CONTENT

Bill for Introduction into the National Assembly —

The Environmental Management and Co-ordination (Amendment) Bill, 2014 .................................................. 2859
THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL, 2014

A Bill for

AN ACT of Parliament to amend the Environmental Management and Co-ordination Act, 1999

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Environmental Management and Co-ordination (Amendment) Act, 2014.

2. (1) The Environmental Management and Co-ordination Act, 1999, in this Act referred to as the “principal Act” is amended in section 2—

(a) by deleting the definition of “coastal zone” and inserting the following new definition—

“coastal zone” means the geomorphologic area where the land interacts with the sea comprising terrestrial and marine areas made up of biotic and abiotic components or systems coexisting and interacting with each other and with socio-economic activities;

(b) by deleting the definition of “District Environment Committee”;

(c) by deleting the definition of “District Environment Action Plan;

(d) by deleting the definition of “Provincial Environment Committee”;

(e) by deleting the definition of “exclusive economic zone” and inserting the following new definition—

“exclusive economic zone” has the meaning assigned to it by the United Nations Convention on the Law of the Sea;

(f) by deleting the definition of “local authority”;
(g) by deleting the definition of “natural resources” and inserting the following new definition—

“natural resources” has the meaning provided under Article 260 of the Constitution;

(h) by deleting the definition of “wetland” and inserting the following new definition—

“wetland” means areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres;

(i) by inserting in proper alphabetical sequence the following new definitions—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matter relating to environment and natural resources;

“continental shelf” has the meaning assigned to it by the United Nations Convention on the Law of the Sea;

“County Environment action plan” mean a County Environment action plan prepared under section 40;

“County Environment Committee” means a committee established under section 29;

“county government” has the meaning assigned to it in section 2 of the County Governments Act;

“environmental organization” means a public benefits organization whose objective is to conserve the environment and natural resources and is duly registered as a community based organization, or a public benefits organization;

“indigenous knowledge” means any traditional knowledge of sources, components, capabilities, practices and uses of, and processes
of preparation, use and storage of plant and animal species and their genetic resources;

"Ministry" means the Ministry for the time being responsible for matters relating to the environment;

"natural resource agreements" means an agreement which involves the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource in Kenya;

"strategic environmental assessment" means a formal and systematic process to analyse and address the environmental effects of policies, plans, programmes and other strategic initiatives;

"traditional knowledge" means such knowledge as may be socially and culturally acquired within or without the context of conventional education by Kenyans; "voluntary environmental management" means the principle of encouraging voluntary compliance in conserving the environment and which is a cost-effective and efficient method of attaining compliance with environmental regulations and of encouraging innovative conservation practices; and

"wildlife" has the meaning assigned to it in the Wildlife Conservation and Management Act.

(2) The principal Act is amended by deleting the words in the first column and substituting therefor the words in the second column wherever they appear in the Act--

<table>
<thead>
<tr>
<th>First Column</th>
<th>Second Column</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister</td>
<td>Cabinet Secretary</td>
</tr>
<tr>
<td>Chairman</td>
<td>Chairperson</td>
</tr>
<tr>
<td>Complaints Committee</td>
<td>Department</td>
</tr>
<tr>
<td>District</td>
<td>County</td>
</tr>
</tbody>
</table>
3. Section 3 of the principal Act is amended—

(a) in subsection (1) by inserting the following words “in accordance with the Constitution and relevant laws” immediately after the words “healthy environment”;

(b) by inserting the following new subsection immediately after subsection (2)—

“(2A) Every person shall cooperate with state organs to protect and conserve the environment and to ensure the ecological sustainable development and use of natural resources”.

(c) in subsection (3) by—

(i) deleting the words “If a person alleges that the entitlement conferred under subsection (1) has been, is been or is likely to be contravened in relation to him” and substituting therefor the words “If a person alleges that the right to a clean and healthy environment has been, is being or is likely to be denied, violated, infringed or threatened, in relation to him; and

(ii) inserting the words “may on his behalf or on behalf of a group or class of persons, members of an association or in the public interest” immediately after the words “that person”.

4. The principal Act is amended by inserting the following new section immediately after section (3)—
3A. (1) Subject to the law relating to access to information, every person has the right to access any information that relates to the implementation of this Act, that is in the possession of the Authority, lead agencies or any other person.

(2) A person desiring the information referred to in subsection (1) shall apply to the Authority or a lead agency and may be granted access to such information on payment of the prescribed fee.

5. The principal Act is amended by repealing section 4.

6. Section 5 of the principal Act is amended by deleting the word “Council” and substituting therefor the words “Cabinet Secretary”.

7. The principal Act is amended by repealing section 6.

8. The principal Act is amended by repealing section 8 and replacing it with the following new section—

“8. The headquarters of the Authority shall be in Nairobi but the Authority shall ensure its services are accessible in all parts of the Republic.”

9. Section 9 (2) of the principal Act is amended—

(a) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) make recommendations to the relevant authorities with respect to land use planning;”

(b) by deleting paragraph (e);

(c) in paragraph (h) by deleting the words “and coordinate” appearing immediately after the word “undertake”;
(d) in paragraph (m) by the deleting the words "environmental education and public awareness about the need for sound environmental management as well as for enlisting public support and encouraging the effort made by other entities in that regard" and substituting therefor the words "environmental education, public awareness and public participation";

(e) in paragraph(n) by inserting the word "develop," immediately before the word "publish";

(f) in paragraph(o) by deleting the words appearing immediately after the word "protection";

(g) in paragraph (p) by deleting the words "issue an annual" and substituting therefor the words "submit to the Cabinet Secretary every two years, a";

(h) by inserting the following new paragraphs immediately after paragraph (p)—

"(q) encourage voluntary environmental conservation practices and natural resource conservancies, easements, leases, payments for ecosystem services and other such instruments and in this regard, develop guidelines."

"(r) work with other lead agencies to issue guidelines and prescribe measures to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya";

(i) by renumbering paragraph (q) as paragraph (s).

10. Section 10 of the principal Act is amended—

(a) in subsection (1) (c) by—

(i) inserting the words "who shall be the Secretary to the Board" immediately after the word "Director-General";

(ii) deleting the word "President" and substituting therefor the words "Cabinet Secretary from amongst three persons selected by the Board through a competitive recruitment process;";
(b) by deleting subsection (1) (d) and substituting therefor the following new subsection—

“(1) (d) the Principal Secretary in charge of finance or his representative;”;

c) by deleting subsection (1) (e) and substituting therefor the following new subsection—

“(1) (e) six members, not being public officers, appointed by the Cabinet Secretary;”;

d) by deleting subsection (1) (f) and substituting therefor the following new subsection—

“(1) (f) the Attorney General or his representative.”;

e) by inserting the following new subsection immediately after subsection (3)—

“(3A) Where the office of the Director-General falls vacant, the Board may, pending the appointment of a Director General, appoint a person to act in that capacity provided that such appointment shall not exceed a period of six months”; and

(f) by deleting subsection (14) (c).

11. Section 12 of the principal Act is amended by—

(a) deleting the word “directly” and substituting therefor the words “direct any”;

(b) by renumbering section 12 as section 12 (1);

(c) by inserting the following new subsection immediately after subsection (1)—

“(2) Any person who fails to comply with subsection (1) commits an offence.”

12. The principal Act is amended by repealing section 14 and replacing it with the following new section—

14. The Director-General and the Directors of the Authority shall be paid such salaries and allowances, as may, from time to time, be determined by the Board on the
advice of the Salaries and Remuneration Commission.

13. Section 23 of the principal Act is amended—

(a) in subsection (2) by deleting the word “four” and substituting therefor the word “three” and deleting the words “(Corporations) or to an Auditor appointed under this section.”

(b) by deleting subsection (3) and substituting therefor the following new subsection—

“(3) The annual accounts of the Authority shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Financial Management Act”.

14. Section 24 of the principal Act is amended—

(a) in subsection (3)—

(i) by deleting the words “shall be vested in the Authority and, subject to this Act”;

(ii) by deleting the words “he deems fit” and substituting therefor the words “the Cabinet Secretary may prescribe upon the advice of the Salaries and Remuneration Commission”;

(iii) by inserting the words “and subject to chapter Six of the Constitution” immediately after the word “management”;

(b) by inserting the following new subsections immediately after subsection (3)—

“(3A) The Board referred to in subsection (3) shall be known as the Board of Trustees of the Trust Fund and shall be a body corporate having perpetual succession and a common seal and may by its corporate name sue and be sued.

(3B) The Trust Fund shall be administered in the manner provided for under a Trust Deed, and for purposes of this Act, the Trust Deed shall be deemed to constitute the rules and regulations that govern the operations and functions of the Fund.”
Schedule at the county level;

(e) two representatives of farmers or pastoralists within the county to be appointed by the Governor;

(f) two representatives of the business community operating within the concerned county appointed by the Governor;

(g) two representatives of the public benefits organizations engaged in environmental management programmes within the county appointed by the Governor in consultation with the National Federation of Public Benefit Organizations; and

(h) a representative of every regional development authority whose area of jurisdiction falls wholly or partially within the county.

(2) Appointments made under this section shall be done in consultation with the relevant county organs that are representative of the nominees in the county.

(3) The Governor, in making the appointments under this section shall ensure—

(a) equal opportunities for persons with disabilities and other marginalized groups; and

(b) that not more than two-thirds of the members are of the same gender.
(4) The members of the county environment committees appointed under paragraphs (d) to (h) of subsection (2) shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

19. The principal Act is amended by repealing section 30 and replacing it with the following new section—

Functions of the County Environment Committee.

30. The County Environment Committee shall—

(a) be responsible for the proper management of the environment within the county for which they are appointed; and

(b) perform such additional functions as are prescribed by the Act or as may, from to time, be assigned by the Governor by notice in the Gazette.

20. The principal Act is amended by repealing section 31 and replacing it with the following new section—

Department to deal with public complaints.

31. The Cabinet Secretary shall designate a Department within the Ministry to deal with complaints in accordance with section 32.

21. Section 32 is amended by deleting the word "Complaints Committee" wherever it appears and substituting therefor the words "Department" and deleting the word "Council" wherever it appears and substituting therefor the words "Cabinet Secretary".

22. Section 33 is amended by deleting the word "Complaints Committee" wherever it appears and substituting therefor the words "Department".
23. The principal Act is amended by repealing section 34.

24. The principal Act is amended by repealing section 35.

25. The principal Act is amended by repealing section 36.

26. The principal Act is amended by repealing section 37 and replacing it with the following new section—

37. (1) The Authority shall, within three years of the commencement of this Act formulate the National Environmental Action Plan and shall ensure that it has undertaken public participation before the adoption of the Plan.

(2) The Authority shall submit the Plan referred to under subsection (1) to the Cabinet Secretary for approval.

(3) Upon the approval of the Plan by the Cabinet Secretary, the Cabinet Secretary shall submit it to the National Land Commission and the Ministry of Lands.

(4) The Cabinet Secretary shall publish the National Environment Action Plan in the Gazette.

(5) The Authority shall review the National Action Plan every six years.

27. The principal Act is amended by repealing section 39.

28. The principal Act is amended by repealing section 40 and replacing it with the following new section—

40. (1) Every County Environment Action Committee shall within two years of the commencement of this Act and every five years thereafter, prepare a county environment action plan in respect of the
county for consideration and adoption by the County Assembly.

(2) Every County Environment Committee, in preparing a county environment plan, shall undertake public participation and take into consideration every other county environment action plan already adopted with a view to achieving consistency among such plans.

(3) The respective County Executive Committee members of every county shall submit the county environment action plan referred to in subsection (1) to the Cabinet Secretary for incorporation into the national environment action plan referred to in section 37.

(4) The Authority shall consider every county environment action plan and either
41A. (1) The purpose of environmental action plans is to co-ordinate and harmonise the environmental policies, plans, programmes and decisions of the national and county governments as the case may be, in order to—

(i) minimize the duplication of procedures and functions; and promote consistency in the exercise of functions that may affect the environment; and

(ii) secure the protection of the environment across the country; and

(iii) prevent unreasonable actions by any person, state organ or public entity in respect of the environment that are prejudicial to the economic or health interests of other counties or the country.

41B. (1) The Authority shall monitor compliance with the national and county environmental action plans and may take any steps or make any inquiries that it may consider necessary in order to determine if the plans are being complied with.

(2) If as a result of any action taken or inquiry made under subsection (1) the Authority is of the opinion that a plan is not substantially being complied with, the Authority shall serve a written notice to the organ concerned, calling on it to take such specified steps as the Authority may consider necessary to remedy the failure of compliance.

(3) Within thirty days of the receipt of the notice referred to in subsection (2), the organ shall respond to the notice in writing setting out any—
(a) objections to the notice, if any;
(b) the action that will be taken to ensure compliance with the respective plan; or
(c) other information that the organ considers relevant to the notice.

(4) After considering the representations from the organ and any other relevant information, the Authority shall within thirty days of receiving the response referred to in subsection (3) issue a final notice—

(a) to confirm, amend or cancel the notice referred to in subsection (2);
(b) specify any action and a time period within which such action shall be taken to remedy non-compliance.

(5) The Authority shall keep a record of all environmental action plans and ensure that such plans are available for inspection by the public.

31. Section 42 of the principal Act is amended—
(a) in subsection (1)—
(i) by deleting the word “Director General” and substituting therefor the word “Authority” and inserting the word “sea” after the word “lake”;
(ii) by inserting a new paragraph immediately after paragraph (g) as follows—
“(h) any other matter prescribed by the Cabinet Secretary on the advice of the Authority”.
(b) in subsection (3) by deleting the words “riverbanks” and “lake shores” and substituting therefor the words “river basins” and “lake basins” respectively.
(c) by inserting the following new subsection immediately after subsection (4)—

“(4A) The Cabinet Secretary may make Regulations prescribing for any interest in or over land in the interests of defence, public safety, public order, public morality, public health, or land use planning”.

32. Section 43 of the principal Act is amended—

(a) by deleting the words “riverbank” and “lake shores” and substituting therefor the words “river basin” and “lake basin” respectively;

(b) by renumbering section 43 as section 43(1) and inserting a new subsection immediately after subsection (1) as follows—

“(2) The Authority shall in consultation with the relevant lead agencies and stakeholders, issue guidelines and prescribe measures for co-management of critical habitats within or around a lake basin, wetland, forest or coastal zone and such measures shall factor the interests of the local communities resident therein”.

33. Section 45 of the principal Act is amended in subsection (4) by deleting the word “Director-General” wherever it appears and substituting therefor the word “Authority”.

34. Section 48 of the principal Act is amended—

(a) in subsection(1) by—

(i) inserting the words “and the Forests Act” immediately after the expression “subsection (2)”;

(ii) deleting the word “Director-General” and substituting therefor the word “Authority”;

(b) by inserting the following new subsections immediately after subsection (2)—

“(3) Where a forested area is declared to be a protected area under section 54 (1), the Cabinet
Secretary may cause to be ascertained, any individual, community or government interests in the land and forests and shall provide incentives to promote community conservation."

(4) A person who contravenes any conservation measure prescribed by the Authority, or fails to comply with a lawful conservation directive issued by the Authority or its Environment Committee at the counties commits an offence.”

35. Section 49 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

“(2) Any measures undertaken under subsection (1) shall comply with existing laws.”

36. Section 50 of the principal Act is amended by deleting the words “Authority shall, in consultation with the relevant lead agencies” and substituting therefor the words “Cabinet Secretary shall on the advice of the Authority”

37. Section 51 of the principal Act is amended by deleting the words “The Authority shall, in consultation with the relevant lead agencies” and substituting therefor the words “The Cabinet Secretary shall on the recommendation of the Authority”.

38. Section 52 of the principal Act is amended by deleting the words “The Authority shall, in consultation with the relevant lead agencies” and substituting therefor the words “The Cabinet Secretary shall on the recommendation of the Authority”.

39. Section 53 of the principal Act is amended—

(a) in subsection (1) by deleting the words “The Authority shall, in consultation with the relevant lead agencies” and substituting therefor the words “The Cabinet Secretary shall on the recommendation of the Authority”; and
(b) in subsection (2)—

(i) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) appropriate arrangements for access to biological resources, genetic resources and ecological services of Kenya by non-citizens including the issue of licences and fees to be paid for that access”;

(ii) by inserting the following new paragraphs immediately after paragraph (e)—

“(f) measures necessary for the recognition, protection and enhancement of indigenous knowledge and associated practices in the conservation of the environment and natural resources;

(g) necessary for the protection of indigenous knowledge of biodiversity and genetic resources of communities;”

(iii) in paragraph (f) by deleting the word "Authority" and substituting therefor the words "Cabinet Secretary"; and by renumbering paragraph (f) as paragraph (h)."

40. Section 54 of the principal Act is amended in subsection (1) by—

(a) inserting the words “and in accordance with the Constitution, the Convention on Biological Diversity and other treaties immediately after the word “agencies”; and

(b) inserting the word “forests” immediately after the word “lake”.

41. Section 55 of the principal Act is amended—

(a) in subsection (2) by deleting the words “as soon as practicable upon the commencement of this Act, the Authority shall in consultation with the relevant lead agencies, prepare” and substituting
therefor the words “The Cabinet Secretary shall conduct”;

(b) in subsection (3)—

(i) by deleting the word “Authority” and substituting therefor the words “Cabinet Secretary”;

(ii) by deleting the words ‘two’ and substituting therefor the word ‘four’;

(c) by inserting the following new subsections immediately after subsection (7)—

“(8) Where any polluting or hazardous substances are discharged, released or in any other way escape into the Coastal Zone, any person responsible for management of the polluting or hazardous substances shall be liable—

(a) for any resultant damage; and

(b) for the cost of any measures reasonably taken after the release or escape for the purpose of preventing, reversing or minimising any damage caused by such discharge, release or escape; and

(c) for any damage caused by any measures so taken.

(9) Where there arises a grave and imminent threat or danger of damage of discharge, release or escape of polluting or hazardous substances into the Coastal Zone, any person responsible for management of the polluting or hazardous substances shall be liable—

(a) for the cost of any measures reasonably taken for the purpose of preventing, minimising or controlling any such damage; and
(b) for any damage caused by any measures so taken.”

42. Section 56 of the principal Act is amended—

(a) in subsection (1) by deleting the words “Authority shall in consultation with the relevant lead agencies,” and substituting therefor the words “Cabinet Secretary in consultation with the Authority”;

(b) in subsection (2) by deleting the words “Authority shall in consultation with the relevant lead agencies,” and substituting therefor the words “Cabinet Secretary in consultation with the Authority”.

43. The principal Act is amended by inserting a new section immediately after section 56—

Guidelines on climate change.

56A. The Authority shall in consultation with relevant lead agencies, issue guidelines and prescribe measures on climate change.

44. The heading to Part VI of the principal Act is amended by deleting the words “Environmental Impact Assessment” and substituting therefor the words “Integrated Environmental Impact Assessment”.

45. The principal Act is amended by inserting the following new section immediately after the heading of Part VI—

Strategic Environmental Assessment.

57A.(1) All Policies, Plans and Programmes for implementation shall be subject to Strategic Environmental Assessment.

(2) For the avoidance of doubt the plans, programmes and policies are those that are—

(a) subject to preparation or adoption by an authority at regional,
national, county or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament, Government or if regional, by agreements between the governments or regional authorities, as the case may be.

(b) determined by the Authority as likely to have significant effects on the environment.

(3) All entities shall undertake or cause to be undertaken the preparation of strategic environmental assessments at their own expense and shall submit such assessments to the Authority for approval.

(4) The Authority shall, in consultation with lead agencies and relevant stakeholders prescribe rules and guidelines in respect of Strategic Environmental Assessments.

46. Section 58 of the principal Act is amended—

(a) by deleting subsection (2) and substituting therefor the following new subsection—

"(2) The proponent of any project specified in the Second Schedule shall undertake a full environmental impact assessment study and submit an environmental impact assessment study report to the Authority prior to being issued with any licence by the Authority:

Provided that the Authority may direct that the proponent forego the submission of the environmental impact assessment study report in certain cases."

(b) in subsection (6) by deleting the words "in consultation with the Standards Enforcement and Review Committee";
(c) by inserting the following new subsection immediately after subsection (6)—

“(6A) The Cabinet Secretary in consultation with the Authority shall make regulations and formulate guidelines for the practice of Integrated Environmental Impact Assessments and Environmental Audits.”

(d) by inserting the following new subsection immediately after subsection (9) -

“(10) A person who knowingly submits a report which contains information that is false or misleading commits an offence and is liable on conviction to a term of imprisonment of not exceeding three years or to a fine of not exceeding five million shillings or to both such fine and imprisonment and in addition, his licence shall be revoked.”

47. Section 59 of the principal Act is amended by—

(a) deleting the words “for two successive weeks in the Gazette and in a newspaper circulating in the area or proposed area of the project” and substituting therefor the words “in the Gazette, in at least two newspapers circulating in the area or proposed area of the project and over the radio,”;

(b) inserting the following new subsection immediately after subsection (2)—

“(3) The Authority shall ensure that its website contains a summary of the report referred to in subsection (1).”

48. Section 64 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) —

“(3) Where the Authority has directed that a fresh environmental impact assessment be carried out or that new information is necessary from the project proponent, any environmental impact assessment licence that has been
issued may be cancelled, revoked or suspended by the Authority.”

49. Section 67 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) The Authority may, after the issuance of an environmental impact assessment licence—

(a) cancel or revoke such licence; or

(b) suspend such licence, for such time not exceeding twenty four months where the licensee contravenes the provisions of the licence.”

(b) by inserting the following new subsection immediately after subsection (1)—

“(1A) Where the Authority cancels, revokes or suspends a licence in accordance with this section, the reasons for such action shall be in writing.”

50. Section 68(1) of the principal Act is amended by inserting the words “or its designated agents” immediately after the word “Authority”.

51. Section 69 of the principal Act is amended by inserting a new subsection immediately after subsection (1) as follows—

“(1A) Every lead agency shall establish an environmental unit to implement the provisions of this Act.”

52. The principal Act is amended by repealing section 70.

53. The principal Act is amended by repealing section 71 and replacing it with the following new section—

Water quality standards.

71. The Cabinet Secretary shall on the recommendation of the Authority—
(a) establish criteria and procedures for the measurement of water quality;

(b) recommend minimum water quality standards for all the waters of Kenya and for different uses, including—

(i) drinking water;

(ii) water for industrial purposes;

(iii) water for agricultural purposes;

(iv) water for recreational purposes;

(v) water for fisheries and wildlife; and

(vi) for any other prescribed water use;

(c) analyse conditions for the discharge of effluents;

(d) issue guidelines or regulations for the preservation of fishing areas, aquatic areas, water sources and reservoirs and other areas, where water may need special protection;

(e) recommend measures necessary for the treatment of effluents before being discharged into the sewerage system; and

(f) make any other recommendation that may be necessary for the monitoring and control of water pollution.

54. Section 74 (1) of the principal Act is amended by deleting the words “Local Authority” and substituting therefor the word “entity”.

Amendment to section 74 of No. 8 of 1999.
55. Section 75 (1) of the principal Act is amended by deleting the words “Local Authority” and substituting therefor the word “entity”.

56. The principal Act is amended by repealing section 78 and replacing it with the following new section—

Air quality standards

78. The Cabinet Secretary shall on the recommendation of the Authority—

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

(b) set—

(i) ambient air quality standards;

(ii) occupational air quality standards; emission standards for various sources;

(iii) criteria and guidelines for air pollution control for both mobile and stationary sources; and

(iv) any other air quality standards;

(c) determine measures necessary to reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both, to meet the requirements of standards established under this section;

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

(e) do all such things as appear necessary for the monitoring and controlling of air pollution.
57. Section 79 of the principal Act is amended by inserting the words “Subject to the Constitution and any other relevant laws” immediately before the words “The Minister”.

58. Section 86 of the principal Act is amended by deleting the words “The Standards and Enforcement Review Committee shall in consultation with the relevant lead agencies, recommend to the Authority measures necessary to” and substituting therefor the following words “The Cabinet Secretary shall on the recommendation of the Authority”.

59. Section 91 of the principal Act is amended—

(a) in subsection (1) by deleting the words “Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority” and substituting therefor the following words “Cabinet Secretary shall on the recommendation of the Authority determine”; and

(b) in subsection (2) by deleting the words “Authority shall, on the recommendation of the Standards and Enforcement Review Committee” and substituting therefor the words “Cabinet Secretary shall on the recommendation of the Authority”.

60. The principal Act is amended by repealing section 94 and replacing it with the following new section—

94. The Cabinet Secretary shall on the recommendation of the Authority—

(a) determine standards for the concentration of pesticides residues in raw agricultural commodities. For the purposes of this paragraph, raw agricultural commodities—

(i) include fresh or frozen fruit and vegetables in their raw
state, grains, nuts, eggs, raw milk, meat and other agricultural produce;

(ii) do not include any agricultural produce or good which is processed, fabricated or manufactured by cooking, dehydrating, milling, or by any other similar means;

(b) establish standards to regulate the importation, exportation, manufacture, storage, distribution, sale, use, packaging, transportation, disposal and advertisement of pesticides and toxic substances with the relevant organizations;

(c) establish procedures for the registration of pesticides and toxic substances;

(d) determine measures to ensure proper labelling and packaging of pesticides and toxic substances;

(e) determine measures for monitoring the effects of pesticides and toxic substances on the environment;

(f) determine measures for the establishment and maintenance of laboratories to operate as standards laboratories for pesticides and toxic substances; and

(g) determine measures for the establishment of enforcement procedures and regulations for the storage, packaging and transportation of pesticides and toxic substances.
61. The principal Act is amended by repealing section 101 and replacing it with the following new section –

Standards for noise.

101. The Cabinet Secretary shall on the recommendation of the Authority—

(a) recommend minimum standards for emissions of noise and vibration pollution into the environment as are necessary to preserve and maintain public health and the environment;

(b) determine criteria and procedures for the measurement of noise and vibration pollution into the environment;

(c) determine criteria and procedures for the measurement of subsonic vibrations;

(d) determine standards for the emission of sub-sonic vibrations which are likely to have a significant impact on the environment;

(e) issue guidelines for the minimization of sub-sonic vibrations, referred to in paragraph (d) from existing and future sources;

(f) determine noise level and noise emission standards applicable to construction sites, plants, machinery, motor vehicles, aircraft including sonic bonus, industrial and commercial activities;

(g) determine measures necessary to ensure the abatement and control of
noise from sources referred to in paragraph (f); and

(h) issue guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.

62. The principal Act is amended by inserting the following new section immediately after section 103—

104. (1) Subject to the provisions of the Radiation Protection Act, the Cabinet Secretary on the recommendation of the Authority shall—

(a) establish the standards for the setting of acceptable levels of ionizing and other radiation in the environment; and

(b) establish criteria and procedures for the measurement of ionizing and other radiation.

(2) The Authority shall—

(a) inspect and examine any area, place or premises or any vehicle, vessel, boat or any carrier of any description in or upon which the Authority has reasonable cause to believe that radioactive material or any source of ionizing radiation is store, used transported or disposed of;

(b) examine any person with respect to matters under this Act, where there is reasonable cause to believe that that person is contaminated with radioactive material or is unlawfully in possession of an ionizing radiation source;

(c) in collaboration with the Radiation Protection Board, conduct an
ionizing radiation monitoring program and advise on ionizing and radiation control and protection measures;

(d) maintain records of release of radioactive contaminants into the environment;

(e) keep records of baseline data of radiation in the environment;

(f) maintain a register of all radioactive substances imported into Kenya; and

(g) do all such things as may be necessary for the monitoring and control of pollution from radiation.

63. Section 112 of the principal Act is amended—

(a) in subsection (1) by inserting the words “and the Land Act” immediately after the word “Act.”;

(b) by inserting the following new subsection immediately after subsection (5)—

“(5A) That the principle of voluntary environment management shall be used to encourage land owners to grant an easement on their land and to encourage environmental conservation as a competitive land use option.”

64. Section 117 of the principal Act is amended—

(a) in subsection 3(g) by inserting the words “or his designate” after the word “Director -General”; 

(b) in subsection 3(i) by deleting the words “three months” and substituting therefor the words “fourteen days”;

(c) by inserting the following new subsection immediately after subsection (4)—
“(5) In effecting arrest, the Authority may request the Inspector-General for such number of officers as it may require.”

65. Section 118 of the principal Act is amended by—

(a) deleting the words ‘Attorney General’ wherever it occurs and substituting therefor the words “Director of Public Prosecutions”;

(b) inserting the words “,section 29 of the Office of the Director of Public Prosecutions Act” immediately after the words “Constitution”.

66. Section 119 (3) of the principal Act is amended by deleting the words “,on the advice of the Standards Enforcement Review Committee”.

67. Section 124 of the principal Act is amended by—

(a) deleting the words “ direction and control of the Council, in consultation with relevant lead agencies” and substituting therefor the words “Treaty Making and Ratification Act”;

(b) deleting subsection (2).

68. The principal Act is amended by inserting the following new section immediately after section 124—

124A. (1) The Cabinet Secretary shall, within six months from the effective date of this Act, in consultation with the Authority and lead agencies, develop legislation requiring certain transactions involving environmental resources to be subjected to Parliament for ratification.

(2) The acreage, quantity, quality, value, location and dimensions of natural resources whose agreements require Parliamentary approval shall be specified in an Act of Parliament.
(3) Any transaction requiring Parliament’s ratification as required in this section shall include the grant of a right or concession by or on behalf of any person, including a local community, a county or the national government, to another person—

(a) for the exploitation of wildlife resources and habitats; resources of gazetted forests, water resources, resources on community land and biodiversity resources; and

(b) in the case of a foreign national or company, land owned by such person of more than three hectares.

(4) The Cabinet Secretary may, by notice in the Gazette, specify additional environmental resources whose transactions require Parliament’s ratification.

(5) Any agreements concluded before the promulgation of the Constitution and the coming into force of this Act may be reviewed within a period of two years.

69. Section 125 of the principal Act is amended —

(a) in subsection (1) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) three persons with demonstrated competence in environmental matters including but not limited to land, energy, mining, water, forestry, wildlife and maritime affairs.”

(b) by inserting the following new subsections immediately after subsection (4) as follows—

“(5) The members of the Tribunal shall in their first meeting elect from amongst themselves the Vice-Chairperson to the Tribunal.
The Chairperson and Vice-Chairperson shall be of opposite gender.

(7) In the absence of the Chairperson, the Vice Chairperson shall serve as acting Chairperson for the duration of absence of the Chairperson and the acting Chairperson shall perform such functions and exercise such powers as if that person were the Chairperson.

(8) In the absence of both the Chairperson and the Vice Chairperson, the members of the Tribunal may nominate from among themselves a person to act as the Chairperson which person shall have the training and qualifications in the field of law and such person, while acting as the Chairperson, shall perform such functions and exercise such powers as if that person were the Chairperson.

(9) The Chairperson may designate the Vice Chairperson and two other members to constitute a separate sitting of the Tribunal.

70. Section 126 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

“(6) Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an Advocate.”

71. Section 128 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

“(1) Subject to section 125, the quorum for hearing or determining any cause or matter before the Tribunal under this Act shall be three members.”

72. Section 129 of the principal Act is amended—

(a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—
“(a) the grant of a licence or permit or a refusal to grant a licence or permit or the transfer of a licence or permit under this Act or regulations made there under.”

(b) in subsection (2) by inserting the words “or its agents” immediately after the words “committees of the Authority”.

(c) in subsection (3) (c) by inserting the words “orders to enhance the principles of sustainable development and” immediately after the words “including”.

73. Section 134 of the principal Act is amended—

(a) by renumbering it as section 134 (1) and inserting the words “on the recommendation of the Salaries and Remuneration Commission” immediately after the words “Minister”;

(b) by inserting the following new subsection immediately after subsection (1)—

“(2) The remuneration and allowances referred to in subsection (1) and any other expenses incurred by the Tribunal in the execution of its functions under this Act shall be paid out of monies voted by Parliament for that purpose.”

74. The Principal Act is amended by inserting the following new section immediately after section 134 as follows—

Staff of the Tribunal. 134A. “There shall be such other staff of the Tribunal as may be necessary for the performance of its functions”.

75. Section 137 of the principal Act is amended by deleting the words “not exceeding twenty four months, or to a fine of not more than five hundred thousand shillings or to both such fine and imprisonment” and substituting therefor the words “of not less than one year and not more than four years or to a fine of not less than two million shillings and not more than four million shillings or to both such fine and imprisonment.”
The Environmental Management Co-ordination (Amendment) Bill, 2014

76. Section 139 of the principal Act is amended by deleting the words "of not more than five hundred thousand shillings or to imprisonment for a term of not more than twenty-four months or to both such fine and imprisonment:" and substituting therefor the words "of not less than one year and not more than four years or to a fine of not less than two million shillings and not more than four million shillings or to both such fine and imprisonment."

77. Section 140 of the principal Act is amended by deleting the words "not more than five hundred thousand shillings or to imprisonment for a term of not more than twenty-four months or to both such fine and imprisonment and substituting therefor the words "of not less than one year and not exceeding four years or to a fine of not less than two million shillings and not exceeding four million shillings or to both such fine and imprisonment."

78. Section 142 of the principal Act is amended by deleting the words "not exceeding five hundred thousand shillings" and substituting therefor the words "not less than two million shillings and not exceeding five million shillings.

79. Section 143 of the principal Act is amended—

(a) in the marginal note by inserting the words 'orders of the Tribunal' immediately after the word "orders";

(b) by renumbering section 143 as section 143 (1);

(c) by inserting a new paragraph immediately after paragraph (c) as follows—

"(d) fails, neglects or refuses to comply with any order made by the Tribunal."

(d) by deleting the words "not exceeding twelve months, or to a fine not exceeding five hundred thousand shillings, or both" and substituting therefor the words "of not less than one year and not exceeding four years or to a fine of not less than two million shillings and not more than four million shillings or to both such fine and imprisonment."
(e) by inserting the following new subsection immediately after subsection (1)—

"(2) Failure by a lead agency to comply with a directive of the Authority issued under section 12 of this Act shall constitute an offence."

80. Section 144 of the principal Act is amended—

(a) by deleting the words “who commits an offence against” and substituting therefor the word ‘contravenes’; and

(b) by deleting the words “more than eighteen months or to a fine of not more than three hundred and fifty thousand shillings” and substituting therefor the words “of not less than one year and not exceeding four years or to a fine of not less than two million shillings and not exceeding four million shillings or to both such fine and imprisonment.”

81. The Principal Act is amended by inserting a new section immediately after section 147—

147A. A County may make legislation in respect of all such matters as are necessary or desirable that are required or permitted under the Constitution and this Act.

82. The principal Act is amended by repealing section 148 and replacing it with the following section—

148. Any written law by the national and county governments relating to the management of the environment in force immediately before the coming into force of this Act shall have effect, subject to modifications as may be necessary to give effect to this Act, and where the provisions of such law conflict with any provisions of this Act, the provisions of this Act shall prevail.
83. The principal Act is amended by deleting the Second Schedule and substituting therefor the following new Schedule—

SECOND SCHEDULE

Projects requiring submission of an Environmental Impact Assessment Study report

1. Changes in land use including
   (a) Major changes in land use.
   (b) Large scale resettlement schemes.

2. Urban Development including
   (a) Designation of new townships.
   (b) Establishment of industrial estates.
   (c) Establishment of new housing developments exceeding 30 housing units.
   (d) Establishment or expansion of recreational areas in National Parks, National reserves, Forest and nature reserves and any areas designated as environmentally sensitive.
   (e) Shopping centres and complexes.

3. Transportation
   (a) All paved roads.
   (b) Construction of new roads in environmentally sensitive areas.
   (c) Railway lines.
   (d) Airports and airfields.
   (e) Oil and gas pipeline.
   (f) Water transport.
   (g) Construction of tunnels.

4. Dams, rivers and water resources including
   (a) Any project located within a distance prescribed by a written law from a wetland, ocean, sea, lake, river, dam, stream, spring or any other water body.
(b) Storage dams, barrages and piers.
(c) River diversions and water transfer between catchments.
(d) Large scale flood control schemes.
(e) Drilling for the purpose of utilizing ground water resources including geothermal energy.

5. Aerial spraying

6. Mining including quarrying and open cast extraction of—
   (a) Precious metals.
   (b) Gemstones.
   (c) Metalliferous ores.
   (d) Coal.
   (e) Phosphates.
   (f) Limestone and dolomite.
   (g) Large scale commercial stone and slate.
   (h) Commercial large scale harvesting of aggregate, sand, gravel, soil and clay.
   (i) Exploration for the production of petroleum in any form.
   (j) Extracting alluvial gold with use of mercury.
   (k) Geothermal energy exploration and production.

7. Forestry related activities
   (a) Timber harvesting.
   (b) Clearance of forest areas.
   (c) Reforestation/afforestation with alien species.
   (d) Introduction of alien species.
   (e) Excisions of gazetted forest for whatever purposes.
   (f) Any projects located within forest reserves such as construction of dams or other control structures that flood large areas of relatively un degraded areas.

8. Agriculture including
   (a) Large scale agriculture.
   (b) Introduction of new pesticides.
   (c) Pest control programs (large scale).
(d) Widespread introduction of new crops and animals.
(e) Widespread introduction of fertilizers.
(f) Irrigated agriculture exceeding 50 ha.
(g) Major developments in biotechnology including the introduction and testing of genetically modified organisms

9. **Processing and Manufacturing Industries including**—
   (a) Mineral processing, reduction of ores and minerals.
   (b) Smelting and refining of ores and minerals.
   (c) Foundries.
   (d) Large scale brick and earth ware manufacture.
   (e) Cement works and lime processing.
   (f) Glass works.
   (g) Explosive plants.
   (h) Fertilizer manufacture or processing.
   (i) Oil refineries and petrochemical works.
   (j) Large scale tanning and dressing of hides and skins.
   (k) Large scale abattoirs (more than 15 animals/day) and meat processing plants.
   (l) Large scale brewing and malting.
   (m) Bulk grain processing and storage
   (n) Large scale fish processing plants.
   (o) Pulp and paper mills.
   (p) Large scale food processing plants.
   (q) Plants for manufacture of assembly of motor vehicles.
   (r) Plants for the construction and repair of aircrafts or railway equipment.
   (s) Plants for the manufacture of tanks, reservoirs and sheet metals containers.
   (t) Plants for the manufacture of coal brickets.
   (u) Plants for the manufacturing of batteries.
   (v) Chemical works and processing plants.
   (w) Plants for the manufacture or assembly of motor vehicles.

10. **Electrical infrastructure including**—
    (a) Electricity generation stations.
    (b) Electrical transmission lines above 66 KVA.
    (c) Electrical sub stations.
    (d) Pumped storage schemes.
11. Management of hydrocarbons
   Bulk storage of natural gas, petroleum and any combustible and explosive fuels.

12. Waste disposal including:-
   (a) Sites for solid waste disposal.
   (b) Sites for toxic, hazardous and dangerous wastes.
   (c) Waste water treatment plants.
   (d) Sewage treatment plants.
   (e) Works involving major atmospheric emissions.
   (f) Installations for disposal of industrial wastes.
   (g) Works emitting offensive odours.

13. Natural conservation areas—
   (a) Establishment of Protected areas, buffer zones, and wilderness Areas.
   (b) Commercial exploitation of natural fauna and flora.
   (c) Introduction of alien species of flora and fauna into ecosystems.
   (d) Actions likely to affect endangered species of flora and fauna.
   (e) Wetlands reclamation and or any projects likely to affect wetlands.
   (f) Projects located in indigenous forests including those outside of gazetted forests.
   (g) Projects that affect any areas designated as environmentally sensitive areas

14. Nuclear reactors and nuclear plants

15. Marine areas
   (a) Mineral exploitation of resources in the marine areas.
   (b) Reclamation of marine areas.
MEMORANDUM OF OBJECTS AND REASONS

The legislative proposal giving rise to this Bill has been submitted by the Attorney-General. The main object of this Bill is to make provisions to align the Environmental Management and Coordination Act (Act) with the Constitution of Kenya, 2010. The Bill takes into account the devolved system of government, rationalizing of state resources, sound environmental practices, structures for dispute resolution and principles such as transparency, accountability and participatory environment management.

The Bill also proposes to enhance penalties for the willful pollution of the environment by various entities or persons with a view to achieving the Constitutional right of every Kenyan to a clean and healthy environment. To achieve this, the Bill proposes to amend the Act by imposing reasonable penalties in keeping with the rate of inflation, to make such penalties more stringent in order to address any wilful or careless detrimental action with regards to the environment.

Clause 4 of the Bill proposes to amend the Act by inserting a new section 3A that guarantees every person, the right to access any information that is in the possession of the Authority or any lead agency that deals with the environment. This is to ensure the realization and implementation of Article 35 of the Constitution.

The Bill also proposes to amend section 4 of the Act by dissolving the National Environmental Council and transferring its functions to the Cabinet Secretary. This is to avoid the duplication of functions and to ensure the prudent use of state resources in accordance with Article 201 of the Constitution.

The Bill further seeks to amend section 29 of the Act by disbanding Provincial and District Environmental Committees and constituting County Environmental Committees in accordance with Chapter 11 of the Constitution. Clause 18 empowers the Governor of every county to appoint the members of such committee. The functions of the County Environmental Committees shall be to ensure the proper management of the environment for the respective counties. The Bill also proposes to amend section 31 of the Act by dissolving the Public Complaints Committee and transferring its functions to a Department within the Ministry to ensure the pragmatic use of state resources.

In addition the Bill proposes the disbandment of the National Environmental Action Plan Committee and conferring its functions to the Authority. The new section 37 as proposed in clause 26 of the Bill mandates the Authority to formulate the National Environmental Action Plan within three years of the commencement of the Act and to ensure
public participation when undertaking this exercise. Similarly the Bill under clause 28 (proposed section 40) requires every County Environment Committee to prepare a county environment action plan for each county. The proposed section 41 mandates the Authority to monitor and ensure compliance by every person of the National and County Environmental plans.

The Bill seeks to amend section 56 of the Act by inserting a new section 56A which empowers the Authority to issue Guidelines on climate change in line with the country’s international obligations.

The Bill also proposes to amend the Act by inserting a new clause 57A that seeks to provide for Strategic Impact Assessments in the preparation and implementation of policies, plans and programmes.

Clauses 69, 70 and 71 of the Bill seek to improve the performance of the Tribunal in terms of composition and procedure. The Bill also proposes to insert a new section 104 that empowers the Cabinet Secretary on the recommendation of the Authority to set standards for the setting of acceptable levels of radiation in the environment and to establish criteria and procedures for the measurement of ionizing and other radiation.

Clauses 75 to 80 of the Bill seek to enhance penalties for the contravention of the Act.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms.

This law when enacted will confer on the Cabinet Secretary power to make provisions having force of law in terms of Article 94 (6) of the Constitution of Kenya. The regulations made under this Act by the Cabinet Secretary shall be limited to bringing into effect provisions of this Act. The purpose and object of these regulations include the following:

(a) to provide for any interest in or over land in the interest of defence, public safety, public order, public morality, public health, or land use planning;

(b) to provide for the practice of Integrated Environmental impact Assessment and Environmental Audits; and

(c) preservation of fishing areas aquatic areas, water sources and reservoirs and other areas where water may need special protection.

Statement that the Bill concerns county governments

The Bill concerns County Governments in terms of Article 110
(1) (a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule. The establishment of County Environmental Committees to be appointed by the Governor and the preparation of County Environmental action Plans affects county Governments.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds. However, most of the bodies which existed in the principal Act have either been dissolved or merged and may therefore lead to a saving in expenditure.


ADEN DUALE,
Leader of the Majority Party.
Definitions in section 2 of No. 8 of 1999 which it is proposed to amend—

“air quality” means the concentration prescribed under or pursuant to this Act of a pollutant in the atmosphere at the point of measurement;

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

“analysis” means the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or examination of emissions or recording of noise or sub-sonic vibrations to determine the level or other characteristics of the noise or sub-sonic vibration or its effect on any segments of the environment;

“Analyst” means an analyst appointed or designated under section 119;

“annual report on the state of the environment” means the report prepared and issued under section 9;

“Authority” means the National Environment Management Authority established under section 7;

“beneficial use” means a use of the environment or any element or segment of the environment that is conducive to public health, welfare or safety and which requires protection from the effects of wastes, discharges, emissions and deposits;

“benefited environment” means that environment which has benefited through the imposition of one or more obligations on the burdened land;

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

“biological resources” include genetic resources organisms or parts thereof, populations, or any other biotic component or ecosystems with actual or potential use or value for humanity;

“burdened land” means any land upon which an environmental easement has been imposed;

“chemical” means a chemical substance in any form whether by itself or in a mixture or preparation, whether manufactured or derived from nature and for the purposes of this Act includes industrial chemicals, pesticides, fertilizers and drugs;
“coastal zone” means any area declared to be a protected coastal zone under section 55;

“Continental Shelf” means the exclusive economic zone established under section 4 of the Maritime Zones Act (Cap. 171);

“controlled area” means any area designated as such by the Minister under this Act;

“Deposit Bond” means a deposit bond paid under section 28;

“developer” means a person who is developing a project which is subject to an environmental impact assessment process under this Act;

“Director” means a Director appointed under section 10;

“Director-General” means the Director-General of the Authority appointed under section 10;


“District Environment Committee” means the District Environment Committee appointed under section 29;

“ecosystem” means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit;

“effluent” means gaseous waste, water or liquid or other fluid of domestic, agricultural, trade or industrial origin treated or untreated and discharged directly or indirectly into the aquatic environment;

“element” in relation to the environment mean any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;

“environment” includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;

“environmental audit” means the systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing in conserving or preserving the environment;

“environmental easement” means an easement imposed under section 112;

“environmental education” includes the process of recognising values and clarifying concepts in order to develop skills and attitudes necessary
to understand and appreciate the inter-relatedness among man, his culture and his biophysical surroundings;

"environmental impact assessment" means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment;

"Environmental Inspector" means any environmental inspector appointed or designated under section 117;

"environmental management" includes the protection, conservation and sustainable use of the various elements or components of the environment;

"environmental monitoring" means the continuous or periodic determination of actual and potential effects of any activity or phenomenon on the environment whether short-term or long term;

"environmental planning" means both long-term and short-term planning that takes into account environmental exigencies;

"environmental resources" includes the resources of the air, land, flora, fauna and water together with their aesthetical qualities;

"environmental restoration order" means an order issued under section 108;

"environmentally friendly" includes any phenomenon or activity that does not cause harm or degradation to the environment;

"conservation" means conservation outside the natural ecosystem and habitat of the biological organism;

"exclusive economic zone" means the exclusive economic zone established and delimited under section 4 of the Maritime Zones Act (Cap. 371);

"financial year" means the period of twelve months ending on the thirtieth June in every year;

"General Fund" means the General Fund established under section 20;

"genetic resources" means genetic material of actual or potential value;

"good environmental practice" means practice that is in accordance with the provisions of this Act or any other relevant law;

"hazardous substance" means any chemical, waste, gas, medicine, drug, plant, animal or microorganism which is likely to be injurious to human health or the environment;
“hazardous waste” means any waste which has been determined by the Authority to be hazardous waste or to belong to any other category of waste provided for in section 91;

“conservation” means conservation within the natural ecosystem and habitat of the biological organism;

“intergenerational equity” means that the present generation should ensure that in exercising its rights to beneficial use of the environment the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

“intragenerational equity” means that all people within the present generation have the right to benefit equally from the exploitation of the environment, and that they have an equal entitlement to a clean and healthy environment;

“lead agency” means any Government ministry, department, parastatal, state corporation or local authority, in which any law vests functions of control or management or any element of the environment or natural resources;

“local authority” has the meaning assigned to it in section 2 of the Local Government Act (Cap. 265);

“Minister” means the Minister for the time being responsible for matters relating to the Environment;

“mixture containing oil” means a mixture of substances or liquids with such oil content as may be specified under this Act or, if such oil content is not specified, a mixture with an oil content of one hundred parts or more in one million parts of the mixture;

“National Council of Non-Governmental Organisations” means the Council established by section 23 of the Non-Governmental Organizations Co-ordination Act, 1990 (No. 19 of 1990);

“National Environment Action Plan” means the plan referred to in section 37;

“natural resources” include resources of the air, land, water, animals and plants including their aesthetic qualities;

“noise” means any undesirable sound that is intrinsically objectionable or that may cause adverse effects on human health or the environment;

“occupational air quality” means the concentration prescribed under or pursuant to this Act of a substance or energy in the atmosphere within a structure or under-ground space in which human activities take place;
“occupier” means a person in occupational or control of premises, and in relation to premises different parts of which are occupied by different persons, means the respective persons in occupation or control of each part;

“oil” includes—

(a) crude oil, refined oil, diesel oil, fuel oil and lubricating oil; and

(b) any other description of oil which may be prescribed;

“owner” in relation to any premises means—

(a) the registered proprietor of the premises;

(b) the lessee, including a sub-lessee of the premises;

(c) the agent or trustee of any other owners described in paragraphs (a) and (b) of this interpretation section or where such owner as described in paragraphs (a) and (b) cannot be traced or has died, his legal personal representative;

(d) the person for the time being receiving the rent of the premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive the rent if such premises were let to a tenant; and

(e) in relation to any ship means the person registered as the owner of the ship or in the absence of registration, the person owning the ship; except that in the case of a ship owned by any country and operated by a company which in that country is registered as the ship’s operator, “owner” shall include such country and the master of the ship;

“ozone layer” means the layer of the atmospheric zone above the planetary boundary layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;

“pollutant” includes any substance whether liquid, solid or gaseous which—

(a) may directly or indirectly alter the quality of any element of the receiving environment;

(b) is hazardous or potentially hazardous to human health or the environment; and
(c) includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

“polluter-pays principle” means that the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this Act or any other applicable law;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological, or radio-active properties of any part of the environment by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause contravention of any condition, limitation, or restriction which is subject to a licence under this Act;

“practicable” means reasonably practicable having regard, among other things, to local conditions and knowledge and the term “practicable means” includes the provision and the efficient maintenance of plants and the proper use thereof, and the supervision by or on behalf of the occupier of any process or operation;

“precautionary principle” is the principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

“premises” include messages, buildings, lands, and hereditaments in every tenure and machinery, plant or vehicle used in connection with any trade carried on at any premises;

“project” includes any project, programme or policy that leads to projects which may have impact on the environment;

“project report” means a summary statement of the likely environmental effects of a proposed development referred to in section 58;

“proponent” means a person proposing or executing a project, program or an undertaking specified in the Second Schedule;

“proprietary information” means information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law in Kenya or by any international treaty to which Kenya is a party;
“Provincial Director of Environment” means the Provincial Director of Environment appointed under section 16;

“Provincial Environment Committee” means the Provincial Environment Committee appointed under section 29;

“Public Complaints Committee” means the Public Complaints Committee established under section 31;

“radiation” includes ionising radiation and any other radiation likely to have adverse effects on human health and the environment;

“regional development authority” means a regional development authority established by an Act of Parliament;

“regulations” mean regulations made under this Act;

“Restoration Fund” means the National Environment Restoration Fund established under section 25;

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

“ship” includes every description of vessel or craft or floating structure;

“soil” includes earth, sand, rock, shales, minerals, vegetation, and the flora and fauna in the soil and derivatives thereof such as dust;

“standard” means the limits of discharge or emissions established under this Act or under regulations made pursuant to this Act or any other written law;

“sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems;

“sustainable use” means present use of the environment or natural resources which does not compromise the ability to use the same by future generations or degrade the carrying capacity of supporting ecosystems;

“territorial waters” means territorial waters provided for under section 3 of the Maritime Zones Act (Cap. 371);

“trade” means any trade, business or undertaking whether originally carried on at fixed premises or at varying places which may result in the discharge of substances and energy and includes any activity prescribed to be a trade, business or undertaking for the purposes of this Act;
"Tribunal" means the National Environment Tribunal established under section 125;

"Trust Fund" means the National Environment Trust Fund established under section 24;

"waste" includes any matter prescribed to be waste and any matter whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume, composition or manner likely to cause an alteration of the environment;

"water" includes drinking water, river, stream, water-course, reservoir, well, dam, canal, channel, lake swamp, open drain, or underground water;

"wetland" means areas permanently or seasonally flooded by water where plants and animals have become adapted.

Section 3 of No. 8 of 1999 which it is proposed to amend —

3. (1) Every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment.

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

(3) If a person alleges that the entitlement conferred under subsection (1) has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress and the High Court may make such orders, issue such writs or give such directions as it may deem appropriate to—

(a) prevent, stop or discontinue any act or omission deleterious to the environment;

(b) compel any public officer to take measures to prevent or discontinue any act or omission deleterious to the environment;

(c) require that any on-going activity be subjected to an environment audit in accordance with the provisions of this Act;
(d) compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage; and

(e) provide compensation for any victim of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.

(4) A person proceeding under subsection (3) of this section shall have the capacity to bring an action notwithstanding that such a 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 such action—

(a) is not frivolous or vexatious; or

(b) is not an abuse of the court process. In exercising the jurisdiction conferred upon it under subsection (3), the High Court shall be guided by the following principles of sustainable development—

(a) the principle of public participation in the development of policies, plans and processes for the management of the environment;

(b) the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and are not repugnant to justice and morality or inconsistent with any written law; the principle of international co-operation in the management of environmental resources shared by two or more states; the principles of intergenerational and intragenerational equity; the polluter-pays principle; and the precautionary principle.

Section 4 of No. 8 of 1999 which it is proposed to amend—

4. (1) There is established a council to be known as the National Environment Council (hereinafter referred to as the “Council”) which shall consist of—

(a) the Minister who shall be the chairman;

(b) the Permanent Secretaries in the Ministries for the time being responsible for the matters specified in
the First Schedule;

(c) two representatives of public universities in Kenya to be appointed by the Minister;

(d) two representatives of specialised research institutions in Kenya to be appointed by the Minister;

(e) three representatives of the business community, to be appointed by the Minister, one of whom shall be a representative of oil marketing companies;

(f) two representatives of Non-Governmental organisations active in the environmental field to be appointed by the Minister;

(g) the Director-General who shall be the secretary; and

(h) such number of other members as may, from time, be co-opted by the Minister to be members of the Council.

(2) Every appointment under paragraph (f) of subsection (1) shall be made from a list of nominees submitted by the Non-Governmental Organizations Council.

(3) Every appointment under paragraphs (c), (d), (e), (f) and (h) of subsection (1) shall be by name and by notice in the Gazette and shall be for a renewable period of three years, but shall cease if the appointee—

(a) serves the Minister with a written notice of resignation; or

(b) is absent from three consecutive meetings of the Council without the permission of the Minister; or

(c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or

(d) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Council; or

(e) conducts himself in a manner deemed by the Minister, in consultation with the Council, to be
inconsistent with membership of the Council; or

(f) is adjudged bankrupt or has entered into a scheme or arrangement with his creditors.

Section 5 of No. 8 of 1999 which it is proposed to amend —

5. The Council shall—

(a) be responsible for policy formulation and directions for purposes of this Act;

(b) set national goals and objectives and determine policies and priorities for the protection of the environment;

(c) promote co-operation among public departments, local authorities, private sector, Non-Governmental Organisations and such other organisations engaged in environmental protection programmes; and

(d) perform such other functions as are assigned under this Act.

Section 6 of No. 8 of 1999 which it is proposed to amend —

6. (1) The Council shall meet at least four times in every financial year, at such place as it may deem appropriate for the transaction of its business.

(2) The Minister shall preside at all meetings of the Council but in his absence a person appointed by him shall preside on his behalf at such a meeting.

(3) The secretary to the Council shall prepare and keep all the records of the business conducted at the meetings of the Council.

(4) The powers of the Council shall not be affected by any vacancy in the membership thereof nor by any defect in the appointment of a person purporting to be a member of the Council.

(5) Subject to this section, the Council shall regulate its own procedure.

Section 8 of No. 8 of 1999 which it is proposed to amend —
8. The Headquarters of the Authority shall be in Nairobi.

Section 9 of No. 8 of 1999 which it is proposed to amend —

9. (1) The object and purpose for which the Authority is established is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.

(2) Without prejudice to the generality of the foregoing, the Authority shall—

(a) co-ordinate the various environmental management activities being undertaken by the lead agencies and promote the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable yield basis for the improvement of the quality of human life in Kenya;

(b) take stock of the natural resources in Kenya and their utilisation and conservation;

(c) establish and review in consultation with the relevant lead agencies, land use guidelines;

(d) examine land use patterns to determine their impact on the quality and quantity of natural resources;

(e) carry out surveys which will assist in the proper management and conservation of the environment;

(f) advise the Government on legislative and other measures for the management of the environment or the implementation of relevant international conventions, treaties and agreements in the field of environment, as the case may be;

(g) advise the Government on regional and international environmental conventions, treaties and agreements to which Kenya should be a party and follow up the implementation of such agreements where Kenya is a party;
(h) undertake and co-ordinate research, investigation and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigation or survey;

(i) mobilise and monitor the use of financial and human resources for environmental management;

(j) identify projects and programmes or types of projects and programmes, plans and policies for which environmental audit or environmental monitoring must be conducted under this Act;

(k) initiate and evolve procedures and safeguards for the prevention of accidents which may cause environmental degradation and evolve remedial measures where accidents occur;

(l) monitor and assess activities, including activities being carried out by relevant lead agencies, in order to ensure that the environment is not degraded by such activities, environmental management objectives are adhered to and adequate early warning on impending environmental emergencies is given;

(m) undertake, in co-operation with relevant lead agencies, programmes intended to enhance environmental education and public awareness about the need for sound environmental management as well as for enlisting public support and encouraging the effort made by other entities in that regard;

(n) publish and disseminate manuals, codes or guidelines relating to environmental management and prevention or abatement of environmental degradation;

(o) render advice and technical support, where possible, to entities engaged in natural resources management and environmental protection so as to enable them to carry out their responsibilities satisfactorily;

(p) prepare and issue an annual report on the state of the environment in Kenya and in this regard may
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;

(q) perform such other functions as the Government may assign to the Authority or as are incidental or conducive to the exercise by the Authority of any or all of the functions provided under this Act.

(3) The Minister shall lay every annual report on the state of the environment prepared under subsection (2)(p) before the National Assembly as soon as reasonably practicable after its publication where the National Assembly is in session, or where not in session, within twenty-one days of the day the National Assembly next sits after such publication.

**Section 10 of No. 8 of 1999 which it is proposed to amend —**

10. (1) The Authority shall be managed by a Board, which shall consist of—

(a) a chairman appointed by the President;

(b) the Permanent Secretary of the Ministry for the time being responsible for matters relating to the Authority or an officer of that Ministry designated in writing by the Permanent Secretary;

(c) a Director-General appointed by the President;

(d) three Directors who shall be officers of the Authority;

(e) seven members, not being public officers, appointed by the Minister in consultation with the Council; and

(f) the Secretary to the Board, who shall be appointed by the Authority.

(2) No person shall be appointed under subsections (1)(a), (c), (d) or (e) unless such person holds at least a post-graduate degree from a recognized university in the fields of environmental law, environmental science, natural resource management or a relevant social science and in the case of the Director-General, has at least fifteen years’ working experience in the relevant field.
(3) The members referred to under subsection (1)(a) and (e) of subsection (1) shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The members appointed under paragraph (a), (c) and (e) of subsection (1) shall hold office for a term of four years and shall be eligible for reappointment for one further term of four years.

(5) The Board shall elect a Vice-Chairman from among the members appointed under paragraph (e) of subsection (1).

(6) The Board shall meet at least four times in every financial year.

(7) The Chairman shall preside at every meeting of the Board at which he is present, but in his absence the Vice-Chairman shall preside, and in his absence, 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 Chairman.

(8) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or person presiding shall have a casting vote.

(9) The quorum for the transaction of the business of the Board shall be seven members including the person presiding; and all acts, matters or things authorised or required to be done by the Board, shall be effected by a resolution passed by a majority of the members present and voting.

(10) The Secretary to the Board shall not be entitled to vote on any matter before the Board.

(11) The appointment of a member of the Board may be terminated by the appointing authority where the member—

(a) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;

(b) is convicted of an offence and sentenced to imprisonment for a term of six months or more
without the option of a fine;

(c) is incapacitated by prolonged physical or mental illness from performing his duties as a member of the Board; or

(d) becomes, for any reason, incapable or incompetent of properly performing the functions of his office.

(12) Where a member of the Board dies or resigns or otherwise vacates office before the expiry of his term of office, the appointing authority shall appoint another person in the place of such member.

(13) 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 President may appoint a substitute therefore to act with the full powers of the Director-General until such time as the President determines that the incapacity has ceased.

(14) (a) The Director-General shall be the chief executive of the Authority and shall subject to this Act, be responsible for the day to day management of the affairs of the Authority;

(b) A Director shall perform such functions as are conferred by this Act and such additional duties as may be assigned by the Director-General;

(c) The Director-General and the Directors of the Authority shall be paid such salaries and allowances as may, from time to time, be determined by the President.

(15) Subject to subsections (6), (7), (8) and (9) the Board shall regulate its own procedure.

Section 12 of No. 8 of 1999 which it is proposed to amend —

12. The Authority may after giving reasonable notice of its intention so to do, directly lead agency to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the lead agency by or under this Act or any other written law, in the field of environment and if the lead agency fails 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

Powers in respect of lead agencies.
doing shall be a civil debt recoverable by the Authority from the lead agency.

Section 14 of No. 8 of 1999 which it is proposed to amend —

14. The Authority shall pay the Director-General and the Directors such salaries and allowances as may, from time to time, be determined by the President, but those salaries and allowances shall not be altered to their detriment during their term of office.

Section 23 of No. 8 of 1999 which it is proposed to amend —

23. (1) The Authority shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Authority.

(2) Within a period of four months from the end of each financial year, the Authority shall submit to the Auditor-General (Corporations) or to an auditor appointed under this section, the accounts of the Authority together with—

(a) a statement of the income and expenditure of the Authority during that year; and

(b) a statement of the assets and liabilities of the Authority on the last day of that year

(3) The accounts of the Authority shall be audited and reported upon in accordance with sections 29 and 30A of the Exchequer and Audit Act (Cap. 412), by the Auditor-General (Corporations), or by an auditor appointed by the Authority with the approval of the Auditor-General (Corporations) given in accordance with section 29(2)(b) of the Exchequer and Audit Act (Cap. 412).

Section 24 of No. 8 of 1999 which it is proposed to amend —

24. (1) There is hereby established a fund to be known as the National Environment Trust Fund, (hereinafter referred to as the “Trust Fund”).

(2) The Trust Fund shall consist of—

(a) such sums of money as may be received by the Trust Fund in the form of donations, endowments,
grants and gifts from whatever source and specifically designated for the Trust Fund;

(b) such sums of money or other assets as may be specifically designated to the Trust Fund by the Authority out of its general fund.

(3) The Trust Fund shall be vested in the Authority and, subject to this Act, shall be administered by a Board of five Trustees to be appointed by the Minister by a notice in the Gazette on such terms and conditions as he deems fit. The trustees shall be persons holding at least post-graduate degree from a recognized university in the fields of environmental law, economics, environmental science or natural resource management at the time of their appointment.

(4) The object of the Trust Fund shall be to facilitate research intended to further the requirements of environmental management, capacity building, environmental awards, environmental publications, scholarships and grants,

(5) The Board of Trustees may, on the recommendation of the Council, determine that certain donations to the Trust Fund shall be applied specifically and reserved only for prizes and awards for exemplary services to the environment. Such prizes and awards shall be applied by the recipient exclusively to the management of the environment.

Section 26 of No. 8 of 1999 which it is proposed to amend —

Investment of funds and disposal of assets.

26. (1) Subject to this Act, the Authority may, invest any of its funds in securities in which trustees may, for the time being, invest trust funds or in any other securities which the Treasury may, from time to time, approve for that purpose.

(2) Subject to this Act, the Authority may place on deposit with such bank or banks as it may determine, any moneys not immediately required for its purposes.

(3) The assets of the Authority may be disposed of—
(a) if they are current assets, in the normal course of business carried on by the Authority;

(b) where the disposal and the utilization of the proceeds have been taken into account in an annual estimate prepared and approved in accordance with section 22;

(c) by way of sale or otherwise with the approval of the Minister and the Treasury where such disposal has not been taken into account in the estimates.

Section 27 of No. 8 of 1999 which it is proposed to amend —


27. (1) As soon as practicable and not later than three months after the expiry of the financial year, the Director-General shall submit to the Council a financial report concerning the activities of the Authority during such financial year.

(4) The report of the Director-General under subsection (1) shall include information on the financial affairs of the Authority and shall be appended to the report—

(a) an audited statement of income and expenditure of the previous financial year;

(b) estimates of income and expenditure of the Authority for the next ensuing financial year.

(5) The Minister shall not later than fourteen days after the sitting of the National Assembly next after receipt of the report referred to in subsection (1) lay it before the National Assembly.

Section 28 of No. 8 of 1999 which it is proposed to amend —

Deposit Bonds.

28. (1) The Authority shall create a register of those activities and industrial plants and undertakings which have or are most likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practices.

(2) The Minister responsible for Finance may, on the recommendations of the Council, prescribe that persons
engaged in activities or operating industrial plants and other undertakings identified under subsection (1) pay such deposit bonds as may constitute appropriate security for good environmental practice.

(3) The deposit bond determined in accordance with subsection (2) shall be refunded to the operator of the activity, industrial plant or any other undertaking by the Authority after such duration not exceeding twenty-four months without interest where the operator has observed good environmental practices to the satisfaction of the Authority.

(4) The Authority may, after giving the operator an opportunity to be heard, confiscate a deposit bond where the operator is responsible for environmental practice that is in breach of the provisions of this Act, and the Authority may in addition cancel any license issued to the operator under this Act if the Authority is satisfied that the operator has become a habitual offender.

(5) Where an operator is dissatisfied with the confiscation of his deposit bond under this Act, he may refer the matter to a competent court of law.

(6) The proceeds of every refundable deposit bond levied under this section shall be paid into the Restoration Fund and shall be treated as part of the Restoration Fund until refunded to the depositor subject to subjection (3) or confiscated by the Authority.

(7) Any interest accruing from monies deposited into the Restoration Fund under this section shall be for the benefit of the Authority.

Section 29 of No. 8 of 1999 which it is proposed to amend —

29. (1) The Minister shall by notice in the Gazette, appoint Provincial and District Environment Committees of the Authority in respect of every province and district respectively.

(1) Every Provincial Environment Committee shall
consist of—

(a) the Provincial Commissioner of the Province who shall be the chairman;

(b) the Provincial Director of Environment of the Province who shall be the Secretary;

(c) one representative each of the Ministries responsible for the matters specified in the First Schedule at the provincial level;

(d) a representative of every local authority whose area of jurisdiction falls wholly or partly within the province;

(e) two representatives of farmers or pastoralists within the province to be appointed by the Minister;

(f) two representatives of the business community operating within the concerned Province appointed by the Minister;

(g) two representatives of the non-governmental organisations engaged in environmental management programmes within the province appointed by the Minister in consultation with the National Council of Non-Governmental Organisations; and

(h) a representative of every regional development authority whose area of jurisdiction falls wholly or partially within the province.

(3) Every District Environment Committee shall consist of—

(a) the District Commissioner of the district who shall be the chairman;

(b) the District Environment Officer of the district who shall be the secretary; one representative each of the Ministries for the time being responsible for
the matters specified in the First Schedule at the district level; a representative of every local authority whose area of jurisdiction falls wholly or partially within the district; four representatives of farmers, women, youth and pastoralists within the district, to be appointed by the Minister; two representatives of the business community in the district to be appointed by the Minister; two representatives of the non-governmental organisations engaged in environmental management programmes, operating in the district, to be appointed by the Minister in consultation with the National Council of Non-Governmental Organisation; and two representatives of the community-based organisations engaged in environmental programmes operating in the district, to be appointed by the Minister.

**Section 30 of No. 8 of 1999 which it is proposed to amend** —

**30.** The Provincial and District Environment Committees shall—

(a) be responsible for the proper management of the environment within the province or district in respect of which they are appointed;

(b) perform such additional functions as are prescribed by the Act or as may, from time to time, be assigned by the Minister by notice in the Gazette.

**Section 31 of No. 8 of 1999 which it is proposed to amend** —

**31.(1)** There is hereby established a committee of the Authority to be known as the public Complaints Committee (hereinafter referred to as “the Complaints Committee”) which shall consist of—

(a) a chairman appointed by the Minister and who shall be a person qualified for appointment as a
judge of the High Court of Kenya;

(b) a representative of the Attorney-General;

(c) a representative of the Law Society of Kenya;

(d) a representative of non-governmental organisations appointed by the National Council of Non-Governmental Organisations and who shall be the secretary of the Complaints Committee;

(e) a representative of the business community appointed by the Minister;

(f) two members appointed by the Minister for their active role in environmental management.

The members of the Complaints Committee, other than the members appointed under subsection (1)(b), shall hold office for a period of three years but shall be eligible for reappointment:

(a) Provided that no member shall hold office for more than two terms.

Section 32 of No. 8 of 1999 which it is proposed to amend —

32. The functions of the Complaints Committee shall be—

(a) to investigate—

(i) any allegations or complaints against any person or against the Authority in relation to the condition of the environment in Kenya;

(ii) on its own motion, any suspected case of environmental degradation,

(iii) and to make a report of its findings together with its recommendations thereon to the
Council;

(b) to prepare and submit to the Council, periodic reports of its activities which report shall form part of the annual report on the state of the environment under section 9(3); and

(c) to perform such other functions and exercise such powers as may be assigned to it by the Council.

Section 33 of No. 8 of 1999 which it is proposed to amend —

33. (1) The Complaints Committee may, by notice in writing, require any person to—

(a) give to the Complaints Committee all reasonable assistance in connection with the investigation of any complaint under section 32; or

(b) appear before the Complaints Committee for examination concerning matters relevant to the investigation of any complaint under section 32

(2) A person who—

(a) refuses or fails to comply with the requirement of the Complaints Committee which is applicable to him, to the extent to which he is able to comply with it; or

(b) obstructs or hinders the Complaints Committee in the exercise of his powers under this Act; or

(c) furnishes information or makes a statement to the Complaints Committee which he knows to be false or misleading in any material particular; or

(3) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding fifty thousand shillings.

(4) Where an offence under subsection (2) is a continuing offence, the person convicted shall, in addition to the penalty prescribed in subsection (3), be liable to a
fine of one thousand shillings for each day during which the offence continues.

34. No proceedings shall lie against the chairman or any member of the Complaints Committee in respect of anything done bona fide in the performance of the duties of the Complaints Committee under this Act.

35. (1) If a member of the Complaints Committee is directly or indirectly interested in any matter before the Complaints Committee and is present at a meeting of the Complaints Committee at which the matter is the subject of investigation, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions in respect of the matter, or be counted in the quorum of the meeting during the consideration of the matter.

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

36. (2) There shall be paid to the chairman and members of the Complaints Committee, such remuneration, fees or allowances for expenses as the Council may determine.

(2) The remuneration fees or allowances referred to in subsection (1) together with any other expenses incurred by the Complaints Committee in the execution of its functions under this Act shall be paid out of monies provided by Parliament for that purpose.

37. (1) There is established a committee of the Authority to be known as the National Environment Action
Plan Committee and which shall consist of—

(a) the Permanent Secretary in the Ministry for the time being responsible for National Economic Planning and Development who shall be the chairman;

(b) the Permanent Secretaries in the Ministries responsible for the matters specified in the First Schedule or their duly nominated representatives;

(c) four representatives of the business community to be appointed by the Minister;

(d) representatives of each of the institutions specified in the Third Schedule;

(e) five representatives of non-governmental organisations nominated by the National Council of Non-Governmental Organization;

(f) representatives of specialised research institutions that are engaged in environmental matters as may be determined by the Minister; and

(g) a Director of the Authority who shall be the secretary.

(2) The National Environment Action Plan Committee shall, after every five years, prepare a national environment action plan for consideration and adoption by the National Assembly.

Section 39 of No. 8 of 1999 which it is proposed to amend —

39. Every Provincial Environment Committee shall, every five years, prepare a provincial environment action plan in respect of the district for which it is appointed, incorporating the elements of the relevant district environments action plans prepared under section 40 and shall submit such plan to the chairman of the National Environmental Action Plan Committee for incorporation into the national environment action plan.

Section 40 of No. 8 of 1999 which it is proposed to amend —
District Environment Action Plans.

40. Every District Environment Committee shall, every five years, prepare a district environment action plan in respect of the district for which it is appointed and shall submit such plan to the chairman of the Provincial Environment Action Plan Committee for incorporation into the provincial environment action plan proposed under section 39.

Section 41 of No. 8 of 1999 which it is proposed to amend —

Contents of Provincial and District Environment Action Plans.

41. Every provincial environment action plan and every district environment action plan prepared under section 39 and 40 respectively shall contain provisions dealing with matters contained in section 38(a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) in relation to their respective province or district.

Section 42 of No. 8 of 1999 which it is proposed to amend —

Protection of rivers, lakes and wetlands.

42.(1) No person shall, prior written approval of the Director-General given after an environmental impact assessment, in relation to a river, lake or wetland in Kenya, carry out any of the following activities—

(a) erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, or under the river, lake or wetland;

(b) excavate, drill, tunnel or disturb the river, lake or wetland;

(c) introduce any animal whether alien or indigenous, dead or alive, in any river, lake or wetland;

(d) introduce or plant any part of a plant specimen, whether alien or indigenous, dead oralive, in any river, lake or wetland;

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

(f) direct or block any river, lake or wetland from its
natural and normal course; or

(g) drain any lake, river or wetland.

(2) The Minister may, by notice in the Gazette, declare a lake shore, wetland, coastal zone or river bank to be a protected area and impose such restrictions as he considers necessary, to protect the lake shore, wetland, coastal zone and river bank from environmental degradation. In declaring a lake shore, wetland, coastal zone or river bank a protected area, the Minister shall take into consideration the following factors—

(a) the geographical size of the lake shore, wetland, coastal zone or river bank; and
(b) the interests of the communities resident around the lake shore, wetland, coastal zone or river bank concerned.

(3) The Minister may, by notice in the Gazette, issue general and specific orders, regulations or standards for the management of river bank, lake shores, wetlands or coastal zones and such orders, regulations or standards may include management, protection, or conservation measures in respect of any area at risk of environmental degradation and shall provide for—

(a) the development of an overall environmental management plan for a lake, river, wetland or coastal area, taking into account the relevant sectoral interest;

(b) measures for the prevention or control of coastal erosion;

(c) the conservation of mangrove and coral reef ecosystems;

(d) plans for the harvesting of minerals within the coastal zone, including strategies for the restoration of mineral sites;
(e) contingency plans for the prevention and control of all deliberate and accidental discharge of pollutions into the sea, lakes or rivers;

(f) plans for the protection of wetlands;

(g) the regulation of harvesting of aquatic living and non-living resources to ensure optimum sustainable yield;

(h) special guidelines for access to and exploitation of living and non-living resources in the continental shelf, territorial sea and the Exclusive Economic Zone;

(i) promotion of environmentally friendly tourism; and

(j) the management of biological resources.

(4) The Authority shall, in consultation with the relevant lead agencies, issue guidelines for the management of the environment of lakes and rivers.

(5) Any person who contravenes or fails to comply with any orders, regulations or standards issued under this section shall be guilty of an offence.

Section 43 of No. 8 of 1999 which it is proposed to amend —

43. The Minister may, by notice in the Gazette, declare the traditional interests of local communities customarily resident within or around a lake shore, wetland, coastal zone or river bank or forest to be protected interests.

Section 45 of No. 8 of 1999 which it is proposed to amend —

45.(1) Every District Environment Committee shall identify the hilly and mountainous areas under their jurisdiction which are at risk from environmental degradation.

(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 an area;

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

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

(3) Each District Environment Committee shall notify the Director-General of the hilly and mountainous areas it has identified as being at risk from environmental degradation under subsection (1).

(4) The Director-General shall maintain a register of hilly and mountainous area identified under subsection (1) to be at risk from environmental degradation.

Section 48 of No. 8 of 1999 which it is proposed to amend —

Protection of forests.

48. (1) Subject to subsection (2) the Director-General may, after consultation with the Chief Conservator of Forests, enter into any contractual arrangement with private owner of any land on such terms and conditions as may be mutually agreed for purposes of registering such land as forest land.

(2) The Director-General shall not take any action, in respect of any forest or mountain area, which is prejudicial to the traditional interests of the local communities customarily resident within or around such forest or mountain area.

Section 49 of No. 8 of 1999 which it is proposed to amend —

Conservation of energy and planting of trees or woodlots.

49. (1) The Authority shall, in consultation with the relevant lead agencies, promote the use of renewable sources of energy by —

(a) promoting research in appropriate renewable sources of energy;
(b) creating incentives for the promotion 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 by community groups.

Section 50 of No. 8 of 1999 which it is proposed to amend —

50. The Authority shall, in consultation with the relevant lead agencies, prescribe measures necessary to ensure the conservation of biological diversity in Kenya and in this respect the Authority shall—

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

(b) determine which components of biological diversity are endangered, rare or threatened with extinction;

(c) identify potential threats to biological diversity and devise measures to remove or arrest their effects;

(d) undertake measures intended to integrate the conservation and sustainable utilisation ethic in relation to biological diversity in existing government activities and activities by private persons;

(e) specify national strategies, plans and government programmes for conservation and sustainable use of biological diversity;

(f) protect indigenous property rights of local communities in respect of biological diversity; and

(g) measure the value of unexploited natural resources in terms of watershed protection, influences on climate, cultural and aesthetic value, as well as actual and potential genetic value thereof.

Section 51 of No. 8 of 1999 which it is proposed to amend —
51. The Authority shall, in consultation with the relevant lead agencies, prescribe measures adequate to ensure the conservation of biological resources in situ and in this regard shall issue guidelines for—

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

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

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

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

(e) prohibiting and controlling the introduction of alien species into natural habitats; and

(f) integrating traditional knowledge for the conservation of biological diversity with mainstream scientific knowledge.

Section 52 of No. 8 of 1999 which it is proposed to amend —

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

(a) prescribe measures for the conservation of biological resources ex-situ especially for those species threatened with extinction;

(b) issue guidelines for the management of—
   (i) germplasm banks;
   (ii) botanical gardens;
   (iii) zoos or aquaria;
   (iv) animal orphanages; and
   (iv) any other facilities recommended to the Authority by any of its Committees or considered necessary by the Authority;
(c) ensure that species threatened with extinction which are conserved *ex-situ* are re-introduced into their native habitats and ecosystems where—

(i) the threat to the species has been terminated;

or

(i) a viable population of the threatened species has been achieved

*Section 53 of No. 8 of 1999 which it is proposed to amend —*

53. (1) The Authority shall, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the sustainable management and utilisation of genetic resources of Kenya for the benefit of the people of Kenya.

(2) Without prejudice to the general effect of subsection (1), the guidelines issued or measures prescribed under that subsection shall specify—

(a) appropriate arrangements for access to genetic resources of Kenya by non-citizens of Kenya including the issue of licences and fees to be paid for that access;

(b) measures for regulating the import or export of germplasm;

(c) the sharing of benefits derived from genetic resources of Kenya;

(d) biosafety measures necessary to regulate biotechnology;

(e) measures necessary to regulate the development, access to and transfer of biotechnology; and

(f) any other matter that the Authority considers necessary for the better management of the genetic resources of Kenya.

*Section 54 of No. 8 of 1999 which it is proposed to amend —*
54.(1) The Minister may, in consultation with the relevant lead agencies, by notice in the Gazette, declare any area of land, sea, lake or river to be a protected natural environment for the purpose of promoting and preserving specific ecological processes, natural environment systems, natural beauty or species of indigenous wildlife or the preservation of biological diversity in general.

(2) Without prejudice to subsection (1), the Authority may, in consultation with the relevant lead agencies, issue guidelines and prescribe measures for the management and protection of any area of environmental significance declared to be a protected natural environment area under this section.

Section 55 of No. 8 of 1999 which it is proposed to amend —

55.(1) The Minister may, by notice in the Gazette, declare an area to be a protected Zone.

(2) As soon as practicable upon the commencement of this Act, the Authority shall, in consultation with the relevant lead agencies, prepare a survey of the coastal zone and prepare an integrated national coastal zone management plan based on the report of such survey.

(3) The Authority shall, from time to time, not exceeding every two years, review the national coastal zone management plan prepared under subsection (2).

(4) The report of the survey of the coastal zone shall contain—

(a) an inventory of all structures, roads, excavations, harbours, outfalls, dumping sites and
(b) other works located in the coastal zone;
(c) an inventory of all areas within the coastal zone of scenic value or of value for recreational and cultural purposes;
(d) an inventory of areas within the coastal zone of special value for research in respect of fisheries, erosion, littorals movement and such other similar subjects;
(e) an estimate of the quantities of sand, coral sea shells and other substances being removed from
the coastal zone;

(f) an estimate of the impacts of erosion on the coastal zone; and

(g) an estimate of the extent, nature, cause and sources of coastal pollution and degradation

(h) an estimate of freshwater resources available in the coastal zone; and

(i) any other relevant data or information that may be deemed appropriate

(5) Any person who releases or causes to be released into the coastal zone any polluting or hazardous substances contrary to the provisions of this Act shall be guilty of an offence and liable upon conviction to a fine of not less than one million shillings or to imprisonment for a period not exceeding two years or to both such fine and imprisonment. The Minister shall, in consultation with the relevant lead agencies, issue appropriate regulations to prevent, reduce and control pollution or other form of environmental damage in the coastal zone. Notwithstanding the generality of subsection (6) of this section, the regulations made thereunder shall provide for the control and prevention of pollution—of the marine environment from land based sources including rivers, estuaries, pipelines and outfall structures; from vessels, aircrafts and other engines used in the coastal zone; from installations and devices used in the exploration or exploitation of the natural resources of the seabed and subsoil of the exclusive economic zone; and of the marine environment arising from or in connection with seabed activities and from artificial islands installations and other structures in the exclusive economic zone.

Section 56 of No. 8 of 1999 which it is proposed to amend —

56. (1) The Authority shall, in consultation with the relevant lead agencies, undertake or commission other persons to undertake national studies and give due recognition to developments in scientific knowledge relating to substances, activities and practices that deplete the ozone layer to the detriment of public health and the
environment.

(2) The Authority shall, in consultation with the relevant lead agencies, issue guidelines and institute programmes concerning the—

(a) elimination of substances that deplete the stratospheric ozone layer;

(b) controlling of activities and practices likely to lead to the degradation of the ozone layer and the stratosphere;

(c) reduction and minimisation of risks to human health created by the degradation of the ozone layer and the stratosphere; and

(d) formulate strategies, prepare and evaluate programmes for phasing out ozone depleting substances.

The heading to Part VI which it is proposed to amend —

PART VI—ENVIRONMENTAL IMPACT ASSESSMENT

Section 58 of No. 8 of 1999 which it is proposed to amend —

58.(1) Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before for an financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee.

(2) The proponent of a project shall undertake or cause to be undertaken at his own expense an environmental impact assessment study and prepare a report thereof where the Authority, being satisfied, after studying the project report submitted under subsection (1), that the intended project may or is likely to have or will have a significant impact on the environment, so directs.

(3) The environmental impact assessment study report
prepare under this subsection shall be submitted to the Authority in the prescribed form, giving the prescribed information and shall be accompanied by the prescribed fee.

(4) The Minister may, on the advice of the Authority given after consultation with the relevant lead agencies, amend the Second Schedule to this Act by notice in the Gazette.

(5) Environmental impact assessment studies and reports required under this Act shall be conducted or prepared respectively by individual experts or a firm of experts authorised in that behalf by the Authority. The Authority shall maintain a register of all individual experts or firms of all experts duly authorized by it to conduct or prepare environmental impact assessment studies and reports respectively. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.

(6) The Director-General may, in consultation with the Standards Enforcement and Review Committee, approve any application by an expert wishing to be authorised to undertake environmental impact assessment. Such application shall be made in the prescribed manner and accompanied by any fees that may be required.

(7) Environmental impact assessment shall be conducted in accordance with the environmental impact assessment regulations, guidelines and procedures issued under this Act.

(8) The Director-General shall respond to the applications for environmental impact assessment license within three months.

(9) Any person who upon submitting his application does not receive any communication from the Director-General within the period stipulated under subsection (8) may start his undertaking.

Section 59 of No. 8 of 1999 which it is proposed to amend —
Publication of Environmental Impact Assessment.

59. (1) Upon receipt of an environmental impact assessment study report from any proponent under section 58(2), the Authority shall cause to be published for two successive weeks in the Gazette and in a newspaper circulating in the area or proposed area of the project a notice which shall state—

(a) a summary description of the project;

(b) the place where the project is to be carried out;

(c) the place where the environmental impact assessment study, evaluation or review report may be inspected; and

(d) a time limit of not exceeding sixty days for the submission of oral or written comments environmental impact assessment study, evaluation or review report.

(2) The Authority may, on application by any person extend the period stipulated in sub-paragraph (d) so as to afford reasonable opportunity for such person to submit oral or written comments on the environmental impact assessment report.

Section 64 of No. 8 of 1999 which it is proposed to amend —

64. (1) The Authority may, at any time after the issue of an environmental impact assessment licence direct the holder of such licence to submit at his own expense a fresh environmental impact assessment study, evaluation or review report within such time as the Authority may specify where—

(a) there is a substantial change or modification in the project or in the manner in which the project is being operated;

(b) the project poses environmental threat which could not be reasonably foreseen at the time of the study, evaluation or review; or

(c) it is established that the information or data given by the proponent in support of his application for an environmental impact assessment licence under section 58 was false, inaccurate or intended to mislead.
(2) Any person who fails, neglects or refuses to comply with the directions of the Authority issued under subsection (1) shall be guilty of an offence.

Section 67 of No. 8 of 1999 which it is proposed to amend —

67.(1) The Authority shall, on the advice of the Standards and Enforcement Review Committee, cancel, revoke or suspend any environment impact assessment licence for such time not exceeding twenty-four months where the licensee contravenes the provisions of the licence.

(2) Whenever an environment impact assessment licence is revoked, suspended or cancelled, the holder thereof shall not proceed with the project which is the subject of the licence until a new licence is issued by the Authority.

(3) The Authority shall maintain a register of all environment impact assessment licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.

Section 68 of No. 8 of 1999 which it is proposed to amend —

68. (1) The Authority shall be responsible for carrying out environment audit of all activities that are likely to have significant effect on the environment.

(2) An environment inspector appointed under this Act may enter any land or premises for the purposes of determining how far the activities carried out on that land or premises conform with the statements made in the environment impact assessment study report issued in respect of that land or those premises under section 58(2).

(3) The owner of the premises or the operator of a project for which an environment impact assessment study report has been made shall keep accurate records and make annual reports to the Authority describing how far the project conforms in operation with the statements made in the environment impact assessment study report submitted under section 58(2).

(4) The owner of premises or the operator of a project
shall take all reasonable measures to mitigate any undesirable effects not contemplated in the environmental impact assessment study report submitted under section 58(2) and shall prepare and submit an environmental audit report on those measures to the Authority annually or as the Authority may, in writing, require.

Section 69 of No. 8 of 1999 which it is proposed to amend —

69(1) The Authority shall, in consultation with the relevant lead agencies, monitor—

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

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

(2) An environmental inspector appointed under this Act may enter upon any land or premises for the purposes of monitoring the effects upon the environment of any activities carried on that land or premises.

Section 70 of No. 8 of 1999 which it is proposed to amend —

70. (1) There is hereby established a Standards and Enforcement Review Committee to be a committee of the Authority.

(2) The Standards and Enforcement Review Committee shall consist of the members set out in the Third Schedule to this Act.

(3) The permanent secretary under the Minister shall be the Chairman of the Standards and Enforcement Review Committee.

(4) The Director-General shall appoint a Director of the Authority to be a member of the Standards and Enforcement Review Committee who shall be the secretary to the Committee and shall provide the secretarial services to the Committee.

(5) The Standards and Enforcement Review Committee shall regulate its own procedure.

(6) The Standards and Enforcement Review
Committee may co-opt any person to attend its meetings and a person so co-opted shall participate at the deliberations of the Committee but shall have no vote.

(7) The Standards and Enforcement Review Committee shall meet at least once every three months for the transaction of its business.

Section 71 of No. 8 of 1999 which it is proposed to amend —

71. The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies—

(a) advise the Authority on how to establish criteria and procedures for the measurement of water quality;

(b) recommend to the Authority minimum water quality standards for all the waters of Kenya and for different uses, including—

(i) drinking water;
(ii) water for industrial purposes;
(ii) water for agricultural purposes;
(iii) water for recreational purposes;
(iv) water for fisheries and wildlife;
(v) and any other prescribed water use

(c) analyse and submit to the Director-General conditions for discharge of effluents into the environment;

(d) prepare and recommend to the Director-General guidelines or regulations for the preservation of fishing area, aquatic areas, water sources and reservoirs and other areas, where water may need special protection;

(e) identify and recommend to the Authority areas of research on the effects of water pollution on the environment, human beings, flora and fauna;

(f) advise the Authority to carry out investigations of actual or suspected water pollution including the collection of data;

(g) advise the Authority to take steps or authorise any works to be carried out which appear to be
necessary to prevent or abate water pollution from natural causes or from abandoned works or undertakings;

(h) document the analytical methods by which water quality and pollution control standards can be determined and appoint laboratories for the analytical services required or request the Director-General to establish such laboratories;

(i) collect, maintain and interpret data from industries and local authorities on the pre-treatment nature and levels of effluents;

(j) recommend to the Director-General measures necessary for the treatment of effluents before being discharged into the sewerage system;

(k) recommend to the Director-General works necessary for the treatment for the treatment of effluents before being discharged into the water;

(l) submit to the Director-General all such recommendations as may appear necessary for the monitoring and control of water pollution.

Section 74 of No. 8 of 1999 which it is proposed to amend —

74. (1) Every owner or operator of a trade or industrial undertaking shall discharge any effluents or other pollutants originating from the trade or industrial undertaking only into existing sewerage systems and the relevant Local Authority operating or supervising such sewerage system shall issue, at a prescribed fee, the necessary licence for discharge.

(2) The proponent or owner of a trade or an industrial undertaking shall, prior to being granted a licence to discharge effluents into the environment, install an appropriate plant for the treatment of such effluents before they are discharged into the environment.

Section 75 of No. 8 of 1999 which it is proposed to amend —

75. (1) No Local Authority operating a sewerage system or owner or operator of any trade or industrial
undertaking shall discharge any effluents or other pollutants into the environment without an effluent discharge licence issued by the Authority.

(2) Every owner or operator of a trade or an industrial undertaking discharging any effluents or other pollutants into the environment before the commencement of this Act shall, within twelve months of such commencement apply to the Authority for an effluent discharge licence.

(3) Every application for an effluent discharge licence shall be in the prescribed form and accompanied by the prescribed fee.

(4) Before the issuance of a licence under subsections (1) and (2), the Authority shall—

(a) solicit the comments of local authorities concerned and organizations and persons as he may deem fit;

(b) take into consideration the possible effects of effluents or pollutants to be discharged on the quality of an affected water course or other source of water;

(c) take into consideration the existing licences affecting the concerned water course or other source; and

(d) take into consideration the water requirements of riparian residents and ecosystems, human settlements, and agricultural schemes which depend on the affected water course.

(5) Where the Authority rejects an application for the grant of an effluent discharge licence it shall within twenty one days notify the applicant of its decision and state in writing its reasons for so rejecting the application.

(6) An effluent discharge licence issued under this Act shall be in a prescribed form, be subject to such conditions as may be prescribed or as may be specified in the licence and shall remain valid for such period and may be renewed for such further periods as may be prescribed or specified in the licence.
Section 78 of No. 8 of 1999 which it is proposed to amend —

Air quality standards.

78. (1) The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies—

(a) advise the Authority on how to establish criteria and procedures for the measurement of air quality;

(b) recommend to the Authority—

(i) ambient air quality standards;

(ii) occupational air quality standards;

(iii) emission standards for various sources;

(iv) criteria and guidelines for air pollution control for both mobile and stationary sources;

(v) any other air quality standards;

(c) advise the Authority on measures necessary to reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both, to meet the requirements of standards established under this section;

(d) recommend to the Authority guidelines to minimize emissions of green house gases and identify suitable technologies to minimize air pollution;

(e) advise the Authority on emissions concentration and nature of pollutants emitted;

(f) recommend to the Authority the best practicable technology available in controlling pollutants during the emission process;

(g) determine for consideration by the Authority the analytical methods for monitoring air contaminants and recommend to the Director-General the establishment of such number of laboratories for analytical services as may be needed;

(h) request the Authority to carry out investigations of
actual or suspected air pollution including pollution produced by aircrafts and other self propelled vehicles and by factories and power generating stations;

(i) request the Authority to order any industry or other source of air pollution to file such returns and provide such information as it may require; and

(j) do all such things as appear necessary for the monitoring and controlling of air pollution.

(2) Any person who emits any substances which cause air pollution in contravention of emission standards established under this Part shall be guilty of an offence and liable to imprisonment for a term of not more than two years or to a fine of not more than five hundred thousand shillings or to both such fine and imprisonment.

(3) A person found guilty under subsection (2) shall, in addition to any sentence or fine imposed on him—

(a) pay the cost of the removal of the pollution, including any costs which may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the emission; and

(b) the cost to third parties in the form of reparation, restoration, restitution or compensation as may be determined by a competent court upon application by such third parties.

Section 79 of No. 8 of 1999 which it is proposed to amend —

79. (1) The Minister, may on the advice of the Authority, by Gazette Notice, declare any area to be a controlled area for the purposes of this Part.

(2) The Minister may, on the advice of the Authority, in regulations, prescribe the air emission standards in respect of any controlled areas.

Section 86 of No. 8 of 1999 which it is proposed to amend —
The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority measures necessary to—

(1) identify materials and processes that are dangerous to human health and the environment;

(2) issue guidelines and prescribe measures for the management of the materials and processes identified under subsection (1);

(3) prescribe standards for waste, their classification and analysis, and formulate and advise on standards of disposal methods and means for such wastes; or

(4) issue regulations for the handling, storage, transportation, segregation and destruction of any waste.

Section 91 of No. 8 of 1999 which it is proposed to amend —

Hazardous wastes.

(1) The Standards and Enforcement Review Committee shall, in consultation with the relevant lead agencies, recommend to the Authority standard criteria for the classification of hazardous wastes with regard to determining—

(a) hazardous waste;
(b) corrosive waste;
(c) carcinogenic waste;
(d) flammable waste;
(e) persistent waste;
(f) toxic waste;
(g) explosive waste;
(h) radioactive waste;
(i) wastes, reactive otherwise than as described in the foregoing paragraphs of this subsection;
(j) any other category of waste the Authority may consider necessary.

(2) The Authority shall, on the recommendation of the Standards and Enforcement Review Committee issue guidelines and regulations for the management of each
category of hazardous wastes determined under subsection (1).

No person shall import into Kenya any hazardous waste falling under any category determined under subsection (1).

(4) No hazardous waste shall be exported to any country from Kenya without a valid permit granted by the Authority and written consent given by a competent authority of the receiving country.

(5) No hazardous waste shall be transported within or through Kenya without a valid permit granted by the Authority.

(6) Any person who contravenes any provision of this section or who withholds, falsifies or otherwise tampers with information relating to trafficking in hazardous or other waste shall be guilty of an offence and liable to imprisonment for a term of not less than two years or to a fine of not less than one million shillings or to both such imprisonment and fine.

(7) A person found guilty under subsection (6) shall be responsible for the removal of the waste from Kenya and for its safe disposal.

Section 94 of No. 8 of 1999 which it is proposed to amend —

The Standards and Enforcement Review Committee, in consultation with the relevant lead agencies shall—

(a) prepare and submit to the Authority draft standards for the concentration of pesticides residues in raw agricultural commodities, processed foods and animal feed, and for the purposes of this paragraph raw agricultural commodities—

(i) include fresh or frozen fruit and vegetables in their raw state, grains, nuts, eggs, raw milk, meat and other agricultural produce;
(ii) do not include any agricultural produce or good which is processed, fabricated or manufactured by cooking, dehydrating, milling, or by any other similar means;

(b) establish, revisit, modify and submit to the Authority draft standards to regulate the importation, exportation, manufacture, storage, distribution, sale, use, packaging, transportation disposal and advertisement of pesticides and toxic substances with the relevant organisations;

(c) establish and submit to the Authority draft procedures for the registration of pesticides and toxic substances;

(d) establish and submit to the Authority draft measures to ensure proper labelling and packaging of pesticides and toxic substances;

(e) constantly review the use and efficacy of pesticides and toxic substances and submit the findings of such review to the Authority;

(f) recommend to the Authority measures for monitoring the effects of pesticides and toxic substances on the environment;

(g) recommend to the Authority measures for the establishment and maintenance of laboratories to operate as standards laboratories for pesticides and toxic substances;

(h) recommend to the Authority measures for the establishment of enforcement procedures and regulations for the storage, packaging and transportation of pesticides and toxic substances;

(i) constantly collect data from industries on the production, use and health effects of pesticides and toxic substances and avail such data to the Authority;

(j) keep up-to-date records and reports necessary for
the proper regulation of the administration of pesticides and toxic substances;

(k) do all other things as appear necessary for the monitoring and control of pesticides and toxic substances.

Section 101 of No. 8 of 1999 which it is proposed to amend —

Standards for noise.

(a) recommend to the Authority minimum standards for emissions of noise and vibration pollution into the environment as are necessary to preserve and maintain public health and the environment;

(b) establish and submit to the Authority criteria and procedures for the measurement of noise and vibration pollution into the environment;

(c) establish and submit to the Authority criteria and procedures for the measurement of subsonic vibrations;

(d) establish and submit to the Authority standards for the emission of sub-sonic vibrations which are likely to have a significant impact on the environment;

(e) recommend to the Authority guidelines for the minimisation of sub-sonic vibrations, referred to in paragraph (d) from existing and future sources;

(f) establish and submit to the Authority noise level and noise emission standards applicable to construction sites, plants, machinery, motor vehicles, aircraft including sonic bonus, industrial and commercial activities;

(g) recommend to the Authority measures necessary to ensure the abatement and control of noise from sources referred to in paragraph (f);

(h) measure the levels of noise emanating from the
sources referred to in paragraph (f) details of which measurements shall be given to the owner or occupier of the premises from which the measurement was taken; and

(i) recommend to the Authority guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.

**Section 112 of No. 8 of 1999 which it is proposed to amend —**

112. (1) A court may, on an application made under this Part, grant an environmental easement or an environmental conservation order subject to the provisions of this Act.

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

(4) Without prejudice to the general effect of subsection (2), an environmental conservation order may be imposed on burdened land so as to—

(a) preserve flora and fauna;

(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 view;

(e) preserve open space;
(f) permit persons to walk in a defined path across the burdened land;

(g) preserve the natural contours and features of the burdened land;

(h) prevent or restrict the scope of any activity on the burdened land which has as its object the mining and working of mineral aggregates;

(i) prevent or restrict the scope of an agricultural activity on the burdened land;

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

(k) create or maintain migration corridors for wildlife.

(5) Where an environmental easement is imposed on burdened land on which any person has at the time of the imposition of the easement, any existing right or interest to the land and that environmental easement will restrict that right or interest, there shall be paid to that person, by the applicant for the environmental easement such compensation as may be determined in accordance with section 116.

(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.

Section 117 of No. 8 of 1999 which it is proposed to amend —

117. (1) The Director-General shall, by Gazette Notice, appoint duly qualified persons whether public officer or otherwise, whether by name or by title of office, to be environmental inspectors of the Authority for such jurisdiction units as shall be specified in the Gazette Notice appointing them.

(2) An environmental inspector shall—

(a) monitor compliance with the environmental standards established under this Act;

(b) monitor the activities of other sector-specific
environmental inspectorates;

(c) monitor the pattern of use of environmental resources;

(d) conduct environmental audits; and

(e) perform such other functions as may be required under this Act or under the Gazette Notice appointing him.

(3) An environmental inspector may, in the performance of his duties under this Act or any regulations made thereunder, at all reasonable times and without a warrant—

(a) enter any land, premises, vessel, motor vehicle or ox-drawn trailer and make examinations and enquiries to determine whether the provisions of this Act are being complied with;

(b) require the production of, inspect, examine and copy licences, registers, records and other documents relating to this Act or any other law relating to the environment and the management of natural resources;

(c) take samples of any articles and substances to which this Act relates and, as may be prescribed, submit such samples for test and analysis;

(d) carry out periodic inspections of all establishments and undertakings within their respective jurisdictional limits which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have significant impact on the environment, to ensure that the provisions of this Act are complied with;

(e) seize any article, vessel, motor vehicle, plant, equipment, substance or any other thing which he reasonably believes has been used in the commission of an offence under this Act or the regulations made thereunder;

(f) with the written approval of the Director-General order the immediate closure of any manufacturing plant or other establishment or undertaking which
pollutes or is likely to pollute the environment contrary to the provisions of this Act and to require the owner or operator of such establishment or undertaking to implement any remedial measures that the environmental inspector may direct in the notice closing down the establishment or undertaking. Any establishment or undertaking closed down under this paragraph may resume its operations only with the written approval of the Director-General;

(g) with the approval of the Director-General issue an improvement notice requiring the owner or operator of any manufacturing plant, vessel, motor vehicle or other establishment or undertaking to cease any activities deleterious to the environment and to take appropriate remedial measures, including the installation of new plant and machinery if necessary, within such reasonable time as the Director-General may determine;

(h) with an arrest warrant and the assistance of a police officer, arrest any person whom he reasonably believes has committed an offence under this Act; and

(i) install any equipment on any land, premise, vessel or motor vehicle for purposes of monitoring compliance with the provisions of this Act, or the regulations made thereunder upon giving the owner or occupier of the land three months written notice.

(4) In exercising his powers under this Act, the environmental inspector shall suitably identify himself.

118. Environmental Inspector’s powers to prosecute

Subject to the Constitution and the directions and control of the Attorney-General, an environmental inspector may, in any case in which he considers it desirable so to do—

(a) institute and undertake criminal proceedings against any person before a court of competent jurisdiction (other than a court martial) in respect of any offence alleged to have been committed by
that person under this Act; and

(b) discontinue at any stage with the approval of the Attorney-General, before judgment is delivered any such proceedings instituted or undertaken by himself.

Section 119 of No. 8 of 1999 which it is proposed to amend —

119.(1) The Director-General may, by Notice in the Gazette, designate such number of laboratories as he may consider necessary, analytical or reference laboratories for the purpose of this Act.

(2) A notice under subsection (1) shall state the specific functions of the laboratory, local limits or subject matter which the laboratory shall serve and the persons appointed as analysts in respect of that laboratory.

(3) The Authority shall, on the advice of the Standards Enforcement Review Committee, prescribe the form and manner in which samples will be taken for analysis.

Section 124 of No. 8 of 1999 which it is proposed to amend —

124. (1) Where Kenya is a party to an international treaty, convention or agreement, whether bilateral or multilateral, concerning the management of the environment, the Authority shall, subject to the direction and control of the Council, in consultation with relevant lead agencies—

(a) initiate legislative proposals for consideration by the Attorney-General, for purposes of giving effect to such treaty, convention or agreement in Kenya or for enabling Kenya to perform her obligations or exercise her rights under such treaty, convention or agreement; and

(b) identify other appropriate measures necessary for the national implementation of such treaty, convention or agreement.

(2) The Authority shall, in relation to the formation of international treaties, conventions or agreements on the environment, assist the relevant lead agencies negotiating...
such treaties, conventions or agreements.

(3) The Authority shall keep a register of all international treaties, agreements or conventions in the field of the environment to which Kenya is a party.

Section 125 of No. 8 of 1999 which it is proposed to amend —

125. (1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members—

(a) a chairman nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the High Court of Kenya;

(b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya;

(c) a lawyer with professional qualifications in environmental law appointed by the Minister; and

two persons who have demonstrated exemplary academic competence in the field of environmental management appointed by the Minister.

(2) All appointments to the Tribunal shall be by name and by Gazette Notice issued by the Minister.

(3) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The office of a member of the Tribunal shall become vacant—

(a) at the expiration of three years from the date of his appointment;

(b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal;

(c) if he is removed from membership of the Tribunal by the Minister for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause)
or for misbehaviour; and

(d) if he resigns the office of member of the Tribunal.

Section 126 of No. 8 of 1999 which it is proposed to amend —

126. (1) The Tribunal shall not be bound by the rules of evidence as set out in Evidence Act (Cap. 80).

(2) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof, as the case may be.

(3) The Tribunal shall sit at such times and in such places as it may appoint.

(4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(5) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.

Section 128 of No. 8 of 1999 which it is proposed to amend —

128. (1) For the purposes of hearing and determining any cause or matter under this Act, the Chairman and two members of the Tribunal shall form a quorum.

(2) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

Section 129 of No. 8 of 1999 which it is proposed to amend —

129. (1) Any person who is aggrieved by—

(a) a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;

(b) the imposition of any condition, limitation or restriction on his licence under this Act or
regulations made thereunder;

(c) the revocation, suspension or variation of his licence under this Act or regulations made thereunder;

(d) the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;

(e) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder,

may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

(a) confirm, set aside or vary the order or decision in question;

(b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or

(c) make such other order, including an order for costs, as it may deem just.

(4) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

Section 134 of No. 8 of 1999 which it is proposed to amend —

134. There shall be paid to the Chairman and the members of the Tribunal such remuneration and allowances as the Minister shall determine.

Section 137 of No. 8 of 1999 which it is proposed to amend —
137. Any person who—

(a) hinders or obstructs an environmental inspector in the exercise of his duties under this Act or regulations made thereunder;

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

(c) refuses an environmental inspector entry upon any land or into any premises, vessel or motor vehicle which he is empowered to enter under this Act or regulations made thereunder;

(d) impersonates an environmental inspector;

(e) refuses an environmental inspector access to records or documents kept pursuant to the provisions of this Act or regulations made thereunder;

(f) fails to state or wrongly states his name or address to an environmental inspector in the cause of his duties under this Act or regulations made thereunder;

(g) misleads or gives wrongful information to an environmental inspector under this Act or regulations made thereunder;

(h) fails, neglects or refuses to carry out an improvement order issued under this Act by an environmental inspector,

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding twenty four months, or to a fine of not more than five hundred thousand shillings, or both.

Section 139 of No. 8 of 1999 which it is proposed to amend —

139. Any person who—

(a) fails to keep records required to be kept under this Act;
(b) fraudulently alters any records required to be kept under this Act;

(c) fraudulently makes false statements in any records required to be kept under this Act,

commits an offence and is liable upon conviction to a fine of not more than five hundred thousand shillings or to imprisonment for a term of not more than eighteen months or to both such fine and imprisonment.

Section 140 of No. 8 of 1999 which it is proposed to amend —

140. Any person who—

(a) contravenes any environmental standard prescribed under this Act;

(b) contravenes any measure prescribed under this Act;

(c) uses the environment or natural resources in a wasteful and destructive manner contrary to measures prescribed under this Act,

commits an offence and shall be liable upon conviction, to a fine of not more than five hundred thousand shillings or to imprisonment for a term of not more than twenty-four months or to both such fine and imprisonment.

Section 142 of No. 8 of 1999 which it is proposed to amend —

142. (1) Any person who—

(a) discharges any dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment contrary to the provisions of this Act;

(b) pollutes the environment contrary to the provisions of this Act;

(c) discharges any pollutant into the environment contrary to the provisions of this Act,

commits an offence and shall on conviction, be liable to a fine not exceeding five hundred thousand shillings.

(2) In addition to any sentence that the Court may impose upon a polluter under subsection (1) of this Section,
the Court may direct that person to—

(a) pay the full cost of cleaning up the polluted environment and of removing the pollution;

(b) clean up the polluted environment and remove the effects of pollution to the satisfaction of the Authority.

(3) Without prejudice to the provisions of subsections (1) and (2) of this section, the court may direct the polluter to meet the cost of the pollution to any third parties through adequate compensation, restoration or restitution.

Section 143 of No. 8 of 1999 which it is proposed to amend —

143. Any person who—

(a) fails, neglects or refuses to comply with an environmental restoration order made under this Act;

(b) fails, neglects or refuses to comply with an environmental easement, issued under this Act;

(c) fails, neglects or refuses to comply with an environmental conservation order made under this Act,

commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding five hundred thousand shillings, or to both.

Section 144 of No. 8 of 1999 which it is proposed to amend —

General penalty.

144. Any person who commits an offence against any provision of this Act or of regulations made thereunder for which no other penalty is specifically provided is liable, upon conviction, to imprisonment for a term not more than eighteen months or to a fine of not more than three hundred and fifty thousand shillings or to both such fine and imprisonment.

Section 148 of No. 8 of 1999 which it is proposed to amend —
Existing laws.

148. Any written law, in force immediately before the coming into force of this Act, relating to the management of the environment shall have effect subject to modifications as may be necessary to give effect to this Act, and where the provisions of any such law conflict with any provisions of this Act, the provisions of this Act shall prevail.

The Second Schedule which it is proposed to amend —

SECOND SCHEDULE (s.58(1), (4))

PROJECTS TO UNDERGO ENVIRONMENTAL IMPACT ASSESSMENT

1. General—
   (a) an activity out of character with its surrounding;
   (b) any structure of a scale not in keeping with its surrounding;
   (c) major changes in land use.

2. Urban Development including—
   (a) designation of new townships;
   (b) establishment of industrial estates;
   (c) establishment or expansion of recreational areas;
   (d) establishment or expansion of recreational townships in mountain areas, national parks and game reserves;
   (e) shopping centres and complexes.

3. Transportation including—
   (a) all major roads;
   (b) all road in scenic, wooded or mountainous areas and wetlands;
   (c) railway lines;
   (d) airports and airfields;
   (e) oil and gas pipelines;
   (f) water transport.

4. Dams, rivers and water resources including—
   (a) storage dams, barrages and Piers;
(b) river diversions and water transfer between catchments;
(c) flood control schemes;
(d) drilling for the purpose of utilising ground water resources including geothermal energy.

5. Aerial spraying.

6. Mining, including quarrying and open-cast extraction of—
   (a) precious metals;
   (b) pemstones;
   (c) metalliferous ores
   (d) coal;
   (e) phosphates;
   (f) limestone and dolomite;
   (g) stone and slate;
   (h) aggregates, sand and gravel;
   (i) clay;
   (j) exploration for the production of petroleum in any form.
   (k) extracting alluvial gold with use of mercury.

7. Forestry related activities including—
   (a) timber harvesting;
   (b) clearance of forest areas;
   (c) reforestation and afforestation.

8. Agriculture including—
   (a) large-scale agriculture;
   (b) use of pesticide;
   (c) introduction of new crops and animals;
   (d) use of fertilizers;
   (e) irrigation.

9. Processing and manufacturing industries including—
   (a) mineral processing, reduction of ores and minerals;
   (b) smelting and refining of ores and minerals;
   (c) foundries;
(d) brick and earthware manufacture;
(e) cement works and lime processing;
(f) glass works
(g) fertilizer manufacture or processing;
(h) explosive plants;
(i) oil refineries and petro-chemical works;
(j) tanning and dressing of hides and skins;
(k) abattoirs and meat-processing plants;
(l) chemical works and process plants;
(m) brewing and malting;
(n) bulk grain processing plants;
(o) fish-processing plants;
(p) pulp and paper mills;
(q) food-processing plants;
(r) plants for the manufacture of assembly of motor vehicles;
(s) plant for the construction or repair of aircraft or railway equipment;
(t) plants for the manufacture or assembly of motor vehicles;
(u) plants for the manufacture of tanks, reservoirs and sheet-metal containers;
(v) plants for the manufacture of coal briquettes;
(w) plant for manufacturing batteries.

10. Electrical infrastructure including—
   (a) Electricity generation stations;
   (b) Electrical transmission lines;
   (c) Electrical sub-stations;
   (d) Pumped-storage schemes.

11. Management of hydrocarbons including—
    the storage of natural gas and combustible or explosive fuels.

12. Waste disposal including—
   (a) sites for solid waste disposal;
(b) sites for hazardous waste disposal;
(c) sewage disposal works;
(d) works involving major atmospheric emissions;
(e) works emitting offensive odours.

13. Natural conservation areas including—
   (a) creation of national parks, game reserves and buffer zones;
   (b) establishment of wilderness areas;
   (c) formulation or modification of forest management policies;
   (d) formulation of modification of water catchment management policies;
   (e) policies for the management of ecosystems, especially by use of fire;
   (f) commercial exploitation of natural fauna and flora;
   (g) introduction of alien species of fauna and flora into ecosystems.


15. Major developments in biotechnology including the introduction and testing of genetically modified organisms.