

GENERAL EXPLANATORY NOTE:

- [** **]** Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
-
-

ACT

To amend the Environment Conservation Act, 1989, so as to define or further define certain expressions; to make further provision concerning the determination of and compliance with the policy for environmental conservation; to further regulate the constitution of the Council for the Environment; to amend certain references; to provide that the Minister may in certain instances declare private land or water to be a special nature reserve, and to extend the exemptions in respect of the prohibition on admittance to special nature reserves; to compel any person or authority in control of any place to which the public has access to remove any litter discarded, dumped or left at such place; to further define the power of the Minister of Water Affairs to issue permits in connection with disposal sites; to make further provision in connection with the identification of actions likely to have a detrimental effect on the environment; to empower Administrators also to authorize the performance of identified activities; to empower Administrators also to authorize development in limited development areas; to empower the Minister to make regulations regarding the submission of statistics on the types of waste produced; to empower the Minister to make regulations regarding the dumping of litter; to empower the Minister to make regulations regarding environmental impact reports in respect of activities prohibited in limited development areas; to delete the requirement in terms of which certain regulations may only be made applicable within the area of jurisdiction of a local authority with the concurrence of such local authority; to empower the Minister to grant exemption from the application of regulations, notices or directions promulgated or issued in terms of the Act; to extend the provision regarding offences and penalties; to confer upon the Minister, an Administrator and a local authority or government institution certain powers where the environment is damaged, endangered or detrimentally affected; to extend the powers of the Minister to delegate; and to empower persons authorized thereto by the Minister to enter upon land; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 18 June 1992.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 73 of 1989, as amended by section 1 of Act 98 of 1991

- 5 1. Section 1 of the Environment Conservation Act, 1989 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of "council" of the following definition:
 "define" includes a description by means of a map on which sufficient information is indicated to identify an area;"
- 5 (b) by the substitution for the definition of "environmental impact report" of the following definition:
 "environmental impact report" means a report referred to in section 22(2) or 23(3);"
- 10 (c) by the substitution for the definition of "government institution" of the following definition:
 "government institution" means any
 [(a)] institution, body, company or close corporation [established by or under any law; or
 (b) other institution or body] recognized by the Minister by notice in the *Gazette*;"
- 15 (d) by the substitution for the definition of "litter" of the following definition:
 "litter" means any object or matter discarded or left behind by a person in whose possession or control it was;"
- 20 (e) by the substitution for the definition of "prescribe" of the following definition:
 "prescribe" means prescribe by regulation or notice in the *Gazette*;"
- 25 (f) by the insertion after the definition of "protected natural environment" of the following definition:
 "regulation" means a regulation made under this Act;"
- (g) by the substitution for the definition of "this Act" of the following definition:
 "this Act" includes the regulations and any notice issued under the Act;" and
- 30 (h) by the substitution for the definition of "waste" of the following definition:
 "waste" means any matter, whether gaseous, liquid or solid or any combination thereof, [originating from any residential, commercial or industrial area or agricultural area identified] which is from time to time designated by the Minister by notice in the *Gazette* as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity."
- 35

Amendment of section 2 of Act 73 of 1989

- 40 2. Section 2 of the principal Act is hereby amended—
- (a) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs, respectively:
 " (b) the promotion of [sustained] sustainable utilization of species and ecosystems and the effective application and re-use of natural resources;
 45 (c) the protection of the environment against disturbance, deterioration, defacement, poisoning, pollution or destruction as a result of man-made structures, installations, processes or products or human activities; and"; and
- 50 (b) by the substitution for subsection (2) of the following subsection:
 "(2) The policy contemplated in subsection (1) shall be determined by the Minister after consultation with [the council and the Administrator of each province, and with the concurrence of]—
 55 (a) each Minister charged with the administration of any law which in the opinion of the Minister relates to a matter affecting the environment; [and]
 (b) the Minister of Finance [and the Minister of Economic Affairs and Technology];
 (c) the Administrator of each province; and
 60 (d) the council."

Substitution of section 3 of Act 73 of 1989

3. The following section is hereby substituted for section 3 of the principal Act:

“Compliance with policy

5 3. Each Minister, Administrator, local authority and government
institution upon which any power has been conferred or to which any
duty which may have an influence on the environment has been
assigned **[in connection with the environment]** by or under any law,
shall exercise such power and perform such duty in accordance with
10 the policy referred to in section 2.”.

Amendment of section 6 of Act 73 of 1989

4. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

15 “(1) The council shall consist of not more than 22 members, who are
appointed by the Minister, and of whom—
(a) 18 members in the opinion of the Minister have knowledge of and
are able to make a contribution towards the protection and
utilization of the environment; and
20 (b) **[are appointed by the Minister after consultation with]** one mem-
ber for each province is nominated for appointment by the
Administrator of [each] the province concerned.”.

Amendment of section 13 of Act 73 of 1989

5. Section 13 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

25 “(a) advise the Director-General on any matter **[affecting activities]**
which may influence the protection and utilization of the environ-
ment; and”.

Amendment of section 14 of Act 73 of 1989

6. Section 14 of the principal Act is hereby amended by the substitution for
30 subparagraphs (i) and (ii) of paragraph (d) of subsection (1) of the following
subparagraphs, respectively:

 “(i) the National Parks Board **[of Trustees]** referred to in section 5(1)
of the National Parks Act, 1976 (Act No. 57 of 1976);
35 (ii) the **[Board for]** National **[Botanic Gardens]** Botanical Institute
established by section 57 of the Forest Act, 1984 (Act No. 122 of
1984);”.

Amendment of section 18 of Act 73 of 1989

7. Section 18 of the principal Act is hereby amended—

40 (a) by the substitution for paragraph (a) of subsection (2) of the following
paragraph:

 “(a) for the purpose of the protection of the environment in or
special characteristics of such area;”;
45 (b) by the deletion of the word “and” at the end of paragraph (b) of
subsection (2);

 (c) by the insertion of the following paragraph after paragraph (b) of
subsection (2):

50 “(bA) in respect of other land or water than land or water referred
to in paragraph (b), at the request of and with the written
consent of the owner of such land or water, as well as the
holder of any right to minerals in respect of such land, and
subject to the conditions agreed upon by the Minister and the
owner; and”;

 (d) by the substitution for subsection (3) of the following subsection:
55 “(3) The declaration of a special nature reserve shall not be
withdrawn or the boundaries thereof altered except by resolution

- of Parliament: Provided that this subsection shall not apply to a declaration contemplated in subsection (2)(bA).";
- (e) by the deletion of the word "and" at the end of paragraph (a) of subsection (4);
- 5 (f) by the addition of the word "and" at the end of paragraph (b) of subsection (4);
- (g) by the addition of the following paragraph to subsection (4):
"(c) with the concurrence of the owner of the land or water, as well as the holder of any right to minerals in respect of such land, contemplated in subsection (2)(bA).";
- 10 (h) by the deletion of the word "or" at the end of paragraph (a) of subsection (7); and
- (i) by the addition of the following paragraph to subsection (7):
 15 "(c) any other person desiring to view a special nature reserve on account of its special nature or characteristics."

Insertion of section 19A in Act 73 of 1989

8. The following section is hereby inserted in the principal Act after section 19:

"Removal of litter

20 19A. Notwithstanding the provisions of section 19(2) every person or authority in control of or responsible for the maintenance of any place to which the public has access, shall within a reasonable time after any litter has been discarded, dumped or left behind at such place (with the inclusion of any pavement adjacent to, or land situated between, such a place and a street, road or site used by the public to get access to such place) remove such litter or cause it to be removed."

25

Amendment of section 20 of Act 73 of 1989

9. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

30 "(1) No person shall establish, provide or operate any disposal site without a permit issued by the Minister of Water Affairs [and except subject to the conditions contained in such permit] and that Minister may—

35 (a) issue a permit subject to such conditions as he may deem fit;
 (b) alter or cancel any permit or condition in a permit;
 (c) refuse to issue a permit:
Provided that such Minister may exempt any person or category of persons from obtaining a permit, subject to such conditions as he may deem fit."

40 Amendment of section 21 of Act 73 of 1989

10. Section 21 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

45 "(3) The Minister identifies an activity in terms of subsection (1) after consultation with [the council and the Administrator of each province, and with the concurrence of]—

(a) the Minister of each department of State responsible for the execution, approval or control of such activity; [and]
 (b) the Minister of Finance [and the Minister of Economic Affairs and Technology]; and
 50 (c) the Administrator of the province concerned."

Substitution of section 22 of Act 73 of 1989

11. The following section is hereby substituted for section 22 of the principal Act:

“Prohibition on undertaking of identified activities

5 22. (1) No person shall undertake an activity identified in terms of section 21(1) or cause such an activity to be undertaken except by virtue of a written authorization issued by the Minister or by an Administrator or a local authority or an officer, which Administrator, authority or officer shall be designated by the Minister by
10 [regulation] notice in the Gazette.

15 (2) The authorization referred to in subsection (1) shall only be issued after consideration of reports concerning the impact of the proposed activity **[in question]** and of alternative proposed activities on the environment, which shall be compiled and submitted by such persons and in such manner as may be prescribed.

20 (3) The Minister or the Administrator, or a local authority or officer referred to in subsection (1), may at his or its discretion refuse or grant the authorization for the proposed activity or an alternative proposed activity **[in question]** on such conditions, if any, as he or it may deem necessary.

25 (4) If a condition imposed in terms of subsection (3) is not being complied with, the Minister, any Administrator or any local authority or officer **[as the case may be]** may withdraw the authorization in respect of which such condition was imposed, after at least 30 days' written notice was given to the person concerned.”.

Amendment of section 23 of Act 73 of 1989

12. Section 23 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

30 “(2) No person shall undertake in a limited development area any development or activity prohibited by the Minister by notice in the *Gazette* or cause such development or activity to be undertaken unless he has on application been authorized thereto by the Minister or an Administrator designated by the Minister by notice in the Gazette, or by a local authority designated by the Minister or such Administrator **[in the]** by notice in the
35 *Gazette* or the *Official Gazette*, as the case may be, on the conditions contained in such an authorization.

40 (3) In considering an application for an authorization referred to in subsection (2) the Minister, the designated Administrator or **[the designated]** local authority may request the person to submit a report as prescribed, concerning the influence of the proposed activity on the environment in the limited development area.”.

Amendment of section 24 of Act 73 of 1989

13. Section 24 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

45 “(b) the submission, subject to the provisions of section 3(3) of the Statistics Act, 1976 (Act No. 66 of 1976), of statistics on the quantity and types of waste produced;”.

Insertion of section 24A in Act 73 of 1989

14. The following section is hereby inserted in the principal Act after section 24:

50 **“Regulations regarding littering**

24A. The Minister may make regulations with regard to the control of the dumping of litter, concerning—

(a) the nature, design, number, provision and placing of containers for the dumping of litter;

- 5
- (b) the nature, design, number, provision and placing of notices in respect of the dumping of litter;
- (c) the cleaning, clearing away and removal of litter and the emptying and maintenance of containers for the dumping of litter;
- 10 (d) any other facilities or methods to prevent the dumping of litter, as well as programmes for the clearing away of litter;
- (e) the powers of provincial administrations, local authorities or government institutions to control and prevent the dumping of litter; and
- (f) any other matter which he deems necessary or desirable to control and prevent the dumping of litter.”.

Amendment of section 26 of Act 73 of 1989

15 15. Section 26 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The Minister may make regulations with regard to any activity identified in terms of section 21(1) or prohibited in terms of section 23(2), concerning—”.

20 Amendment of section 28 of Act 73 of 1989, as amended by section 2 of Act 98 of 1991

16. Section 28 of the principal Act is hereby amended by the deletion of subparagraphs (ii) and (iii) of paragraph (i).

Insertion of section 28A in Act 73 of 1989

25 17. The following section is hereby inserted in the principal Act after section 28:

“Exemption to persons, local authorities and government institutions from application of certain provisions

30 28A. (1) Any person, local authority or government institution may in writing apply to the Minister, with the furnishing of reasons, for exemption from the application of any provision of any regulation, notice or direction which has been promulgated or issued in terms of this Act.

35 (2) In order to enable him to make a decision on an application in terms of subsection (1), the Minister may call for further information from the applicant.

(3) The Minister may after considering an application—

- 40 (a) refuse to grant exemption;
- (b) in writing grant exemption from compliance with any of or all the provisions of any regulation, notice or direction, subject to such conditions as he may deem fit.

(4) If any condition referred to in subsection (3)(b) is not being complied with, the Minister may in writing withdraw the exemption concerned or at his discretion determine new conditions.

45 (5) The Minister may from time to time review any exemption granted or condition determined, and if he deems it necessary, withdraw such exemption or delete or amend such condition.”.

Amendment of section 29 of Act 73 of 1989

18. Section 29 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

50 “(3) Any person who contravenes a provision of section 19[(1)] or 19A or fails to comply therewith, or fails to comply with a direction in terms of section 31A(1) or (2), or prevents any person authorized in terms of section 41A to enter upon such land or hinders him in the execution of his powers,

shall be guilty of an offence and liable on conviction to a fine, **[not exceeding R1 000]** or to imprisonment for a period not exceeding three months **[or to both such fine and such imprisonment]**.”.

Insertion of section 31A in Act 73 of 1989

5 19. The following section is hereby inserted in the principal Act after section 31:

“Powers of Minister, Administrator, local authority or government institution where environment is damaged, endangered or detrimentally affected

10 **31A.** (1) If, in the opinion of the Minister or the Administrator, local authority or government institution concerned, any person performs any activity or fails to perform any activity as a result of which the environment is or may be seriously damaged, endangered or detrimentally affected, the Minister, Administrator, local authority or government institution, as the case may be, may in writing direct such person—

15 (a) to cease such activity; or
(b) to take such steps as the Minister, Administrator, local authority or government institution, as the case may be, may deem fit, within a period specified in the direction, with a view to eliminating, reducing or preventing the damage, danger or detrimental effect.

20 (2) The Minister or the Administrator, local authority or government institution concerned may direct the person referred to in subsection (1) to perform any activity or function at the expense of such person with a view to rehabilitating any damage caused to the environment as a result of the activity or failure referred to in subsection (1), to the satisfaction of the Minister, Administrator, local authority or government institution, as the case may be.

25 (3) If the person referred to in subsection (2) fails to perform the activity or function, the Minister, Administrator, local authority or government institution, depending on who or which issued the direction, may perform such activity or function as if he or it were that person and may authorize any person to take all steps required for that purpose.

30 (4) Any expenditure incurred by the Minister, an Administrator, a local authority or a government institution in the performance of any function by virtue of the provisions of subsection (3), may be recovered from the person concerned.”.

Substitution of section 33 of Act 73 of 1989

40 20. The following section is hereby substituted for section 33 of the principal Act:

“Delegation

45 33. The Minister, the Minister of Water Affairs, an Administrator, a local authority or a government institution may on such conditions as he or it may deem fit delegate or assign any power or duty conferred upon or assigned to him or it by or under this Act, excluding any power referred to in sections 2, 16(2), 18(1), 18(4), **[20(5)]**, 24, 25, 26, 27 and 28, to, respectively, any officer or employee of the Department, the Department of Water Affairs or the provincial administration or local authority or government institution concerned.”.

Insertion of section 41A in Act 73 of 1989

21. The following section is hereby inserted in the principal Act after section 41:

“Right to enter upon land

5 **41A.** (1) Any person authorized thereto in writing by the Minister, may after reasonable notice to the owner or occupier of any land, at any reasonable time enter upon that land in order to investigate whether any action is necessary in order to give effect to the objects of this Act, or to determine whether the provisions of this Act or a regulation, notice, authorization, instruction or any direction promulgated, issued, granted or made thereunder or any condition imposed thereunder or contained in any authorization, instruction or direction has been complied with.

10 (2) A person authorized under subsection (1) shall not exercise any power or perform any duty unless he is in possession of the authorization concerned.

15 (3) An authorized person shall produce his authorization at the request of any person having a material interest in the matter concerned.”.

Short title

22. This Act shall be called the Environment Conservation Amendment Act, 1992.