

GOVERNMENT OF ZAMBIA

ACT

No. 12 of 1999

Date of Assent: 23rd December, 1999

**An Act to amend the Environmental Protection and
Pollution Control Act**

[24th December, 1999

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Environmental Protection and Pollution Control (Amendment) Act, 1999, and shall be read as one with the Environmental Protection and Pollution Control Act, in this Act referred to as the principal Act.

Short title

Cap. 204

2. Section *two* of the principal Act is amended—

Amendment
of section 2

(a) by the deletion of the definition of " conservation " and the substitution therefor of the following:

" conservation " means the sustainable management and use of natural resources and the environment so that they continue to provide the required benefits to man and other living things;

(b) by the insertion in the appropriate places of the following new definitions:

" Director of Public Prosecutions " means the person appointed Director of Public Prosecutions under article *fifty-six* of the Constitution;

Cap. 1

" inspector " means the person appointed inspector under section *eighty-three*; and

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" permit " means a document authorising activities as specified under this Act.

Amendment
of section 4

3. Section *four* of the principal Act is amended—

(a) by the deletion of subsection (1) and the substitution therefor of the following subsections:

" (1) The Council shall consist of the following members appointed by the Minister:

(a) the Chairman;

(b) a representative from the following Ministries or organisations:

(i) the ministry responsible for environment and natural resources;

(ii) the ministry responsible for mines and minerals development;

(iii) the ministry responsible for local government and housing;

(iv) the ministry responsible for labour and social security;

(v) the ministry responsible for education;

(vi) the ministry responsible for health;

(vii) the ministry responsible for energy and water development;

(viii) the ministry responsible for food, agriculture and fisheries;

(ix) the Zambia Wildlife Authority;

(x) the Chamber of Mines;

(xi) the Zambia Association of Chambers of Commerce and Industry;

(xii) a non-governmental organisation concerned with the conservation of nature designated by the Chairperson of that organisation;

(xiii) the national Institute for Scientific and Industrial Research; and

(xiv) the Zambia Bureau of Standards.

- (2) The members shall appoint a Vice-Chairman from amongst themselves. "; and
(b) by the re-numbering of subsection (2) as subsection (3).
4. Section *five* of the principal Act is amended— Amendment
of section 5
- (a) by the deletion of subsection (1) and the substitution therefor of the following subsection:
" (1) A member shall hold office for a period of three years and shall be eligible for re-appointment but shall not hold office for more than two terms ";
- (b) by the deletion of the word " or " at the end of paragraph (f);
- (c) by the insertion after paragraph (f) of the following new paragraph:
" (g) if he ceases to be a representative of the organisation or Ministry that appointed him: or " and
- (d) by the re-numbering of paragraph (g) as paragraph (h).
5. The principal Act is amended by the deletion of the word " protection " wherever it appears and substitution therefor of the word " management ". General
amendment
of Act
6. Section *six* of the principal Act is amended— Amendment
of section 6
- (a) in subsection (1)—
- (i) by the deletion of the word " protect " and the substitution therefor of the word " conserve "; and
- (ii) by the insertion of the word " prevent " before the words " and control pollution ";
- (b) in subsection (2)—
- (i) by deletion in paragraph (a) of the word " good " and the substitution therefor of the word " sustainable ";
- (ii) by the insertion in paragraph (b) of the words " preventing and " between the words " at " and " controlling ";
- (iii) by the deletion in paragraph (d) of the words " environmental conservation, protection and pollution control " and the substitution therefor of the words " environmental conservation, prevention and control of pollution ";

(iv) by the deletion in paragraph (g) of the words " protection of the environment and control of pollution " and the substitution therefor of the words " management of the environment, prevention and control of pollution ";

(v) by the deletion in paragraph (m) of the words " and the protection ";

(vi) by the deletion in paragraph (n) of the words " environmental and natural resources use and protection " and the substitution therefor of the words " sustainable management and use of the natural resources and the environment ";

(vii) by the deletion in paragraph (q) of the word " protection "; and

(viii) by the deletion in paragraph (t) of the words " protection of the environment and the control of pollution " and the substitution therefor of the words " management of the environment, prevention and control of pollution ".

Amendment of section 21

7. Section *twenty-one* of the principal Act is amended in subsection (3)—

(i) by the deletion of the words " Council and any Minister " and the substitution therefor of the words " Council and the Minister "; and

(ii) by the deletion in paragraph (d) of the word " proper " and the substitution therefor of the word " sustainable ".

Amendment of section 23

8. Section *twenty-three* of the principal Act is amended in paragraph (c) by the deletion of the word " preservation " and the substitution therefor of the word " conservation ".

Amendment of section 36

9. Section *thirty-six* of the principal Act is amended in paragraph (a) by the deletion of the words " air ambient " and the substitution therefor of the words " ambient air ".

Repeal and replacement of section 42

10. The principal Act is amended by the deletion of section *forty-two* and the substitution therefor of the following section:

Permit or licence to emit pollutants

" 42. An owner or operator of an undertaking, industry or business emitting or likely to emit a pollutant which is likely to cause air pollution or whom the inspectorate so requests, shall apply to the inspectorate for a permit or licence".

- 11.** Section *forty-six* of the principal Act is amended by the insertion after the word "licence" of the words "or permit". Amendment of section 46
- 12.** Section *forty-seven* of the principal Act is amended— Amendment of section 47
- (a) by the deletion of the definition of "licence" and the substitution therefor of the following definition:
- "licence" means a licence issued under this Part to transport waste or to operate a waste disposal site or plant, or to generate or store hazardous wastes; and
- (b) by the deletion of the definition of "management" and the substitution therefor of the following definition:
- "waste management" means the collection, transportation and disposal of waste.
- 13.** Section *forty-nine* of the principal Act is amended in paragraph (k) by the insertion after the word "services" of the words "on waste management". Amendment of section 49
- 14.** Section *fifty* of the principal Act is amended by the deletion of subsection (3) and the substitution therefor of the following subsection: Amendment of section 50
- "(3) A person shall not operate a waste disposal site or plant or generate or store hazardous waste without a permit or licence."
- 15.** Section *fifty-one* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following subsection. Amendment of section 51
- "(1) The inspectorate may, on application, grant a licence to generate or store hazardous waste or to transport or operate a waste disposal site or plant subject to such conditions as it may impose."
- 16.** Section *fifty-two* of the principal Act is amended— Amendment of section 52
- (a) in subsection (1) by the insertion of the words "or store" between the words "generate" and "hazardous"; and
- (b) by the deletion of subsection (2) and the substitution therefor of the following subsection:
- "(2) An application for a licence made under subsection (1) shall only be granted after consultation with the relevant local authorities:
- Provided that where a local authority makes the application, the application shall be granted with the approval of the town and country planning authority."
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Amendment
of section 59

17. Section *fifty-nine* of the principal Act is amended in subsection (1)—

(a) by the insertion after the word "import" of a comma and the word "export"; and

(b) by the insertion after the word "importing" of the word "exporting".

Amendment
of section 64

18. Section *sixty-four* of the principal Act is amended—

(a) in subsection (2) by the insertion after the words "deliver for importation to" of the words "export, deliver for exportation to, "; and

(b) in subsection (3) by the deletion of the full stop at the end of that subsection and the substitution therefor of the words "or to both".

Amendment
of section 65

19. Section *sixty-five* of the principal Act is amended by the deletion of subsection (4).

Amendment
of section 74

20. Section *seventy-four* of the principal Act is amended in subsection (1) by the deletion of the words "seventy-five" and the substitution therefor of the word "ninety".

Amendment
of section 81

21. Section *eighty-one* of the principal Act is amended by the insertion after the word "prevention" of the words "and control".

Amendment
of section 84

22. Section *eighty-four* of the principal Act is amended by the insertion immediately after subsection (4) of the following new subsections:

"(5) An inspector may seize or detain any substance, material, matter, vehicle, aircraft or boat where—

(a) the inspector has reasonable grounds to believe that the substance, material, matter, vehicle, aircraft or boat is causing pollution contrary to this Act; or

(b) the inspector has reasonable grounds to believe that the vehicle or boat is transporting or hoarding any matter or article causing or likely to cause pollution contrary to the requirements of this Act.

(6) Where an inspector seizes or detains any substance, material, matter, vehicle, aircraft or boat under subsection (5), the inspector shall give the person from whom the substance, material, matter, vehicle, aircraft or boat is seized, a notice in the prescribed form.

(7) Where—

- (a) the Director of Public Prosecutions advises the Inspectorate in writing that no prosecution shall be instituted consequent upon any search or seizure under this Act; or
- (b) the person from whom any substance, material, matter, vehicle, aircraft or boat was seized is not convicted of an offence under this Act;

the inspector shall return the substance, material, matter, vehicle, aircraft or boat to the owner or the person from whose custody the substance was taken within ten days from the date of receipt by the Inspectorate of such information."

23. The principal Act is amended by the insertion immediately after section *eighty-four* of the following new sections:

Insertion of
new sections
84A and 84B

" 84A. (1) An inspector or police officer may, without warrant, arrest any person and keep that person in custody where—

Power of
arrest

- (a) the person is found committing an offence or is reasonably suspected of having committed an offence under this Act;
- (b) upon being requested by the inspector or the police officer, the person wilfully fails or refuses to furnish that person's name, address or other relevant information to the satisfaction of the inspector or police officer; and
- (c) the inspector or police officer has reasonable grounds to believe that unless arrested, the person will—
 - (i) escape or cause unreasonable delay, trouble or expense in being made answerable to justice;
 - (ii) interfere with the witnesses; or
 - (iii) tamper with or destroy relevant evidence or material.

(2) Subject to subsections (3) and (4), any person arrested under subsection (1) shall be taken before a court of competent jurisdiction as soon as is practicable, and shall not be detained for longer than is reasonably necessary for the purpose.

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

(4) Where any person is arrested under subsection (1) or surrendered to a police post or station under subsection (3), a police officer shall if it does not appear practicable to bring that person before a court within twenty-four hours after the person was so taken into custody, inquire into the case and unless the offence appears to the police officer to be of a serious nature release the person, on executing a bond, with or without sureties for a reasonable amount to appear before a competent court at a time and place to be named in the bond; but where any person is retained in custody by a police officer that person shall be brought before a court as soon as is practicable.

Immunity of
officers of
Council

84B. An inspector or officer of the Council shall not be liable in respect of any act done or omitted to be done in good faith by the inspector or officer in the exercise of duties and powers under this Act or any other written law."

Amendment
of section 85

24. Section *eighty-five* of the principal Act is amended in subsection (1)—

(a) by the deletion in paragraph (a) of the word " or " at the end of that paragraph;

(b) by the insertion immediately after paragraph (a) of the following paragraph:

" (b) assaults an inspector in the lawful exercise of duties and powers under this Act; and; " or

(c) by the re-numbering of paragraph (b) as paragraph (c).

Amendment
of section 91

25. Section *ninety-one* of the principal Act is amended—

(a) in subsection (1) by the deletion of the word " fifteen " and the substitution therefor of the word " sixty "; and

(b) in subsection (2) by the deletion of the word " seven thousand, five hundred " and the substitution therefor of the words " thirty thousand ".

Insertion of
new sections
91A, 91B,
91C, 91D
and 91E

26. The principal Act is amended by the insertion immediately after section *ninety-one* of the following new sections:

" Forfeiture
on conviction

91A. (1) Subject to the other provisions of this section, where any person is convicted of an offence under this Act, the court may, on application by an inspector or police officer, in

addition to any other penalty imposed, declare any matter, article, vehicle, aircraft or boat used in the commission of the offence to be forfeited to the State without compensation and shall order the matter, article, aircraft, vehicle or boat to be disposed of by the Inspectorate by public auction.

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

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

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

(5) The Inspectorate shall, where the article, matter, vehicle, aircraft, or boat is registered in the name of any person other than the convicted person, within seven days after the publication of the notice in the *Gazette*, cause a copy to be sent by registered post to the person at the address indicated on the register.

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

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

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

(8) In any proceedings brought under subsection (6), the onus of proof shall be on the applicant and no order discharging the conditional order shall be made unless the applicant has adduced evidence and proved to the satisfaction of the

court that the applicant was not in any manner privy to the offence and that the matter, article, vehicle, aircraft, or boat was at the time of the commission of the offence, used for such purpose without the applicant's knowledge or consent, and without any negligent disregard on the part of the applicant of its use by the convicted person.

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

Cap. 399

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

Disposal of
matter,
article,
vehicle,
aircraft or
boat

91B. (1) Where any matter, article, vehicle, aircraft or boat is seized under this Act in relation to or in connection with the commission of an offence under this Act and --

- (a) the person suspected of having committed the offence is unknown;
- (b) the person suspected of having committed the offence cannot be found for the purpose of service of the process of the court charging that person with the offence; or
- (c) having been served with such process, the person suspected of having committed the offence fails to appear in answer to the charge;

the Inspectorate may, one month after publication of a notice of its intention so to do, in an issue of a newspaper of general circulation in the district in which the offence is alleged to have been committed, apply by way of an *ex-parte* original

application, to the court for an order declaring the matter, article, vehicle, aircraft or boat, to be forfeited to the State without compensation and ordering it to be disposed of as the court may consider fit.

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

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

(4) Where the matter, article, vehicle, aircraft or boat is sold, the proceeds shall be held by the Inspectorate pending the determination of any proceedings brought in respect of the offence and shall be dealt with by the Inspectorate as the court may direct.

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

91C. (1) The Director of Public Prosecutions may at the request of the Council in writing appoint by name or rank any inspector to undertake or assist in undertaking and prosecuting criminal proceedings in respect of any offence alleged to have been committed by any person in contravention of this Act, and may at any time, without assigning any reason cancel any such appointment.

Prosecution
of offences

(2) In undertaking or prosecuting any proceedings under subsection (1), the inspector shall act in accordance with the general or special instruction of the Director of Public Prosecutions and shall for the purpose of any such prosecution have the powers of a public prosecutor appointed under any law for the time being in force.

Power to make orders on process in premises, plant and machinery

91D. (1) An inspector shall, by way of an *ex-parte* application, apply to a court for an order in respect of any premises on which an offence is suspected of being committed under this Act—

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

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

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

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

- (a) that seven days notice of the intention to make an application under this section stating the time at which it had been made, has been served on the occupier of the premises;
- (b) that the carrying on or use of the operation or process on any part of the premises is causing pollution likely to cause significant damage to human, plant or animal health or the environment; or
- (c) that any machinery, plant, equipment or appliance is being used so as to cause significant damage to human, plant or animal health or the environment: the court may make an interim order prohibiting either absolutely or subject to conditions the use of the plant, machinery, equipment or appliance or the carrying on or use of the operation or process until the earliest opportunity for hearing and determining the application.

(4) Where after the hearing of the application by an inspector under subsection (1) the court is satisfied on evidence

submitted by an inspector and after affording the owner or occupier an opportunity to be heard, the court may—

- (a) prohibit the use of the machinery, plant, equipment or appliance in question unless satisfied that it can be repaired, altered or moved so as to permit the use thereof without the polluting effect, in which case the court may prohibit its use until it has been so repaired, altered or moved;
- (b) prohibit the carrying on or use of the operation or process in question unless satisfied that there shall be taken such steps as will enable it to be carried on or used otherwise than in the manner causing pollution or causing significant damage to human, plant or animal health or the environment, in which case the court may prohibit the use of the machinery, plant equipment or appliance or the carrying on or use of the operation or process until such steps are taken in the course of the carrying on or the use of it; or
- (c) make such other order as the court may consider appropriate.

91E. (1) An inspector may, where satisfied that any person has committed an offence for which the penalty does not exceed one thousand penalty units or where a person has admitted the commission of an offence under this Act for which the penalty does not exceed one thousand penalty units, summarily demand from the person the payment of a fine not exceeding eight hundred penalty units in respect of such offence.

Summary
imposition
of penalties

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

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

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

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

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

(a) fails to issue a receipt to the person making the payment as required under subsection (5);

(b) fails to account for any payment made under this section; or

(c) in any manner misuses or puts to personal use any payment made under this section;

commits an offence and is liable, on conviction, to a fine not exceeding five thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Amendment
of section 93

27. Section *ninety-three* of the principal Act is amended by the insertion after the words " in the *Gazette* " of the words " and in at least three issues of a newspaper in general circulation in the Republic ".

Amendment
of section 96

28. Section *ninety-six* of the principal Act is amended by the insertion immediately before the word " control " of the words " prevention and ".
