorised person may therein, as appropriate—

(a) make such plans, take such photographs and carry out such inspections,

(b) make such tests and take such samples,

(c) carry out such surveys, take such levels, make such excavations and carry out such examinations of depth and nature of subsoil,

(d) require that the premises or vehicle or any part of the premises or anything in the premises or vehicle shall be left undisturbed for such period,

Pt.I S.14

- (e) require from an occupier of the premises or any occupant of the vehicle or any person employed on the premises or any other person on the premises, such information,
- (f) require the production of and inspect such records and documents, and take copies of or extracts from, or take away if considered necessary for the purposes of inspection or examination, any such records or documents,

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

- (5) (a) An authorised person who, having entered any premises or boarded any vehicle, pursuant to this section, considers that waste thereon or therein is such, or is being handled or transported in such manner, as to constitute a risk of environmental pollution, may direct the holder of such waste to take such measures as are considered by that authorised person to be necessary to remove that risk, including the disposal of the waste, in such manner and place and within such period as the authorised person may specify.
 - (b) If a holder of waste fails to comply with a direction of an authorised person under this subsection, the authorised person may do all things as are necessary to ensure that the direction is carried out and the costs incurred by him or her in doing any such thing shall be recoverable from the holder of the waste by him or her, or the person by whom he or she was appointed, as a simple contract debt in any court of competent jurisdiction.
- (6) Any person who—
- (a) refuses to allow an authorised person to enter any premises or board any vehicle or to take any person or equipment with him or her in the exercise of his or her powers under this section,
 - (b) obstructs or impedes an authorised person in the exercise of any of his or her powers under this section,
 - (c) gives either to an authorised person, a relevant local authority or the Agency, information which to his or her knowledge is false or misleading in a material respect, or
 - (d) fails or refuses to comply with any requirement of this section or of an authorised person,

shall be guilty of an offence.

- (7) (a) Where an authorised person in the exercise of his or her powers under this section is prevented from entering any premises or if an authorised person has reason to believe that evidence related to a suspected offence under this Act may be present in any premises and that the evidence may be removed therefrom or destroyed, the authorised person or the person by whom he or she was appointed may apply to a judge of the District Court for a warrant

under this subsection authorising the entry by the authorised person into the premises. Pt.I S.14

- (b) If on application being made to him or her under this subsection, a judge of the District Court is satisfied, on the sworn information of the applicant, that the authorised person concerned has been prevented from entering a premises as aforesaid or that the authorised person has reasonable grounds for believing the other matters aforesaid, the judge may issue a warrant under his or her hand authorising that person, accompanied, if the judge deems it appropriate so to provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time or times within 1 month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the premises concerned and exercise the powers referred to in *subsection (4) or (5)*.

(8) An authorised person may, in the exercise of any power conferred on him or her by this Act involving the bringing of any vehicle to any place, or where he or she anticipates any obstruction in the exercise of any other power conferred on him or her by or under this Act, request a member of the Garda Síochána to assist him or her in the exercise of such a power and any member of the Garda Síochána of whom he or she makes such a request shall comply therewith.

(9) An authorised person may enter on land for the purpose of assessing the suitability of the land for waste disposal; such an entry shall be subject to the relevant provisions of section 83 (other than subsection (6)) of the Act of 1963 as if it were an entry made under that section.

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

(11) Without prejudice to the generality of *subsection (10)*, 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.

(12) 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.

Pt.I

Monitoring and
inspection.

15.—(1) (a) Each local authority and the Agency shall carry out, or cause to be carried out, such monitoring of the nature, extent and effects of emissions to the environment arising from the holding, recovery or disposal of waste as it considers to be necessary for the performance of its functions under this Act.

(b) Each local authority and the Agency shall carry out such periodic inspection of facilities for the holding, recovery or disposal of waste, premises where hazardous waste is produced, and the activities of persons otherwise holding or dealing in waste as it considers to be necessary for the performance of its functions under this Act.

(2) Each local authority and the Agency shall keep and maintain or cause to be kept and maintained, such records of any monitoring or inspections carried out by it under *subsection (1)* as it considers reasonable and necessary.

(3) (a) Where it appears necessary so to do for any purpose of this Act, a local authority or the Agency may require any person who holds or is in control of the recovery or disposal of any waste to carry out or arrange to have carried out such monitoring in relation to the activity concerned as the local authority or the Agency may specify and to keep and to supply to the local authority or the Agency such records of the said monitoring as the local authority or the Agency may specify.

(b) A person who fails to comply with a requirement under this subsection shall be guilty of an offence.

(4) Each local authority and the Agency shall, if so requested by the Minister, supply to the Minister or to any person specified by the Minister, at such intervals and in such manner as the Minister may require, records of any monitoring carried out under this section that are in its possession or control.

(5) Each local authority and the Agency shall carry out or take or cause to be carried out or taken such monitoring or other measures as it considers necessary to verify that any monitoring or records of such monitoring required by it under *subsection (3)* to be carried out or kept are being carried out or kept.

(6) Without prejudice to any other provisions of this Act, the Minister shall make regulations requiring the making of payments to the Agency or a local authority by any person holding, dealing in, or in control of the recovery or disposal of, waste for the purpose of defraying costs which may be incurred by the Agency or local authority in carrying out any monitoring or inspection or taking other measures under this section in relation to the activities aforesaid of that person.

(7) A defrayment, the payment of which is required under regulations under this section, shall be payable on demand and, in default of being so paid, shall be recoverable from the person concerned by the Agency or local authority concerned as a simple contract debt in any court of competent jurisdiction.

16.—(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—

Pt.I

Service of notices.

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

(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 3 months after a notice is affixed under *subsection (1) (e)* remove, damage or deface the notice without lawful authority.

(5) A person who contravenes *subsection (4)* shall be guilty of an offence.

17.—(1) Where a provision of this Act, or of any regulation made under this Act, or of any notice served under this Act, enables representations or objections to be made, or requires documents, particulars or other information to be furnished, before the expiration of a specified period and the last day of the period is a Saturday, a Sunday, a public holiday (within the meaning of the Holidays (Employees) Act, 1973) or any other day on which the principal office of the local authority concerned or the Agency (as the case may be) is closed, the representations, objections, documents, particulars or other information (as the case may be) shall be regarded as having been received before the expiration of that period if received by the local authority or the Agency on the next following day on which the principal office of the local authority or the Agency is open.

Time for the doing of certain things: Saturdays, Sundays, public holidays, etc.

(2) In this section “representations or objections” includes submissions and observations.

18—(1) The Minister, a local authority or the Agency may, for any purpose relating to his or her or its functions under this Act, by the service of a notice in writing on the person, require—

- (a) any holder of waste, or
- (b) any person, engaged in the importation, exportation, production, collection, recovery or disposal of waste, or any related or ancillary activity, or
- (c) any person acting as a waste broker or dealer, or
- (d) the occupier or person in charge of any waste facility,

to maintain such records and to furnish in writing to the Minister, local authority or Agency, as the case may be, within such period (being not less than 14 days after the date of the service of the notice) and, if appropriate, thereafter at such frequency as may be specified in the notice, such particulars, as to—

- (i) any activity or process as aforesaid or any facility concerned,
- (ii) provision proposed to be made or made or measures taken for the importation, exportation, collection, recovery or disposal of any waste concerned,
- (iii) the origin, type, quantity, nature, composition and properties of waste concerned, or
- (iv) any other related or ancillary matter,

as may be so specified.

(2) A person who fails to comply with a notice under this section or who furnishes any information in reply to such a notice which he or she knows to be false or misleading in a material respect shall be guilty of an offence.

(3) The Minister shall make regulations requiring—

- (a) a specified class or classes of person carrying on a specified class or classes of waste recovery or disposal activity, or
- (b) a specified class or classes of holder or producer of a specified class or classes of waste,

to maintain specified records for a specified period or periods, and to provide or make available specified information, including evidence of specified matters, to a local authority, the Agency or any other specified person, at such frequency, under such circumstances and in such manner as may be specified.

(4) Information obtained under this section by a local authority, or any summary or compilation of, or any report based on, such information may, and shall if the Minister or the Agency so requests, be furnished to the Minister or the Agency, as the case may be.

(5) Each local authority and the Agency shall compile or otherwise obtain, and furnish to the Minister, such statistics or other information relating to any aspect of waste production and management, at such frequency, as may be specified in writing by the Minister.

(6) Where the Agency or a local authority brings proceedings against a person in respect of an offence under this Act, and the person is convicted of that offence, the Agency or the local authority, as the case may be, shall, as soon as may be after the conviction of the person, inform each local authority or, as the case may be, each other local authority and the Agency of the fact that the person has been so convicted, giving such details, as it thinks appropriate, of the nature of the offence.

(7) Where the Agency grants, effects the transfer or accepts the surrender of a waste licence, it shall (unless the holder of the licence or the transferee thereof is a local authority) within a period of 21 days thereafter inform the local authority in whose functional area the activity, the subject matter of the licence concerned, will be, or (as the case may be) is or has been, carried on, of that fact.

(8) A person who contravenes a provision of regulations under *subsection (3)* shall be guilty of an offence.

19.—(1) Each local authority and the Agency shall as soon as may be after the commencement of this section establish and maintain a register for the purposes of this Act, and shall make therein all such entries and additions as may, from time to time, be prescribed.

Register to be maintained by each local authority and the Agency.

(2) A register under this section shall be kept at the principal office of the local authority concerned or the Agency, as the case may be, and shall be made available for inspection by any person during office hours.

(3) Where a request is made to a local authority or the Agency for a copy of an entry in the register maintained by it under this section, the authority or the Agency, as the case may be, shall issue such a copy to the applicant on, if it so requires, the payment by the applicant to it of a fee of such an amount (not exceeding the reasonable cost of making the copy) as it may determine.

(4) Every document purporting to be a copy of an entry in a register maintained by a local authority or the Agency under this section and purporting to be certified by an officer of the local authority or 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 or she was such an officer, be received in evidence in any legal proceedings and shall, until the contrary is proved, be deemed to be a true copy of the entry and to be evidence of the terms of the entry.

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

(6) A local authority shall notify, in such manner and at such times as may be prescribed, the Agency of such particulars entered in a register maintained by it under this section as may be prescribed.

(7) (a) A local authority or the Agency may keep a register under this section otherwise than in legible form so that the register is capable of being used to make a legible copy or reproduction of any entry in the register.

(b) References in the preceding provisions of this section to a copy of an entry in a register under this section shall be construed as including references to such a legible copy or reproduction.

Pt.I

Expenses.

20.—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.

Transfer of
functions from local
authorities to
Agency, etc.

21.—(1) The Minister may, following consultation with the Agency, where he or she is satisfied that any function conferred on a local authority by this Act could be more effectively performed by the Agency in lieu of being performed by that authority, by regulations provide that the function shall be performed by the Agency with effect from a date specified in the regulations.

(2) Whenever regulations under *subsection (1)* are in force in relation to a particular function, a reference in this Act to a local authority shall, where appropriate, be construed as a reference to the Agency and the function to which the regulations relate shall be a function of the Agency.

(3) The Minister may, where he or she is satisfied that any function conferred on a local authority by this Act could, as respects the functional area of the corporation of a borough (other than a county borough), or the council of an urban district, that is situate in the functional area of that local authority, be more effectively performed by the said corporation or council in lieu of being performed by that authority, by regulations provide that the said function shall, with effect from a date specified in the regulations, be performed, as respects the first-mentioned functional area, by the said corporation or, as the case may be, council.

(4) Whenever regulations under *subsection (3)* are in force in relation to a particular function, a reference in this Act to a local authority shall, where appropriate, be construed as a reference to the corporation of the borough or the council of the urban district to which the regulations relate and the function to which the regulations relate shall be a function of the said corporation or council.

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

PART II

Waste Management Planning

Waste management
plans.

22.—(1) In this section—

“relevant period” means the period beginning on the date of making of the waste management plan concerned or, as the case may be, the date on which the last review of the said plan under *subsection (4)* was completed and ending on the date on which the local authority or authorities concerned expect to complete or, as may be appropriate, to next complete, a review of the plan under that subsection;

“waste management plan” includes, where the context admits, a replacement waste management plan under *subsection (4)*.

(2) Subject to *subsection (3)* and *section 24*, each local authority shall, not later than such date as may be prescribed, make a plan (in this Act referred to as a “waste management plan”) with regard to—

- (a) the prevention, minimisation, collection, recovery and disposal of non-hazardous waste within its functional area, and
- (b) the matters specified in *subsection (8)* in relation to hazardous waste so far as they relate to its functional area.

(3) Two or more local authorities may, in lieu of each of them making a waste management plan, jointly make a plan (in this Act also referred to as a “waste management plan”) as respects their functional areas (but not later than the date referred to in *subsection (2)*) with regard to the matters specified in *paragraphs (a)* and *(b)* of the said subsection.

(4) A local authority or, in the case of a waste management plan under *subsection (3)*, the two or more local authorities concerned, shall review a waste management plan made by it or them from time to time as occasion may require and at least once in each period of 5 years after the date of making of the plan and may, consequent on such a review, make in accordance with *section 23* any variations to the plan or replace it by a new waste management plan as it or they thinks or think fit.

(5) A local authority shall, before it commences the preparation of any of the following, namely, a waste management plan under *subsection (2)* or *(3)*, a variation of, or a replacement for, such a plan under *subsection (4)* or a replacement for such a plan in compliance with a requirement made by the Minister under *section 24*, cause notice of its intention to commence such preparation to be published in a newspaper circulating in its functional area and such a notice shall state that written representations in relation to the matter may be made to the local authority within a specified period, being a period of not less than 2 months from the date of publication of the notice.

(6) A waste management plan shall, in respect of non-hazardous waste, contain such objectives as seem to the local authority or local authorities concerned to be reasonable and necessary—

- (a) to prevent or minimise the production or harmful nature of waste,
- (b) to encourage and support the recovery of waste,
- (c) to ensure that such waste as cannot be prevented or recovered is disposed of without causing environmental pollution, and
- (d) to ensure in the context of waste disposal that regard is had to the need to give effect to the polluter pays principle,

and shall specify such measures or arrangements as are to be taken or entered into by the local authority or local authorities, with a view to securing the objectives of the plan.

(7) Without prejudice to the generality of *subsection (6)*, a waste management plan shall, subject to such regulations as may be made by the Minister for the purposes of this section, include information on or otherwise have regard to—

- (a) the policies and objectives, and the priorities respectively assigned to them, of the local authority or authorities concerned in relation to assisting the prevention and

minimisation of waste and in relation to the management generally of activities carried on by it or them or other persons as respects the collection, recovery and disposal of waste within its or their functional area or areas;

(b) the measures which—

(i) will be taken during the relevant period by the local authority or authorities concerned, and

(ii) in so far as the local authority or authorities concerned can determine, will or may be taken during the relevant period by persons other than such authority or authorities,

for the purpose of preventing or minimising the production of waste;

(c) the type, quantity and origin of waste which the local authority or authorities concerned expect to arise during the relevant period in its or their functional area or areas for collection, recovery or disposal;

(d) the type and quantity of waste which the local authority or authorities concerned expect to be transported into, or out of, its or their functional area or areas for recovery or disposal during the relevant period;

(e) facilities, plant and equipment which the local authority or authorities concerned expect to be available or, in its or their opinion, will be required to be available for the collection, recovery or disposal of waste in its or their functional area or areas during the relevant period and matters relevant to the selection of sites in respect of facilities aforesaid;

(f) general requirements of a technical or other nature applicable to the collection, recovery and disposal of waste and the aftercare of facilities used for the disposal of waste;

(g) the steps to be taken generally by the local authority or authorities concerned to enforce the provisions of this Act in its or their functional area or areas;

(h) the identification of sites at which waste disposal or recovery activities have been carried on, the assessment of any risk of environmental pollution arising as a result of such activities, measures proposed to be taken, or, where such an assessment has already been made, measures taken, in order to prevent or limit any such environmental pollution, the identification of necessary remedial measures in respect of such sites, and measures proposed to be taken, or, where such measures have already been identified, measures taken, to achieve such remediation, having regard to the cost-effectiveness of available remediation techniques;

(i) any incidental and ancillary matters;

(j) such other matters as may be prescribed.

(8) There shall be included in a waste management plan, but separate from the other information contained in the plan, information

as respects the implementation of measures consequential on, or incidental to, the provisions of the hazardous waste management plan or any recommendations made by the Agency under *section 26 (6)*. Pt.II S.22

(9) The Minister may make regulations prescribing the manner in which any matter is to be set out or addressed in a waste management plan.

(10) The making, review, variation or replacement of a waste management plan shall be a reserved function.

(11) In making or reviewing a waste management plan, the local authority or authorities concerned shall have regard to the proper planning and development of its or their functional area or areas and shall, for this purpose, have regard to the provisions of—

- (a) the development plan or plans and any special amenity area order made under the Act of 1963,
- (b) a water quality management plan made under the Local Government (Water Pollution) Acts, 1977 and 1990, and
- (c) an air quality management plan made under the Air Pollution Act, 1987,

for the time being in force in relation to the said area or areas.

(12) A local authority shall take such steps as are appropriate and necessary to attain in relation to its functional area the objectives in a waste management plan made by the authority (whether such plan has been made by the authority or jointly by the authority with another local authority or other local authorities).

(13) The corporation of a borough (not being a county borough) or the council of an urban district shall, in the performance by it of any functions in relation to waste management, have regard to the provisions of a waste management plan made by the council of the county in whose functional area the borough or urban district is situate.

(14) Upon the making of a waste management plan by a local authority—

- (a) any plan prepared under Article 4 (2) of the European Communities (Waste) Regulations, 1979, by that authority, or
- (b) any special waste plan within the meaning of the European Communities (Toxic and Dangerous Waste) Regulations, 1982, prepared by that authority,

that is for the time being in force shall cease to have effect.

23.—(1) Where a local authority proposes to make, under *subsection (2) or (3) of section 22*, or to vary or replace under *subsection (4) of that section*, or to replace in compliance with a requirement made by the Minister under *section 24*, a waste management plan (“the plan”), the local authority shall cause to be published in at least one newspaper circulating in its functional area a notice of the proposal to make, vary or replace, as the case may be, the plan, and shall submit a copy of the proposed plan or, as the case may be, the proposed variation of the plan, to the Minister, the Agency and such other persons as may be prescribed.

Publication of notices in relation to waste management plans and procedure on review of such plans.

(2) A notice under *subsection (1)* shall state that—

- (a) a copy of the proposed plan or, as the case may be, the proposed variation of the plan may—
 - (i) be inspected at a specified place and at specified times during a specified period, being a period of not less than 2 months from the time when the proposed plan or variation is deposited for inspection (and the proposed plan or variation shall be so deposited and made available for such inspection accordingly), and
 - (ii) be purchased from the local authority (and the proposed plan or variation shall be made available for such purchase accordingly (at a cost not exceeding the reasonable cost of making a copy));
- (b) written representations in relation to the proposed plan or to the proposed variation of the plan made to the local authority within the period aforesaid will be taken into consideration by the local authority or authorities concerned before the making of the plan or, as the case may be, the variation of the plan (and any such representations shall be taken into consideration accordingly).

(3) The local authority or authorities concerned, having considered any representations duly made to it or each of them, as the case may be, within the relevant period under *subsection (2)*, may make, vary or replace the plan (whether in the terms as originally proposed or with such amendments as it or they thinks or think fit).

- (4) (a) A local authority which has made a plan under *subsection (2)* or *(3)* of *section 22* shall furnish to a person, on request and, if the authority so requires, payment to it by the person of such reasonable fee as it may charge, a copy of, or extract from, the plan, within a period of 21 days of receipt by the authority of such request, or of payment of such fee as it may charge, whichever shall be the later.
- (b) A document purporting to be a copy of a plan or to be an extract from a plan and to be certified by an officer of a local authority which made the plan under *subsection (2)* or *(3)* of *section 22* as a true copy shall be *prima facie* evidence of the plan or extract, as the case may be, and it shall not be necessary to prove the signature of such officer or that he or she was in fact such an officer.
- (c) Evidence of a plan or of an extract from such plan may be given by production of a copy thereof certified pursuant to this subsection and it shall not be necessary to produce the plan itself.

Power of Minister
in relation to waste
management plans.

24.—The Minister may, after consultation with the local authority or authorities concerned—

- (a) require that two or more local authorities jointly make a waste management plan under *section 22 (3)*,
- (b) require that the making of waste management plans, whether under *subsection (2)* or *(3)* of *section 22*, by two

or more local authorities be co-ordinated in such manner and in relation to such matters as the Minister may specify, and

Pt.II S.24

- (c) require a local authority or, as the case may be, two or more local authorities, to vary (whether by addition or deletion) a waste management plan made by it or them in such manner as the Minister may specify or to replace the plan by a new waste management plan,

and the local authority or authorities shall comply with any such requirement of the Minister.

25.—As soon as may be after a local authority or, as the case may be, two or more local authorities, has or have made, varied or replaced a waste management plan, the local authority or, as the case may be, one of the local authorities, shall transmit a copy of the plan or variation or the new plan, as the case may be, to the Minister, the Agency and such other persons as may be prescribed.

Duty of local authority on making, varying or replacing a waste management plan.

26.—(1) The Agency shall, as soon as may be after the commencement of this section, but not later than such date as may be prescribed, make a national plan (in this Act referred to as “the hazardous waste management plan”) with regard to—

Hazardous waste management plan.

- (a) the prevention and minimisation of hazardous waste,
- (b) the recovery of hazardous waste,
- (c) the collection and movement of hazardous waste, and
- (d) the disposal of such hazardous waste as cannot be prevented or recovered.

(2) The hazardous waste management plan shall have regard to, and incorporate such information contained in, any waste management plan as the Agency considers appropriate and shall—

- (a) describe the type, quantity and origin of hazardous waste arising in the State, the movement of hazardous waste within, into or out of the State, and facilities available for the collection, recovery or disposal of such waste in the State, and such description shall indicate the likely position with respect to each of those matters for such period after the making or review under *subsection (3)* of the plan as the Agency thinks appropriate;
- (b) specify objectives and, where appropriate, targets which in the opinion of the Agency are practicable or desirable in relation to the prevention and minimisation of the production of hazardous waste, the minimisation of the harmful nature of such waste and the recovery or disposal of such waste, over such periods as may be specified;
- (c) provide for, as appropriate, the identification of sites at which waste disposal activities, being activities that to a significant extent involved hazardous waste, have been carried on, the assessment of any risk of environmental pollution arising as a result of such activities, the taking or recommendation of measures in order to prevent or limit any such environmental pollution, the identification

of necessary remedial measures in respect of such sites, and the recommendation of measures to be taken to achieve such remediation, having regard to the cost-effectiveness of available remediation techniques;

- (d) have regard to the need to give effect to the polluter pays principle;
- (e) 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;
- (f) make recommendations, as respects the management of hazardous waste, regarding—
 - (i) priorities, measures or programmes which could be pursued,
 - (ii) infrastructure, waste facilities or other physical resources considered by the Agency to be necessary throughout the State or in any area of the State,
 - (iii) the functions of any relevant public authorities;
- (g) specify policies which the Agency proposes to pursue, having regard to its functions under this Act or any other enactment.

(3) The Agency shall from time to time as it thinks appropriate, and at least once in each period of 5 years after the date of making of the hazardous waste management plan, review the plan and make such revisions thereto as it thinks fit and references in this Part to such a plan shall, unless the context otherwise requires, be construed as including references to such a plan as so revised.

- (4) (a) The Agency shall cause to be published in at least one national newspaper—
 - (i) a notice of its intention to make the hazardous waste management plan,
 - (ii) where it has carried out a review of that plan and proposes to revise the plan consequent on such a review, a notice of that proposal,
 and shall furnish a copy of the plan or, as the case may be, the proposed revision of the plan to the Minister, each local authority and such other persons as may be prescribed.
- (b) *Subsections (2), (3) and (4) of section 23 shall apply in relation to the hazardous waste management plan and a notice aforesaid as those provisions apply in relation to a waste management plan and a notice under subsection (1) of section 23 with the following and any other necessary modifications, namely—*
 - (i) references in those provisions to a plan and a proposed variation of a plan shall be construed, respectively, as references to the hazardous waste management plan and a proposed revision of that plan,
 - (ii) references in those provisions to varying or replacing a plan shall be construed as references to revising a plan,

- (iii) references in those provisions to a local authority Pt.II S.26 shall be construed as references to the Agency.

(5) A Minister of the Government, a local authority and any other public authority in whom are vested functions by or under any enactment in relation to the protection of the environment shall have regard to, and in so far as it is considered by that Minister of the Government, local authority or other public authority to be appropriate to do so, shall take measures to implement or otherwise give effect to, recommendations contained in the hazardous waste management plan.

(6) Without prejudice to *subsection (5)*, the Agency may, having regard to the provisions of the hazardous waste management plan and the functions of local authorities in relation to the management of hazardous waste, make such recommendations to one or more local authorities as the Agency considers appropriate in relation to the effective management by it or them of hazardous waste, and such recommendations shall be regarded as having been issued under and in accordance with section 63 of the Act of 1992.

(7) For the purpose of the making or review of a hazardous waste management plan by the Agency, it shall be the duty of each local authority and any public authority referred to in *subsection (5)* to furnish to the Agency, on request being made by the Agency therefor, any relevant information which is available to, or may reasonably be obtained by, the local authority or public authority.

(8) Nothing in this Part shall be construed as requiring the Agency to provide, or assume a direct role in the provision of, any waste facilities, equipment or related resources or as imposing a duty on the Agency owed to any person to identify a site at which a waste disposal activity has been carried on or to do any other thing referred to in *subsection (2) (c)* in relation to such a site.

(9) Upon the making of the hazardous waste management plan or of any revisions thereto, the Agency shall—

- (a) cause to be published in at least one national newspaper a notice of that fact and of the means by which a copy of the plan, as made or revised, may be obtained by members of the public at a cost not exceeding the reasonable cost of making a copy, and
- (b) furnish a copy of the plan, as made or revised, to the Minister and each local authority, and any other public authority which in the opinion of the Agency has an interest in the management of hazardous waste.

PART III

Measures to Reduce Production, and Promote Recovery, of Waste

27.—(1) In this Part—

Interpretation (*Part III*).

“deposit and refund scheme” means, in relation to any product, substance, component or packaging, a scheme whereby the producer, distributor or retailer, as the case may be, who operates the scheme requires a purchaser of a product or substance to pay to him or her a refundable deposit in relation to the product or substance or any component thereof or packaging therefor, that is to say a deposit of

money the amount of which will be repaid by the producer, distributor or retailer, as the case may be, to the purchaser if the purchaser returns to him or her the product, substance, component or packaging, as the case may be;

“distributor” means a person who sells or supplies a product or substance by wholesale and “distribute” shall be construed accordingly;

“environmental audit” has the same meaning as it has in section 74 of the Act of 1992;

“environmental management system” means a system for managing the carrying on of an activity with regard to its effects on the environment;

“life cycle assessment” means, in relation to a product, an assessment of the effects on the environment of the manufacture, distribution, marketing and use of the product and the recovery or, as appropriate, disposal thereof (including the use of energy and raw materials in, and the production of waste from, any of the said activities);

“producer” includes such person as the Minister may specify by regulations to be a producer for the purposes of this Part (and such specification may include the importer or vendor of the product concerned);

“producer responsibility obligation” means a requirement to take steps for the purpose of the prevention, minimisation, limitation or recovery of waste as respects the class or classes of product to which the requirement relates and may include a requirement to achieve specified targets in relation to those matters;

“waste audit” means an evaluation of the manner in which an activity is carried on with a view to identifying opportunities for—

(a) preventing or minimising the production of waste from the activity or the harmfulness of any waste produced from the activity, and

(b) facilitating the recovery of any waste so produced.

(2) A reference in this Part to the implementation and operation of a waste reduction programme shall be construed as a reference to the taking of steps in a systematic manner for the purpose of—

(a) reducing the production of waste from the activity concerned or the harmfulness of any waste produced from the activity, and

(b) recovering any waste so produced,

having regard to the results of a waste audit conducted in relation to the activity.

28.—(1) For the purpose of promoting, supporting or facilitating the prevention or minimisation of waste, any Minister of the Government or a local authority may provide such support or assistance, including the provision of moneys, as he or she or the local authority considers appropriate in relation to research and development projects being carried out, or proposed to be carried out, by any person

in respect of the prevention or minimisation of waste, and for the purposes aforesaid may establish programmes and specify criteria and objectives governing the availability and provision of such assistance and support. Pt.III S.28

- (2) (a) A person who carries on any activity of an agricultural, commercial or industrial nature (including the manufacture of any product) shall have due regard to the need to prevent or minimise the production of waste from that activity and, as the case may be, from any product manufactured by him or her as a result of such an activity, and shall take all such reasonable steps as are necessary for the purposes of such prevention or minimisation (including, where appropriate, steps as respects the design of any product aforesaid).
- (b) The Minister may by regulations specify steps, as respects any particular activity aforesaid, that shall be regarded as reasonable steps necessary to be taken for the purposes of the prevention or, as the case may be, minimisation of the production of waste referred to in *paragraph (a)*, and a person who carries on such an activity shall take those steps accordingly.
- (3) (a) Subject to *paragraph (c)*, the Minister may, after consultation with any Minister of the Government concerned, make regulations for the purpose of preventing, minimising or limiting the production of waste or a specified class or classes of waste, and any such class may be defined by reference to the manufacturing or industrial process or other activity giving rise to the waste concerned or to such other matters as the Minister thinks appropriate.
- (b) Subject as aforesaid, regulations under this section may include provisions for the imposition of producer responsibility obligations on producers of products.
- (c) Regulations under this section shall only apply to a scheduled activity to such extent as the Minister may determine following consultation with the Agency.
- (4) Without prejudice to the generality of *subsection (3)*, regulations under this section may provide for all or any of the following matters—
 - (a) requiring a person, in a specified manner, to conduct a waste audit and implement and operate a waste reduction programme in relation to an activity carried on by him or her,
 - (b) requiring the keeping of specified documents, records or other particulars, and the furnishing of specified information to specified persons or the publication of specified information, in relation to the conduct of a waste audit or the implementation and operation of a waste reduction programme,
 - (c) exempting a person from the requirements of regulations under the foregoing paragraphs, as respects a particular activity being carried on by that person, if and for so long as he or she is carrying out a specified environmental audit, or operating a specified environmental management system, in relation to the particular activity,

- (d) prohibiting, otherwise than with the consent of a person prescribed for the purpose by regulations under *paragraph (e)*, the display or use of any specified mark or symbol at any premises or on or in any product, substance, packaging, advertisement or notice,
- (e) prescribing a person for the purposes of regulations under *paragraph (d)*, the procedures to be followed by such a person in granting any consent under such regulations and enabling him or her to withdraw such a consent in specified circumstances,
- (f) without prejudice to *paragraph (g)*, requiring a person to use the best available technology not entailing excessive costs for preventing or limiting the production of waste from an activity carried on by the said person,
- (g) the specification, by the Minister or such person as may be prescribed for the purpose by the regulations, of the best available technology not entailing excessive costs for preventing or limiting the production of waste from an activity carried on by a person specified in regulations under *paragraph (f)*,
- (h) requiring the producer of a specified class or classes of product to carry out a life cycle assessment in relation to the product, in such manner or in accordance with such standards or procedures as may be specified,
- (i) prohibiting, or limiting or controlling in a specified manner and to a specified extent—
 - (i) the production or use, in a production process or otherwise, of any substance, material or thing,
 - (ii) the composition, production, importation, distribution, supply, sale, disposal or advertising of any product or substance, or
 - (iii) the production of any waste,
- (j) specifying requirements to be complied with as respects the design, composition or production of packaging and the use which may be made of packaging, including a requirement—
 - (i) that the composition, volume or weight of packaging be restricted or limited to such extent as is consistent with its purpose of providing protection for the product or substance concerned,
 - (ii) that packaging be designed, produced and used so as to be capable of being re-used,
- (k) requiring products to be designed, manufactured or constructed in a specified manner or in accordance with such standards as may be prescribed in accordance with regulations under *paragraph (l)*,
- (l) enabling a specified person or persons to prescribe standards for the purposes of regulations under *paragraph (k)*,

(m) requiring a producer to prepare and publish, at a specified frequency and in a specified manner—

(i) a plan specifying the steps proposed to be taken by him or her to prevent or minimise the production of waste from any activity of production carried on by him or her or from a product manufactured by him or her, or any component of, or packaging related to, such a product, and

(ii) a report on the steps taken by him or her in pursuance of such a plan and the results of those steps,

(n) requiring the preparation and publication, at a specified frequency and in a specified manner, by a person who is the subject of any specified requirement of regulations under this section (other than a requirement imposed by regulations under *paragraph (m)*) of—

(i) a plan specifying the steps to be taken by him or her to comply with such a requirement, and

(ii) a report on the steps taken by him or her to comply with such a requirement and the results of those steps,

(o) conferring on public authorities (including the Minister) and other specified persons specified additional functions for the purpose of securing or facilitating the operation of provisions of regulations under this section,

(p) any matters consequential on, or incidental to, the foregoing.

(5) (a) Without prejudice to *subsection (3)* or *section 7 (2)*, regulations under this section may make provision in relation to persons, products, substances, activities or other matters referred to in this section generally or in relation to a specified class or classes of such persons, products, substances, activities or other matters.

(b) A target an obligation to achieve which is imposed on a person by regulations under this section may be defined in such regulations by reference to a specified proportion (whether by weight, volume or otherwise) of the products, substances or other things to which the obligation relates.

(6) A person who contravenes *subsection (2) (b)* or a provision of regulations under this section shall be guilty of an offence.

(7) In a prosecution for a contravention of regulations under this section (being a contravention consisting of a failure to achieve a target specified in the regulations), it shall be a good defence to prove that the accused took all reasonable steps to achieve the said target.

29.—(1) A reference in this section to the implementation and operation of a source separation programme for waste shall be construed as a reference to the taking of steps in a systematic manner

Measures related to recovery of waste.

for the purpose of separating specified waste from other waste and the holding of such waste so separated prior to its collection, recovery or disposal.

(2) For the purpose of promoting, supporting or facilitating the recovery of waste, any Minister of the Government or a local authority may provide to any person such support or assistance, including financial assistance, as he or she or the local authority considers appropriate, including the provision of moneys in relation to research and development projects being carried out or proposed to be carried out by any person in respect of the recovery of waste, and for the purposes aforesaid may establish programmes and specify criteria and objectives governing the availability and provision of such assistance and support.

(3) (a) The Minister may, after consultation with any Minister of the Government concerned, make regulations in relation to or for the purpose of the recovery of waste or a specified class or classes of waste, and any such class may be defined by reference to the manufacturing or industrial process or other activity giving rise to the waste concerned or to such other matters as the Minister thinks appropriate.

(b) Regulations under this section may include provisions for the imposition of producer responsibility obligations on producers of products.

(4) Without prejudice to the generality of *subsection (3)*, regulations under this section may provide for all or any of the following matters—

(a) requiring the labelling or marking of a product or substance or its packaging, in a specified manner, so as to identify or specify—

(i) the composition of the product, substance or packaging,

(ii) the potential hazards of the product, substance or packaging in the event of its being recovered or disposed of,

(iii) the potential of the product, substance or packaging to be recovered,

(iv) such other information as may be specified,

(b) specifying requirements to be complied with as respects the nature, composition or design of packaging and the use to be made of packaging, and such requirements may include a prohibition on the use of packaging otherwise than in the specified circumstances or a requirement that packaging be designed in accordance with such standards as may be prescribed in accordance with regulations under *paragraph (e)* for the purpose of facilitating the recovery of the packaging,

(c) prohibiting, or limiting or controlling in a specified manner and to a specified extent, the importation, distribution, supply or sale in a specified container or other packaging of any product or substance,

- (d) for the purpose of facilitating the removal of components from, or the dismantling of, products prior to their recovery or disposal, requiring products to be designed, manufactured or constructed in a specified manner or in accordance with such standards as may be prescribed in accordance with regulations under *paragraph (e)*,
- (e) enabling a specified person or persons to prescribe standards for the purposes of regulations under *paragraph (b)* or *(d)*,
- (f) requiring a producer, distributor or retailer to operate a deposit and refund scheme in relation to a product or substance of a type or brand made, distributed or sold by him or her, or any component of, or packaging related to, such product or substance,
- (g) specifying the conditions under which a scheme referred to in *paragraph (f)* is to be operated (including the amount of the deposit or deposits to be required of the purchasers concerned and the targets that the operator of such a scheme shall achieve as respects the return of products, substances or packaging under the scheme in a particular period),
- (h) requiring a producer, distributor or retailer to collect or arrange for the collection of, or to take back or arrange for the taking back of, without imposing any charge for so doing, any product or substance of a type or brand made, distributed or sold by such producer, distributor or retailer, or any component of, or packaging related to, such product or substance, after the purchaser thereof no longer has any use for it, and specifying the conditions under which such collection or taking back is to be conducted (including the targets that the producer, distributor or retailer shall achieve as respects the collection or taking back of such type or brand of product or substance, or such related components or packaging, in a particular period),
- (i) requiring the owner or manager of a supermarket, service station or other sales outlet to provide, free of charge, specified facilities at such an outlet for the removal by customers of packaging from products or substances purchased by them at that outlet, and receptacles for the deposit of such packaging,
- (j) requiring the owner or manager of a supermarket, service station or other sales outlet to impose a charge on a customer in respect of the provision by him or her to the customer of any bag, container or other such packaging in relation to products or substances purchased by the customer at that sales outlet, such charge being of an amount equal to the full cost of such packaging or to such other amount as may be specified in the regulations,
- (k) requiring the purchaser of a product or substance to return such product or substance, or any component of, or packaging related to, such product or substance, after he or she no longer has any use for it to a retailer of such a product or substance or to deliver it to an authorised waste collector or other specified person or facility,

- (l) requiring a producer of a product or substance to use recovered or recoverable material or components in the production of the product or substance, or prohibiting, or limiting or controlling in a specified manner and to a specified extent, the use of specified virgin material in such production,
- (m) requiring a person to implement and operate, in a specified manner, a source separation programme for waste of a specified class or classes,
- (n) requiring that waste, the subject of a source separation programme, be offered and made available, free of charge or otherwise, in a specified manner, to a specified person for collection by such a person,
- (o) requiring, in a specified manner, the owner or manager of a supermarket, service station or other sales outlet to provide, operate and maintain, or arrange for the provision, operation and maintenance of, waste collection receptacles at such an outlet for use by members of the public and transfer or arrange for the transfer of waste that may be so placed in such receptacles to a specified waste recovery facility,
- (p) requiring that any used product, substance, component, packaging or other waste to which regulations under any other provision of this subsection apply be recovered in a specified manner,
- (q) requiring specified other steps to be taken in relation to waste referred to in *paragraph (p)* where, by reason of circumstances defined in the regulations, it is not practicable to recover the waste,
- (r) notwithstanding any other provision of this section, requiring a local authority to provide specified financial assistance in a specified manner to persons engaged in the recovery of household waste,
- (s) exempting from all or any of the requirements of regulations under this section a person who is certified by an association or body corporate formed or established for the purpose of carrying on waste recovery activities and approved by the Minister in accordance with regulations under *paragraph (t)* to be either—
 - (i) a member or shareholder of that association or body corporate, as the case may be, or
 - (ii) participating, in a satisfactory manner, in a scheme for the recovery of waste, or complying with any requirements specified by that association or body corporate, as the case may be, in relation to the recovery of waste,
- (t) (i) the granting by the Minister of approvals for the purpose of regulations under *paragraph (s)* and the conditions which he or she may attach to such approvals, including conditions relating to—

- (I) the financial and administrative arrangements to be made by the association or body corporate concerned,
 - (II) the waste recovery activities to be carried on by the association or body corporate concerned and the manner in which they are to be carried on,
 - (III) targets to be achieved by the association or body corporate concerned with respect to the recovery of waste by it,
- (ii) enabling the Minister to vary as he or she thinks fit any condition attached to an approval aforesaid or to revoke such an approval in specified circumstances,
 - (iii) the means by which an association or body corporate shall determine, for the purpose of regulations under *paragraph (s)*, whether a person is participating, in a satisfactory manner, in a scheme referred to in that paragraph or, as the case may be, is complying with requirements referred to in that paragraph,
 - (iv) the grant and revocation by an association or body corporate of a certificate for the purpose of regulations under *paragraph (s)* and the notifications to be given by it in respect of such a grant or revocation to the person concerned and other specified persons,
- (u) requiring a person to keep specified documents, records or other particulars and to furnish specified information to specified persons in relation to the steps taken by him or her to comply with a specified requirement of regulations under this section, and enabling a specified person to verify the accuracy of any matter stated or recorded pursuant to a requirement of regulations under this paragraph,
 - (v) requiring a producer or distributor to prepare and publish, at a specified frequency and in a specified manner—
 - (i) a plan specifying steps proposed to be taken by him or her to promote, support or facilitate the recovery of any product or substance made, distributed or sold by him or her, or any component of, or packaging related to, such a product or substance, and
 - (ii) a report on the steps taken by him or her in pursuance of such a plan and the results of those steps,
 - (w) requiring the preparation and publication, at a specified frequency and in a specified manner, by a person who is the subject of any specified requirement of regulations under this section (other than a requirement imposed by regulations under *paragraph (v)*) of—
 - (i) a plan specifying the steps to be taken by him or her to comply with such a requirement, and
 - (ii) a report on the steps taken by him or her to comply with such a requirement and the results of those steps,

Pt.III S.29

- (x) conferring on public authorities (including the Minister) and other specified persons specified additional functions for the purpose of securing or facilitating the operation of provisions of regulations under this section,
 - (y) requiring local authorities to facilitate, promote or carry out in a specified manner the composting of municipal waste of an organic nature or any other process for the biological transformation of such waste,
 - (z) any matters consequential on, or incidental to, the foregoing.
- (5) (a) Without prejudice to *subsection (3)* or *section 7 (2)*, regulations under this section may make provision in relation to persons, products, substances, activities or other matters referred to in this section generally or in relation to a specified class or classes of such persons, products, substances, activities or other matters.
- (b) A target an obligation to achieve which is imposed on a person by regulations under this section may be defined in such regulations by reference to a specified proportion (whether by weight, volume or otherwise) of the products, substances or other things to which the obligation relates.
- (6) A person who contravenes a provision of regulations under this section shall be guilty of an offence.
- (7) In a prosecution for a contravention of regulations under this section (being a contravention consisting of a failure to achieve a target specified in the regulations), it shall be a good defence to prove that the accused took all reasonable steps to achieve the said target.

Public authority
waste management.

- 30.—**(1) (a) The Minister shall, as soon as may be after the commencement of this section, promulgate a programme with regard to the prevention, minimisation and recovery of waste arising from the performance by public authorities of their functions.
- (b) A programme under this subsection may deal with such class or classes of waste, or apply to such class or classes of public authorities, as the Minister may consider appropriate.
- (2) The Minister shall review from time to time as he or she thinks appropriate a programme under *subsection (1)* and make such revisions thereto as he or she thinks fit.
- (3) Without prejudice to the generality of *subsection (1)*, a programme under that subsection may include—
- (a) specific objectives in relation to different types of waste,
 - (b) measures for the co-ordination of steps being taken or proposed to be taken by public authorities in relation to the prevention, minimisation and recovery of waste,

- (c) proposals for the regulation pursuant to powers under this Act or any other enactment of activities carried on for the prevention, minimisation and recovery of waste. Pt.III S.30

(4) For the purpose of a programme under *subsection (1)*, the Minister shall publish guidelines and criteria in relation to the prevention, minimisation and recovery of waste, to which public authorities shall have regard in the performance of their functions, and such guidelines and criteria may include provision for all or any of the following matters—

- (a) consideration being given by public authorities to the likely effects on the environment of particular goods or services they propose to purchase or engage,
- (b) objectives with regard to the use by public authorities of materials recovered from waste,
- (c) the conduct by public authorities of waste audits and the implementation and operation by them of waste reduction programmes and the publication of the results of such audits and programmes,
- (d) the making by public authorities of plans (“public authority waste management plans”), specifying appropriate measures to facilitate, and objectives with regard to, the prevention, minimisation and recovery of waste by them,
- (e) the content, publication, implementation and review of public authority waste management plans,
- (f) the preparation and publication by public authorities of reports on the implementation by them of their respective public authority waste management plans and their compliance generally with guidelines and criteria published under this subsection.

31.—(1) A local authority may—

Recovery of waste
by local authorities.

- (a) engage or participate in the recovery of waste, and for that purpose may enter into one or more agreements with any other local authority or other person,
- (b) buy or otherwise acquire waste for the purpose of recovering it,
- (c) use, sell or otherwise dispose of any material or thing, including energy, recovered from waste.

(2) For the purpose of *subsection (1)*, “local authority” includes the corporation of a borough of any kind and the council of an urban district.

PART IV

Holding, Collection and Movement of Waste

32.—(1) A person shall not hold, transport, recover or dispose of waste in a manner that causes or is likely to cause environmental pollution. General duty of a holder of waste.

(2) A person shall not, save in such circumstances as may be specified under *subsection (4)*, transfer the control of waste to any person other than an appropriate person.

(3) A holder of waste shall, without delay, inform—

- (a) the local authority in whose functional area the loss, spillage, or other matter mentioned in this subsection occurs, or
- (b) in the case of hazardous waste, both the said local authority and the Agency,

of any loss, spillage, accident or other development concerning that waste which causes, or is likely to cause, environmental pollution.

(4) The Minister may by regulations—

- (a) provide that the holder of a specified class or classes of waste shall effect and maintain a policy of insurance insuring him or her to a specified extent as respects any liability on his or her part to pay damages or costs on account of injury to person or property arising from the holding by him or her of the waste,
- (b) provide that on the transfer of waste, in specified circumstances, the holder of the waste shall provide to the transferee specified particulars in writing of the waste so as to enable that person to avoid a contravention of the relevant provisions of this Act,
- (c) provide that *subsection (2)* shall not apply in specified circumstances.

(5) In this section “an appropriate person” means a local authority, the corporation of a borough that is not a county borough, the council of an urban district, or a person otherwise authorised under and in accordance with this Act or the Act of 1992 to undertake the collection, recovery or disposal of the class of waste in question.

(6) (a) A person who contravenes *subsection (1), (2) or (3)* or a provision of regulations under *subsection (4)* shall be guilty of an offence.

(b) In a prosecution for a contravention of *subsection (1)*, it shall be a good defence to prove that the activity concerned was carried on in accordance with a waste collection permit or waste licence under this Act or a licence or revised licence under Part IV of the Act of 1992.

(7) Without prejudice to *subsection (6)*, where a person transfers the control of waste to another person in contravention of *subsection (2)*—

- (a) any act done or instrument made by a person to transfer title in the waste for that purpose shall not operate to transfer that title,
- (b) the first-mentioned person shall, for the purposes of this Act, be deemed to be a holder, in addition to the second-mentioned person, of the waste:

Provided that nothing in this paragraph shall be construed as requiring either of the said persons to be held to be a holder of the

waste on or after the date on which a subsequent transfer (if any), of Pt.IV S.32
the control of the waste in accordance with *subsection (2)* is effected.

33.—(1) (a) Each local authority shall collect, or arrange for the Collection of waste.
collection of, household waste within its functional
area.

(b) The corporation of a borough (other than a county
borough) or the council of an urban district may col-
lect, or arrange for the collection of, household
waste.

(2) *Subsection (1) (a)* shall not apply to household waste in any
part of a local authority's functional area to the extent that any of
the conditions mentioned in *subsection (3)* applies to that part or, as
appropriate, to that household waste.

(3) The conditions referred to in *subsection (2)* are—

(a) an adequate waste collection service is available in the part
concerned of the local authority's functional area,

(b) the estimated costs of the collection of the waste concerned
by the local authority would, in the opinion of the auth-
ority, be unreasonably high,

(c) the local authority is satisfied that adequate arrangements
for the disposal of the waste concerned can reasonably
be made by the holder of the waste.

(4) A local authority may collect, or arrange for the collection of
waste, other than household waste.

(5) A local authority may enter into arrangements with one or
more other local authorities, or with one or more other persons, for
the collection on its behalf by the said authority or authorities or, as
the case may be, by the said person or persons, of waste in its func-
tional area or in a part or parts of that area.

(6) Notwithstanding any other provision of this Act, a local auth-
ority shall be under no duty to collect, or arrange for the collection
of, waste from any person—

(a) if any provision of bye-laws under *section 35* regarding the
presentation of the waste for collection is not complied
with, or

(b) if the waste contains any product or substance or packaging
therefor in contravention of regulations under *section 29*.

(7) Waste collected or recovered by a local authority shall become
the property of the authority.

(8) (a) A person shall not, without lawful authority, disturb, inter-
fere with or remove—

(i) anything deposited at a facility provided by or on
behalf of a local authority or an authorised waste
collector for the deposit or storage of waste, or any
plant, including any receptacles therein,

Pt.IV S.33

(ii) anything deposited in a receptacle for waste, whether such receptacle is for the use by members of the public or otherwise.

(b) A person shall not obstruct or interfere with the collection of waste by a local authority or an authorised waste collector.

(c) A person who contravenes *paragraph (a)* or *(b)* shall be guilty of an offence.

(9) For the purpose of this section, other than *subsection (1)*, “local authority” includes the corporation of a borough of any kind and the council of an urban district.

Waste collection permits.

34.—(1) (a) Subject to *paragraph (b)*, a person other than a local authority shall not, for the purposes of reward, with a view to profit or otherwise in the course of business, collect waste, on or after such date as may be prescribed, save under and in accordance with a permit (in this Act referred to as a “waste collection permit”) granted by the local authority in whose functional area the waste is collected.

(b) The Minister may make regulations providing that *paragraph (a)* shall not apply in respect of the collection of any class or classes of waste where such collection is carried out in compliance with such requirements (which may include a requirement as to the entry of specified particulars concerning the person carrying out the collection in the register maintained by the local authority concerned under *section 19*) as are specified in the regulations.

(c) A person who contravenes *paragraph (a)* or any requirement of regulations under *paragraph (b)* shall be guilty of an offence.

(2) (a) The Agency may give such guidance or directions to a local authority or local authorities generally as it considers appropriate in relation to the control to be exercised or the measures to be taken by it or them of, or with regard to, the collection of hazardous waste by persons in its or their functional area or areas or the grant by it or them of waste collection permits in respect of such waste.

(b) A local authority shall have regard to any guidance and comply with any direction given to it under *paragraph (a)* in performing any of its functions under this section or *section 33*, as appropriate.

(3) On an application being made to a local authority for the grant of a permit under this section, the authority may decide to grant the permit, subject to, or without, conditions or to refuse to grant the permit.

(4) A local authority shall not grant a waste collection permit unless it is satisfied that the activity in question would not, if carried on in accordance with such conditions as may be attached to the permit, cause environmental pollution, and that the grant of the per-

mit is in accordance with any relevant provisions of that authority's waste management plan and the hazardous waste management plan, as the case may be. Pt.IV S.34

(5) (a) Without prejudice to *subsections (3), (4) and (6)*, an application for a waste collection permit may be refused, or a waste collection permit may be revoked, if the applicant, permit holder or any other relevant person has been convicted of an offence under this Act prescribed for the purposes of this subsection, or of an offence under any other enactment, or instrument under an enactment, as may be so prescribed.

(b) The reference in *paragraph (a)* to a relevant person is a reference to a person whom the local authority determines to be relevant for the purposes of considering the application concerned or, as the case may be, of deciding whether to revoke the waste collection permit, having had regard to any criteria that the Minister by regulations provides it is to have regard to in determining such a matter.

(6) A local authority may at any time review, and decide to amend conditions attached to, or revoke, a permit which it has granted under this section.

(7) Conditions attached to a permit granted under this section shall specify the requirements to be complied with in respect of the activities to which the permit relates ("the activities concerned") and, without prejudice to the generality of the foregoing, such requirements may include requirements in relation to—

- (a) the types and quantities of waste which may be collected ("waste concerned");
- (b) the place or places to which waste concerned may or shall be delivered for recovery or disposal;
- (c) the methods, receptacles, including skips, and vehicles, to be employed in the collection of waste concerned (including requirements regarding the periods during which receptacles may be left in a public place, and the supervision of their use by the holder of the permit);
- (d) identifying marks to be displayed on any such receptacle or vehicle;
- (e) technical, environmental or safety standards to be complied with (including standards regarding the segregation, packaging or labelling of waste concerned or categories of such waste);
- (f) documentation that shall accompany each consignment of waste concerned or that shall be carried on each vehicle which is used for the activities concerned;
- (g) the keeping and preservation of records and the information to be supplied to the local authority concerned or any other person by the holder of the permit in relation to the activities concerned;
- (h) the effecting and maintenance of a policy of insurance by the holder of the permit insuring him or her as respects

any liability on his or her part to pay damages or costs on account of injury to person or property arising from the activities concerned;

(i) matters consequent on measures that may be taken under *section 35*.

(8) (a) A local authority, before making a decision in relation to an application made to it for the grant of a waste collection permit, shall consider any submissions made to it under and in accordance with regulations under *subsection (11)* in relation to the application.

(b) A local authority shall, if it decides—

(i) to grant, or amend any conditions that it has attached to, a waste collection permit, or

(ii) to refuse to grant, or revoke, such a permit,

forthwith notify the applicant therefor or its holder, as the case may be, of the decision and the reasons for the decision.

(9) (a) An applicant for, or the holder of, a waste collection permit may, within one month of the date of a notice under *subsection (8)*, appeal against the decision of the local authority concerned to the judge of the District Court for the District Court district in which the principal office of the local authority is situate.

(b) On the hearing of an appeal under this subsection, the judge of the District Court may make an order giving such directions to the local authority concerned as he or she thinks proper in relation to the grant or revocation of a waste collection permit or the amendment of conditions attached to such a permit.

(10) A contravention of any provision of *section 32* or *39*, or of any condition of a waste collection permit, by any person employed by or on behalf of, or otherwise carrying out any waste collection activity for, or on behalf of, the holder of the permit, shall be deemed to also be a contravention of the provision or condition, as the case may be, by that holder.

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

(b) Without prejudice to the generality of *paragraph (a)*, regulations under this subsection may make provision in relation to all or any of the following matters—

(i) the form in which an application for the grant of a waste collection permit (“a permit”) shall be made and the form of a permit;

(ii) information and particulars to be submitted by an applicant for the grant of a permit, and verification of such information and particulars;

(iii) specifying the period within which an application for the grant of a permit shall be dealt with by a local authority;

- (iv) matters in respect of which a local authority must be satisfied prior to the granting of a permit; Pt.IV S.34
- (v) requiring a local authority to attach specified conditions to a permit;
- (vi) specifying conditions that a local authority may attach to a permit;
- (vii) the amendment of conditions attached to, or the revocation of, a permit and the grounds for such amendment or revocation;
- (viii) the making available for inspection by members of the public of an application for the grant of a permit, and the making of submissions by members of the public to a local authority, within a specified period, in relation to such an application;
- (ix) the publication by a local authority of decisions made by it in relation to permits;
- (x) requiring an applicant for the grant of a permit to defray, or contribute towards, any costs incurred by the local authority concerned in carrying out an investigation in relation to the application.

(12) The collection of waste shall, in the period before a waste collection permit in relation to such collection is granted or refused, be deemed not to have contravened the provisions of this section if, before the date prescribed under *subsection (1) (a)*, an application has been made for a waste collection permit in respect of such collection and the requirements of regulations under *subsection (11)* in relation to the application have been complied with by the applicant therefor.

(13) The reference in *subsection (1) (a)* to a local authority, where it first occurs, shall be construed as including a reference to the corporation of a borough of any kind and the council of an urban district.

35.—(1) Whenever a local authority considers that, for the purpose of the proper management of waste or the prevention or control of environmental pollution, it is necessary so to do, it may, subject to *subsection (5)*, make bye-laws— Presentation of waste for collection.

- (a) requiring a holder of household waste to present such waste for collection by a person collecting waste in accordance with this Part,
- (b) requiring a holder of household or commercial waste who presents such waste for collection as aforesaid (whether pursuant to a requirement of bye-laws under *paragraph (a)* or not) to so present the waste in a manner specified in the bye-laws.

(2) A bye-law under *subsection (1)* shall be made in accordance with, and construed as if it was made under, Part VII of the Local Government Act, 1994.

(3) Bye-laws under *subsection (1)* may, without prejudice to the generality of that subsection or of section 37 (4) of the Local Government Act, 1994, include provisions specifying—

- (a) that waste shall only be placed for collection in receptacles of a particular kind and that different waste shall be placed in different receptacles,
- (b) the quantity of waste which may or may not be placed in any receptacle,
- (c) the waste, or the mixtures of waste, which may or may not be placed in a receptacle,
- (d) the measures or precautions to be taken where particular waste, or mixtures thereof, is or are placed in a receptacle,
- (e) the size, colour, construction or maintenance of receptacles,
- (f) the location at which the waste is to be made available for collection,
- (g) times during which the waste is to be made available for collection,
- (h) any matters consequential on, or incidental to, the foregoing.

(4) A local authority may provide or, where appropriate, may, in accordance with *section 34*, require the holder of a waste collection permit granted by the authority to provide, receptacles in which household or commercial waste (either generally or of a specified nature or type) presented for collection shall be placed for such collection, and the local authority or the said holder, as the case may be, may require such reasonable payment, as it or he or she may determine, in respect of the provision of receptacles from the persons to whom they are provided.

- (5) (a) The Minister may, if he or she considers it expedient so to do for the purpose of the prevention or control of environmental pollution, give a direction to a local authority requiring it to take specified steps (including the making of bye-laws under Part VII of the Local Government Act, 1994) to ensure that specified substances, products, materials or classes of waste arising in household or commercial waste are segregated for the purpose of and in the course of collection, and recovered or disposed of in a specified manner.
- (b) A local authority concerned shall comply with any direction of the Minister given under this subsection within such period as may be specified in the direction.

Regulations in relation to movement of waste.

36.—(1) For the purpose of preventing environmental pollution therefrom, the Minister may by regulations provide for the supervision and control of the movement of waste within, into or out of the State.

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

- (a) the prohibition, prevention, limitation or control of the movement of waste and, in particular—
- (i) requiring that any movement of waste or waste of a specified class or classes be authorised by the Agency or a local authority,
 - (ii) enabling conditions of a kind specified in the regulations to be attached by the Agency or a local authority, as the case may be, to any such authorisation;
- (b) notifications, including documentation, to be given before and after the movement of waste, the form and content of such notifications, the persons required to give such notifications and the persons to whom such notifications are to be given;
- (c) information, including documentation, to accompany any movement of waste, the form and content of such information and the persons required to prepare, hold or submit such information;
- (d) enabling the inspection of consignments of waste and documentation relating thereto by persons authorised in that behalf by the Agency or a local authority;
- (e) requirements as to the segregation, handling, packaging and labelling of waste and the containers in which waste may be moved;
- (f) a requirement that shipments of waste may enter or leave the State at a specified place or places only within the State;
- (g) requiring a person who undertakes the movement of waste to effect and maintain a policy of insurance insuring him or her as respects any liability on his or her part to pay damages or costs on account of injury to person or property arising from the movement of the waste;
- (h) requiring an agreement or agreements to be entered into with one or more appropriate persons by a person exporting or importing waste whereby the first-mentioned person or persons agrees or agree to recover or dispose of the waste;
- (i) the seizure, taking in charge, recovery or disposal of a consignment of waste or a part thereof by the Agency or a local authority or a person authorised by the Agency or a local authority in that behalf where any provision of regulations under this section or of any specified enactment has not been complied with as respects the consignment or a part thereof, as the case may be;
- (j) the keeping of records by specified persons of the source of, and particulars concerning the movement, delivery and receipt of, waste and, as the case may be, the recovery or disposal thereof, and the persons to whom such records shall be made available;

- (k) the prevention and control of litter and nuisance from odours that may arise from the movement of waste and generally with respect to the handling of waste whilst it is being moved;
 - (l) the imposition by the Agency or a local authority on a person undertaking the movement of waste of such charges as are necessary to defray any costs reasonably incurred by the Agency or the local authority in performing any function under regulations under this section with respect to the waste;
 - (m) requiring a person to give such security to the Agency or a local authority for the payment of any charges he or she may be liable to pay to the Agency or the local authority (as the case may be) pursuant to regulations under *paragraph (l)* as the Agency or the local authority may request;
 - (n) requiring a person who undertakes the movement of waste to give security of a specified nature to the Agency, a local authority or any other specified person in respect of costs which may be incurred by the Agency, local authority or other person aforesaid in taking steps in relation to the waste in the event of a contravention by the first-mentioned person of any provision of regulations under this section as respects that waste;
 - (o) requiring a person who undertakes the movement of waste or who is the consignee of waste imported into the State or moved within the State to return, where the Agency or a local authority directs him or her to do so, the waste to its place of origin or to such other place as may be specified in the direction and to take such measures as may be so specified in relation to the waste, including the recovery or disposal of the waste in such manner or at such facility as may be so specified;
 - (p) specifying the circumstances in which the Agency or a local authority may give a direction to a person pursuant to regulations under *paragraph (o)*;
 - (q) any matters consequential on, or incidental to, the foregoing.
- (3) A person who contravenes a provision of regulations under this section shall be guilty of an offence.

PART V

Recovery and Disposal of Waste

Interpretation (*Part V*).

37.—In this Part, unless the context otherwise requires—

“civic waste facility” shall be construed in accordance with *section 38 (2)*;

“waste licence” includes a revised waste licence under *section 46 (2)*.

38.—(1) A local authority shall provide and operate, or arrange for the provision and operation of, such facilities as may be necessary for the recovery and disposal of household waste arising within its functional area. Pt.V
Waste management
facilities.

(2) A local authority may provide and operate, or may arrange for or facilitate the provision and operation of—

(a) civic waste facilities, that is to say, facilities at which waste may be deposited by members of the public, and

(b) other facilities for—

(i) the segregation, mixing, baling, storage or treatment of waste prior to its recovery or disposal,

(ii) the recovery of waste, or

(iii) the disposal of waste (other than household waste).

(3) Without prejudice to the provisions of *subsection (2)*, a local authority, having made an examination of the matter, shall provide, or arrange for the provision of, such facility or facilities as appears or appear to it to be necessary and reasonable at which vehicles may be discarded.

(4) For the purpose of *subsections (1), (2) and (3)*, a local authority may enter into an agreement or otherwise make arrangements with any other local authority or other person for the recovery or disposal of waste by such authority or person on its behalf, or the joint provision or operation by it and that other authority or person, of any relevant facility.

(5) The repeal of any enactment mentioned in *Part I* of the *Fifth Schedule* shall not prejudice the continued operation of waste disposal facilities by the corporation of a borough (other than a county borough) or the council of an urban district, where such facilities are in operation upon the commencement of this section.

(6) The Minister may take such measures as seem to him or her to be appropriate to promote and support the establishment of such facilities for the good management, including the recovery or disposal, of waste as he or she may consider to be necessary or desirable, and without prejudice to the generality of the foregoing, may for the purpose of this subsection provide, with the consent of the Minister for Finance, grants or other forms of financial assistance in respect of the establishment of such facilities.

(7) (a) Where it appears to a local authority or the Agency that it is necessary so to do for the purpose of the effective and orderly disposal of waste, a local authority or the Agency may, in such circumstances and subject to such conditions as may be prescribed, require a holder or producer of any class or classes of waste, other than household waste, to dispose, or arrange for the disposal, of that waste, in such manner, under such conditions and at such appropriate waste disposal facility as may be specified by it.

(b) A person who fails to comply with a requirement under this subsection shall be guilty of an offence.

(8) The Agency shall classify facilities that exist in the State for the disposal of waste in such manner and having regard to such criteria as may be prescribed.

(9) For the purpose of *subsection (2)*, other than *paragraph (b) (iii)*, and *subsection (3)*, “local authority” includes, as appropriate, the corporation of a borough of any kind and the council of an urban district.

(10) Section 3 (c) of the Derelict Sites Act, 1990, is hereby amended by the addition of “or under” after “conferred by”.

(11) (a) A person shall not deposit or discard waste at a facility provided by a local authority under this section otherwise than in accordance with any conditions for the time being standing specified by the local authority as respects the nature, type and quantity of waste that may be so deposited or discarded or the use otherwise of such a facility.

(b) A local authority shall take such steps as are reasonable to bring to the notice of members of the public any conditions for the time being standing specified by it for the purposes of *paragraph (a)*.

(c) A person who contravenes *paragraph (a)* shall be guilty of an offence.

(d) Subject to *paragraph (e)*, waste deposited or discarded at a facility provided by a local authority under this section shall become the property of the authority.

(e) Without prejudice to *paragraph (c)*, where a person deposits or discards waste in contravention of *paragraph (a)*—

(i) the waste shall not become the property of the local authority concerned unless it decides to assume ownership of the waste,

(ii) any expenses incurred by the local authority concerned in recovering or disposing, or arranging for the recovery or disposal, of the waste shall be recoverable by it from the person as a simple contract debt in any court of competent jurisdiction.

Requirement to
hold waste licence.

39.—(1) Subject to *subsections (4) and (7)*, a person shall not dispose of or undertake the recovery of waste at a facility, on or after such date as may be prescribed, save under and in accordance with a licence under this Part (in this Act referred to as a “waste licence”) that is in force in relation to the carrying on of the activity concerned at that facility.

(2) For the purpose of *subsection (1)*, different dates may be prescribed in respect of different waste disposal or recovery activities, different classes of facility and different classes of waste.

(3) The recovery or disposal of waste shall, in the period before a waste licence in relation to such recovery or disposal is granted or refused, be deemed not to have contravened the provisions of this Part if, before the date prescribed under *subsection (1)* in respect of the activity concerned—

(a) an application has been made for a waste licence in respect of that activity and the requirements of regulations under *sections 45 and 50* in relation to the application for a waste licence have been complied with by the applicant therefor, and

- (b) in the case of a disposal of waste, other than one carried out by a local authority, the corporation of a borough that is not a county borough, or the council of an urban district, it is carried out in accordance with a permit issued under the European Communities (Waste) Regulations, 1979, or the European Communities (Toxic and Dangerous Waste) Regulations, 1982, as appropriate.

(4) The Minister may by regulations provide that *subsection (1)* shall not apply in respect of—

- (a) the disposal in a specified manner of a specified class or classes of waste at its place of production, or
- (b) the recovery in a specified manner of a specified class or classes of waste,

if and for so long as the person carrying out the disposal or recovery of the waste, as the case may be, complies with specified conditions in relation to the carrying out of such disposal or recovery.

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

- (a) the quantity of waste concerned which may be recovered or disposed of in a particular period,
- (b) the use of the best available technology not entailing excessive costs to prevent or eliminate or, where that is not practicable, to limit, abate or reduce, an emission from the recovery or disposal activity concerned,
- (c) such other matters as the Minister considers are appropriate to ensure that the recovery or disposal activity concerned will not cause environmental pollution, which may include a requirement that the person concerned obtain the prior written consent of the relevant local authority to the carrying on by him or her of the activity concerned and the specification of controls to be exercised or measures to be taken by that local authority in relation to the carrying on of that activity (which that local authority is hereby empowered to exercise or take).

(6) The Minister may by regulations—

- (a) require the producer of a specified class or classes of waste, other than household waste, to—
 - (i) comply with specified conditions in relation to the treatment or temporary storage by him or her of the waste at the premises where it is produced, including the obtaining of the prior written consent of the relevant local authority to such treatment or storage,
 - (ii) make a plan with respect to the taking of such measures, in the event of an incident occurring that involves the loss or release of the waste, as will prevent or minimise the risk of environmental pollution therefrom,
 - (iii) effect and maintain a policy of insurance insuring him or her to a specified extent as respects any liability on his or her part to pay damages or costs on account

of injury to person or property arising from the production or holding of the waste,

(b) enable a local authority to attach specified conditions to a consent granted by it pursuant to regulations under *paragraph (a) (i)* and to revoke such a consent where any of the conditions so attached are not complied with,

(c) specify a maximum period for which the waste may be stored as aforesaid and deem storage of the waste beyond that period to be a disposal or recovery, as appropriate, of the waste.

(7) In addition to the exemption from its terms provided for by *section 51, subsection (1)* shall not apply in respect of—

(a) the recovery or disposal of waste at a facility connected with an activity in respect of which a licence or revised licence under Part IV of the Act of 1992 is in force, where such recovery or disposal is subject to the said licence or revised licence,

(b) household waste produced and disposed of within the curtilage of the same dwelling,

(c) the deposit of litter in a litter bin,

(d) the deposit of waste at a civic waste facility,

(e) the transfer of waste to a local authority, the corporation of a borough that is not a county borough, the council of an urban district or any other person for the purpose of its being recovered or disposed of in accordance with this Act or a licence or revised licence under Part IV of the Act of 1992,

(f) the disposal of animal by-products within the meaning of the European Communities (Disposal, Processing and Placing on the Market of Animal By-Products) Regulations, 1994, and

(g) such other activities as may be prescribed.

(8) The Minister may make regulations amending the First Schedule to the Act of 1992 by the addition thereto, subject to such modifications, if any, as he or she may determine and specifies in the regulations, of any of the activities specified in the *Third Schedule* or the *Fourth Schedule*.

(9) A person who contravenes *subsection (1)* or a provision of regulations under *subsection (4)* or *(6)* shall be guilty of an offence.

Grant of waste
licences.

40.—(1) (a) On application being made in that behalf to it, the Agency may grant to the applicant a waste licence subject to, or without, conditions or refuse to grant to the applicant such a licence.

(b) This subsection is subject to *sections 42* and *50* and regulations under *section 45*.

(2) Subject to *subsection (5)*, in considering an application for a waste licence or in reviewing, pursuant to this Part, a waste licence, the Agency shall—

Pt.V S.40

- (a) carry out or cause to be carried out such investigations as it deems necessary or as may otherwise be prescribed for the purposes of such consideration or review,
- (b) have regard to—
 - (i) any relevant air quality management plan under section 46 of the Act of 1987, or water quality management plan under section 15 of the Local Government (Water Pollution) Act, 1977, or waste management plan or hazardous waste management plan under *Part II*,
 - (ii) (I) any environmental impact statement in respect of proposed development comprising or for the purposes of the waste activity concerned, which is submitted to the Agency under and in accordance with a requirement of, or made pursuant to, regulations under *section 45*,
 - (II) any submissions or observations made to the Agency in relation to the environmental impact statement,
 - (III) such supplementary information (if any) relating to such statement as may have been furnished to the Agency by the applicant or licence holder under and in accordance with a requirement of, or made pursuant to, regulations under *section 45*,
 - (IV) where appropriate, the views of other Member States of the European Communities in relation to the effects on the environment of the proposed activity,
 - (iii) such other matters related to the prevention, limitation, elimination, abatement or reduction of environmental pollution from the activity concerned as it considers necessary, and
 - (iv) such other matters as may be prescribed.
- (3) (a) For the purpose of *subsection (2) (b) (ii)*, the Agency shall, other than in the case of an environmental impact statement in respect of development proposed to be carried out by or on behalf of a local authority within the functional area of the authority, have regard to the matters mentioned in the environmental impact statement and any submissions, observations or supplementary information relating to such statement made or furnished to the Agency under and in accordance with a requirement of, or made pursuant to, regulations under *section 45*, only in so far as they relate to the risk of environmental pollution from the activity in question.
- (b) The reference in this subsection to a local authority's functional area is a reference to its functional area in its capacity as a planning authority.

(4) The Agency shall not grant a waste licence unless it is satisfied that—

- (a) any emissions from the recovery or disposal activity in question (“the activity concerned”) will not result in the contravention of any relevant standard, including any standard for an environmental medium, or any relevant emission limit value, prescribed under any other enactment,
- (b) the activity concerned, carried on in accordance with such conditions as may be attached to the licence, will not cause environmental pollution,
- (c) 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 concerned,
- (d) if the applicant is not a local authority, the corporation of a borough that is not a county borough, or the council of an urban district, subject to *subsection (8)*, he or she is a fit and proper person to hold a waste licence,
- (e) the applicant has complied with any requirements under *section 53*.

(5) Where a waste licence is granted in relation to an activity, a licence under—

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

shall not be granted in relation to such an activity, and any such licence that is in force in relation to such an activity shall thereupon cease to have effect in relation thereto.

- (6) (a) Where a waste licence is granted in relation to an activity, and a foreshore licence has been granted under the Foreshore Act, 1933, in relation to the same activity, any conditions attached to that foreshore licence shall, in so far as they are for the purpose of preventing environmental pollution, cease to have effect.
- (b) The grant of a licence under the Foreshore Act, 1933, in relation to any activity shall not prejudice, affect or restrict in any way the application of any provision of this Act to such an activity.

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

- (a) neither that person nor any other relevant person has been convicted of an offence under this Act prescribed for the purposes of this subsection,
- (b) in the opinion of the Agency, that person or, as appropriate, any person or persons employed by him or her to direct or control the carrying on of the activity to which the

waste licence will relate has or have the requisite technical knowledge or qualifications to carry on that activity in accordance with the licence and the other requirements of this Act,

- (c) in the opinion of the Agency, that person is likely to be in a position to meet any financial commitments or liabilities that the Agency reasonably considers will be entered into or incurred by him or her in carrying on the activity to which the waste licence will relate in accordance with the terms thereof or in consequence of ceasing to carry on that activity.

(8) The Agency may, if it considers it proper to do so in any particular case, regard a person as a fit and proper person for the purposes of this Part notwithstanding that that person or any other relevant person is not a person to whom *subsection (7) (a)* applies.

(9) The references in *subsections (7) and (8)* to a relevant person are references to a person whom the Agency determines to be relevant for the purposes of considering the application concerned having regard to any criteria that the Minister by regulations provides it is to have regard to in determining such a matter.

(10) A waste licence granted to a person under this Part may not be transferred to another person, other than under and in accordance with *section 47*.

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

(12) It shall be a good defence—

- (a) to a prosecution for an offence under any enactment other than this Part, or

(b) to proceedings under—

- (i) section 10 or 11 of the Local Government (Water Pollution) Act, 1977,
- (ii) section 20 of the Local Government (Water Pollution) (Amendment) Act, 1990,
- (iii) section 28, 28A or 28B of the Act of 1987,
- (iv) *section 57 or 58*,

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

- (13) (a) A holder of a waste licence shall, within a period of 1 month after the cesser of the activity to which the licence relates, give notice in writing of that fact to the Agency.

(b) A person who fails to comply with *paragraph (a)* shall be guilty of an offence.

Pt.V

Conditions attached
to a waste licence.

41.—(1) A waste licence may provide as respects any condition attached to it that the condition shall be complied with before or after any activity to which the licence relates has been commenced or has ceased.

(2) Without prejudice to the generality of *section 40 (1) (a)*, conditions attached to a waste licence granted under this Part—

(a) shall, as appropriate—

- (i) specify the waste recovery or disposal activity, as the case may be, to which the licence relates (“the activity concerned”) and the types, nature, composition and quantity of waste permitted to be recovered or disposed of during specified periods or otherwise,
- (ii) specify the facility where waste may be recovered or disposed of under the licence,
- (iii) specify procedures or methods to be followed or employed with respect to the activity concerned, having regard to the nature and composition of the waste, the proximity to the facility concerned of water catchment areas and the characteristics of the receiving environment,
- (iv) require specified measures to be taken to prevent the entry to waters of specified substances or to avoid pollution by specified substances,
- (v) specify requirements of a technical nature to be complied with for the purpose of controlling emissions arising from, or which are a result of, the activity concerned, including—
 - (I) requirements relating to the design, construction, provision, operation or maintenance of the facility concerned, or any plant thereon,
 - (II) other requirements for the purposes aforesaid, including the use or employment of specified procedures or codes of practice,
- (vi) require the monitoring, supervision and control of each aspect of the operation of the facility or any plant concerned by specified means and for that purpose require specified procedures or codes or practices to be followed or employed and precautions of a security nature to be taken,
- (vii) require the monitoring of such environmental media as, in the opinion of the Agency, may be affected by or as a result of the activity concerned,
- (viii) require records to be kept of the quantity, nature and origin of waste accepted into the facility concerned, the treatment, recovery or disposal of such waste, and where relevant, the quantity, nature, destination, frequency of collection and mode of transport of waste leaving the facility concerned, and specify the period for which such records are to be preserved,

- (ix) in the case of a waste disposal activity, require the recording and identification of a deposit of hazardous waste in the facility concerned, Pt.V S.41
- (x) require the keeping of other specified records and require specified information to be supplied to the Agency, or any other specified person, in relation to the carrying on of the activity concerned, including a statement by the holder of the licence confirming whether or not he or she has complied with each of the conditions attached to the licence,
- (b) may, as appropriate—
- (i) specify requirements to be complied with as respects the nature, composition, temperature, volume, level, rate, method of treatment and location of an emission arising from, or which is a result of, the activity concerned (“an emission concerned”),
 - (ii) specify the periods during which an emission concerned may, or may not, be made,
 - (iii) specify limits to the effects of an emission concerned,
 - (iv) specify the concentration of a pollutant in an environmental medium or a discharge rate which shall not be exceeded,
 - (v) require the provision, operation and maintenance of meters, gauges and other apparatus or means for monitoring the nature, extent and effects of an emission concerned,
 - (vi) specify requirements as to the training and qualifications of persons employed in carrying on the activity concerned,
 - (vii) specify the methods, vehicles and receptacles to be employed in transporting waste to, from or within the facility concerned,
 - (viii) require the taking and analysis of samples, the making of measurements and compliance with specified quality control procedures in connection with the activity concerned and for that purpose require—
 - (I) the use of specified analytical standards or the services of specified laboratories to be availed of,
 - (II) the keeping of records in relation to the samples, measurements or procedures,
 - (III) the furnishing of information to the Agency or any other specified person in relation to the samples, measurements or procedures,
 - (ix) require the making of a plan, and the revision thereof at specified intervals, setting out the measures to be taken in the event of any accident or incident

(including any difficulty of an operational nature) occurring that involves the facility or any plant concerned,

- (x) require specified measures to be taken in the event of a breakdown of any plant or other equipment which may affect an emission concerned,
- (xi) where appropriate, specify the type of fuel to be, or not to be, used, as the case may be,
- (xii) require the making and maintenance of such financial provision as may be required under *section 53 (1)*,
- (xiii) require the holder of the licence to effect and maintain a policy of insurance insuring him or her as respects any liability on his or her part to pay damages or costs on account of injury to person or property arising from the carrying on of the activity concerned,
- (xiv) require the making of payments by the holder of the licence to the Agency to defray costs which may be incurred by the Agency in monitoring or otherwise in performing any functions in relation to the activity concerned,
- (xv) specify requirements for the closure, restoration and remediation of, or the carrying out of aftercare in relation to, the facility concerned,
- (xvi) require the holder of the licence to comply with such further requirements in relation to the closure, restoration, remediation and aftercare of the facility concerned, or otherwise as may in due course be determined under *section 46 (5)*,
- (xvii) specify the latest date by which a condition attached to the licence is to be complied with.

(3) The Minister may by regulations—

- (a) require the Agency to attach as conditions to any waste licence that may be granted by it in respect of a specified class or classes of waste recovery or disposal activity, provisions requiring compliance with any specified standard, specification, procedure or other requirement, including any requirement the imposition of which is required or necessary to give effect to any Community act in relation to waste,
 - (b) require the Agency to attach as a condition to a waste licence of a specified class or classes a provision prohibiting the recovery or disposal of specified waste in a facility concerned or by means of a specified recovery or disposal activity, or
 - (c) require the Agency to take account of any other specified matter in attaching conditions to a waste licence.
- (4) Conditions attached to a waste licence may apply in respect of any plant, or land or any part of any land, which is, or has been, used

for the purpose of, or incidental to, an activity to which the licence relates and any emission from the facility concerned. Pt.V S.41

(5) The Agency may recover the amount of any payment due to it arising from a condition attached to a waste licence as a simple contract debt in any court of competent jurisdiction.

(6) Prior to the commencement of the waste recovery or disposal activity to which a waste licence relates, as the case may be, or the coming into force of a waste licence in respect of an activity to which *section 39 (3)* applies, the Agency shall inspect the facility concerned in order to ensure that it complies with the relevant conditions attached to the waste licence.

42.—(1) (a) Where a person proposes to make an application to the Agency for the grant of a waste licence under *section 40* or for the review of a waste licence under *section 46*, he or she shall publish or give notice of his or her intention to do so in such form and to such persons as may be prescribed under *section 45*.

Application for a waste licence or review of a waste licence.

(b) Where the Agency proposes to review a waste licence under *section 46 (1)*, it shall publish such notice as may be prescribed under *section 45* for the purposes of this section, and shall give notice in writing to the holder of the licence and, where appropriate, to the local authority in whose functional area the activity, the subject matter of the licence, is carried on, and to such other persons (if any) as may be so prescribed, of its intention to conduct such a review.

(2) Before making a decision under *section 40* in respect of an application made to it for the grant of a waste licence, or under *section 46 (2)* in consequence of a review of a waste licence that has been conducted by it under that section, the Agency shall give notice in writing to—

- (a) the applicant or the holder of the licence, as the case may be,
- (b) any person who has made a written submission to it in relation to the application or the review, in accordance with regulations under this Part,
- (c) where relevant, the local authority in whose functional area the activity, the subject matter of the proposed waste licence or the waste licence, as the case may be, is intended to be, or is, carried on, and
- (d) such other persons as may be prescribed,

of the decision it proposes to make in respect of the application or in consequence of the review and, where the decision so notified is a decision to grant a waste licence or a revised waste licence, shall specify where a copy of the proposed licence or revised licence may be obtained.

(3) Any person may, subject to compliance with the requirements of any regulations under *sections 45* and *50*, and at any time before

the expiration of the appropriate period, make an objection to the Agency in relation to a decision referred to in *subsection (2)* that it proposes to make.

(4) An objection shall—

(a) be made in writing,

(b) state the name and address of the objector,

(c) state the subject matter of the objection,

(d) state in full the grounds of objection and the reasons, considerations and arguments on which they are based, and

(e) be accompanied by such fee (if any) as may be payable in respect of the making of such objection in accordance with regulations under *section 50*.

(5) (a) An objection which does not comply with the requirements of *subsection (4)* shall be invalid.

(b) The requirement of *subsection (4) (d)* shall apply whether or not the objector requests, or proposes to request, under *subsection (9)* an oral hearing of the objection.

(6) An objection shall be accompanied by such documents, particulars, or other information relating to the objection as the objector considers necessary or appropriate.

(7) Without prejudice to the provisions of any regulations under *section 45*, an objector shall not be entitled to elaborate in writing upon, or make further submissions in writing in relation to, the grounds of objection stated in the objection, and any such elaboration, submissions or further grounds of objection that is or are received by the Agency shall not be considered by it.

(8) Any documents, particulars or other information submitted by an objector, other than such documents, particulars or other information which accompanied the objection or which were furnished to the Agency under and in accordance with a requirement of, or made pursuant to, regulations under *section 45*, shall not be considered by the Agency.

(9) (a) A person making an objection under *subsection (3)* may request an oral hearing of the objection.

(b) (i) A request for an oral hearing of an objection shall be made in writing to the Agency and shall be accompanied by such fee (if any) as may be payable in respect of such request in accordance with regulations under *section 50*.

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

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

(10) An objection, or a request for an oral hearing under *subsection (9)*, shall be made— Pt.V S.42

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

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

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

(11) (a) Where a request for an oral hearing of an objection is made in accordance with *subsection (9)*, or otherwise where an objection has been made, the Agency shall have an absolute discretion to hold an oral hearing in relation to the objection and, if it decides to hold such a hearing, it shall give notice in writing of that decision to—

(i) the applicant or the holder of the licence, as the case may be,

(ii) where relevant, the local authority in whose functional area the activity, the subject matter of the proposed waste licence or the waste licence, as the case may be, is intended to be, or is, carried on,

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

(iv) such other person as may be prescribed.

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

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

43.—(1) (a) Where—

*Section 42:
supplementary
provisions.*

(i) no objection is made in accordance with *section 42 (3)* to the Agency in relation to a decision that it proposes to make in respect of an application made to it for the grant of a waste licence or in consequence of a review conducted by it of a waste licence, or

(ii) any objection or objections that has or have been so made to it in relation thereto is or are withdrawn,

the decision of the Agency in relation to that application or in consequence of the review shall be that as notified by it under *section 42 (2)*.

(b) Where the decision of the Agency is to grant a waste licence or a revised waste licence, such a licence shall be granted by it as soon as may be after the making of the decision.

(2) Without prejudice to *section 40 (4)*, where an objection has been made in accordance with *section 42 (3)* in relation to a decision referred to in *section 42 (2)* which it proposes to make, and has not been withdrawn, the Agency shall consider such objection and any submissions, plans, documents or other information and particulars furnished to the Agency in accordance with regulations under *section 45* in relation to such objection and, where an oral hearing has been held in relation to the objection, to the report on the hearing, and as soon as may be thereafter the Agency shall decide to grant or refuse to grant the relevant licence in accordance with *section 40 (1)*.

(3) For the purposes of *subsection (2)*, the Agency may consider an objection in relation to a decision referred to in *section 42 (2)*, notwithstanding a default of compliance on the part of an objector with a requirement of, or made pursuant to, regulations under *section 45* to furnish any submissions, plans, documents or other information and particulars, without further notice to that person.

(4) It shall be the duty of the Agency to ensure that—

- (a) a decision by it under *section 42 (11)* to hold an oral hearing, or
- (b) a decision by it in respect of an application made to it for the grant of a waste licence or in consequence of a review that has been conducted by it of a waste licence, whether or not an oral hearing has been held in relation to any objection made to it in accordance with *section 42 (3)* in respect of that decision,

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 determination of any such application or the completion of any such review.

- (5) (a) A person shall not question the validity of a decision of the Agency on an application made to it for the grant of a waste licence, or in consequence of a review conducted by it of such a licence, otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (hereafter in this subsection referred to as “the Order”).
- (b) An application for leave to apply for judicial review under the Order in respect of a decision referred to in *paragraph (a)* shall—
 - (i) be made within the period of 2 months commencing on the date on which the decision is given,
 - (ii) be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to—
 - (I) the Agency,
 - (II) where the applicant for leave is not the applicant for, or the holder of, the waste licence concerned, the applicant for or holder of that licence,

(III) any person who has made an objection in accordance with *section 42 (3)* to the Agency in relation to the matter concerned,

(IV) any other person specified for that purpose by order of the High Court,

and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed.

(c) (i) The determination of the High Court of an application for leave to apply for judicial review as aforesaid or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case save with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(ii) This paragraph shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(d) References in this subsection to the Order shall be construed as including references to the Order as amended or re-enacted (with or without modification) by rules of court.

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

Conduct of oral hearing and written report thereon.

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

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

(3) The person 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 of a waste licence or a revised waste licence, as the case may be (including the conditions to be attached to such a licence) or to the refusal of such a licence.

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

Pt.V S.44

- (b) Without prejudice to the generality of *paragraph (a)*, regulations under this subsection shall provide for all of the following—
- (i) matters that may be raised at an oral hearing;
 - (ii) the persons who may be heard at an oral hearing;
 - (iii) enabling the person conducting an oral hearing to require any person to attend the hearing and give evidence in relation to any matter in question at the hearing;
 - (iv) the publication or giving of notice of the holding of an oral hearing;
 - (v) the alteration of the time and place of the holding of an oral hearing;
 - (vi) the provision of submissions, plans, documents or other information and particulars to persons;
 - (vii) the adjournment or re-opening of an oral hearing, and the publication or giving of notice regarding such an adjournment or re-opening;
 - (viii) the replacement of a person appointed to conduct an oral hearing or the conduct of a new oral hearing;
 - (ix) the withdrawal of a request for an oral hearing, and matters consequential thereon.

Regulations
regarding waste
licences.

45.—(1) The Minister shall make regulations in relation to applications for the grant of waste licences or for the review of waste licences and in relation to the grant or review of such licences, and such regulations may contain different provisions in relation to different classes of such matters.

(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 in which an application for the grant of a waste licence (“a licence”) or for the review of a licence shall be made and the form of a licence,
- (b) the time within which an application for the grant or review of a licence shall be made relative to publication or giving of a notice under *section 42 (1)* in respect of such an application,
- (c) the making of objections under *section 42 (3)*,
- (d) the publication or giving by an applicant for the grant of a licence (“an applicant”), a holder of a licence, or the Agency of specified notices,
- (e) requiring or enabling submissions, plans, documents and other information and particulars, including an environmental impact statement, to be furnished to the Agency or any other specified person by an applicant, a holder of a licence, a person making objections under *section 42 (3)*

(“an objector”) or any other person within such periods as may be specified, Pt.V S.45

- (f) requiring or enabling an applicant, a holder of a licence, an objector or any other person to furnish to the Agency or any other specified person, within such period as may be specified by the Agency, such additional information or particulars (including an environmental impact statement) relating to an application for the grant of a licence or for the review of a licence as the Agency may require or request,
- (g) requiring the production to the Agency, within such period as may be specified by it, of such evidence as it may reasonably require in order to verify any information or particulars furnished to it by an applicant, a holder of a licence, an objector or any other person under and in accordance with regulations under this section,
- (h) requiring the Agency to publish or make available for inspection or purchase by members of the public of a copy of an application for the grant of a licence or for the review of a licence or of any submissions, plans, documents or other information (including, where appropriate, an environmental impact statement and any supplementary information relating thereto), or any extract therefrom, that relate or relates to such an application,
- (i) procedures to be followed by the Agency in dealing with an application for the grant of a licence or in conducting a review of a licence (including consultation procedures in relation to an environmental impact statement), whether or not an oral hearing is held in respect thereof, and the times within which the steps in such procedures shall be taken,
- (j) without prejudice to *paragraph (i)*, the period within which a decision to grant a licence may be made,
- (k) the publishing of a decision given by the Agency in respect of an application made to it for the grant of a licence or in consequence of a review conducted by it of a licence, and the reasons therefor, and of any specified documents or other information in relation to the decision,
- (l) the information to be contained in an environmental impact statement,
- (m) requiring an applicant or a holder of a licence to defray or contribute towards the cost of any investigation carried out or caused to be carried out by the Agency in relation to an application for the grant of a licence or a review of a licence, or
- (n) specifying the conditions and circumstances under which an application for the grant of a licence may be deemed by the Agency to have been withdrawn.

(3) Regulations under this section may contain such incidental, supplementary, consequential and transitional provisions as appear to the Minister to be necessary for the purposes or in consequence of, or to give full effect to, such regulations.

Pt.V S.45

(4) A person who, in relation to an application for a waste licence or for a review of a waste licence, makes a statement in writing which to his or her knowledge is false or misleading in a material respect shall be guilty of an offence.

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

Review of waste
licences.

46.—(1) The Agency may review a waste licence—

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

(2) As soon as may be after it has completed a review of a waste licence under this section, the Agency may grant to the holder thereof a waste licence (“a revised waste licence”) the terms and conditions of which are, in such respects as the Agency thinks appropriate, different from those of the first-mentioned licence and the revised waste licence shall have effect in lieu of the first-mentioned licence.

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

- (a) the Agency considers that any emission arising from or as a result of the activity to which the waste licence relates (“an emission concerned”) constitutes a risk of environmental pollution,
- (b) there has been a material change in the nature of the activity to which the waste licence relates, or in the nature or extent of an emission concerned, or of the location in which the said activity is carried on or an adjacent area,
- (c) there has been a material change, which could not reasonably have been foreseen when the waste licence was granted, in the condition of the environment in the area in which the activity to which the licence relates is carried on,
- (d) evidence, which was not available when the waste licence was granted and would have materially affected the decision of the Agency to grant the licence subject to the conditions to which it was granted, has become available,
- (e) new standards or requirements relating to the conduct or control of the activity to which the waste licence relates, the content or nature of an emission concerned, or their effects on the environment, are prescribed under a provision of this Act or a Community act.

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

- (a) any change in the quality of the environment in the area in which the activity to which the waste licence relates is carried on, and Pt.V S.46
- (b) the development of technical knowledge in relation to environmental pollution and the effects of such pollution,

since the waste licence was granted or last reviewed.

(5) (a) Without prejudice to *subsection (1)*, the Agency shall review a waste licence upon receipt of a notification under *section 40 (13)*, or on otherwise becoming aware of the cessation of the activity to which the licence relates, or following a refusal by it to accept the surrender of the licence under *section 48 (7)*.

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

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

(ii) environmental protection,

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

47.—(1) A waste licence may be transferred from the holder to another person in accordance with this section. Transfer of waste licences.

(2) Where the holder of a waste licence desires that the licence be transferred to another person (hereafter in this section referred to as “the proposed transferee”), the holder of the licence and the proposed transferee shall jointly make an application to the Agency requesting that such a transfer be effected by the Agency.

(3) An application under *subsection (2)* shall be made in such form and include such information as may be prescribed and shall be accompanied by such fee as may be prescribed under *section 50* and the waste licence concerned.

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

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

(a) that the proposed transferee would, if he or she were an applicant for the licence, be regarded by it as a fit and proper person to be granted under *section 40* a like waste licence to the licence concerned,

(b) that the proposed transferee has complied with any requirements under *section 53*, and

Pt.V S.47

(c) regarding such other matters as may be prescribed,

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

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

Surrender of waste licences.

48.—(1) A waste licence may be surrendered by its holder, but only if the Agency accepts the surrender.

(2) The holder of a waste licence who desires to surrender it shall make an application for that purpose to the Agency, in such form, giving such information and accompanied by such evidence as may be prescribed and accompanied by such fee as may be prescribed under *section 50*.

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

(a) shall inspect the facility at which the activity to which the licence relates is carried on (“the relevant facility”), and

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

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

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

(6) Having regard to such information or evidence as is furnished to it under *paragraph (b)* of *subsection (3)* and to the results of an inspection under *paragraph (a)* of that subsection and of any monitoring, sampling and investigation required to be carried out under *subsection (4)*, the Agency shall assess the condition of the relevant facility, so far as that condition is the result of the use of the facility for the recovery or disposal of waste (whether or not carried on in accordance with the waste licence concerned) and the likely effect on any environmental media of any emissions from the relevant facility that may occur.

(7) If the Agency is satisfied that the condition of the relevant facility is not causing or likely to cause environmental pollution, it shall accept the surrender of the waste licence, but otherwise shall refuse to accept the surrender of the licence.

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

- (a) the applicant concerned,
- (b) the local authority in whose functional area the activity, the subject matter of the waste licence, has been carried on, and
- (c) any person concerned that it has consulted under *subsection (5)*,

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

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

49.—(1) Where the activity to which a waste licence relates has not been substantially commenced within the period of 3 years beginning on the date on which the licence was granted or, as may be appropriate, the period referred to in *paragraph (a)* or *(b)* of *subsection (2)*, then that licence shall cease to have effect on the expiry of the said period.

Limit on duration of waste licences.

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

- (a) specify for the purposes of *subsection (1)* a period of more than 3 years beginning on the date on which the licence is to be granted,
- (b) in the case of a waste licence granted by it, on an application which complies with such requirements (if any) as may be prescribed being made by the holder of the licence in that behalf, extend for the purposes of *subsection (1)* the period referred to in that subsection or specified by it under *paragraph (a)*, as may be appropriate.

50.—(1) The Minister shall make regulations providing for the payment to a local authority or the Agency, as appropriate, of a fee of a specified amount in respect of—

Fees.

- (a) an application made to the local authority for the grant of a waste collection permit under *section 34*,
- (b) an application made to the Agency for—
 - (i) the grant of a waste licence under *section 40*,
 - (ii) a review of such a licence under *section 46*,
 - (iii) the transfer of such a licence under *section 47*,
 - (iv) the surrender of such a licence under *section 48*; and

- (v) the extension for the purposes of *section 49* of a period mentioned in that section,
- (c) an objection made to the Agency under *section 42 (3)* or a request for an oral hearing in relation to such an objection made to it under *section 42 (9)*,

and such regulations may make provision for—

- (I) the payment of fees of different amounts in respect of different classes of such applications or other matters as aforesaid,
- (II) the exemption from the payment of any such fee in such circumstances as may be specified,
- (III) the waiver, remission or refund (in whole or in part) of any such fee in such circumstances as may be specified, and
- (IV) the manner in which such fees may be disposed of.

(2) Where, pursuant to regulations under this section, a fee is payable to a local authority or the Agency in respect of an application or request made to it, the local authority or the Agency, as the case may be, shall not consider or determine the application or request unless and until such fee is received.

Recovery of sludges and agricultural waste.

51.—(1) The provisions of this section shall apply notwithstanding the provisions of any bye-law made under section 21 of the Local Government (Water Pollution) (Amendment) Act, 1990.

(2) (a) Subject to *paragraph (b)*, a waste licence under *section 39* shall not be required for the recovery of—

- (i) sludge from a facility operated by a local authority for the treatment of water or waste water,
- (ii) blood of animal or poultry origin,
- (iii) faecal matter of animal or poultry origin in the form of manure or slurry, or
- (iv) such natural agricultural waste as may be prescribed.

(b) The Minister may make regulations amending *paragraph (a)* by adding or deleting to or from that provision any specified class or classes of waste or waste recovery activity.

(c) “Recovery”, for the purpose of this section, includes the injection of waste into land for the purpose of benefiting the carrying on of any agricultural or silvicultural activity or an ecological system.

(3) The Minister may make regulations prohibiting, or limiting or controlling in a specified manner and to a specified extent, the recovery of any waste to which *subsection (2)* applies (hereafter in this section referred to as “relevant waste”).

(4) Without prejudice to the generality of *subsection (3)*, regulations under this section may make provision in relation to all or any of the following matters:

- (a) a requirement that the recovery of relevant waste shall not be carried out without the prior written consent of the local authority in whose functional area the proposed recovery activity is to take place, and enabling that local authority to attach such conditions to such a consent as it considers appropriate,
- (b) the rate at which relevant waste may be spread on or injected into land,
- (c) specifying—
 - (i) limits in respect of the constituent elements of relevant waste or of the concentration of such elements in land on which relevant waste is recovered, and
 - (ii) maximum annual quantities of the constituent elements of relevant waste which may be recovered on land,
- (d) the treatment, sampling and analysis, in a specified manner, of relevant waste and the monitoring, sampling and analysis, in a specified manner, of land on which such waste is recovered,
- (e) restricting the use of land on or in which relevant waste is recovered,
- (f) (i) the keeping by a person of records containing specified particulars as respects—
 - (I) the production, treatment, recovery, or the transfer to another person, of relevant waste,
 - (II) the monitoring, sampling and analysis of relevant waste or of land on which such waste is recovered,
- (ii) the entry in a register required to be established and maintained for the purpose by a local authority of particulars as aforesaid,
- (iii) the furnishing of specified information to a local authority or any other specified person in relation to the matters referred to in *subparagraph (i)*,
- (g) the furnishing by a local authority to the Agency of such information regarding waste referred to in *subsection (2) (a) (i)*, in such manner and at such times, as the Agency may require and the preparation and publication by the Agency—
 - (i) of a report, by a specified date, regarding the recovery and disposal of the said waste,
 - (ii) of further reports, at specified intervals after the said date, regarding the said recovery and disposal,

Pt.V S.51

- (h) the issue of directions or guidance to local authorities with respect to the performance of their functions under regulations under this section,
- (i) requiring compliance by specified persons with specified codes of practice concerning the carrying on of any recovery activity in respect of relevant waste,
- (j) any matters consequential on, or incidental to, the foregoing.

(5) A person who contravenes a provision of regulations under this section shall be guilty of an offence.

(6) For the purpose of this section, other than *subsection (4) (a)*, “local authority” includes the corporation of a borough of any kind and the council of an urban district.

Discharges to
sewers.

52.—Section 97 of the Act of 1992 shall apply in relation to the grant of a waste licence under this Part as if a reference in that section to a licence or revised licence were a reference to a waste licence under this Part.

Financial provisions
regarding waste
recovery and
disposal.

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

- (a) decides whether to—
 - (i) grant a waste licence,
 - (ii) transfer such a licence,
- (b) conducts a review of a waste licence,

require the applicant for, or the holder of, the licence or the proposed transferee, as the case may be, to—

- (i) furnish to it such particulars in respect of such matters affecting his or her ability to meet the financial commitments or liabilities that the Agency reasonably considers will be entered into or incurred by him or her in carrying on the activity to which the licence relates or will relate, as the case may be, in accordance with the terms of the licence or in consequence of ceasing to carry on that activity as it may specify, and
- (ii) make, and furnish evidence of having so made, such financial provision as it may specify (which may include the entering into a bond or other form of security) as will, in the opinion of the Agency, be adequate to discharge the said financial commitments or liabilities.

(2) A person who, pursuant to a requirement made of him or her under *subsection (1)*, furnishes to the Agency any particulars or evidence which he or she knows to be false or misleading in a material respect shall be guilty of an offence.

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

(4) Without prejudice to the generality of *subsection (3)*, regulations under this section may specify by reference to the type of activity to which the waste licence concerned relates or will relate—

- (a) the nature of the financial provision that the Agency may require a person to make under *subsection (1) (ii)*,
- (b) the matters to be had regard to by the Agency in determining the amount of financial provision that it may require a person to make under *subsection (1) (ii)*.

54.—(1) Where a waste licence is granted under this Act in relation to an activity, and a permission has been granted under Part IV of the Act of 1963 in respect of development comprising or for the purposes of that activity, any conditions attached to that permission shall, in so far as they are for the purposes of the prevention, limitation, elimination, abatement or reduction of environmental pollution, cease to have effect.

Application of the Act of 1963 and related regulations.

(2) The grant of a permission under Part IV of the Act of 1963 in relation to any development comprising or for the purposes of a waste recovery or disposal activity shall not prejudice, affect or restrict in any way the application of any provision of this Act to such an activity.

(3) Notwithstanding section 26 of the Act of 1963 or any other provision of the Local Government (Planning and Development) Acts, 1963 to 1993, where a waste licence 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—

- (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 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.

(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 any development comprising or for the purposes of a waste recovery or disposal activity, the carrying on of which requires the grant of a waste licence, the Agency—

(a) shall consult with the planning authority in whose functional area the activity is or will be carried on in relation to any development which—

(i) is necessary to give effect to any conditions to be attached to a waste licence in respect of the activity, and

(ii) 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 waste licence such conditions related to the development aforesaid as may be specified by the said planning authority for the purposes of the proper planning and development of its functional area, or more stringent conditions as the Agency may consider necessary for the prevention, limitation, elimination, abatement or reduction of environmental pollution from the activity.

(5) Works consisting of or incidental to the carrying out of development referred to in *subsection (4) (a)* and the provision of waste collection receptacles in accordance with regulations under *section 29 (4) (o)* shall each be exempted development within the meaning, and for the purposes, of the Local Government (Planning and Development) Acts, 1963 to 1993, and a condition attached to a permission granted under Part IV of the Act of 1963 shall not prejudice, affect or restrict in any way the provision of waste collection receptacles as aforesaid.

(6) References in sections 25, 26 and 41 of the Act of 1963 to an activity in relation to which a licence under Part IV of the Act of 1992 is required shall be construed as including references to an activity in relation to which a waste licence under this Act is required.

(7) (a) Where development is proposed to be carried out by or on behalf of a local authority in its functional area, being development which comprises or is for the purposes of a waste recovery or disposal activity requiring the grant by the Agency to the local authority of a waste licence, the Minister may by order grant an exemption (if he or she is satisfied that exceptional circumstances warrant the granting of such an exemption) in respect of such development from a requirement of regulations under *section 45* to furnish an environmental impact statement.

(b) The Minister in making an order under this subsection shall comply with the provisions of Article 2 (3) of Council Directive 85/337/EEC of 27 June, 1985¹.

(c) Without prejudice to *paragraph (b)*, the Minister shall, where he or she considers it necessary to do so for the purpose of paragraph 3 (a) of Article 2 of the aforesaid Directive, specify in an order under this subsection requirements to be complied with by the local authority concerned or, as the case may be, the person who proposes to carry out the development on its behalf in relation to the matters specified in the said paragraph.

¹ O.J. No. L 175/40, 5 July, 1985

- (d) The Minister shall cause an order under this subsection to be published in the *Iris Oifigiúil*. Pt.V S.54
- (e) The reference in this subsection to a local authority's functional area is a reference to its functional area in its capacity as a planning authority.

(8) The Minister may make regulations specifying the time within which an application for a waste licence shall be made relative to an application for a permission under Part IV of the Act of 1963.

PART VI

General Provisions Regarding Environmental Protection

55.—(1) (a) Where it appears to a local authority, as respects its functional area, that it is necessary so to do in order to prevent or limit environmental pollution caused, or likely to be caused, by the holding, recovery or disposal of waste, the local authority may serve a notice under this section on a person who is or was holding, recovering or disposing of the waste, as the case may be.

Power of local authority to require measures to be taken in relation to the holding, recovery or disposal of waste.

(b) *Paragraph (a)* shall not apply in respect of the recovery or disposal of waste carried on in accordance with a waste licence, or a licence or revised licence granted under Part IV of the Act of 1992.

(2) A notice under this section may require—

- (a) the taking of specified measures which the local authority considers necessary in order to prevent or limit the environmental pollution concerned or prevent a recurrence thereof,
- (b) the cesser of the holding, recovery or disposal concerned,
- (c) the mitigation or remedying of any effects of any activity aforesaid in a specified manner,

within a specified period (not being less than 14 days commencing on the date of the service of the notice).

(3) A notice under this section—

- (a) may be served whether or not there has been a prosecution for an offence under this Act in relation to the activity concerned;
- (b) shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the activity concerned.

(4) A person on whom a notice under this section has been served may, within such period as may be specified in the notice for the purpose, make representations in writing to the local authority concerned regarding the terms of the notice, and the local authority, having considered any such representations, may amend the terms of the notice or confirm or revoke the notice, and shall inform the person of such amendment, confirmation or revocation.

Pt. VI S.55

(5) A person on whom a notice under this section has been served shall, within the period specified in the notice, comply with the terms thereof.

(6) If a person on whom a notice under this section has been served does not, within the period specified in the notice, comply with the terms thereof, the local authority concerned may take such steps as it considers reasonable and necessary to secure compliance with the notice, and may recover any expense thereby incurred from the said person as a simple contract debt in any court of competent jurisdiction.

(7) Without prejudice to the generality of *subsection (2)*, a notice under this section may require—

- (a) the removal of waste to any location or locations,
- (b) the disposal of waste in a specified manner or at a specified facility,
- (c) the taking of measures to prevent the continuance of the activity to which the notice relates,
- (d) the treatment of affected lands or waters so as to mitigate or remedy the effects of the activity concerned,
- (e) the taking of such other action as may be necessary to counteract any risk of environmental pollution arising from the activity concerned.

(8) A person who fails to comply with a notice under this section shall be guilty of an offence.

(9) Save where the context does not admit such a construction, references in this section to a notice thereunder shall, if the notice has been amended under *subsection (4)*, be construed as references to the notice as so amended.

Powers of local authority to take measures to prevent or limit environmental pollution caused by waste.

56.—(1) Where it appears to a local authority that measures are required to be taken in order to prevent or limit environmental pollution in its functional area caused, or likely to be caused, by the holding, recovery or disposal of waste, the local authority may take such steps, carry out such operations, recover or dispose of, or arrange for the recovery or disposal of, such waste or give such assistance as it considers necessary to prevent or limit such pollution or to mitigate or remedy the effects on the environment of any such activity.

(2) Where a local authority takes steps, carries out operations, recovers or disposes of, or arranges for the recovery or disposal of, waste or gives assistance under this section, the local authority may recover the costs of such steps, operations, recovery, disposal or assistance as a simple contract debt in a court of competent jurisdiction from such person as the local authority satisfies the court is a person whose act or omission necessitated such steps, operations, recovery, disposal or assistance.

(3) Nothing in this Act or an instrument made thereunder or any other enactment shall prejudice the taking of necessary action by a local authority in pursuance of the powers under this section.

57.—(1) Where, on application by any person to the High Court, that Court is satisfied that waste is being held, recovered or disposed of in a manner that causes or is likely to cause environmental pollution, it may by order—

Pt. VI

Powers of High Court in relation to the holding, recovery or disposal of waste.

- (a) require the person holding, recovering or disposing of such waste to carry out specified measures to prevent or limit, or prevent a recurrence of, such pollution, within a specified period,
- (b) require the person holding, recovering or disposing of such waste to do, refrain from or cease doing any specified act, or to refrain from or cease making any specified omission,
- (c) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

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

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

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

58.—(1) (a) Where, on application by any person to the appropriate court, that court is satisfied that another person is holding, recovering or disposing of, or has held, recovered or disposed of, waste, in a manner that is causing, or has caused, environmental pollution, that court may make an order requiring that other person to do one or more of the following, that is to say:

Remedies for unauthorised holding, recovery or disposal of waste.

- (i) to discontinue the said holding, recovery or disposal of waste within a specified period, or
 - (ii) to mitigate or remedy any effects of the said holding, recovery or disposal of waste in a specified manner and within a specified period.
- (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, 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 was 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, as respects its functional area, or the Agency, may take any steps specified in the order to mitigate or remedy any effects of the activity concerned.
 - (b) The amount of any expenditure incurred by a local authority or the Agency in relation to steps taken by it under *paragraph (a)* shall be a simple contract debt owed by the person in respect of whom the order under *subsection (1)* was made to the authority or the Agency, as the case may be, and may be recovered by it 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 judge of the District Court for the District Court district in which the activity 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 activity 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 activity concerned and shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the activity concerned. Pt.VI S.58

(7) Without prejudice to any powers of the court concerned to enforce an order under *subsection (1)*, a person who fails to comply with an order under that subsection shall be guilty of an offence.

59.—(1) Each local authority shall, save in a particular case where a provision of this Act provides to the contrary, be responsible for the supervision of, and the enforcement of the relevant provisions of this Act in relation to, the holding, recovery and disposal of waste within its functional area. Functions of local authorities in regard to waste.

(2) Nothing in *subsection (1)* shall be construed as prejudicing the right of the Agency or any other person to perform any functions conferred on it or him or her by or under any provision of this Act.

PART VII

Miscellaneous

60.—(1) The Minister may, whenever he or she thinks proper, give general directions in writing to the Agency or each local authority as to policy in relation to, as appropriate— Policy directions by Minister in relation to waste licensing, the movement of waste and other matters.

- (a) the making or review of the hazardous waste management plan or a waste management plan,
- (b) the management of waste recovery or disposal activities carried on otherwise than under a waste licence,
- (c) the granting of waste licences,
- (d) the performance by the Agency or local authority of its functions under this Act with respect to movements of waste,
- (e) matters related to matters aforesaid.

(2) In performing its functions under this Act, the Agency or each local authority concerned, as the case may be, shall have regard to any directions given to it by the Minister under this section.

(3) Save as respects the matters referred to in *paragraph (a)* thereof, *subsection (1)* shall not be construed as enabling the Minister to exercise any power or control in relation to the performance in particular circumstances by the Agency or a local authority of a function conferred on it by or under this Act.

(4) Whenever the Minister gives a direction under this section, he or she shall—

- (a) as soon as may be cause a copy of the direction to be laid before each House of the Oireachtas;

Pt.VII S.60

(b) cause a copy of the direction to be transmitted to the Agency or each local authority concerned, as the case may be;

(c) cause to be published in the *Iris Oifigiúil* a notice of the giving of the direction.

(5) A notice under *subsection (4)(c)* shall specify where a copy of the direction to which it relates may be obtained and the fee (if any) payable in respect of such a copy (which the Minister is hereby empowered to charge).

Detention and
forfeiture of certain
vehicles and
equipment.

61.—(1) (a) Where proceedings are instituted for an offence under *section 36, 39 or 51* and those proceedings are to be prosecuted on indictment, a judge of the District Court for the appropriate District Court district may, on application to him or her in that behalf by the local authority in whose functional area the offence is alleged to have been committed, or by the Agency, make an order requiring the defendant in those proceedings to enter into a bond of an amount equal to the value which the judge estimates to be the value of any vehicle or equipment owned by the defendant that is alleged by the local authority or by the Agency to have been used in the commission of the offence.

(b) In this subsection “appropriate District Court district” means the District Court district in which the offence concerned is alleged to have been committed or the defendant concerned resides or carries on business.

(2) If a defendant fails to comply with an order of a judge of the District Court under *subsection (1)*, the judge may (without prejudice to any other means of enforcing the order) make an order authorising the local authority concerned or the Agency to detain any vehicle or equipment in respect of which the first-mentioned order was made pending the determination of the proceedings for the offence concerned.

(3) If a person is convicted on indictment of an offence under *section 36, 39 or 51*, the court before which the person is convicted may order the forfeiture to the local authority in whose functional area the offence was committed or the Agency of any vehicle or equipment owned by the defendant that was used in the commission of the offence or the amount of any bond entered into by the defendant in compliance with an order under *subsection (1)*.

(4) An order under *subsection (3)* shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

(5) A local authority or the Agency may deal with or (as appropriate) dispose of, as it thinks fit, any vehicle or equipment, or the amount of any bond, forfeited to it under *subsection (3)*.

62.—(1) The Minister may by regulations provide that the provisions to which this section applies shall have effect with such modifications as may be specified in the regulations for the purpose of enabling the State to give effect to any Community act in relation to waste.

Pt.VII

Power to give effect to Community acts.

(2) This section applies to the provisions of—

(a) this Act, and

(b) Part IV of the Act of 1992.

(3) In this section “modifications” includes modifications effected by the addition to, or the deletion from, the provision concerned of any matter or thing.

63.—(1) Subject to *subsection (2)*, section 45 of the Act of 1992 shall apply in respect of any functions which may be performed by the Agency under this Act.

Agreements between Agency and other public authorities.

(2) *Subsection (1)* shall not be construed as enabling the Agency to authorise a public authority to perform any functions under *Part II* or to grant or refuse to grant a waste licence under *Part V*.

64.—The Act of 1992 is hereby amended by the insertion of the following section after section 96:

Mass balances of specified substances.

“96A.—(1) The Minister may, for the purposes of—

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

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

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

- (a) requiring the person concerned to make on specified dates or at specified intervals measurements, calculations, estimates or projections of the release of substances to environmental media,

Pt.VII S.64

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

(3) The Agency and any prescribed public authority shall each publish information that has been provided to it pursuant to regulations under this section in such manner and subject to such conditions as may be prescribed.”.

Amendment of Act of 1992 and Act of 1987.

65.—(1) The Act of 1992 is hereby amended by—

- (a) the deletion in section 3 of “the disposal of” in paragraph (c) of the definition of “emission”;
- (b) the insertion in section 83, after subsection (1), of the following subsection:

“(1A) Prior to, and for the purpose of considering an application for, the grant of a licence or a revised licence, the Agency shall carry out or cause to be carried out such investigations as it considers necessary or as may be prescribed.”.

- (c) the insertion in section 83, after subsection (3), of the following subsection:

“(3A) *Section 53 of the Waste Management Act, 1996*, shall apply in relation to a licence or revised licence under this Part, with the substitution for references in that section to the grant or review of a waste licence of references to the grant or review of a licence or revised licence under this Part and with any other necessary modifications.”.

(2) Section 30 of the Act of 1987 is hereby amended by the substitution, in subsections (1) and (2), for “unless a licence under this Act is in force in relation to the plant”, in each place where those words occur, of the following:

“save under and in accordance with a licence under this Act that is in force in relation to the plant”.

Amendment of Local Government (Water Pollution) Act, 1977.

66.—(1) The Local Government (Water Pollution) Act, 1977, is hereby amended by the insertion of the following section after section 26:

“Regulations for the prevention or limitation of water pollution.

Pt.VII S.66

26A.—(1) For the purpose of preventing or limiting water pollution, the Minister may, by regulations, prohibit or limit or control in a specified manner and to a specified extent, the production, treatment, use (in a process or otherwise), importation, distribution, storage, transport, supply or sale of any specified substance or of any article containing any specified substance.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

- (a) make different provisions for different substances or articles,
 - (b) require local authorities or other specified persons to take specified steps for the purposes of securing compliance with the regulations,
 - (c) contain such incidental, consequential and supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of such regulations.
- (3) (a) A person who contravenes a provision of regulations under this section shall be guilty of an offence.
- (b) A person guilty of an offence under this section shall be liable—
- (i) on summary conviction, to a fine not exceeding £1,000 or imprisonment for a term not exceeding 6 months or, at the discretion of the court, to both such fine and such imprisonment, or
 - (ii) on conviction on indictment, to a fine not exceeding £25,000 or imprisonment for a term not exceeding 5 years or, at the discretion of the court, to both such fine and such imprisonment.

(4) A prosecution for an offence under this section may be taken by the Minister, a local authority, or such other person as may be specified in regulations under this section.”.

(2) Section 3 of the Local Government (Water Pollution) Act, 1977, is hereby amended by the substitution for subsection (3) (inserted by the Local Government (Water Pollution) (Amendment) Act, 1990) of the following subsection:

“(3) It shall be a defence to a charge of committing an offence under this section for the accused to prove that he took all reasonable care to prevent the entry to waters to which the charge relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of

operation, that were suitable for the purpose of such prevention, and, where appropriate, that the entry to waters to which the charge relates arose from an activity carried on in accordance with a nutrient management plan approved under section 21A (inserted by the *Waste Management Act, 1996*) of the Local Government (Water Pollution) (Amendment) Act, 1990.”.

(3) The Local Government (Water Pollution) (Amendment) Act, 1990, is hereby amended by the insertion of the following section after section 21:

“Nutrient
Management Plans.

21A.—(1) Subject to subsection (2), whenever a local authority considers that, for the purposes of preventing, eliminating or minimising the entry of polluting matter to waters from an activity referred to in section 21 (1) (b) (being an activity that is carried on in its functional area) it is necessary to do so, it may serve a notice in writing under this section on—

(a) the owner of the land on which the activity is carried on, or

(b) if the owner of the said land is not in occupation thereof, the person who is in occupation of the said land, requiring the person to prepare and furnish to it for its approval under this section a plan (in this section referred to as a ‘nutrient management plan’) in relation to the activity within a specified period, being a period of not less than 5 months beginning on the date of service of the notice.

(2) A notice under subsection (1) shall not be served on a person in relation to an activity the carrying on of which requires the grant of a licence under Part IV of the Environmental Protection Agency Act, 1992.

(3) Before a local authority decides to exercise the power conferred by subsection (1), (whether generally as respects activities referred to in section 21 (1) (b) carried on on lands in its functional area or as respects such activities carried on on lands in a particular part of its functional area) it shall consult with such body or bodies as may be prescribed for the purposes of this subsection.

(4) A notice under this section—

(a) shall require that the nutrient management plan—

(i) provide such particulars of the activity concerned as are specified in the notice,

(ii) specify the quantities of such nutrients in animal and other waste as are specified in the

notice (which may include nutrients in waste as aforesaid produced from sources other than the land concerned) which it is estimated will be used in each year of the relevant period on the land concerned,

- (iii) provide that a determination of the types and concentration of nutrients in the soil of the land concerned shall be made in accordance with a programme of sampling and analysis to be determined by the local authority after consultation with the person on whom the notice is served (hereafter in this section referred to as 'the relevant person'),
- (iv) specify the maximum quantities of such nutrients as are specified in the notice that, in the opinion of the relevant person, having regard to each of the matters referred to in subsection (5), ought, in each year of the relevant period, to be applied to, or injected into, the land concerned, or such parts thereof as are specified in the notice, or applied to crops growing on that land or such parts as are so specified,
- (v) specify the times during the relevant period when the application to, or the injection into, the land concerned, or the application to crops growing thereon, of animal and other waste and chemical fertiliser ought, and ought not, in the opinion of the relevant person, to be carried out, having regard to any crop requirements and the objective of preventing, eliminating or minimising the loss of nutrients to waters,
- (vi) require the keeping and maintenance of records in respect of each year, or, in the case of the matters referred to in clause (III), the year or years concerned, of the relevant period, containing such particulars as may be determined by the local authority after consultation with the relevant person in relation to—
 - (I) the doing of the following things during the year concerned by the said person, namely—

- (A) the production, treatment, receiving from, or transfer to, another person by him of animal or other waste,
 - (B) the application to, or the injection into, the land concerned or the application to crops growing thereon, by him of animal or other waste and the times and rates at which such application or injection is carried out,
- (II) the types and quantities of chemical fertiliser applied to the land concerned during the year concerned and the times and rates at which such application is carried out,
- (III) the results of the determination referred to in subparagraph (iii) made in relation to the land concerned and, as the case may be, of any further determination of such kind made, pursuant to a requirement under paragraph (b) (ii), during the year concerned,
- (vii) require such information in relation to the matters referred to in this paragraph and, as the case may be, paragraph (b), as is specified in the notice to be furnished to the local authority,
- (b) may require that the nutrient management plan—
- (i) shall require the keeping and maintenance of records in respect of each year of the relevant period containing particulars as may be determined by the local authority after consultation with the relevant person of the concentration of such nutrients in animal or other waste as are specified in the notice that have been applied to, or injected into, the land concerned during the year concerned,
 - (ii) shall provide that a further determination of the kind referred to in paragraph (a) (iii) (whether in

respect of nutrients generally or nutrients of a class specified in a notice served by the local authority on the relevant person for the purposes of this subparagraph) shall be made at specified intervals after the determination referred to in that provision has been made,

- (iii) shall address such other matters as the local authority considers necessary for the purpose of preventing, eliminating or minimising the entry of nutrients to waters from the activity concerned and specifies in the notice.

(5) The matters referred to in subsection (4) (a) (iv) are—

- (a) the nature of the activity concerned,
- (b) the type of soil concerned and the types and concentration of nutrients in that soil,
- (c) the types of crop previously grown on the land concerned and the types of nutrient previously applied to, or injected into, that land and the rates of such application or injection, where relevant,
- (d) the types of crop grown or to be grown on the land concerned,
- (e) the intensity of the stocking of animals (if any) on the land concerned and of any other agricultural activities carried on on that land, and
- (f) the need to make efficient use of nutrients having regard to any crop requirements and the objective of preventing, eliminating or minimising the loss of nutrients to waters.

(6) In subsection (4) and the subsequent provisions of this section 'the relevant period' means the period of 12 months, or such longer period as may be specified in the notice concerned under subsection (1) or (8), as appropriate, beginning on the date that is 2 months after the approval of the nutrient management plan concerned under this section by the relevant local authority.

(7) A local authority may, as respects a nutrient management plan prepared and furnished to it in accordance with a notice under subsection (1), refuse to approve of the plan or approve thereof without modifications or make such modifications therein as it considers proper and approve of the plan as so modified.

(8) (a) A local authority, where it refuses to approve of a nutrient management plan under subsection (7), may, by service of a notice in writing on the person who furnished the plan to it, require that person to prepare and furnish to it another such plan and subsection (3) and the other provisions of this section shall apply to such a notice and such a plan as they apply to a notice under subsection (1) and a plan furnished to it pursuant to a notice under that subsection.

(b) The reference in subsection (2) to a notice under subsection (1) includes a reference to a notice under this subsection.

(9) If, upon the expiration of the period of 2 months from the date of receipt by it of a nutrient management plan prepared and furnished in accordance with a notice under this section, the local authority concerned has neither given a decision under subsection (7) to refuse to approve of the plan nor a decision thereunder to approve of the plan (by either of the means referred to in that subsection), the local authority shall be deemed to have approved of the plan under that subsection.

(10) A nutrient management plan may, with the prior written consent of the local authority which approved of the plan under this section, be varied during the relevant period.

(11) A person who fails to comply with a notice under subsection (1) or (8) within the period specified in the notice shall be guilty of an offence and be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months, or to both.

(12) Proceedings for an offence under this section may be brought by the local authority which served the notice concerned.”.

Immunity of the
Agency and local
authorities.

67.—(1) No action or other proceeding shall lie or be maintainable against the Agency or a local authority 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 exercise any power or carry out any duty conferred or imposed on the Agency or local authority by or under this Act.

(2) Where a local authority or the Agency is satisfied that any authorised person appointed by that local authority or the Agency, or any officer or employee of that local authority or the Agency, has carried out his or her duties in relation to the performance by that local authority or the Agency of its functions under this Act in a *bona fide* manner, the local authority or the Agency, as the case may be, shall indemnify the authorised person, officer or other employee against all actions or claims howsoever arising in respect of the carrying out by him or her of his or her said duties.

68.—(1) References in any enactment (other than this Act) to a permit under—

Pt.VII
Adaptation of
certain references
and transitional
provisions.

- (a) the European Communities (Waste) Regulations, 1979,
- (b) the European Communities (Toxic and Dangerous Waste) Regulations, 1982, or
- (c) the European Communities (Waste Oils) Regulations, 1992,

shall be construed as references to, as appropriate—

- (i) such a permit that is for the time being in force by virtue of *subsection (6)*,
- (ii) a waste collection permit under *Part IV*,
- (iii) a waste licence under *Part V*.

(2) Section 3 (1) of the Act of 1992 is hereby amended by the substitution of the following definition for the definition of “waste management plan”:

“ ‘waste management plan’ means—

- (a) a plan prepared under Article 4 (2) of the European Communities (Waste) Regulations, 1979, or a special waste plan within the meaning of the European Communities (Toxic and Dangerous Waste) Regulations, 1982, or
- (b) a waste management plan or a hazardous waste management plan within the meaning of the *Waste Management Act, 1996*,

that is for the time being in force;”.

(3) The provisions of section 62 of the Act of 1992 shall, in so far as they apply or have effect in relation to a particular landfill facility, cease to have effect upon the grant of a waste licence under *section 40* in respect of that facility.

(4) Section 83 (7) (b) of the Act of 1992 is hereby amended by—

- (a) the deletion in subparagraph (ii) of “or”,
- (b) the addition of the following subparagraph after subparagraph (iii):

“or

- (iv) *section 57 or 58 of the Waste Management Act, 1996*,”.

(5) Section 102 of the Act of 1992 is hereby amended by—

- (a) the insertion in subsection (1), after “Local Government (Water Pollution) Act, 1977”, of “or a waste management plan under *section 22* of the *Waste Management Act, 1996*”,
- (b) the insertion in subsection (2), after “Local Government (Water Pollution) Act, 1977,”, of “or *sections 22, 23 and 25* of the *Waste Management Act, 1996*,”.

Pt.VII S.68

(6) (a) A permit issued under the European Communities (Waste) Regulations, 1979, the European Communities (Toxic and Dangerous Waste) Regulations, 1982, or the European Communities (Waste Oils) Regulations, 1992, being a permit to which this subsection applies, shall, notwithstanding the revocation of the said Regulations by this Act, continue in force in accordance with its terms but shall cease to have effect upon, as the case may be—

(i) the grant to the holder of the permit of, as appropriate—

(I) a waste collection permit referred to in *paragraph (b)*, or

(II) a waste licence referred to in the said paragraph, or

(ii) the making of a decision by the Agency or the local authority concerned to refuse to grant to the said holder such a permit or licence.

(b) This subsection applies to an aforesaid permit if—

(i) the holder thereof has applied before the appropriate date referred to in *section 39 (1)* for the grant of a waste licence, or, as the case may be, applied before the date referred to in *section 34 (1)* for a waste collection permit, in respect of the activity to which the first-mentioned permit relates, and

(ii) the said application is made in accordance with the requirements of regulations under this Act.

Transfer of functions in relation to waste licences.

69.—(1) The Minister may by order transfer the functions of the Agency under this Act to a local authority in so far as those functions relate to waste licences authorising the carrying on within the functional area of that local authority of such activity or activities as is or are specified in the order.

(2) An order under this section may contain such ancillary, subsidiary and incidental provisions as the Minister may determine, including provisions modifying or adapting any provision of this Act for the purpose of enabling the order to have full effect.

(3) Without prejudice to the generality of *subsection (2)*, an order under this section may specify terms, conditions and restrictions upon and subject to which a function transferred by the order is to be performed by the local authority to which the function is transferred.

(4) If an order under this section is revoked the functions to which it relates shall thereupon become and be vested in the Agency.

(5) The Minister shall cause an order under this section to be published in the *Iris Oifigiúil*.

Exclusion of certain enactments relating to public health.

70.—Section 107 of the Public Health (Ireland) Act, 1878, and section 27 of the Public Health Acts Amendment Act, 1890, shall not apply in relation to waste within the meaning of this Act.

71.—(1) A vehicle shall not be abandoned on any land.

Pt.VII
Abandoned
vehicles.

(2) Where there is a contravention of *subsection (1)*—

- (a) the person who placed the vehicle at the place where it was abandoned, and
- (b) if there is a registered owner of the vehicle and the person aforesaid is not its registered owner, the registered owner,

shall each be guilty of an offence.

(3) In a prosecution for an offence under *subsection (2)*, it shall be a good defence to prove—

- (a) that the act complained of constituted the transfer of control of the vehicle concerned to a person, with his or her consent, at a facility provided by or on behalf of that person for the purpose of the recovery or disposal of vehicles (including a facility referred to in *section 38 (3)*) and that such transfer of control was not effected in contravention of *section 32*, or
- (b) in case the defendant is the registered owner of the vehicle concerned, that the abandonment of the vehicle was not authorised by him or her.

(4) Without prejudice to the provisions of *sections 55 (6)* and *56*, and notwithstanding the provisions of any regulations made under *section 97* (inserted by *section 63* of the Road Traffic Act, 1968) of the Road Traffic Act, 1961, a local authority may enter on any land upon which a vehicle has been abandoned and remove the said vehicle; a local authority shall not, other than with the consent of the occupier, enter into a private dwelling under this subsection unless it has given to the occupier of the dwelling not less than 24 hours notice in writing of its intended entry.

(5) Where, in relation to a vehicle removed from land by a local authority under *subsection (4)*—

- (a) the local authority is of the opinion that the condition of the vehicle is such that it is capable of being used as a vehicle or can, by the expenditure of a reasonable amount of money, be rendered capable of being so used, and
- (b) the local authority can, by reasonable inquiry, ascertain the name and address of the owner of the vehicle,

the local authority shall store or arrange for the storage of the vehicle and shall serve a notice on the owner informing him or her of the removal and storage and of the address of the place where the vehicle may be claimed or recovered, and such a notice shall require the owner to claim or recover it within 2 weeks of the date of the service of the notice and inform him or her of the consequences specified in *subsection (7)* of his or her failure to do so.

(6) A vehicle to which *subsection (5)* applies shall be given to a person claiming the vehicle if, but only if, he or she makes a declaration in such form as may be specified by the local authority concerned or in a form to the like effect, stating that he or she is the owner of the vehicle or is authorised by its owner to claim it, and pays to the local authority the amount of the expenditure reasonably incurred by the local authority in respect of the removal and storage of the vehicle.

(7) Where a vehicle is removed from land by a local authority under *subsection (4)*, and—

- (a) *subsection (5) (a)* does not apply in respect of the vehicle, or
- (b) the name and address of the owner of the vehicle cannot be ascertained by the local authority by reasonable inquiry, or
- (c) the said owner fails to claim the vehicle and remove it from the place where it is stored within 4 weeks of the date on which a notice under *subsection (5)* has been served on him or her,

the vehicle shall become the property of the local authority.

(8) No action shall lie in respect of anything done in good faith and without negligence in the course of the removal or storage of a vehicle under this section.

(9) A person who makes a declaration under *subsection (6)* which to his or her knowledge is false or misleading in a material respect shall be guilty of an offence.

(10) For the purposes of this section—

“abandoned”, in relation to a vehicle, includes left in such circumstances or for such period that it is reasonable to assume that the vehicle has been abandoned, and cognate words shall be construed accordingly;

“local authority” includes the corporation of a borough of any kind and the council of an urban district;

“registered owner” has the meaning assigned to it by the Road Traffic Act, 1961.

Section 4 (1).

FIRST SCHEDULE

Categories of Waste

1. Production or consumption residues not otherwise specified in this Schedule.
2. Products which have not been manufactured in accordance with the specifications relating to them.
3. Products whose date for appropriate use has expired.
4. Materials spilled, lost or which have undergone any other mishap (including any materials contaminated as a result of any such mishap).
5. Materials contaminated or soiled as a result of planned actions.
6. Unusable parts.
7. Substances which no longer perform satisfactorily.
8. Residues of industrial processes.

9. Residues from pollution abatement processes. Sch.1
10. Machining or finishing residues.
11. Residues from the extraction and processing of raw materials.
12. Adulterated materials.
13. Any materials, substances or products whose use is prohibited by or under any enactment.
14. Products for which the holder has no further use.
15. Contaminated materials, substances or products resulting from any remedial action taken with respect to land.
16. Any materials, substances or products which are not otherwise specified in this Schedule.

SECOND SCHEDULE

Section 4 (2).

Hazardous Waste

Part I

Categories or Generic Types of Hazardous Waste

Category I Waste

1. Anatomical substances, hospital or other clinical waste.
2. Pharmaceutical, medicinal or veterinary compounds.
3. Wood preservatives.
4. Biocides or phyto-pharmaceutical substances.
5. Residue from substances employed as solvents.
6. Halogenated organic substances not employed as solvents, excluding inert polymerized materials.
7. Tempering salts containing cyanides.
8. Mineral oils or oily substances (including cutting sludges).
9. Mixtures or emulsions of oil and water or hydrocarbon and water.
10. Substances containing polychlorinated biphenyls or polychlorinated terphenyls (including dielectrics).
11. Tarry materials arising from refining, distillation or any pyrolytic treatment (including still bottoms).
12. Inks, dyes, pigments, paints, lacquers or varnishes.
13. Resins, latex, plasticizers, glues or adhesives.

Sch.2 Pt.I

14. Chemical substances arising from research and development or teaching activities (including laboratory residues) which are not identified or are new and whose effects on humans or the environment are not known.
15. Pyrotechnics or other explosive materials.
16. Photographic chemicals or processing materials.
17. Any material contaminated with any congener of polychlorinated dibenzo-furan.
18. Any material contaminated with any congener of polychlorinated dibenzo-p-dioxin.

Category II Waste

19. Animal or vegetable soaps, fats or waxes.
20. Non-halogenated organic substances not employed as solvents.
21. Inorganic substances without metals or metal compounds.
22. Ashes or cinders.
23. Soil, sand or clay (including dredging spoils).
24. Non-cyanidic tempering salts.
25. Metallic dust or powder.
26. Spent catalyst materials.
27. Liquids or sludges containing metals or metal compounds.
28. Residue (other than the substances mentioned in *paragraphs 29, 30 and 33*) from pollution control operations (including baghouse dusts).
29. Scrubber sludges.
30. Sludges from water purification plants.
31. Decarbonization residue.
32. Ion-exchange column residue.
33. Sewage sludges, untreated or unsuitable for use in agriculture.
34. Residue from cleaning of tanks or equipment.
35. Contaminated equipment.
36. Contaminated containers (including packaging and gas cylinders).
37. Batteries or other electrical cells.
38. Vegetable oils.
39. Materials resulting from the selective collection of waste from households.
40. Any other waste.

Constituents of Category II Waste which render it hazardous when it has the properties specified in Part III

41. Beryllium or beryllium compounds.
42. Vanadium compounds.
43. Chromium (VI) compounds.
44. Cobalt compounds.
45. Nickel compounds.
46. Copper compounds.
47. Zinc compounds.
48. Arsenic or arsenic compounds.
49. Selenium or selenium compounds.
50. Silver compounds.
51. Cadmium or cadmium compounds.
52. Tin compounds.
53. Antimony or antimony compounds.
54. Tellurium or tellurium compounds.
55. Barium compounds, excluding barium sulphate.
56. Mercury or mercury compounds.
57. Thallium or thallium compounds.
58. Lead or lead compounds.
59. Inorganic sulphides.
60. Inorganic fluorine compounds, excluding calcium fluoride.
61. Inorganic cyanides.
62. Any of the following alkaline or alkaline earth metals, namely, lithium, sodium, potassium, calcium, magnesium in uncombined form.
63. Acidic solutions or acids in solid form.
64. Basic solutions or bases in solid form.
65. Asbestos (dust or fibres).
66. Phosphorus: phosphorus compounds, excluding mineral phosphates.
67. Metal carbonyls.
68. Peroxides.
69. Chlorates.
70. Perchlorates.

71. Azides.
72. Polychlorinated biphenyls or polychlorinated terphenyls.
73. Pharmaceutical or veterinary compounds.
74. Biocides or phyto-pharmaceutical substances (including pesticides).
75. Infectious substances.
76. Creosotes.
77. Isocyanates or thiocyanates.
78. Organic cyanides (including nitriles).
79. Phenols or phenol compounds.
80. Halogenated solvents.
81. Organic solvents, excluding halogenated solvents.
82. Organohalogen compounds, excluding inert polymerized materials and other substances referred to in this Part.
83. Aromatic compounds; polycyclic and heterocyclic organic compounds.
84. Aliphatic amines.
85. Aromatic amines.
86. Ethers.
87. Substances of an explosive character, excluding those referred to elsewhere in this Part.
88. Sulphur organic compounds.
89. Any congener of polychlorinated dibenzo-furan.
90. Any congener of polychlorinated dibenzo-p-dioxin.
91. Hydrocarbons and their oxygen, nitrogen or sulphur compounds not otherwise referred to in this Part.

Part III

Properties of Waste which render it hazardous

There is set out in each paragraph of this Part a general term denoting a particular property of waste which renders it hazardous, followed by an explanation of such general term by reference to a description of substances or preparations which possess the particular property.

92. "Explosive": substances or preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene.
93. "Oxidizing": substances or preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances.

94. "Highly flammable":
 - (a) liquid substances or preparations having a flash point below 21°C (including extremely flammable liquids), or
 - (b) substances or preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or
 - (c) solid substances or preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal of the source of ignition, or
 - (d) gaseous substances or preparations which are flammable in air at normal pressure, or
 - (e) substances or preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities.
95. "Flammable": liquid substances or preparations having a flash point of not less than 21°C and not more than 55°C.
96. "Irritant": non-corrosive substances or preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation.
97. "Harmful": substances or preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.
98. "Toxic": substances or preparations (including very toxic substances or preparations) which, if they are inhaled or ingested or if they penetrate the skin, may cause serious, acute or chronic health risks or death.
99. "Carcinogenic": substances or preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.
100. "Corrosive": substances or preparations which may destroy living tissue on contact.
101. "Infectious": substances containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in humans or other living organisms.
102. "Teratogenic": substances or preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence.
103. "Mutagenic": substances or preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence.
104. "Ecotoxic": substances or preparations which present or may present immediate or delayed risks for one or more sectors of the environment.

105. “Residuary hazardous property”:

- (a) substances or preparations which release toxic or very toxic gases in contact with water, air or an acid, or
- (b) substances or preparations capable by any means, after being disposed of, of yielding another substance which possesses any property referred to in this or any other paragraph of this Part.

Section 4 (3).

THIRD SCHEDULE

Waste Disposal Activities

1. Deposit on, in or under land.
2. Land treatment, including biodegradation of liquid or sludge discards in soils.
3. Deep injection of the soil, including injection of pumpable discards into wells, salt domes or naturally occurring repositories.
4. Surface impoundment, including placement of liquid or sludge discards into pits, ponds or lagoons.
5. Specially engineered landfill, including placement into lined discrete cells which are capped and isolated from one another and the environment.
6. Biological treatment not referred to elsewhere in this Schedule which results in final compounds or mixtures which are disposed of by means of any activity referred to in this Schedule.
7. Physico-chemical treatment not referred to elsewhere in this Schedule which results in final compounds or mixtures which are disposed of by means of any activity referred to in this Schedule.
8. Incineration on land or at sea.
9. Permanent storage, including emplacement of containers in a mine.
10. Release of waste into a water body (including a seabed insertion).
11. Blending or mixture prior to submission to any activity referred to in this Schedule.
12. Repackaging prior to submission to any activity referred to in this Schedule.
13. Storage prior to submission to any activity referred to in this Schedule, other than temporary storage, pending collection, on the premises where the waste concerned is produced.

FOURTH SCHEDULE

Section 4 (4).

Waste Recovery Activities

1. Solvent reclamation or regeneration.
2. Recycling or reclamation of organic substances which are not used as solvents.
3. Recycling or reclamation of metals and metal compounds.
4. Recycling or reclamation of other inorganic materials.
5. Regeneration of acids or bases.
6. Recovery of components used for pollution abatement.
7. Recovery of components from catalysts.
8. Oil re-refining or other re-uses of oil.
9. Use of any waste principally as a fuel or other means to generate energy.
10. Spreading of any waste on land with a consequential benefit for an agricultural activity or ecological system, including composting and other biological transformation processes.
11. Use of waste obtained from any activity referred to in a preceding paragraph of this Schedule.
12. Exchange of waste for submission to any activity referred to in a preceding paragraph of this Schedule.
13. Storage of waste intended for submission to any activity referred to in a preceding paragraph of this Schedule, other than temporary storage, pending collection, on the premises where such waste is produced.

FIFTH SCHEDULE

Repeals and Revocations

Part I

Enactments Repealed

Session and Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)
41 and 42 Vict., c.52	Public Health (Ireland) Act, 1878	Sections 28, 35, 36, 37, 37A, 52, 53, 54, 55, 60 and 63A.
53 and 54 Vict., c.59	Public Health Acts Amendment Act, 1890	Section 26.
53 and 54 Vict., c.ccxlvi	Dublin Corporation Act, 1890	Section 63.
7 Edw.7, c.53	Public Health Acts Amendment Act, 1907	Sections 19, 28, 29 and 48.
No. 1 of 1942	Water Supplies Act, 1942	Section 10A.
No. 11 of 1982	Litter Act, 1982	Sections 9, 10, 11, 12 and 13.
No. 7 of 1992	Environmental Protection Agency Act, 1992	Section 96 (4).

Statutory Instruments Revoked

S.I. Number and Year (1)	Citation (2)	Extent of Revocation (3)
S.I. No. 390 of 1979	The European Communities (Waste) Regulations, 1979	The whole Regulations.
S.I. No. 33 of 1982	The European Communities (Toxic and Dangerous Waste) Regulations, 1982	The whole Regulations.
S.I. No. 108 of 1984	The European Communities (Waste) Regulations, 1984	The whole Regulations.
S.I. No. 30 of 1990	The European Communities (Asbestos Waste) Regulations, 1990	The whole Regulations.
S.I. No. 183 of 1991	European Communities (Use of Sewage Sludge in Agriculture) Regulations, 1991	The whole Regulations.
S.I. No. 399 of 1992	The European Communities (Waste Oils) Regulations, 1992	The whole Regulations.
S.I. No. 90 of 1994	The European Communities (Asbestos Waste) Regulations, 1994	The whole Regulations.
S.I. No. 121 of 1994	The European Communities (Transfrontier Shipment of Waste) Regulations, 1994	The whole Regulations.
S.I. No. 262 of 1994	The European Communities (Batteries and Accumulators) Regulations, 1994	The whole Regulations.