

ENVIRONMENT MANAGEMENT BILL, 2016

MEMORANDUM

This Bill seeks to repeal the Environment Management Act (Cap 60:02) and replace it with new legislation which provides for a more responsive legal framework for the protection and management of the environment and the conservation and sustainable utilization of natural resources, in light of new emerging issues in environment and natural resources management.

The Bill is divided into seventeen parts as follows—

Part I contains preliminary provisions and definitions of terms used throughout the Bill.

Part II contains general principles of environmental management; the right of every person in Malawi to a clean and healthy environment; and the need to ensure public participation in environmental management.

Parts III and IV are on administration and institutional framework of the Act. Part III establishes the Environment Protection Authority (hereinafter referred to as the “Authority”) and makes provision for composition of the Authority; tenure and vacation of office of members of the Authority; the secretariat of the Authority; and the powers and functions of the Authority. Part IV provides for the establishment of various advisory committees on environmental issues.

Part V deals with environmental planning at national level and district level. At national level, the Authority is mandated to prepare a National Environment Action Plan whilst at district level, every District Environment Sub-Committee in consultation with the Authority has to prepare a District Environment Action Plan and a District State of the Environment Report. Further, this Part also contains provisions requiring a Strategic Environment Assessment to be done by any institution which intends to develop policies, legislation, programmes, development plans and physical plans that are likely to have an adverse effect on the management, conservation and enhancement of the environment or sustainable management of natural resources.

(ii)

Environment Management

Part VI contains provisions on requirements for an environmental and social impact assessment on certain projects and on how the environmental and social impact assessment should be conducted. In addition, the Part provides that the Authority can carry out environmental audits and environmental monitoring of any project.

Part VII provides for the establishment of environmental quality standards by the Authority, in consultation with lead agencies. The environmental quality standards include air quality standards; water quality standards; standards for discharge of effluent into water; standards for control of obnoxious smells; standards for control of noise and vibration; soil quality standards; standards for minimization of radiation; other environmental quality standards and standards under other written law.

Part VIII provides for the management of the environment and natural resources. It contains provisions for the management of rivers and lakes; management of wetlands; protection of natural heritage sites; management of hill tops; hill sides and mountainous areas; conservation of energy and renewable sources; protection of the ozone layer; control and management of factors affecting climate change; and waste management.

Part IX provides for pollution control by prohibiting unlawful discharge into the environment. The Part also contains offences and penalties.

Part X contains provisions dealing with biological and genetic resources. It also includes provisions on the control and management of alien and invasive species.

Part XI provides for the issuance of environmental protection orders and environmental easements.

Part XII provides for the establishment of an inspectorate, the powers of environmental inspectors and the keeping of records by the Authority.

Parts XIII and XIV deal with financial provisions. The Parts provide for the revenue of the Authority and the establishment and application of the Environmental Fund.

Part XV provides for offences and their penalties.

Part XVI provides for the establishment of the Environmental Tribunal and sets out its powers.

Part XVII contains miscellaneous provisions such as the power of the Authority to make rules, and on the repeal of the Environment Management Act.

ENVIRONMENT MANAGEMENT BILL, 2016,

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II — GENERAL PRINCIPLES

3. National environmental policy
4. Right to clean and healthy environment
5. Public participation in environmental management
6. Inconsistent provisions in other written laws

PART III — THE ENVIRONMENT PROTECTION AUTHORITY

7. Establishment of Environment Protection Authority
8. Powers of the Authority
9. Functions of the Authority
10. Composition of the Authority
11. Tenure of office of members of the Authority
12. Vacancies
13. Secretariat of the Authority
14. Meetings of the Authority
15. Remuneration of members of the Authority
16. Confidentiality
17. Disclosure of conflict of interest
18. Annual report
19. Protection of members and employees

SECTION

PART IV— OTHER INSTITUTIONAL ARRANGMENTS FOR ENVIRONMENTAL MANAGEMENT

20. Oversight role of Authority
21. Delegation of functions of the Authority
22. Powers of the Authority in respect of lead agencies
23. Roles of lead agencies
24. Reporting responsibilities of lead agencies
25. Advisory committees
26. District Environment Sub-Committee
27. Local Environment and Natural Resources Committee

PART V — ENVIRONMENTAL PLANNING

28. Environmental planning at national level
29. Environmental planning at district level
30. Strategic Environmental Assessment

PART VI — ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT, AUDITS AND MONITORING

31. Environmental and Social Impact Assessment Reports
32. Environmental audits
33. Environmental monitoring
34. Fees

PART VII — ENVIRONMENTAL STANDARDS

35. Basis for environmental quality standards
36. Air quality standards
37. Water quality standards
38. Standards for discharge of effluent into water
39. Standards for control of obnoxious smells
40. Standards for control of noise and vibration
41. Soil quality standards
42. Standards for minimization of impact of ionizing and other radiation
43. Other environmental quality standards
44. Standards under other written law

PART VIII — MANAGEMENT OF THE ENVIRONMENT AND NATURAL RESOURCES

45. Regulation of use and management of rivers and lakes
46. Protection of traditional and indigenous interests and rights
47. Management of riverbanks and lake shores

SECTION

48. Regulation of use and management of wetlands
49. Protection of natural heritage sites
50. Identification of hilly and mountainous areas
51. Measures for the management of hill tops, hill sides and mountainous areas
52. Conservation of energy and use of renewable sources
53. Protection of the ozone layer
54. Control and management of factors affecting climate change
55. Duty to minimize and manage waste
56. Waste management
57. Licence for waste
58. Exportation of hazardous waste
59. Guidelines for management of toxic and hazardous substances
60. Prohibition of discharge of hazardous substances or mixture containing oil into the environment

PART IX — POLLUTION CONTROL

61. Discharge of pollutants
62. Discharge of pollutants into aquatic environment
63. Discharge of effluent
64. Air pollution
65. Noise pollution emissions in excess of established standards
66. Environmental emergency
67. Environmental incentives

PART X — BIOLOGICAL AND GENETIC RESOURCES

68. Biological and genetic resources
69. Access to genetic resources
70. Conservation of biological resources
71. Conservation of biological resources in situ
72. Conservation of biological resources ex situ
73. Control and management of alien and invasive species

PART XI — ENVIRONMENTAL PROTECTION ORDERS AND ENVIRONMENTAL EASEMENTS

74. Environmental protection orders
75. Enforcement of environmental protection orders
76. Environmental easements

SECTION

77. Application for an environmental easement
78. Enforcement of environmental easements
79. Registration of environmental easements
80. Compensation for environmental easements

PART XII — INSPECTION, ANALYSIS AND RECORDS

81. Inspectorate
82. Powers of inspectors
83. Procedure for taking samples
84. Establishment or designation of laboratories
85. Certificate of analysis, etc.
86. Keeping of records
87. Public access to information and prohibition of disclosure

PART XIII — FINANCIAL PROVISIONS

88. Funds of the Authority
89. Accounts and audit
90. Financial year of the Authority
91. Duty to operate on sound financial principles
92. Estimates

PART XIV — THE ENVIRONMENT FUND

93. Establishment of the Environmental Fund
94. Objects of the Fund
95. Vesting of the Fund
96. Advances to the Fund
97. Application of the Fund
98. Books and other records of account, audit and reports of the Fund
99. Holdings of the Fund

PART XV — OFFENCES

100. Hindering, obstructing of inspectors
101. Offences relating to Environmental and Social Impact Assessments
102. Offences relating to records
103. Offences relating to environmental standards and guidelines
104. Offences relating to hazardous substances and wastes
105. Offences relating to pollution

SECTION

- 106. Offences relating to access to genetic or biological resources
- 107. General offences
- 108. Administrative penalties

PART XVI — DISPUTE SETTLEMENT

- 109. Establishment of an Environmental Tribunal
- 110. Composition of Tribunal
- 111. Power to appoint assessors
- 112. Power to seek direction of Tribunal in complex matters
- 113. Failure to attend
- 114. Representation of parties
- 115. Enforcement of orders
- 116. Costs
- 117. Liability of bodies corporate

PART XVII — MISCELLANEOUS

- 118. Closure of premises
- 119. Regulations
- 120. Repeal and savings
- 121. Agreements, licences, permits, etc

A BILL

entitled

An Act to make provision for the protection and management of the environment; the conservation and sustainable utilization of natural resources and for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Environment Management Act, 2016, and shall come into force on a date the Minister may, by notice published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

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

“access” means obtaining, possessing and using biological and genetic resources conserved including traditional knowledge whether derived from products, intangible components or parts thereof for purposes of research, bio-prospecting, conservation, industrial application or commercial use;

“access to environmental information” means a free or inexpensive means to obtain environmental information held by a public authority, the private sector or non-governmental organization;

“advisory committee” means any advisory committee established under section 20;

“alien species” means species that do not naturally occur within an area and that have usually arrived in the area as a result of human intervention, whether deliberate or accidental;

“analysis” means the examination of any matter, substance or process for the purpose of determining its composition or quality or its effect, whether physical, chemical or biological on any segment of the environment;

“applicant” means a person, institution or organization seeking access;

“Authority” means the Malawi Environment Protection Authority established under section 7;

“benefit sharing” means the sharing of any benefit that accrues from the utilization of biological and genetic resources, traditional knowledge, technologies, innovations or practices;

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

“climate change” means change of climate which is attributed directly or indirectly to human activity that alters the composition of the atmosphere in addition to natural climate variability observed over comparable time periods;

“community rights” mean those rights held by local communities over their biological and genetic resources, parts or derivatives thereof, and over their practices, innovations, knowledge and technologies;

“conservation” means the preservation of natural resources and their protection from misuse, fire or waste;

“dangerous” means harmful or dangerous to public health, plant or animal life or to the environment and “danger” shall be construed accordingly;

“developer” means a person who has proposed or has undertaken to implement a project;

“Director General” means the Director General of the Authority appointed in accordance with section 13;

“District Environment Sub-Committee” means the committee established under section 26;

“ecosystem” means a dynamic complex of plant, animal, and microorganisms in a community, and their non-living environment interacting as a functional unit;

“effluent” means waste water or other fluid originating from a domestic or an agricultural or industrial activity, whether treated or untreated and whether discharged directly or indirectly into the environment;

“endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range due to man-made or natural changes in their environment;

“environment” means the physical factors of the surrounding of the human being including land, water, atmosphere, climate, sound, odour, taste; the biological factors of fauna and flora; and includes the cultural, social and economic aspects of human activity, the natural and the built environment;

“Environmental and Social Impact Assessment” means a systematic evaluation of a project to determine its impact on the environment and the conservation of natural resources;

“Environmental and Social Impact Assessment Report” means the Environmental and Social Impact Assessment Report required under section 34;

“environmental easement” means an easement imposed under section 77;

“environmental audit” means the systematic documentation and periodic and objective evaluation of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

“environmental monitoring” means the continuous or periodic assessment of the actual and potential impact of any activity on the environment;

“environmental planning” means planning that takes into account environmental issues;

“environmental information” means information in any category or form whether written, electronic, audio-visual or in any other processed or unprocessed form relating to elements of the human or natural environment, factors that affect the environment, and environmental decision-making;

“*ex situ*” means, with reference to conservation, outside the natural ecological system and habitat of a biological organism;

“genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity;

“genetic resource” means any genetic material of actual or potential value;

“hazardous substance” means any chemical, waste, gas or gaseous matter, plant, animal or micro-organism which is injurious to human health or the environment;

“hazardous waste” means waste which is poisonous, corrosive, noxious, explosive, inflammable, radioactive, toxic or harmful to the environment;

“*in situ*” means, with reference to conservation, within the natural ecological system and habitat of a biological organism;

“inspector” means an environmental inspector designated under section 81;

“inspectorate” means the inspectorate established under section 81;

“invasive species” means any species, and includes its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem; and whose introduction does or is likely to cause economic or environmental harm or harm to human health;

“lead agency” means any public office or organization including a Ministry or Government Department which is conferred by any written law or policy with powers and functions for the protection and management of any segment of the environment and the conservation and sustainable utilization of natural resources of Malawi;

“licensing authority” means a person on whom is conferred power under any written law to issue licences in respect of anything or activity required under that written law not to be done or carried out otherwise than in accordance with a licence;

– “Local Authority” means a Local Authority established under the Local Government Act;

Cap.22:01

“local community” means the human population in a distinct geographical area, with control or custody over its biological and genetic resources, innovations, practices, knowledge, and technologies governed partially or completely by its own customs, traditions or laws;

“local environment and natural resources committees” means the village and area development committees as established under the Local Government Act to initiate, coordinate and mobilize local community participation in environment and natural resources management issues and to represent interests of such local communities and includes any local community institution participating in the management and protection of the environment and natural resources under any written law;

Cap.22:01

“National Environment Action Plan” means the National Environment Action Plan prepared under section 28, outlining environmental strategies, measures and programmes necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources;

“natural resources” means the natural resources of Malawi, wherever located;

“occupier” means a person in occupation or control of any premises, and, in relation to premises different parts of which are occupied by different persons, means the person in occupation or control of each such different part;

“oil” includes—

(a) crude oil, diesel oil, fuel oil, lubricating oil, petrol and paraffin, and any other petroleum product capable of causing pollution whether in a solid or liquid form; and

(b) any other substance which may be prescribed by the Minister, by notice published in the *Gazette*, to be oil for purposes of this Act;

“owner”, in relation to any premises, means—

(a) the registered owner of the premises in question;

(b) the lessee or sub-lessee of the premises in question;

(c) the agent, attorney or the personal representative of the owner of the premises;

(d) the person in actual possession of the premises or entitled to receive the rent of the premises, whether on his own account or as agent or trustee of any other person or as receiver; or

(e) in relation to any vessel, includes the charterer, pilot or other person in actual control of the vessel, whether or not the vessel is registered in or outside Malawi;

“ozone layer” means the ozone layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;

“participation” means the opportunity and ability of any member of the public to influence the outcome of decision-making processes and implementation thereof;

“pollutant” means any substance whether in a liquid, solid or gaseous form which directly or indirectly—

(a) adversely alters or destroys the quality of the environment; or

(b) is dangerous or potentially dangerous to public health, plant or animal life;

and includes objectionable odours, noise, vibration, or any substance or particle that causes temperature change or physical, chemical or biological change to the environment;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical or biological environment caused by the discharge, emission or deposit of waste or a pollutant into the environment in such amounts and for such duration and under such conditions as to cause an actual or potential danger to the environment;

“premises” includes any land, whether covered by buildings or not, any place underground and any land covered by water and hereditament of any tenure and description;

“prior informed consent” means procedure for exchanging, receiving and handling notification or information by a competent authority;

“project” means a development activity or proposal which has or is likely to have an impact on the environment;

“proprietary information” means any proprietary information protected by law or by any international treaty or convention to which Malawi is a party;

“protected area” means area of land, lake or river declared by the Minister to be a protected area under this Act;

“public” includes individuals, non-governmental organizations and private and public institutions concerned with environmental management and related issues;

“public authority” means a government agency, department or entity that exercises public functions under any policy or legislation;

“segment” in relation to the environment, means any portion or part of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;

“sustainable utilization” means the use or exploitation of natural resources which guards against the extinction, deletion or degradation of any natural resource of Malawi and permits the replenishment of natural resources by natural means or otherwise;

“strategic environmental assessment” means an assessment of the positive and adverse effects or impact that the implementation of policies, legislation, programmes or development plans and physical plans has or is likely to have on the protection and conservation of the environment or on the sustainable management of the environment;

“threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range;

“traditional knowledge” means the accumulated knowledge associated with conservation and sustainable use of biological and genetic resources which has been developed over time by indigenous or local communities;

“Tribunal” means the Environment Tribunal established under section 109;

“vehicle” has the meaning ascribed to it in the Road Traffic Act;

Cap. 69:01

“vessel” includes a ship, boat, floating structure or aircraft;

“waste” includes commercial or industrial waste whether in a liquid, solid or gaseous form which is discharged, emitted or deposited into the environment in such volume, composition or manner as to cause pollution; and

“water” includes surface and underground water, drinking water and water in a river, stream, watercourse, public reservoir, well, dam, canal, channel, lake, swamp or open drain and water in a gaseous or solid form.

PART II—GENERAL PRINCIPLES

National
environmental
policy

3.—(1) Every person shall take all necessary and appropriate measures to protect and manage the environment, to conserve natural resources and to promote sustainable utilization of natural resources in accordance with this Act and any other written law or policy relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources.

(2) Without prejudice to the generality of subsection (1), every person required under any written law to perform functions relating to the protection and management of the environment or the conservation and the sustainable utilization of natural resources shall take such steps and measures as are necessary for—

(a) promoting a clean and healthy environment in Malawi;

(b) ensuring the sustainable utilization of the natural resources of Malawi;

(c) facilitating the restoration, maintenance and enhancement of the ecological systems and ecological processes essential for the function of the biosphere, and the preservation of biological diversity;

(d) ensuring that true and total costs of environmental pollution and degradation are borne by the person responsible;

(e) promoting public awareness and participation in the formulation and implementation of environmental and conservation policies of the Government;

(f) promoting co-operation with foreign governments and international or regional organizations in the protection of the environment and the conservation and sustainable utilization of natural resources;

(g) promoting cultural or social principles applied by any community in Malawi for the management of the environment or natural resources in so far as the same are relevant;

(h) using and conserving the environment and natural resources of Malawi equitably and for the benefit of both present and future generations taking into account the rate of population growth and productivity of the available resources;

(i) promoting community based management of natural resources and ensuring equitable sharing of costs and benefits of sustainable management of natural resources;

(j) ensuring that precautionary measures are taken to prevent or mitigate possible deleterious environmental effects of any project, even where scientific evidence is not certain;

(k) ensuring that development planning at all levels takes into account environmental conservation;

(l) requiring prior Environmental and Social Impact Assessments of proposed projects which may significantly affect the environment or use of natural resources;

(m) promoting scientific research, technological development and training relating to the protection and management of the environment or the conservation and sustainable utilization of natural resources; and

(n) ensuring that social issues including gender, health, human rights, HIV and AIDS are mainstreamed in development interventions to minimize negative impacts on the environment and to enhance sustainable utilization of natural resources in accordance with relevant policies and legislation.

4.—(1) Every person has the right to a clean and healthy environment and has the duty to safeguard and enhance the environment.

Right to clean
and healthy
environment

(2) The right to a clean and healthy environment under subsection (1) includes the access by any person to the various public elements or segments of the environment for recreational, educational, health, spiritual and cultural purposes.

(3) The duty to enhance and safeguard the environment imposed under subsection (1) includes the duty to inform the Authority or a relevant lead agency of all activities or phenomena that may affect the environment significantly and shall be exercisable by individual persons, public authorities, non-governmental organizations, or local environment and natural resources committees.

(4) In furtherance of the right to a clean and healthy environment and the enforcement of the duty to safeguard and enhance the environment, the Authority or the lead agency so informed under subsection (3) or any person interested in enforcing the right to a clean and healthy environment shall be entitled to bring an action against any person whose activities or omissions have or are likely to have a significant impact on the environment to—

(a) prevent or stop any act or omission which is deleterious or injurious to any segment of the environment or likely to accelerate unsustainable depletion of natural resources;

(b) procure any public officer to take measures to prevent or stop any act or omission which is deleterious or injurious to any segment of the environment for which the public officer is responsible under any written law;

(c) require that any on-going project or other activity be subject to an environmental audit or monitoring in accordance with this Act; or

(d) seek a court order for the taking of other measures that would ensure that the environment does not suffer significant harm.

(5) Any person proceeding under subsection (4) shall have the capacity to bring an action notwithstanding that the person cannot show that the defendant's act or omission has caused or is likely to cause him any personal loss or injury:

Provided that the legal action—

(a) is not frivolous or vexatious; or

(b) is not an abuse of the court process:

Provided further that in every case the determining factor shall be whether such person is acting in the best interest of the environment and in exercise of the duty to safeguard and enhance the environment.

(6) Any person who has reason to believe that his right to a clean or healthy environment has been violated by any person may, instead of proceeding under subsection (4), file a written complaint to the Tribunal outlining the nature of his complaint and particulars.

(7) The Tribunal shall, within thirty (30) days from the date of the filing of the complaint, institute an investigation into the activity or matter complained about and shall give a written response to the complainant indicating what action the Tribunal has taken or shall take to restore the claimant's right to a clean and healthy environment, including instructing the Authority to take such legal action on the matter as the Authority may deem appropriate.

(8) Subsection (6) shall not be construed as limiting the right of the complainant to commence an action under subsection (4):

Provided that an action shall not be commenced before the Tribunal has responded in writing to the complainant, or where the Authority has responded in writing to the complainant, or where the Authority has commenced an action against any person on the basis of a complaint made to the Tribunal.

5.—(1) For purposes of ensuring effective public participation, enforcement of rights and duties created under this Act, the Authority shall promote the right of every person to—

Public participation in environmental management

(a) access environmental information and lead agencies, private sector and non-governmental organizations shall have a duty to provide such information in a timely manner;

(b) participate in environmental decision-making processes directly or through representative bodies and mechanisms for effective, direct and indirect public participation shall be created by lead agencies; and

(c) be afforded an adequate and effective administrative or judicial remedy for any harmful or adverse effects resulting from acts or omissions affecting the environment.

(2) The Authority shall establish guidelines and, where necessary, recommend promulgation of regulations for ensuring the realization and implementation of the provisions of subsection (1).

(3) No derogation from the rights and duties provided for in subsection (1) shall be permissible unless the same is necessary in a free, accountable and democratic society and in accordance with the Constitution.

6. Subject to the Constitution, where a written law on the protection and management of the environment or the conservation and sustainable utilization of natural resources is inconsistent with any provision of this Act, the written law shall be invalid to the extent of the inconsistency.

Inconsistent provisions in other written laws

PART III — THE MALAWI ENVIRONMENT PROTECTION AUTHORITY

7.—(1) There is hereby established an Authority to be known as the Malawi Environment Protection Authority (hereinafter referred to as “the Authority”) which shall be the principal agency for the protection and management of the environment and sustainable utilization of natural resources.

Establishment of Malawi Environment Protection Authority

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of—

(a) suing and being sued;

(b) acquiring, charging and disposing movable and immovable property;

(c) entering into contracts; and

(d) doing or performing all such other things or acts for the proper administration of this Act.

(3) The Authority shall perform its functions and exercise its powers independent of any person or authority, but shall give effect to any policy direction relating to its powers and functions which may be issued to it by the Minister, in accordance with this Act.

Powers of the Authority

8. The Authority shall have all powers necessary for the proper performance of its functions under this Act, and in particular, but without prejudice to the generality of the foregoing, the Authority shall have power to—

(a) investigate, either upon request or by its own motion, any violation or potential violation of this Act or any other written law relating to environment and natural resources management and take such action to redress the violation as it may deem fit;

(b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

(d) co-operate with other bodies or organizations within or outside Malawi as the Authority may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;

(e) open and operate bank accounts for the funds of the Authority;

and

(f) invest any funds of the Authority not immediately required in accordance with section 99(2).

Functions of the Authority

9.—(1) The Authority shall coordinate, monitor, supervise, and consult with all relevant stakeholders on all activities relating to the utilization and management of the environment and natural resources.

(2) Without prejudice to the generality of subsection (1), the functions of the Authority shall include to—

(a) advise the Minister on the formulation and implementation of policies for the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(b) initiate legislative proposals, standards and guidelines on the environment in accordance with this Act;

(c) enforce the right to a clean and healthy environment, provisions of this Act, and monitor and enforce compliance with environment and natural resources related policies and legislation by lead agencies;

(d) coordinate and monitor all activities concerning the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(e) prepare plans and develop strategies for the protection and management of the environment and the conservation and sustainable utilization of natural resources, and facilitate co-operation between the Government, local authorities, private sector and the public in the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(f) review and approve Environmental and Social Impact Assessments, strategic environmental assessments and other relevant environmental assessments in accordance with this Act;

(g) promote integration and mainstreaming of environmental and social concerns into overall national planning through coordination with relevant ministries, departments and agencies of Government;

(h) initiate, facilitate or commission research and studies on any aspect of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(i) prepare and publish a National State of the Environment Report every five (5) years and an annual report on the status of the environment and in this regard direct any lead agency to prepare and submit to it, a report on the state of the sector of the environment under the administration of that lead agency;

(j) coordinate the promotion of public awareness and education on the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(k) monitor the state of, and trends in, the utilization of natural resources and the impact of such utilization on any segment of the environment;

(l) receive and investigate any complaint by any person relating to the protection and management of the environment and the sustainable utilization of natural resources and take appropriate action;

(m) promote international and regional co-operation in the protection and management of the environment and the conservation and sustainable utilization of natural resources shared between Malawi and other countries;

(n) advise the Government on regional and international environmental conventions, treaties and agreements to which Malawi should be a party and follow up on the implementation of such agreements to which Malawi is a party;

(o) coordinate and monitor trans-boundary environment and natural resources management initiatives including providing advice on negotiating, signing and implementation of any agreements that may be entered into between Malawi and a neighboring state.

(p) prescribe, by notice published in the *Gazette*, environmental quality criteria and standards necessary for the maintenance of essential ecological processes and a healthy environment;

(q) establish rules and procedures for the appointment, discipline, termination, and terms and conditions of service of the staff, administrative and financial matters;

(r) render advice and technical support, where possible, to entities engaged in environment and natural resources management so as to enable them carry out their functions satisfactorily; and

(s) carry out any other activities and take such other measures as may be necessary or expedient for the proper administration and achievement of the objects of this Act.

(3) The Minister shall annually lay a summary report on the state of the environment prepared under subsection (2)(i) before the National Assembly as soon as reasonably practicable after its publication.

(4) In discharging its duties and functions under this section, the Authority shall promote the general principles of environmental management stipulated in section 3, and shall liaise with the Minister and, where appropriate, consult the lead agency responsible for the relevant segment of the environment.

Composition
of the
Authority

10.—(1) The Authority shall consist of—

(a) a chairperson, a vice-chairperson, and five (5) other members who shall be appointed by the President; and

(b) the following members, *ex-officio*—

(i) the Secretary responsible for the environment or his designated representative; and

(ii) the Solicitor General or his designated representative.

(2) A person shall not be appointed under subsection (1) unless the person holds at least a relevant degree in the field of environmental sciences, law, natural resource management or social science, and has at least a minimum of five (5) years related experience in the relevant field.

11. The members appointed under section 10 (1)(a) shall hold office for a term of five (5) years but shall be eligible for re-appointment for one more term of five (5) years. Tenure of office

12.—(1) The office of a member of the Authority, other than an *ex-officio* member, shall become vacant— Vacancies

(a) upon his death;

(b) if he is convicted of an offence and sentenced to a term of imprisonment without an option of a fine;

(c) if he is physically or mentally incapacitated for a continuous period of six (6) months from performing his duties as a member of the Authority;

(d) if he becomes, for any reason, incompetent of performing the functions of his office;

(e) if he is adjudged bankrupt;

(f) if he is absent, without valid excuse, from three (3) consecutive meetings of the Authority of which he has had notice; or

(g) upon expiry of one (1) month written notice to the appointing authority of his intention to resign.

(2) Where a member of the Authority dies or resigns, or otherwise vacates office before expiry of the term of his office, the President shall appoint another person in place of the member subject to the provisions of this Act.

13.—(1) The Secretariat of the Authority shall consist of the Director General and other employees of the Authority appointed under this Act. Secretariat of the Authority

(2) The Authority shall appoint the Director General, on terms and conditions that the Minister approves.

(3) A person shall not be appointed a Director General unless the person holds at least a postgraduate degree in the fields of

environmental sciences, law, natural resource management or a relevant social science degree, and at least ten (10) years of experience in a relevant field of environmental management.

(4) The Director General shall serve for a renewable term of five (5) years up to a maximum of two terms.

(5) The Authority shall appoint, on such terms and conditions as it may determine, and approved by the Minister, other staff of the Authority subordinate to the Director General as the Authority considers necessary for the proper discharge of the functions of the Authority.

(6) The Authority may delegate to the Director General, the appointment of certain categories of the staff of the Authority.

(7) The Director General may appoint consultants or temporary employees of the Authority as he considers necessary for the discharge of the functions of the Authority, subject to confirmation by the Authority.

(8) The Director General shall report to the Authority every appointment made by him of any person under subsection (6) or (7).

(9) The Authority shall exercise disciplinary control over the staff appointed by the Authority and by the Director General under subsections (2) and (6) and the Director General shall, at his sole discretion, exercise disciplinary control over the staff appointed by him under subsection (7).

(10) The Director General shall—

(a) be the chief executive officer of the Authority and in that capacity, he shall be responsible for the day-to-day administration and management of the affairs of the Authority and in that regard, he shall be answerable to the Authority;

(b) subject to this Act and the general supervision and control of the Authority, be responsible for the management of the funds, property and business of the Authority and for the administration, organization and control of the staff of the Authority;

(c) serve as secretary to the Authority and to any committee established by the Authority;

(d) on the instructions of the chairperson or the chairperson of any committee of the Authority, as the case may be, convene meetings of the Authority or meetings of the committees, and in carrying out his duties as secretary, be entitled to attend all meetings of the Authority and of the committees; and

(e) subject to the special or general directions of the Authority, do or perform any duty which he considers to be expedient for the purposes of the Authority.

(11) Where the Director General is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the Authority may appoint a person to act in that position with full powers of the Director General until such time as the Authority determines that the incapacity has ceased.

14.—(1) The Authority shall meet at least four (4) times in every financial year in ordinary sessions.

Meeting of
the Authority

(2) The chairperson shall preside at every meeting of the Authority at which he is present, but in his absence the vice-chairperson shall preside, and in the absence of both the chairperson and the vice-chairperson the members present shall elect one of their number, who shall with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(3) A decision on any matter before the Authority shall be taken by a majority of votes of members present, and in the case of an equality of votes, the chairperson or person presiding shall have a casting vote in addition to his deliberative vote.

(4) The quorum for the transaction of the business of the Authority shall be five (5) members including the chairperson or the person presiding, and all acts, matters or things authorized or required to be done by the Authority, shall be effected by a resolution passed by a majority of the members present and voting.

(5) The Authority may at its discretion, at any time and for any length of time, invite any person, and the Minister may, in the like manner, nominate a competent officer in the public service, to attend any meeting of the Authority and take part in the deliberations of the Authority, but such person shall not vote at the meetings of the Authority.

(6) Subject to the provisions of this Act, the Authority shall regulate its own procedure.

15. The members of the Authority shall be paid remuneration and allowances determined by the Minister, from time to time.

Remuneration
of members
of the
authority

16.—(1) Subject to the provisions of the Constitution or any other written law, a member or employee of the Authority shall not—

Confidenti-
ality

(a) in any way disclose any information submitted by a person

in connection with an application for a licence, certificate or appointment under this Act; or

(b) publish any information obtained in contravention of paragraph (a), unless that person is—

(i) ordered to do so by a court of law; or

(ii) authorized in writing by the person who made the application.

(2) Any person who contravenes subsection (1) commits an offence.

Disclosure of
conflict of
interest

17.—(1) If a person is present at any meeting of the Authority or of its committee at which any matter for which that person or a member of his immediate family is directly or indirectly interested in a private capacity is the subject of consideration he shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Authority otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member who fails or neglects to disclose his interest under this section shall be removed from the Authority.

Annual report

18.—(1) The Authority shall, within four (4) months after the end of each financial year, furnish to the Minister a report on the exercise and performance of its functions during that year and the report shall include financial statements duly audited, the report of the auditors and such other information as the Minister may, by notice in writing to the Authority, require.

(2) The Minister shall, on receipt of the report referred to in subsection (1), lay the report before the National Assembly, and subsequently publish the report.

Protection of
members and
employees

19. Legal proceedings shall not be brought against a member of the Authority, the Director General or other officer of the Authority, a lead agency, an inspector, an analyst, or any other person duly authorized by the Authority, the Director General, inspector or analyst to do anything authorized under this Act, in respect of anything done in good faith in accordance with the provisions of this Act.

PART IV - OTHER INSTITUTIONAL ARRANGMENTS FOR ENVIRONMENTAL MANAGEMENT

20. For purposes of management of the environment under this Act, the Authority shall oversee the following institutions and authorities—

Oversight role of Authority

- (a) lead agencies;
- (b) advisory committees;
- (c) District Environment Sub-Committees; and
- (d) Local Environment and Natural Resources Committee.

21. The Authority may in the performance of its functions under this Act delegate any of those functions to a lead agency, relevant advisory committee or any other public officer under this Act; the functions when so delegated and performed shall be deemed always to have been performed by the Authority.

Delegation of functions of the Authority

22.—(1) The Authority may after giving reasonable notice to do so, direct any lead agency to perform, within such time and in such manner as the Authority shall specify, any of the duties imposed on the lead agency by or under this Act or by any written law relating to environment and natural resources.

Powers of the Authority in respect of lead agencies

(2) If the lead agency fails or neglects to comply with such directions, the Authority may itself perform or cause to be performed the duties in question, and the expense incurred by it in so doing shall be a civil debt recoverable by the Authority from the lead agency.

23.—(1) Nothing in this Act shall be construed as divesting any lead agency of the powers, functions, duties or responsibilities conferred or imposed on it by any written law relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources or limiting such powers.

Roles of lead agencies

(2) In the exercise by the Authority of its coordinating, monitoring and supervisory functions under this Act, a lead agency shall not be released from performing its duties as prescribed by law.

(3) Lead agencies shall perform functions and responsibilities as provided under relevant written laws and this Act and, without derogating from the generality of the foregoing, shall—

- (a) ensure sustainable realization of national development by preventing activities that degrade the environment;

(b) undertake appropriate precautionary measures and enforcement of standards applicable to their sector; and

(c) report on their implementation and enforcement activities to the Authority in accordance with section 24.

(4) The Authority shall, in consultation with lead agencies issue guidelines for elimination of gaps, conflicts, inconsistencies and duplications in environment and natural resources policies and legislation and their implementation and enforcement.

(5) A lead agency responsible for promotion of utilization of segments of the environment or natural resources shall not undertake regulatory functions over that segment of the environment or natural resource.

(6) The lead agencies, shall, in consultation with other relevant agencies and the Authority develop guidelines and best practices for management and monitoring of the environment and natural resources.

Reporting
responsibilities
of lead
agencies

24. Each lead agency shall, with respect to the segment of the environment it is charged with under any written law, submit to the Authority—

(a) within three months after the expiry of each financial year, a report on its operations during that period, including progress on integrating and mainstreaming environmental concerns in its plans, projects and programmes; and

(b) other reports prescribed and at times prescribed by the Authority, on the state of that segment of the environment and the measures taken by the lead agency to maintain or improve the environment.

Advisory
committees

25.—(1) The Authority may establish such advisory committees as may be deemed necessary and appropriate for the conduct of its regulatory responsibilities.

(2) The Authority may, on terms and conditions determined by the Authority, engage experts from outside its permanent staff as advisers, consultants, reviewers or technical experts to assist in the conduct of its regulatory responsibilities.

(3) The use of advisory committees or outside experts shall not relieve the Authority from its responsibilities under this Act or other written laws or applicable regulations.

(4) The Authority shall ensure that technical support received from advisory committees or experts is provided in a manner that avoids any conflict of interest or improper influence on its regulatory decision making.

26.—(1) Notwithstanding sections 15 and 16 of the Local Government Act, the Authority shall, in consultation with local authorities, issue guidelines for the establishment of a committee on the environment for each district (in this Act otherwise referred to as the “District Environment Sub-Committee”).

District
Environment
Sub-
Committee
Cap. 22:01

(2) The functions of the District Environment Sub-Committee shall be to—

(a) coordinate the activities of a Local Authority relating to the management of the environment and natural resources;

(b) ensure that environmental concerns are integrated in all plans, programs and projects of the local authorities;

(c) assist in development and formulation of by-laws relating to the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(d) promote dissemination of information about the environment through education and outreach programs;

(e) liaise with the Authority on all matters relating to environment management in the district;

(f) coordinate the activities of local environment and natural resources environment committees in the management of the environment and natural resources;

(g) receive reports from and advise local environment and natural resources committees on their plans and programs;

(h) prepare District Environment Action Plans every five (5) years which shall be consistent with the National Environment Action Plan; and

(i) by June of every year, compile annual District State of the Environment and Outlook Reports to be integrated into the National State of the Environment Report.

27.—(1) Each local authority shall, on the advice of the District Environment Sub-Committee, establish Local Environment and Natural Resources Committees at such level in its area of jurisdiction as it may deem expedient which shall be responsible for undertaking environment and natural resources management activities in their jurisdiction.

Local
Environment
and Natural
Resources
Committee

(2) Local Environment and Natural Resources Committees shall be established with special recognition of the roles and responsibilities of traditional leaders and the need to integrate traditional knowledge in environment and natural resources management strategies, plans and programs.

(3) The functions of Local Environment and Natural Resources Committees shall be to—

(a) prepare a Local Environment Action Plan which shall be consistent with the District Environment Action Plan and the National Environment Action Plan;

(b) carry out public environmental education and outreach programs;

(c) mobilize local communities within its jurisdiction to sustainably manage and conserve the environment and natural resources and restore degraded environmental resources through self-help;

(d) mobilize and provide guidance to local communities in its jurisdiction to participate in implementation and enforcement of environment and natural resources related policies and legislation;

(e) monitor all socio-economic activities in its jurisdiction to ensure that they do not adversely affect the environment;

(f) report any events or activities which have, or are likely to have, significant environmental impact to the Local Authority or the Authority; and

(g) carry out any other duties as provided in any written law relating to environment and natural resources management or as prescribed by the Local Authority in consultation with the Authority or a lead agency.

PART V — ENVIRONMENTAL PLANNING

Environmental
planning at
national
level

28.—(1) The Authority shall prepare and publish a National Environment Action Plan, other relevant plans and a National State of the Environment and Outlook Report every five (5) years or such other lesser period as may be considered necessary by the Authority:

Provided that the National Environment Action Plan shall be approved by Cabinet before it is published.

(2) The purpose of the National Environment Action Plan shall be to promote and facilitate integration of strategies and measures for the protection and management of the environment into plans and programmes for the social and economic development of Malawi.

(3) The National Environment Action Plan shall—

(a) cover all matters affecting the environment in Malawi and shall contain guidelines for the management and protection of the

environment and natural resources as well as strategies for controlling, preventing or mitigating any deleterious effects;

(b) respond to and address environment and natural resources issues raised in the National State of the Environment and Outlook Report;

(c) take into account District Environment Action Plans as provided for under section 29;

(d) be binding upon all persons in the public and private sector including private companies, non-governmental organizations and government departments and agencies;

(e) without prejudice to subsection (1), be reviewed and modified, from time to time, to take into account emerging knowledge and scientific data;

(f) be in a form and contain other matters prescribed by the Authority;

(g) upon Cabinet approval, be laid before the National Assembly; and

(h) be disseminated to the public by the Authority.

(4) The Authority shall monitor activities, plans and programs of lead agencies to ensure that they conform to the strategies, plans and programs under the National Environment Action Plan and the District Environment Action Plan and respond to the National State of the Environment and Outlook Report and District State of the Environment Reports as the case may be.

29.—(1) Every District Environment Sub-Committee shall, in consultation with the Authority, prepare a District Environment Action Plan and District State of the Environment and Outlook Report which shall be revised every five (5) years or such other lesser period as may be considered necessary by the Authority.

Environmental planning
at district
level

(2) The District Environment Action Plan shall—

(a) conform with the National Environment Action Plan and the District Development Plan;

(b) bind all persons in public and private sector in the district including private companies, non-governmental organizations, local environmental and natural resources committees and government agencies;

(c) be in a form and contain matters prescribed by the Authority;

(d) respond to and address environment and natural resources issues raised in the District State of the Environment and Outlook Report;

(e) upon approval by the District Environment Sub-Committee be adopted by the Local Authority; and

(f) be disseminated to the public by the District Council.

(3) A person shall not implement a development activity or project in any district without consulting the District Environmental Sub-Committee.

(4) A District Environment Sub-Committee may recommend to the Authority, the issuance of a stop order in respect of any development activity which does not comply with the District Environment Action Plan for the district.

Strategic
Environmental
Assessment

30. — (1) A public institution which intends to develop policies, legislation, programmes, plans that are likely to have an adverse effect on the management, conservation and enhancement of the environment or sustainable management of natural resources shall conduct a strategic environmental assessment of the policies, programmes, legislation, development plans and physical plans and submit the findings to the Authority for approval.

(2) The institution referred to in subsection (1) shall not adopt or implement a policy, legislation, programme, plan which has not been approved by the Authority.

(3) Where an institution responsible for the policy, legislation, programme, development plan and physical plan, considers that it does not require a strategic environmental assessment under this section, it shall submit a brief summary to the Authority.

(4) Upon receipt of a brief summary referred to in subsection (3), the Authority shall review the policy, legislation, programme, development plan and physical plan and determine whether a strategic environment assessment is necessary and shall inform the institution concerned, in writing, of its decision and the reasons therefor.

(5) An institution, after receipt of the decision of the Authority in relation to the strategic environmental assessment report, shall comply with recommendations made and conditions for approval.

(6) Where the Authority and the institution concerned are unable to reach agreement on the amendments to be made to the revised policy, legislation, programme, development plan and physical plan or the measures to be taken, the Authority or the proponent may lodge a notice of objection with the Minister or refer the matter to the Tribunal.

(7) The Minister may, upon receipt of the notice under subsection (6), order the documents referred to in subsection (4) to be subjected to public review or a public hearing before making a final determination.

PART VI — ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT
MONITORING AND AUDITING

31.—(1) The Minister may, on the recommendation of the Authority, specify, by notice published in the *Gazette*, the type and size of a project which shall not be implemented unless an Environmental and Social Impact Assessment is carried out.

Environ-
mental and
Social Impact
Assessment

(2) A person shall not undertake any project for which an Environmental and Social Impact Assessment is required without the written approval of the Authority, and except in accordance with any conditions imposed in that approval.

(3) Any other licensing authority shall not grant a permit or licence for the execution of a project referred to in subsection (1) unless an approval for the project is granted by the Authority, or the grant of the permit or licence is made conditional upon the approval of the Authority being granted.

(4) The Minister may, on the advice of the Authority, make regulations for the effective administration of Strategic Environmental Assessment, Environmental and Social Impact Assessment and Environmental Audit.

32.—(1) The Authority shall, in consultation with such lead agency as it may consider appropriate, carry out or cause to be carried out periodic environmental audits of any project for purposes of enforcing the provisions of this Act.

Environ-
mental audits

(2) The owner of the premises or operator of a project for which an Environmental and Social Impact Assessment has been made shall keep records and make annual reports to the Authority describing how far the project conforms in operation with the statements made in the Environmental and Social Impact Assessment.

(3) A developer shall take all reasonable measures for mitigating any undesirable effects on the environment arising from the implementation of a project which could not reasonably be foreseen in the process of conducting an Environmental and Social Impact Assessment and shall, within a reasonable time, report to the Authority on the effects and measures taken.

(4) An inspector may enter any land or premises for the purpose of determining how far the activities carried out on that land or

premises conform to the statements made in the Environmental and Social Impact Assessment.

Environmental
monitoring

33.—(1) The Authority shall, in consultation with any lead agency, monitor—

(a) all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; and

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

(2) The Authority shall require a developer whose project requires an Environmental and Social Impact Assessment licence to prepare and submit to the Authority, environmental management plans in a form and manner prescribed by the Authority.

(3) An inspector may enter upon any land or premises for the purpose of monitoring the effects on the environment of any activities carried out on that land or premises and to enforce compliance with the environmental mitigation and management plans prescribed under subsection (2).

Fees

34. The Authority shall, by notice published in the *Gazette*, prescribe fees necessary for conducting environmental and social impact studies and for covering reasonable costs for scrutinizing Environmental and Social Impact Assessment Reports and for the subsequent monitoring of a project which has been approved for implementation under this Act.

PART VII — ENVIRONMENTAL STANDARDS

Basis for
environmental
quality
standards

35.—(1) The prescription of the environmental quality standards under this Part shall be based on scientific and environmental principles and shall take into account the practicability and availability of appropriate technology for ensuring compliance with the standards.

(2) The Authority may in liaison with relevant lead agencies, prescribe different environmental quality standards to apply in different areas of Malawi with respect to different segments of the environment and the Authority may from time to time vary the standards.

Air quality
standards

36. The Authority shall, in liaison with relevant lead agencies—

(a) establish criteria and procedures for the measurement of air quality;

(b) establish—

- (i) ambient air quality standards;
- (ii) occupational air quality standards;
- (iii) emission standards for various sources;
- (iv) criteria and guideline for air pollution control for both mobile and stationery sources;
- (v) any other air quality standards as may be prescribed;

(c) take measures to reduce existing sources of pollution by requiring the redesign of plants or the installation of new technology or both, to meet the requirements of standards established under subsection (1);

(d) develop guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution; and

(e) monitor the enforcement of standards.

37. The Authority shall, in liaison with lead agencies, establish— Water quality standards

(a) criteria and procedures for the measurement of water quality;

(b) minimum quality standards for all the waters of Malawi; and

(c) minimum quality standards for prescribed water uses.

38. The Authority shall, in liaison with relevant lead agencies— Standards for discharge of effluent into water

(a) establish standards for the discharge of any effluent into the water bodies of Malawi; and

(b) prescribe measures for pre-treatment of effluent before discharge into the sewerage system;

39. The Authority shall, in liaison with relevant lead agencies, establish— Standards for control of obnoxious smells

(a) procedures for measurement and determination of obnoxious smells;

(b) minimum standards for control of pollution of the environment, by smell; and

(c) guidelines for measures leading to the abatement of obnoxious smells, whether from human activities or naturally occurring phenomena.

Standards for control of noise and vibration

40. The Authority shall, in liaison with lead agencies, establish—

- (a) criteria and procedures for the measurement of noise and vibration pollution;
- (b) minimum standards for the emission of noise and vibration pollution into the environment; and
- (c) guidelines for the abatement of unreasonable noise and vibration pollution from any source.

Soil quality standards

41. The Authority shall, in liaison with relevant lead agencies establish—

- (a) criteria and procedures for the measurement and determination of the quality of soil;
- (b) minimum standards for the management of the quality of soil;
- (c) procedure for undertaking clean up and remedial action of contaminated soil; and
- (d) guidelines for the disposal of any waste in the soil, the optimal utilization of any soil, identification of the various soils and practices that are necessary in order to conserve soil and prohibition of activities that may degrade the soil and for monitoring and control of soil degradation.

Standards for minimization of impact of ionizing and other radiation
No. 16 of 2011

42. Without prejudice to the Atomic Energy Act, the Authority shall in liaison with relevant lead agencies, establish—

- (a) criteria and procedures for the measurement; and
- (b) standards for the minimization, of ionizing and other radiation in the environment.

Other environmental quality standards

43. The Authority shall, in liaison with relevant lead agencies, establish—

- (a) other standards that may affect the environment; and
- (b) criteria and procedures it may consider necessary for the determination of the standards provided for under paragraph (a).

Standards under other written laws

44.—(1) Notwithstanding the provisions of sections 35 to 43, the Authority shall not establish separate standards in relation to matters already dealt with under rules, regulations or standards under other written laws.

(2) The Authority shall, where regulations, rules or standards are issued under any other laws as provided in subsection (1), have the general power to supervise, monitor and enforce the regulations, rules and standards, as if issued under this Act.

PART VIII — MANAGEMENT OF THE ENVIRONMENT AND
NATURAL RESOURCES

45.—(1) The Authority shall, in liaison with relevant lead agencies, issue guidelines and prescribe measures for the management of rivers and lakes.

Regulation of use and management of rivers and lakes

(2) A person shall not, in relation to a river or lake, carry out any of the following activities—

(a) use, erect, reconstruct, alter, place, extend, remove or demolish any structure or part of any structure in, on, under, or over the bed;

(b) excavate, drill, tunnel, or disturb the bed or otherwise;

(c) introduce or plant any part of a plant whether alien or indigenous in a lake or river;

(d) introduce any animal or micro-organisms, whether alien or indigenous in any river or lake, or on, in or under its bed;

(e) deposit any substance in a river or lake or in, on or under its bed, if that substance would or is likely to have adverse effects on the environment;

(f) divert or block any river from its normal course; or

(g) drain any lake or river.

(3) The Authority may, in consultation with a relevant lead agency, in writing waive any of the restrictions in subsection (1) in respect of any person subject to conditions prescribed by the Authority.

(4) For the purposes of this Part—

“lake” includes natural lake, artificial lake, dam, canal, gulf, bay, inlet, lagoon; and

“river” includes streams, canals or brooks.

(5) Any person who contravenes this section or any guideline issued under this section commits an offence.

46. The Authority shall, in liaison with relevant lead agencies, issue guidelines and prescribe measures for the recognition and protection of traditional and indigenous interests and rights of local communities customarily resident within or around a lake shore, wetland or river bank or forest.

Protection of traditional and indigenous interests and rights

47.—(1) The Authority shall, in liaison with relevant lead agencies, take all measures necessary in order to protect the banks of rivers and the shores of lakes in Malawi from human activities that adversely affect the rivers and lakes.

Management of river banks and lake shores

(2) The Authority shall, with assistance and participation of various lead agencies, identify the banks of rivers and the shores of lakes within its jurisdiction which are at risk from environmental degradation or which have other value to the local communities and shall take necessary measures to minimize or eliminate the risk and protect those areas.

(3) The Authority shall, in consultation with lead agencies, by notice published in the *Gazette*, declare protected zones along banks of rivers and shores of lakes within such limits as it may be considered necessary to protect those rivers and lakes from deleterious human activities.

(4) In declaring protected zones on the banks of a river or the shores of a lake under subsection (3), the Authority shall take into account—

(a) the size of the river or the lake in determining the area of the protected zone;

(b) existing interests in the land covered by the proposed protected zone;

(c) nature of the proposed activity within the river bank or lake shore; and

(d) geographical location of a river or a lake.

(5) Notwithstanding the provisions of this section, sustainable use of any protected zone which does not adversely affect the river or the lake may be permitted by the Authority subject, where necessary, to Environmental and Social Impact Assessment conducted in accordance with this Act.

(6) Any person who contravenes this section commits an offence.

48.—(1) A person shall not—

(a) reclaim any wetland;

(b) erect, reconstruct, alter, place, extend, remove or demolish any structure that is fixed in, or is part of, any structure in, on, under, or over any wetland;

(c) excavate, drill, tunnel, or disturb the wetland in a manner that has an adverse effect on the wetland;

(d) deposit any substance in a wetland or in, on or under its bed, if that substance would or is likely to have adverse effects on the environment of the wetland; or

(e) introduce or plant any exotic or introduced plant or animal in a wetland unless he has written approval from the

Authority given in consultation with a relevant lead agency in accordance with subsection (3) of this section.

(2) The Authority may, in liaison with a relevant lead agency, and upon an application to carry on an activity referred to in subsection (1), carry out any investigation it considers necessary, including an Environmental and Social Impact Assessment under this Act to determine the effects of that activity on the wetland and the environment in general for the purposes of granting authorization.

(3) The Authority shall, in liaison with relevant lead agencies, establish guidelines for identification and sustainable management of all wetlands in Malawi.

(4) The Authority shall, in liaison with the relevant lead agency, and by notice in the *Gazette*, specify the traditional uses of wetlands which shall be exempted from the application of subsection (1) and declare any wetland to be a protected wetland thereby excluding or limiting human activity in that wetland.

(5) Any person who contravenes this section commits an offence.

49.—(1) The Authority shall, in liaison with relevant lead agencies and with the assistance and participation of the Local Environmental and Natural Resources Committees and the District Environment Sub-Committee, identify those elements, objects and sites in the natural environment which are of cultural importance to the people of Malawi.

Protection of natural heritage sites

(2) The Authority shall, in such manner as may be prescribed, maintain a register of all elements, objects and sites identified under subsection (1).

(3) The Authority shall, in liaison with a relevant lead agency, issue guidelines and prescribe measures for the management or protection of cultural elements, objects and sites registered under this section.

50.—(1) Each District Environment Sub-Committee shall, with the assistance and participation of a Local Environment and Natural Resources Committee within the district and relevant lead agencies, identify the hilly and mountainous areas which are at risk from environmental degradation.

Identification of hilly and mountainous areas

(2) A hilly or mountainous area is at risk from environmental degradation if—

- (a) it is prone to soil erosion;
- (b) landslides have occurred in such area;

(c) vegetation cover has been removed or is likely to be removed at a faster rate than it is being replaced; or

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

(3) Each District Environment Sub-Committee shall notify the Authority of the hilly and mountainous areas it has identified as being at risk from environmental degradation.

(4) The Authority shall maintain a register of hilly and mountainous areas at risk from environmental degradation.

Measures for the management of hill tops, hill sides and mountainous areas

51.—(1) The Authority shall, in liaison with relevant lead agencies, issue guidelines and prescribe measures for the sustainable use and management of hillsides, hilltops and mountainous areas.

(2) The guidelines and measures issued and prescribed under this section shall include—

(a) appropriate farming methods;

(b) carrying capacity of the areas described in subsection (1) in relation to animal husbandry;

(c) measures to curb soil erosion;

(d) disaster preparedness in areas prone to landslides;

(e) protection of hillsides, hilltops and mountainous areas;

(f) protection of catchment areas; and

(g) any other measures the Authority considers necessary.

(3) The District Environment Sub-Committee and a Local Environment and Natural Resources Committee shall be responsible for ensuring that guidelines and measures prescribed under this section are implemented and enforced.

(4) Each District Environment Sub-Committee shall, in its District Environment Action Plan prepared under this Act, specify which of the areas identified under subsection (1) shall be targeted for forestation or reforestation.

(5) Each District Environment Sub-Committee shall take measures through encouraging self-help in the community, to plant trees and other vegetation in any area specified under subsection (1) which are within the limits of its jurisdiction and not subject to any personal interest in land.

(6) Where the areas specified under subsection (1) are subject to leasehold, freehold or any other interest in land including customary

tenure, the holder of that interest shall be responsible for taking measures to plant trees and other vegetation in those areas.

(7) Where a holder of an interest in land fails to comply with subsection (3), the District Environment Sub-Committee may mobilize the community to ensure compliance and may, in an appropriate case, recover the costs of such work from the holder of such interest.

(8) Any person who contravenes the guidelines and measures issued and prescribed under this section or who fails to comply with a lawful direction issued by a local environment and natural resources committee under this section commits an offence and may be required to perform community work prescribed under the Penal Code.

Cap. 7:01

52. The Authority shall, in liaison with relevant lead agencies, promote renewable sources of energy by—

Conservation of energy and use of renewable sources

(a) promoting research and use of appropriate renewable sources of energy;

(b) creating incentives for the use of renewable sources of energy;

(c) promoting measures for the conservation of non-renewable sources of energy; and

(d) taking measures to encourage the planting of trees and woodlots by individual land users, institutions and community groups.

53.—(1) The Authority shall, in consultation with lead agencies, carry out national studies on substances, activities and practices that deplete or are likely to deplete the stratospheric ozone layer and other components of the stratosphere.

Protection of the ozone layer

(2) The Authority may, in consultation with lead agencies, make regulations—

(a) restricting or prohibiting the use of any appliance, equipment or any other thing which uses ozone depleting substances;

(b) requiring any person to make, in a manner and in a form determined by the Authority, regular reports to the Authority on the generation, consumption and importation of ozone depleting substances;

(c) providing for the progressive reduction and eventual elimination of substances that deplete the ozone layer;

(d) providing for the control of activities and practices likely to deplete the ozone layer; and

(e) providing for other matters that are necessary for protecting the stratospheric ozone layer.

(3) A person shall not import or export any appliance, equipment or any other thing which uses substances that deplete the stratospheric ozone layer except under a licence issued by the Authority, and subject to such conditions as the Authority may determine.

Control and management of factors affecting climate change

54.—(1) The Authority shall, in consultation with lead agencies, develop guidelines and prescribe measures for the control and management of factors affecting climate change.

(2) The guidelines and measures shall—

(a) identify activities, practices and substances that cause climate change and measures for reducing or eliminating their effects;

(b) prescribe measures for reduction of greenhouse gas emissions from any sector;

(c) prescribe measures to enhance greenhouse gas sinks;

(d) promote assessment and monitoring of the potential impact of climate change on the functioning of ecosystems, vegetation sinks and net carbon sinks.

(3) The Authority may commission national studies on activities, practices or substances that cause climate change and develop necessary policy and legislation for effective control, management and monitoring of such activities, practices or substances.

Duty to minimize and manage waste

55.—(1) Every person has the duty to manage any waste generated by his activities or the activities of those persons working under his direction in a way and in a manner that he does not cause ill health to other persons or damage to the environment.

(2) A person shall not dispose of any waste whether generated within or outside Malawi except in accordance with this Act and as prescribed by the Authority.

(3) Every person whose activities generate waste shall employ measures for the minimization of waste through treatment, reclamation and recycling.

(4) Any person who contravenes this section commits an offence.

Waste management

56.—(1) The Minister shall, on recommendation of the Authority, by regulations, make provision for the management, transportation,

treatment and recycling, and reduction of waste, safe disposal of waste, and for prohibiting littering of public places.

(2) The Authority shall, in liaison with lead agencies and operators—

(a) formulate such measures as are necessary to regulate the collection, storage, transportation, reduction and safe disposal of waste;

(b) promulgate such rules or formulate criteria and standards for the classification and analysis of waste and shall determine the method or methods for safe disposal of waste;

(c) control the handling, storage, transportation, classification, importation, exportation and destruction of waste;

(d) control the reduction of waste; and

(e) monitor any waste disposal site and direct the control of any such site if its continued use as a waste disposal site constitutes or is likely to constitute a hazard to the health of the people living in the vicinity of, or to the environment adjacent to, the site.

57.—(1) A person shall not handle, store, transport, classify or destroy waste other than domestic waste, or operate a waste disposal site or plant, or generate waste except in accordance with a licence issued under this section.

Licence for
waste

(2) The Authority may, in consultation with relevant lead agencies, grant to any person a licence to handle, store, transport, classify or destroy any waste, except domestic waste, or to generate waste or to operate a waste disposal site or plant, subject to conditions determined by the Authority.

(3) An application for a licence under this section shall be in the prescribed form or, if no application form is prescribed, in a form as the Authority may determine, and the form shall contain the applicant's full names, postal and physical addresses and any other particulars as the Authority may require.

(4) Any person who, at the commencement of this Act, is carrying on the business of handling, storing, transporting, classifying, destroying or disposing of waste shall apply for a licence under this section within six (6) months from the date of the commencement of this Act.

(5) The Authority may, at any time, revoke a licence issued under this section or vary any condition attached to the licence if the

activity in respect of which the licence is issued constitutes an imminent, actual or potential hazard to the environment or natural resources or if the licensee violates any condition endorsed on the licence.

(6) The Authority may delegate the power to issue a licence under this section to the Director General and anything done by the Director General in the exercise of that power shall be valid for all purposes as if it had been done by the Authority.

Exportation of hazardous waste

58.—(1) A person shall not export any hazardous waste or substance, except under a permit issued by the Authority, and subject to conditions determined by the Authority.

(2) An exporter shall, before a permit is issued, produce to the Authority written confirmation from an appropriate authority of the receiving country that the hazardous waste or substance may be exported to that country.

(3) A person shall not transport within Malawi hazardous waste or substances, except under a permit issued by the Authority, and subject to any conditions imposed by the Authority.

Guidelines for management of toxic and hazardous substances

59.—(1) The Authority shall, in consultation with a relevant lead agency, establish criteria for the classification of toxic and hazardous substances in accordance with their toxicity and the hazards they present to human health and the environment.

(2) The Authority shall, in consultation with the relevant lead agency, on the basis of criteria established under subsection (1), issue guidelines and prescribe measures for the management of toxic and hazardous substances.

(3) The guidelines issued and the measures prescribed under this section shall include guidelines and measures on—

(a) registration, labeling, packaging and advertising of toxic and hazardous substances;

(b) control of imports and exports of toxic and hazardous substances;

(c) distribution, storage, transportation and handling of toxic and hazardous substances;

(d) monitoring the effects of toxic and hazardous substances and their residue on human health and the environment;

(h) disposal of expired and surplus toxic and hazardous substances;

and

(i) restricting and banning of extremely toxic and hazardous toxic and hazardous substances.

60.—(1) A person shall not discharge any hazardous substance, oil or other mixture containing oil in any waters or any other segment of the environment except in accordance with the guidelines prescribed by the Authority in consultation with a relevant lead agency.

Prohibition of discharge of hazardous substances or oil or mixture containing oil into the environment

(2) A person who discharges a hazardous substance, oil or mixture containing oil into the environment contrary to subsection (1) commits an offence and shall, upon conviction, and in addition to any other sentence the court may impose—

(a) pay the costs of removal, including any costs that may be incurred by a Government department, agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge;

(b) pay the costs of third parties in form of reparation, restoration, restitution or compensation as may, from time to time, be determined by the Authority.

(3) The owner or operator of a production or storage facility, motor vehicle or vessel from which a discharge occurs contrary to this section shall mitigate the impact of the discharge by—

(a) giving immediate notice of the discharge to the Authority and other Government officers;

(b) immediately commencing cleanup operations using the best available cleaning up techniques; and

(c) complying with such directions as the Authority may from time to time prescribe.

(4) Until the owner or operator of the production or storage facility, motor vehicle or vessel has taken the mitigation measures prescribed in subsection (3), the Authority may seize the production or storage facility, motor vehicle or vessel.

(5) Where the owner or operator fails to take the necessary measures under subsection (3) after the expiry of a reasonable time in all the circumstances, the Authority may, upon an order of the court or the Tribunal, dispose of the production or storage facility, motor vehicle or vessel to meet the costs of taking the necessary measures under subsection (3) and other remedial and restoration measures.

(6) The court, in convicting or sentencing a person of an offence under this section, shall take into account the measures taken by that person to comply with subsection (3).

(7) The Authority may, by notice published in the *Gazette*, prescribe fees as it shall deem necessary for the monitoring, cleaning up, and removing of hazardous substances or oil discharged into the environment.

PART IX — POLLUTION CONTROL

Discharge of
pollutants

61.—(1) A person shall not discharge or emit any pollutant into the environment, except in accordance with this Act.

(2) It shall be the duty of every person to prevent the discharge or emission of any pollutant into the environment otherwise than in accordance with this Act and to comply with such general or specific directions of the Authority for preventing, minimizing or cleaning up, removing or disposing of any pollutant discharged or emitted into the environment.

(3) Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act may be required by the Authority to clean up, remove or dispose of the pollutant in a manner and within a period directed by the Authority and to pay the full costs of cleaning up the polluted environment and of removing the pollution.

(4) The Authority may, by notice published in the *Gazette*, prescribe fees it shall deem necessary for the monitoring, cleaning up, removing or disposing of pollutants discharged or emitted into the environment.

Discharge of
pollutants into
aquatic
environment

62.—(1) A person shall not discharge, dump or emit any pollutant into an aquatic environment except in accordance with this Act.

(2) Any person who contravenes this section commits an offence and shall be liable on conviction to a fine of fifty million Kwacha (K50, 000,000) and imprisonment for fifteen (15) years.

Discharge of
effluent

63.—(1) A person shall not discharge or emit effluent into the aquatic environment except under a licence issued by the Authority, and subject to such conditions as the Authority shall determine.

(2) Any person who owns or operates an industrial undertaking shall discharge any effluent or other pollutants originating from the trade or industrial undertaking only into existing sewerage system after pre-treatment to meet sewerage discharge standards;

(3) The Authority may revoke any licence issued under this section if the licensee fails to comply with the conditions of the licence or any provision of this Part:

Provided that no licence shall be revoked without the licensee being given a reasonable opportunity to be heard.

(4) The Authority may, by notice published in the *Gazette*, prescribe such fees as it shall deem necessary for the monitoring, cleaning up, removing or disposing of effluent discharged or emitted into the aquatic environment.

(5) Any person who contravenes this section commits an offence and shall be liable on conviction to a fine of ten million Kwacha (K10,000,000) and to imprisonment for ten (10) years.

64.—(1) A person shall not emit a gas or a gaseous substance, or any other pollutant which causes or is likely to cause air pollution into the atmosphere except in accordance with this Act. Air pollution

(2) Any person who owns, occupies or operates any industrial or trade premises or any other undertaking that causes or is likely to cause air pollution into the environment shall put in place appropriate measures to control air pollution.

(3) Any person who owns or operates any industrial or trade premises or any other undertaking that is likely to emit or discharge any pollutant or contaminant that causes or is likely to cause air pollution into the environment shall inform the Authority of the intention during the early planning stage.

(4) The Authority, upon receiving and considering the submitted information under subsection (3), may require the developer of the trade or industrial facility or other such undertaking to undertake an Environmental and Social Impact Assessment in accordance with the provisions of this Act.

(5) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine of fifty million Kwacha (K50,000,000) and to imprisonment for fifteen (15) years, and shall, for each day the offence continues, be liable to a fine of fifty thousand Kwacha (K50,000).

65.—(1) A person shall not emit noise in excess of the noise emission standards established in accordance with this Act or any other written law. Noise pollution emissions in excess of the established standards

(2) The Authority may upon submission of a written request grant a permit allowing emission of noise above prescribed or established noise standards.

(3) Any person who contravenes this section commits an offence and shall be liable, on conviction, to a fine of five hundred thousand Kwacha (K500,000) and to imprisonment for twelve (12) months.

66.—(1) The Authority shall, in consultation with relevant lead agencies, prepare guidelines or plans for coordination, prevention, Environmental emergencies

mitigation and management of environmental emergencies including—

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

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

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

(4) In preparing guidelines under this section, the Authority may consult the following—

- (a) any lead agency;
- (b) a security agency;
- (c) a Local Authority; or
- (d) any other organization the Authority may consider necessary.

(5) For purposes of this section, “security agency” means the Defence Force, the Malawi Police Service or the Department of Immigration.

Environmental
incentives

67.—(1) In exceptional circumstances, the Authority may, in consultation with lead agencies and the Malawi Revenue Authority, recommend to the Minister responsible for finance to include in annual budget proposals,—

- (a) fiscal incentives that are necessary for promoting the protection and management of the environment and the conservation and sustainable utilization of natural resources;
- (b) economic instruments to ensure an appropriate pricing of environmental resources;

(c) economic instruments to ensure that the costs of pollution are paid by the polluter; and

(d) necessary measures for preventing the unsustainable use of natural resources and controlling the generation of pollutants.

Part — X BIOLOGICAL AND GENETIC RESOURCES

68. The biological and genetic resources of Malawi shall constitute an integral part of the natural wealth of the people of Malawi and shall—

Biological and genetic resources

(a) be protected, conserved and managed for the benefit of the people of Malawi; and

(b) only be exploited or utilized in accordance with this Act and any other written law.

69.—(1) The Authority shall, in liaison with relevant lead agencies, initiate legislative proposals, issue guidelines and prescribe measures for the protection, conservation and sustainable management and utilization of genetic resources and for access to genetic resources.

Access to genetic resources

(2) The Authority shall prescribe measures to—

(a) regulate access to genetic resources by non-citizens or non-residents of Malawi;

(b) ensure that prior informed consent of communities is obtained and is an essential component for any arrangement in bio-prospecting;

(c) ensure effective equitable sharing of benefits and sustainable business mechanisms for the transfer of biotechnology;

(d) protect indigenous property rights of communities;

(e) prohibit or restrict any trade or traffic in any component of biological diversity;

(f) provide for fees payable in respect of accessing the resources and the export therefore;

(g) provide guidelines for reviewing of genetic materials and patenting requirements for indigenous species;

(h) regulate the collection, characterization, evaluation and documentation of plant genetic resources for food, agricultural and medicinal purposes; and

(i) regulate any other matters that the Authority may consider necessary for the sound management of the genetic resources of Malawi.

Conservation of
biological
resources

70. The Authority shall, in consultation with relevant lead agencies,—

(a) identify, prepare and maintain an inventory of biological diversity of Malawi;

(b) determine a component of biological diversity which is threatened with extinction;

(c) determine actual and potential threats to the biological diversity of Malawi and devise such measures as are necessary for preventing, removing or mitigating the effect of those threats;

(d) devise measures for the better protection and conservation of rare and endemic species of wild fauna and flora;

(e) develop national strategies, plans and programmes for the conservation of the biological diversity of Malawi;

(f) require, in writing, any developer, including the Government, to integrate the conservation and sustainable utilization of the biological diversity of Malawi in any project the implementation of which has or is likely to have detrimental effects to the biological diversity of Malawi.

Conservation of
biological
resources
in situ

71. The Authority shall, in consultation with relevant lead agencies, prescribe measures and issue guidelines to promote the conservation of biological resources *in situ* in relation to—

(a) land use methods that are compatible with the conservation of biological diversity;

(b) the selection and management of protected areas so as to promote the conservation of various terrestrial and aquatic ecosystems of Malawi;

(c) the selection and management of buffer zones near protected areas;

(d) the protection of species, ecosystems and habitats threatened with extinction;

(e) prohibiting or controlling the introduction of alien animal and plant species;

(f) identifying, promoting and integrating traditional knowledge into conservation and sustainable use of biological diversity; and

(g) safe handling, transfer, and use of living modified organisms resulting from modern biotechnology that may have adverse impact on biodiversity, human health, and the environment.

72. The Authority shall, in consultation with relevant lead agencies, prescribe measures for the conservation of biological diversity *ex situ*, in relation to—

Conservation of biological resources *ex situ*

- (a) species threatened with extinction;
- (b) issuance of guidelines for the establishment of—
 - (i) germplasm;
 - (ii) botanical gardens;
 - (iii) zoos;
 - (iv) animal orphanages; or
 - (v) any other facilities the Authority considers necessary;

(c) species threatened with extinction which are conserved *ex situ* in order to re-introduce them into their native habitats and ecosystems where—

- (i) the threat to the species has been terminated; and
- (ii) a viable population of the threatened species has been achieved.

73.—(1) The Authority shall, in consultation with relevant lead agencies, take measures for control, eradication or management of alien and invasive species in order to—

Control and management of alien and invasive species

- (a) prevent the unauthorized introduction and spread of alien and invasive species to the ecosystem;
- (b) manage and control alien and invasive species to prevent or minimize harm to the environment;
- (c) eradicate alien and invasive species from ecosystems and habitats where they may harm such ecosystems and habitats; and
- (d) ensure that environmental and risk assessments are conducted for purposes of permits under the Biosafety Act.

Cap. 60:03

(2) A person shall not carry out an activity involving a specimen of an alien species or an invasive species without a permit issued by the Authority in accordance with the Act.

(3) A permit referred to in subsection (2) may only be issued after a prescribed assessment of risks and potential impacts on biodiversity is carried out.

(4) The Authority may, by notice published in the *Gazette*,—

(a) exempt from the provisions of subsection (2), an alien species or invasive species specified in the notice or any alien or invasive species of a category specified in the notice; and

(b) publish a list of alien and invasive species in respect of which a permit issued under this subsection may not be issued.

(5) The Authority shall regularly review a notice published under subsection (4).

(6) A person authorized by a permit under subsection (2) to carry out an activity involving a specimen of an alien species or invasive species shall take all required steps to prevent or minimize harm to biodiversity.

(7) A person who is an owner, occupier or lessee of land on which a listed invasive species occurs shall notify any relevant competent authority such as an agriculture extension officer, or an environmental inspector, in writing, of the listed alien or invasive species on that land and shall—

(a) take steps to control and eradicate the listed alien or invasive species to prevent it from spreading; and

(b) take all the necessary steps to prevent or minimize harm to biodiversity.

(8) A competent authority which is satisfied that any person has failed to comply with the provisions of subsection (7), or has contravened subsection (2), shall take such steps as may be necessary to remedy any harm to biodiversity caused by the actions of the person or the occurrence of the listed alien or invasive species on land of which he is the owner, occupier or lessee.

(9) If the person in respect of whom the directive has been issued by the competent authority fails to comply with the directive, the competent authority may implement the directive and recover all costs reasonably incurred by the competent authority in implementing the directive from that person or proportionately from that person and any other person who benefited from implementation of the directive.

(10) If an alien species establishes itself as an invasive species due to actions of a specific person, the person shall be liable for all costs incurred in the control and eradication of that species.

(11) The control and eradication of a listed invasive species shall be carried out by methods and procedures approved by the Authority in consultation with a relevant lead agency and shall be

carried out with caution and in a manner that causes the least possible harm to biodiversity and damage to the environment.

(12) Subject to subsection (11), the methods and procedures used to control and eradicate a listed invasive species shall be directed at the offspring, propagating material and re-growth of the invasive species in order to prevent the species from producing offspring, seed, regenerating, or re-establishing itself in any manner.

(13) The Authority shall ensure the coordination and implementation of programmes for the prevention, control or eradication of listed alien species and invasive species.

PART XI — ENVIRONMENTAL PROTECTION ORDERS AND ENVIRONMENTAL EASEMENTS

74.—(1) The Authority shall have power to issue environmental protection orders against any person whose acts or omissions have or are likely to have adverse effects on the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Environmental protection orders

(2) Environmental protection orders shall be in the prescribed form and, if no form is prescribed, in a form determined by the Authority.

(3) Notwithstanding the provisions of any other law to the contrary, an environmental protection order may require the person against whom it is made to—

(a) take any necessary measures for the restoration of any land degraded by reason of the activities of the person against whom the environmental protection order is made, including the replacement of soil, the replanting of trees and other flora, and the restoration, as far as may be possible, of unique geological, physiographical, ecological or historical features of the land and of waste disposal sites;

(b) stop, prevent or modify any action or conduct which causes or contributes or is likely to cause or contribute to pollution;

(c) remove, at the expense of the person against whom the environmental protection order is made, any waste or refuse deposited by that person, or with his or her knowledge or authority, in a place specified in the environmental protection order and to dispose of the waste or refuse in a manner and at a place and within a period specified in the environmental protection order;

(d) pay compensation specified in the environmental protection order to any person whose land is degraded by the action or conduct of the person against whom the environmental protection order is made.

(4) An environmental protection order shall, in addition to the matters referred to this section, specify—

(a) an activity considered by the Authority to be detrimental to the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(b) particulars of the person or persons against whom it is made;

(c) a period within which anything required to be done by the person against whom it is made shall be done;

(d) penalties which may be imposed for non-compliance with the environmental protection order; and

(e) any other matters as the Authority may consider necessary for the protection and management of the environment and the conservation and sustainable utilization of natural resources.

(5) The Authority shall have power to inspect, at any reasonable time, an activity on any premises for purposes of determining whether the activity is harmful to the environment or the conservation of natural resources or whether to make an environmental protection order under this section.

(6) For purposes of subsection (5), the Authority may enter any premises at any reasonable time to enforce the environmental protection order and the Authority shall not be responsible for the consequences of any action reasonably taken by him, in good faith, under this section.

(7) Subject to subsection (6), any person aggrieved with an environmental protection order may, within thirty (30) days from the date on which it is made, appeal to the Tribunal, and the appellant shall specify whether the appeal is against the whole environment protection order or against only a part or parts thereof.

(8) The Authority may delegate the power referred to in subsections (5) and (6) to an inspector and anything done by the inspector shall be deemed to be done by the Authority and shall be valid for all purposes.

(9) An environmental protection order shall be served on the person against whom it is made or his agent or legal practitioner.

75.—(1) Where a person against whom an environmental protection order is served fails, neglects or refuses to take the action specified in the environmental protection order, the Authority shall take such action as it deems appropriate for achieving the purposes for which the environmental protection order is made.

Enforcement of environmental protection orders

(2) Where the Authority has taken action under this section, it shall be entitled to recover in full from the person against whom the environmental protection order is made, expenses reasonably incurred by the Authority for taking the action, and if the expenses remain unpaid for a period of more than thirty (30) days from the date of first demand, in writing, by the Authority, the amount in respect of the expenses shall be recoverable by the Government as a civil debt.

76.—(1) Subject to this Act and on application made under this Part, the Tribunal or the High Court may grant an environmental easement.

Environmental easements

(2) The object of an environmental easement is to further the principles of environmental management set out in this Act by facilitating conservation and enhancement of the environment, in this Act referred to as the benefitted environment, through the imposition of one or more obligations in respect of use of land, in this Act referred to as the burdened land, being the land in the vicinity of the benefitted environment.

(3) An environmental easement may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest under customary law.

(4) Without prejudice to the generality of subsection (3), an environmental conservation order may be imposed on the burdened land in order to—

- (a) preserve fauna and flora;
- (b) preserve the quality and flow of water in a dam, lake, river or aquifer;
- (c) preserve any outstanding geological, physiographical, ecological, archeological or historical features of the burdened land;
- (d) preserve scenic views or open space;
- (e) preserve natural contours and features of the burdened land;
- (f) permit persons to walk in a defined path across the burdened land;

(g) prevent or restrict the scope of any activity on the burdened land which has, as its effect, the mining and working of minerals or aggregates;

(h) prevent or restrict the scope of any agricultural activity on the burdened land;

(i) create and maintain works on burdened land so as to limit or prevent harm to the environment; or

(j) create and maintain migration corridors for wildlife.

(5) Where an environmental easement is imposed on burdened land whose effect will be to restrict or curtail the enjoyment of an existing right or interest enjoyed by any person, there shall be paid to the person, by the applicant for the environmental easement, compensation determined in accordance with this Act.

(6) An environmental easement may exist in gross, that is to say, the validity and enforceability of the easement shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited, or of a person with an interest in that plot of land who can be benefited by the environmental easement.

Application for
an environ-
mental
easement

77.—(1) Any person or group of persons may apply to the Tribunal or the High Court for one or more environmental easements.

(2) The court or the Tribunal may impose conditions on the grant of an environmental easement as it considers to be best calculated to advance the object of an environmental easement.

Enforcement of
environmental
easement

78.—(1) Proceedings to enforce environmental protection orders may be commenced only by the person in whose name the environmental easement has been registered.

(2) Proceedings to enforce an environmental easement may seek—

(a) the grant of an environmental restoration order; or

(b) the grant of a remedy available under law relating to easements in respect of land.

(3) The court or Tribunal shall have discretion to adapt and adjust, so far as seems necessary to it, the procedure relating to the enforcement of the requirements of an environmental easement.

Registration of
environmental
easements

79.—(1) Where an environmental easement is imposed on land, the title of which is registered under any written law, the environmental easement shall be registered in accordance with that written law applicable to registration of easements.

(2) Where an environmental easement is imposed on any land other than land referred to in subsection(1), the District Environment Sub-Committee of that area in which that land is situated shall register the environmental easement in a local register established for the purpose.

(3) In addition to any matter which may be required by any law relating to the registration of easements, the person in whose name, the environmental easement is registered shall be included in the name of the grantee of the environmental easement.

80.—(1) A person who has a legal interest in the land which is the subject matter of an environmental easement, shall, in accordance with this Act, be entitled to compensation commensurate with the lost value of the use of the land.

Compensation for environmental easements

(2) A person described in subsection (1) may apply to the court or the Tribunal that granted the easement for compensation stating the nature of his legal interest in the burdened land and the compensation sought.

(3) The court or Tribunal may order that the applicant for the environmental easement bear the cost of compensating the person described in subsection (1).

(4) Where the court or Tribunal is satisfied that the environmental easement is of national importance, it may order the Government to compensate the person described in subsection (1).

(5) In determining the compensation due under this section, the court or the Tribunal shall take into account the provisions of the Constitution and any other laws relating to compulsory acquisition of land.

PART XII — INSPECTION, ANALYSIS AND RECORDS

81.—(1) The Authority shall establish an inspectorate with the necessary technical staff and facilities to administer, monitor and enforce measures for the protection and management of, and for the prevention and control of, pollution to, the environment.

Inspectorate

(2) For purposes of ensuring compliance with the provisions of this Act, the Authority may appoint or designate a number of public officers, it may consider necessary, to be inspectors.

(3) Every inspector shall be issued with an identity card, and the identity card shall constitute *prima facie* evidence that the holder thereof is an inspector duly designated by the Authority under subsection (1).

(4) An inspector shall, on demand by any person affected by the exercise of the powers of the inspectors under this Act, produce for inspection, the identity card referred to in subsection (3).

Powers of
inspectors

82.—(1) An inspector may, in the performance of his duties under this Act or any regulations made thereunder,—

(a) enter, at any reasonable time, any premises without warrant or previous notice, to examine any activity which the inspector reasonably considers to be detrimental to the environment or natural resources and to collect therefrom samples of any pollutant or other substance for analysis at any laboratory;

(b) carry out, with or without notice, periodic inspections to ensure that the provisions of this Act and its regulations are complied with;

(c) inspect and examine any vehicle or vessel, in or upon which he has reasonable cause to believe that a pollutant or other article or substance which he believes to be a pollutant is being or has been transported;

(d) order production of any document pertaining to transportation of a pollutant or any other article or substance;

(e) collect a sample of a pollutant or any substance from a vehicle, vessel or place where it has been derived for analysis at a laboratory designated by the Authority under section 84;

(f) request information from a person who has, or appears to have, custody or control of the pollutant or such other article or substance or the vehicle or vessel in which it is or has been transported;

(g) require the owner or occupant or the agent of the owner or occupant of the premises to produce for inspection any book, document or record or copies thereof for retention by the inspector concerning any matter relevant to the administration of this Act;

(h) make examinations and enquiries to determine whether this Act is being complied with;

(i) seize any plant, equipment, substance or any other thing which he believes has been used in the commission of an offence against this Act or regulations made thereunder;

(j) serve an order on the owner, user or occupier of any land or premises requiring the owner, user, occupier to take measures specified in an order for the prevention of harm to the environment and natural resources;

(k) close any facility which pollutes or is likely to pollute the environment contrary to this Act;

(l) require the owner or operator of the facility referred to in paragraph (k) to implement remedial measures that the environmental inspector may, in the notice closing down a manufacturing plant, undertaking or establishment, direct; and

(m) cause a police officer to arrest any person whom he reasonably believes has committed an offence under this Act.

(2) It shall be the duty of the owner or occupant of the agent or the owner or occupant of, the premises to render an inspector reasonable assistance in the performance by the inspector of the functions provided under this section.

83.—(1) An inspector shall, before collecting from the premises, vessel or vehicle a sample of any pollutant or other article or substance which the inspector believes to be a pollutant, inform the owner or occupier of the premises, vessel or vehicle or other person in control of the vehicle or vessel from which the sample is to be taken of his intention to do so.

Procedures
for taking
samples

(2) The inspector shall place the sample in three separately sealed packages and shall deliver one package to the Authority, another to the laboratory at which the sample will be tested or analyzed and the third to the owner or occupier of the premises or vehicle or other person in control of the vehicle.

(3) Any dispute arising from the manner in which a sample is collected by an inspector or in connection with the results of any laboratory test or analysis of the sample shall be referred by the aggrieved person or the Authority, as the case may be, to the Tribunal.

84. The Authority may, by notice published in the *Gazette*, establish, or where it deems it necessary, designate laboratories it thinks fit to be analytical laboratories or reference laboratories at which samples taken under this Act may be tested or analyzed.

Establishment
or designation
of
laboratories

85.—(1) There shall be issued, by designated laboratories in respect of any test or analysis, a certificate showing the results of the test or analysis.

Certificate of
analysis, etc.

(2) The certificate shall state the method or methods used in carrying out the test or analysis and shall be signed by the analyst who carried out the test or analysis.

(3) A certificate issued under this section shall be *prima facie* evidence of the results of any test or analysis carried out under this Act.

Keeping of records

86.—(1) The Authority shall, by notice published in the *Gazette*, prescribe the activities in respect of which records shall be kept for the purposes of this Act and may require any person in possession or control of the records to transmit the records to the Authority at intervals determined by the Authority;

(2) The records shall be used by the Authority or an inspector for purposes of environmental auditing, monitoring, control and inspection and other purposes related to the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Public access to information and prohibition of disclosure

87.—(1) Subject to subsection (3), every person shall have access to any information submitted to the Authority or any lead agency relating to the implementation of the provisions of this Act or any other law relating to the protection and management of the environment and to the conservation and sustainable utilization of natural resources.

(2) Notwithstanding subsection(1), no person shall be entitled to have access to proprietary information, to which the Trademarks Act or the Patents Act applies, submitted to or received by the Authority under this Act unless prior written consent of the owner of the proprietary information has been granted.

(3) A person desiring the information shall apply to the Authority or a lead agency and may be granted access on payment of a prescribed fee.

(4) A person shall not, without the consent of the Authority, publish or disclose to any person, otherwise than in accordance with this Act, the contents of any document, communication or information which relates to and which has come to his

knowledge in the course of his duties under this Act.

(5) Any person who contravenes subsection (4) commits an offence and upon conviction, shall be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for twelve (12) months.

PART XIII — FINANCIAL PROVISIONS

Funds of the Authority

88.—(1) The operating and financial costs of the Authority shall be financed from—

(a) all moneys received or recovered under this Act by or on behalf of the Authority by way of fees, including any penalty or fines in respect of the fees;

(b) other moneys and assets as may vest in or accrue to the Authority, whether in the course of its functions or otherwise;

(c) the proceeds of a sale by the Authority of any assets or equipment to which it has title;

(d) grants or donations received by the Authority; and

(e) sums appropriated by Parliament for the purposes of the Authority.

(2) Subject to provisions of the Public Finance and Management Act, the Authority may, with the approval of the Minister, borrow, either temporarily, by way of overdraft or otherwise, any sum it may require, for meeting its obligations or discharging its functions under this Act. Cap. 37:02

(3) The Authority may charge fees in respect of publications, seminars, documents and advisory or other services provided by the Authority.

(4) The Authority may invest its moneys which are not immediately required for the performance of its functions under this Act.

89.—(1) The Authority shall cause to be kept proper accounts and other records relating thereto in respect of its funds and shall, in every respect, comply with the provisions of the Public Finance Management Act. Accounts and Audit

Cap. 37:02

(2) There shall be paid out of payments made to the Authority, sums that are necessary to defray any expenses incurred by the Authority, including the remuneration, allowances and other employment benefits of the Director General and members of staff of the Authority.

(3) The Authority shall appoint independent auditors at the end of each financial year to examine and audit the accounts and all relevant documents of the Authority.

90.—(1) The financial year of the Authority shall be the period commencing on the date of the commencement of this Act and ending on the following 30th June and thereafter it shall be concomitant of the financial year of Government. Financial year of the Authority

(2) The Minister, may by order published in the *Gazette*, prescribe a different date for the ending of the financial year of the Authority.

91.—(1) The Authority shall perform its functions in accordance with sound financial principles and shall ensure, as far as possible, that its revenue is sufficient to meet its expenditure properly charged to revenue. Duty to operate on sound financial principles

(2) The Authority may invest money from the Fund in conformity with good commercial practice.

Estimates

92.—(1) The Director General shall, not later than three (3) months before the end of each financial year, prepare and submit to the Authority for its approval, estimates of income and expenditure of the Authority for the next ensuing year and may, at any time before the end of a financial year, prepare and submit to the Authority for approval, any estimates supplementary to the estimates of the current year.

(2) No expenditure shall be made out of funds of the Authority unless that expenditure is part of the expenditure approved by the Authority under the estimates for the financial year in which the expenditure is to be made or in the estimates supplementary to it.

PART XIV — THE ENVIRONMENT FUND

Establishment
of the
Environment
Fund

93.—(1) There is hereby established a fund to be known as the Environment Fund (in this Act otherwise referred to as the “Fund”).

(2) The Fund shall consist of—

(a) sums appropriated by Parliament for the purposes of the Fund;

(b) advances made to the Fund under section 96;

(c) environmental levies on products, industries and activities that adversely affect the environment as the Minister responsible for finance may, in consultation with the Authority, impose;

(d) sums or other assets received for the purposes of the Fund, by way of voluntary contributions or donations; and

(e) sums paid by way of fees or other penalties in respect of licenses issued under this Act.

Objects of the
Fund

94. The Fund shall be utilized for the operational costs and expenses of the Authority and the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Vesting of the
Fund
Cap.37:02

95. The Fund shall be vested in the Authority and, subject to this Act and the Public Finance Management Act, shall be administered in accordance with the direction of the Authority.

Advances to the
Fund

96. If, in any financial year, the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance shall make advances to the Fund in order to meet the deficiency or any part thereof and the

advances shall be made on terms and conditions, whether as to repayment or otherwise, determined by the Minister responsible for finance.

97.—(1) Without derogation from the generality of section 95, the Fund, may be applied to— Application of the Fund

(a) research and training which promotes the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(b) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Authority;

(c) the cost of any scheme which the Authority considers to be in the interest of the protection and management of the environment and the conservation and sustainable utilization of natural resources;

(d) meeting any expenses arising from the establishment and operations of the Authority; and

(e) any purpose which the Authority considers to be in the interest of the objects of the Fund.

(2) The Authority shall, in consultation with relevant lead agencies, prescribe operational guidelines for the distribution and monitoring utilization of the funds under the Fund.

98.—(1) The Authority shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Public Finance Management Act. Books and other records of account, audit and reports of the Fund
Cap. 37:02

(2) The accounts of the Authority and the Fund shall be audited by the Auditor General.

(3) The Authority shall cause to be prepared, as soon as practicable, but not later than six (6) months after the end of the financial year, an annual report on all the financial transactions of the Authority.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

99.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn there from except by means of cheques signed by persons authorized in that behalf by the Authority. Holdings of the Fund

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Authority, be invested in a manner the Authority may, after consulting with the Minister responsible for finance, determine.

PART XV — OFFENCES

Hindering,
obstructing of
inspectors

100. Any person who—

(a) hinders or obstructs an inspector in the execution of his duties under this Act;

(b) fails to comply with a lawful order or requirement made by an inspector in accordance with this Act;

(c) prevents the Director General or an inspector or any person duly authorized by the Director General or an inspector from gaining entry upon or into any premises which he is empowered under this Act to enter;

(d) impersonates the Director General or an inspector or any person duly authorized by the Director General or inspector;

(e) prevents an inspector from having access to any record or document required by the inspector for purposes of this Act;

(f) misleads or gives false information to the Director General or an inspector or any person duly authorized by the Director General or inspector under this Act; or

(g) fails to comply with measures directed by the Authority, the Director General or any inspector for the protection and management of the environment and the conservation and sustainable utilization of natural resources,

commits an offence and shall, on conviction, be liable to a fine of two million Kwacha (K2,000,000) and to imprisonment for twelve (12) months and, in addition shall, for each day the offences continues, be liable to a fine of one hundred thousand Kwacha (K100,000).

Offence
related to
Environmental
and Social
Impact
Assessment

101. Any person who contravenes section 31 or carries out a project that requires an Environmental and Social Impact Assessment licence without the licence, or knowingly gives false information in an Environmental and Social Impact Assessment report contrary to section 32, commits an offence and on conviction, shall be liable to a fine of ten million Kwacha (K10,000,000) and to imprisonment for ten (10) years.

102. Any person who—

(a) fails to keep or furnish the Authority with records required under this Act or under any regulations made under this Act;

(b) fraudulently or knowingly alters any records, commits an offence and shall, on conviction, be liable to a fine of ten million Kwacha (K10,000,000) and to imprisonment for ten (10) years.

Offences
relating to
records

103. Any person who—

(a) violates any environmental standard established under this Act;

(b) violates any measure prescribed under this Act; or

(c) uses natural resources otherwise than in accordance with guidelines issued under this Act, commits an offence and shall, on conviction, be liable to a fine of ten million Kwacha (K10,000,000) and to imprisonment for ten (10) years.

Offences
relating to
environmen-
tal standards
and guide-
lines

104. Any person who—

(a) fails to manage hazardous substances or materials, processes and wastes in accordance with this Act;

(b) knowingly or fraudulently mislabels wastes or chemicals;

(c) aids or abets the illegal trafficking in wastes, chemicals, or hazardous substances or wastes, commits an offence and shall, on conviction, be liable to a fine of fifty million Kwacha (K50,000,000) and to imprisonment for fifteen (15) years.

Offences
relating to
hazardous
substances
and wastes

105. Any person who discharges or emits any pollutant into the environment otherwise than in accordance with this Act commits an offence and shall, on conviction, be liable to a fine of fifty million Kwacha (K50,000,000) and to imprisonment for fifteen (15) years.

Offences
relating to
pollution

106. Any person who—

(a) trades in any component of genetic or biological resources contrary to the provisions of this Act or any other written law;

(b) unlawfully obtains access to genetic or biological resources without providing any equitable benefit contrary to the provisions of this Act or any other written law;

(c) obtains and utilizes community rights or traditional knowledge without the prior informed consent of a local community as stipulated under this Act or any other written law;

(d) unlawfully possesses any biological resources; or

Offences
relating to
access to
genetic or
biological
resources

(e) unlawfully disturbs the habitat of a biological resource in contravention of this Act, commits an offence and shall, on conviction, be liable to a fine of twenty five million Kwacha (K25,000,000) and to imprisonment for twelve (12) years:

Provided that in fixing a fine, a court shall take into account the value of the product of the genetic or biological resource collected from Malawi.

General
offences and
penalties

107.—(1) Any person who contravenes any provision of this Act for which no other penalty is specifically provided commits an offence and shall, on conviction, be liable to a fine of ten million Kwacha (K10, 000,000) and to imprisonment for five (5) years.

(2) Where applicable, a person who is convicted of an offence under this section may, in addition to the fine provided for, be liable to—

(a) a fine of one hundred thousand Kwacha (K100,000) for each day the offence continues to be committed;

(b) revocation or suspension of a permit or licence issued under this Act; or

(c) forfeiture of equipment or products related to the offence.

Administrative
penalties

108.—(1) Any person who fails to comply with any order or direction given by the Authority requiring him to take measures specified therein to avoid or mitigate damage to the environment commits an offence and shall be liable to an administrative penalty.

(2) Any person who fails to comply with any condition of a permit, licence or other authorization issued under the Act commits an offence and shall be liable to an administrative penalty.

(3) Any person who continues to operate under a licence previously granted to him after revocation of the licence by the Authority commits an offence and shall be liable to an administrative penalty.

(4) Any person who prevents, obstructs, or refuses entry upon his land, by the Authority or any member or agent thereof for purposes of conducting investigations and inspections commits an offence and shall be liable to an administrative penalty.

(5) Any person who refuses or fails to or neglects to comply with directions, rules, or orders of an inspector made in the course of the inspector's duties commits an offence and shall be liable to an administrative penalty.

(6) Any person who fails to provide the Authority, within the time specified, with any date, information, documents or materials required by the Minister under this Act commits an offence and shall be liable to an administrative penalty.

(7) Any person who fails to make information at his disposal available to the public under this Act commits an offence and shall be liable to an administrative penalty.

(8) The Authority may impose the following administrative penalties—

(a) giving the person a written warning;

(b) directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes, to—

(i) remedy the effects of the contravention;

(ii) compensate persons who have suffered loss because of the contravention;

(iii) ensure that the person does not commit further contravention;

(c) requiring a person to pay a monetary penalty of up to five million Kwacha (K5,000,000);

(d) requiring the person to pay a monetary penalty of one hundred thousand Kwacha (K100,000) for each day the offence continues to be committed. Cap. 1:01

(9) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and shall, on conviction, be liable to a fine of five million Kwacha (K5,000,000) and to imprisonment for twelve (12) months.

(10) Where the administrative penalty imposed by the Authority is monetary and the person on whom it has been imposed does not pay the monetary penalty for more than thirty (30) days from the date of the initial demand in writing by the Authority, the amount in respect of the monetary penalty may be recovered by the Authority as a civil debt.

Part XVI — DISPUTE SETTLEMENT

109.—(1) There is hereby established an Environmental Tribunal (in this Act otherwise referred to as “the Tribunal”) which shall— Establishment
of Environ-
mental Tribunal

(a) consider appeals against any decision or action of the

Authority, lead agency, Director General or inspector under this Act;

(b) hear and determine petitions on violation of the right to a clean and healthy environment or any other provision of this Act and any written law relating to environment and natural resources management;

(c) receive complaints from any person, lead agencies, private sector or non-governmental organizations relating to implementation and enforcement of environment and natural resources management policies and legislation;

(d) consider other issues and make declaratory orders the Authority, the Director General, lead agency or any person may refer to it under this Act.

(2) The Tribunal shall consist of—

(a) a legal practitioner who is conversant with environmental law, and who has practiced the profession of the law for at least ten years, nominated by the Malawi Law Society, who shall be the chairperson;

and

(b) two (2) other members appointed by the Minister, both of whom shall be sufficiently qualified in the protection and management of the environment and the conservation and sustainable utilization of natural resources.

Rules, procedure and decision of the Tribunal

110.—(1) The Tribunal shall not be bound by rules of evidence and shall admit, as evidence, any matter which in its opinion shall assist it to arrive at a just and equitable decision for the advancement of the purposes of this Act.

(2) The Tribunal shall make its own rules of procedure and shall have power to—

(a) summon any person to give evidence in any proceedings before the Tribunal or to produce to the Tribunal, any document relevant to the proceedings before it;

(b) require the disclosure of information and production of documents of any kind from any person;

(c) confirm, vary, amend or alter a decision made by the Authority, the Director General, lead agency or inspector or reverse or substitute such decision or any decision which is just and equitable and which is in the interest of the protection and management of the environment or the conservation and sustainable utilization of natural resources.

(d) declare any activity or practice that violates any provision of this Act or any other written law illegal and void; and

(e) order a remedy, compensation including an injunction or similar order as it may deem necessary to advance the objects and principles provided for under this Act or any other written law relating to environment and natural resources management.

(3) The decisions of the Tribunal shall be by majority vote.

(4) Any person aggrieved with the decision of the Tribunal may appeal to the High Court on point of law, within thirty (30) days from the date of the decision of the Tribunal.

111. The chairperson of the Tribunal may appoint any persons with special skills or knowledge on environmental issues which are subject matter of any inquiry or proceedings before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

Power to appoint assessors

112.—(1) When any matter to be determined by the Authority under this Act appears to it to involve a point of law or to be of unusual importance or complexity, it may, after giving notice to concerned parties, refer the matter to the Tribunal for direction.

Power to seek direction of Tribunal in complex matters

(2) Where any matter has been referred to the Tribunal under subsection (1), the Authority and the parties thereto shall be entitled to be heard by the Tribunal before a decision is made in respect of the matter and may appear personally or may be represented by a legal practitioner.

113. If a party, without good cause, fails to attend or to be represented at the proceedings of the Tribunal, the Tribunal may proceed in the absence of that party or representative.

Failure to attend

114. A party to any proceedings before the Tribunal may—

(a) appear in person; or

(b) be assisted or represented by a legal practitioner.

Representation of parties

115. A person who intends to enforce a decision of the Tribunal may apply to the High Court for an order to enforce the decision.

Enforcement of orders

116.—(1) Subject to subsection (2), the Tribunal shall not make any order as to costs but nothing in this subsection shall prevent a legal practitioner from agreeing with his client the payment of solicitor and own client costs.

Costs

(2) The Tribunal may make an order as to costs where a party fails to attend, without good cause, any proceedings of the Tribunal or where the matter is vexatious or frivolous.

Liability of
bodies corporate

117.—(1) Where an offence under this Act is committed by a body corporate or a partnership, shall—

(a) in the case of the body corporate, every director, manager or similar officer of the body corporate, be liable for the offence; and

(b) in the case of a partnership, every partner, be jointly and severally be liable for the offence.

(2) A person shall not be liable for an offence under subsection (1), if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case.

PART XVII — MISCELLANEOUS

Closure of
premises

118.—(1) Where the Director General believes, on reasonable grounds, that this Act or any regulations made thereunder, have been contravened, the Director General may, subject to subsection (2), order the closure of any premises by means of, or in relation to which the Director General reasonably believes the contravention was committed.

(2) The closure of any premises shall cease after the provisions of this Act or any regulations made thereunder have, in the opinion of the Director General, been complied with, unless, before that time, court proceedings have been instituted in respect of the contravention, in which event the premises shall remain closed until the proceedings are finally concluded.

Regulations

119.—(1) The Minister may, on the recommendation of the Authority, make regulations for the better carrying out of the purposes of this Act.

(2) Notwithstanding section 21 (e) of the General Interpretation Act, the regulations made under this section may create offences in respect of any contraventions of the regulations and may, for the offences, impose a fine of up to fifty million kwacha (K50,000,000) and to imprisonment for ten (10) years.

Repeal and
savings
Cap. 60:02

120.—(1) The Environment Management Act is repealed.

(2) Any subsidiary legislation made under the Environment Management Act repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall, unless in conflict with this Act, remain in force and be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

121. Any agreement, document, licence, or permission, made, granted or approved under the Environment Management Act repealed under section 120 relating to protection and management of the environment, and the conservation and sustainable utilization of natural resources shall, in so far as it is consistent with the provisions of this Act and except as otherwise expressly provided in this Act or in any other written law, continue and be deemed to have been made, granted or approved by the Authority or the Minister as the case may be, under the corresponding provisions of this Act.

Agreements
licences,
permits etc

OBJECTS AND REASONS

The principal object of this Bill is to repeal the Environment Management Act (Cap 60:02) and replace it with new legislation to address the current issues relating to the protection and management of the environment, and the conservation and sustainable utilization of natural resources.

KAI EKENI KAPHALE, SC
Attorney General