

(18 September 2009 – to date)

[This is the **current** version and applies as from **18 September 2009**, i.e. the date of commencement of the National Environment Laws Amendment Act 14 of 2009 – **to date**]

ENVIRONMENT CONSERVATION ACT 73 OF 1989

(Government Notice 1188 in Government Gazette 11927 dated 9 June 1989. Commencement date: 9 June 1989.)

As amended by:

Environment Conservation Amendment Act 98 of 1991 - Government Notice 1495 in Government Gazette 13346 dated 3 July 1991. Commencement date: 3 July 1991.

Environment Conservation Amendment Act 79 of 1992 - Government Notice 1768 in Government Gazette 14075 dated 26 June 1992. Commencement date: 26 June 1992.

Environment Conservation Second Amendment Act 115 of 1992 - Government Notice 1903 in Government Gazette 14119 dated 8 July 1992. Commencement date: 8 July 1992.

Environment Conservation Amendment Act 94 of 1993 - Government Notice 1166 in Government Gazette 14926 dated 7 July 1993. Commencement date: 7 July 1993.

Environment Conservation Second Amendment Act 189 of 1993 - Government Notice 2 in Government Gazette 15395 dated 5 January 1994. Commencement date: 5 January 1994.

Environment Conservation Amendment Act 52 of 1994 - Government Notice 2093 in Government Gazette 16141 dated 7 December 1994. Commencement date: 7 December 1994.

Proclamation R.29 under Section 235(8) of the Constitution of the Republic of South Africa 200 of 1993 – Proclamation No. R.29 in Government Gazette 16346 dated 7 April 1995. Commencement date: 7 April 1995.

Proclamation R.43 under section 235(8) of the Constitution of the Republic of South Africa 200 of 1993 – Proclamation No. R.43 in Government Gazette 17354 dated 8 August 1996. Commencement date: 8 August 1996.

National Environmental Management Act 107 of 1998 - Government Notice 1540 in Government Gazette 19519 dated 27 November 1998. Commencement date: 29 January 1999 [Proc. No. R.8, Gazette No. 19703 dated 29 January 1999]

Prepared by:

National Heritage Resources Act 25 of 1999 - Government Notice 506 in Government Gazette 19974 dated 28 April 1999. Commencement date: 1 April 2000 [Proc. No. R. 18, Gazette No. 21051 dated 31 March 2000]

Environment Conservation Amendment Act 50 of 2003 - Government Notice 180 in Government Gazette 26023 dated 18 February 2004. Commencement date of sections 2 and 3: 18 February 2004.

National Environmental Management: Protected Areas Act 57 of 2003 - Government Notice 181 in Government Gazette 26025 dated 18 February 2004. Commencement date: 1 November 2004 [Proc. No. 52, Gazette No. 26960 dated 2 November 2004.]

Environment Conservation Amendment Act 50 of 2003 - Government Notice 180 in Government Gazette 26023 dated 18 February 2004. Commencement date of section 1: 3 January 2006 [Proc. No. 68, Gazette No. 28346 dated 20 December 2005].

National Environmental Management: Waste Act 59 of 2008 - Government Notice 278 in Government Gazette 32000 dated 10 March 2009. Commencement date: 1 July 2009 [Proc. No. 34, Gazette No. 32189 dated 30 April 2009]

National Environment Laws Amendment Act 44 of 2008 - Government Notice 1318 in Government Gazette 31685 dated 5 December 2008. Commencement date: 11 September 2009 [Notice. No. 902, Gazette No. 32563 dated 11 September 2009]

National Environment Laws Amendment Act 14 of 2009 - Government Notice 617 in Government Gazette 32267 dated 27 May 2009. Commencement date: 18 September 2009 [Proc. No. 65, Gazette No. 32580 dated 18 September 2009]

Note:

The principal Act is hereby amended by section 8 of Act 94 of 1993 by the substitution for the expression "Minister of Finance", wherever it occurs, of the expression "Minister of State Expenditure".

The principal Act is hereby amended by section 4 of the Schedule of Proc. R.43 of 1996 by the substitution for the expression "Administrator" wherever it occurs, of the expression "competent authority".

ACT

To provide for the effective protection and controlled utilization of the environment and for matters incidental thereto.

(English text signed by the State President.)

(Assented to 1 June 1989.)

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

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1. Definitions

In this Act, unless the context indicates otherwise—

"administrative body" means a Minister, competent authority, local authority, government institution or a person who makes a decision in terms of the provisions of this Act;

"Administrator"

(Definition of "Administrator" inserted by section 1(a) of Part 1 of the Schedule of Proc. R.29 of 1995)

(Definition of "Administrator" deleted by section 1(a) of the Schedule of Proc. R.43 of 1996)

"chief executive officer" means the officer in charge of the relevant local authority or government institution;

"committee" means the Committee for Environmental Co-ordination established by section 12;

(Definition of "committee" substituted by section 1 of Act 94 of 1993)

"competent authority" in so far as a provision of this Act is applied in or with reference to a particular province, means the competent authority to whom the administration of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) been assigned in that province;

(Definition of "competent authority" inserted by section 1(b) of the Schedule of Proc. R.43 of 1996)

"council" means the Council for the Environment established by section 4;

"define" includes a description by means of a map on which sufficient information is indicated to identify an area;

(Definition of "define" inserted by section 1(a) of Act 79 of 1992)

"Department" means the Department of Environmental Affairs and Tourism;

(Definition of "Department" substituted by section 1(a) of Act 52 of 1994)

"Director-General" means the Director-General: Environmental Affairs and Tourism;

(Definition of "Director-General" substituted by section 1(b) of Act 52 of 1994)

"disposal site"

(Definition of "disposal site" deleted by section 80, Schedule 2, of Act 59 of 2008)

"ecological process" means the process relating to the interaction between plants, animals and humans and the elements in their environment;

"ecosystem" means any self-sustaining and self-regulating community of organisms and the interaction between such organisms with one another and with their environment;

"environment" means the aggregate of surrounding objects, conditions and influences that influence the life and habits of man or any other organism or collection of organisms;

"environmental impact report" means a report referred to in section 22(2) or 23(3);

(Definition of "environmental impact report" substituted by section 1(b) of Act 79 of 1992)

"government institution" means any institution, body, company or close corporation recognized by the Minister by notice in the *Gazette*;

(Definition of "government institution" substituted by section 1(c) of Act 79 of 1992)

"limited development area" means an area declared as a limited development area in terms of section 23(1);

"litter" means any object or matter discarded or left behind by a person in whose possession or control it was;

(Definition of "litter" substituted by section 1(d) of Act 79 of 1992)

"local authority", in so far as a provision of this Act is applied in or with reference to a particular province, means a local government body or a transitional council, as the case may be, contemplated in section 1(1) of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

(Definition of "local authority" substituted by section 1 of Act 98 of 1991)

(Definition of "local authority" substituted by section 1(b) of Part 1 of the Schedule of Proc. R.29 of 1995)

"management advisory committee" means a committee established under section 17(1);

"Minister" means the Minister of Environmental Affairs and Tourism;

(Definition of "Minister" substituted by section 1(c) of Act 52 of 1994)

"Minister of State Expenditure" -

(a) in so far as the administration of a provision of this Act has under section 235(8) of the Constitution of the Republic of South Africa, 1993, been assigned to a competent authority within the jurisdiction of the government of a province and the provision is applied in or with reference to the province concerned, means the member of the Executive Council of that province responsible for the budget in the province; or

(b) in so far as the administration of a provision of this Act has not been so assigned, means the Minister of Finance;

(Definition of "Minister of State Expenditure" inserted by section 1(c) of Part 1 of the Schedule of Proc. R.29 of 1995)

"Official Gazette" means the *Provincial Gazette* of a province;

(Definition of "Official Gazette" inserted by section 1(c) of Part 1 of the Schedule of Proc. R.29 of 1995)

"prescribe" means prescribe by regulation or notice in the *Gazette*;

(Definition of "prescribe" substituted by section 1(e) of Act 79 of 1992)

"protected natural environment" means an area declared as a protected natural environment under section 16(1);

"province" means a province established in terms of section 124 of the Constitution of the Republic of South Africa, 1993;

(Definition of "province" inserted by section 1(d) of Part 1 of the Schedule of Proc. R.29 of 1995)

"provincial administration" means the provincial administration established for a province by the Public Service Act, 1994 (Proclamation No. 103 of 1994);

(Definition of "provincial administration" inserted by section 1(d) of Part 1 of the Schedule of Proc. R.29 of 1995)

"regulation" means a regulation made under this Act;

(Definition of "regulation" inserted by section 1(f) of Act 79 of 1992)

"special nature reserve" means an area declared as a special nature reserve under section 18;

"**this Act**" includes the regulations and any notice issued under the Act;

(Definition of "this Act" substituted by section 1(g) of Act 79 of 1992)

"**waste**"

(Definition of "waste" substituted by section 1(h) of Act 79 of 1992)

(Definition of "waste" deleted by section 80, Schedule 2, of Act 59 of 2008)

PART I

POLICY FOR ENVIRONMENTAL CONSERVATION

2.

(Section 2 amended by section 2 of Act 79 of 1992)

(Section 2 amended by section 1 of Act 189 of 1993)

(Section 2 amended by section 2 of Act 52 of 1994)

(Section 2 repealed by section 50(1) of Act 107 of 1998)

3.

(Section 3 amended by section 3 of Act 79 of 1992)

(Section 3 amended by section 2 of Act 189 of 1993)

(Section 3 amended by section 2 of the Schedule of Proc. R.43 of 1996)

(Section 3 repealed by section 50(1) of Act 107 of 1998)

PART II

COUNCIL FOR THE ENVIRONMENT, COMMITTEE FOR ENVIRONMENTAL CO-ORDINATION AND BOARD OF INVESTIGATION

(Heading of Part II substituted by section 2 of Act 94 of 1993)

4.

(Section 4 repealed by section 50(1) of Act 107 of 1998)

5.

(Section 5 repealed by section 50(1) of Act 107 of 1998)

6.

(Section 6 amended by section 4 of Act 79 of 1992)

(Section 6 repealed by section 50(1) of Act 107 of 1998)

7.

(Section 7 repealed by section 50(1) of Act 107 of 1998)

8.
(Section 8 repealed by section 50(1) of Act 107 of 1998)
9.
(Section 9 repealed by section 50(1) of Act 107 of 1998)
10.
(Section 10 amended by section 2 of Part 1 of the Schedule of Proc. R.29 of 1995)
(Section 10 repealed by section 50(1) of Act 107 of 1998)
11.
(Section 11 repealed by section 50(1) of Act 107 of 1998)
12.
(Section 12 amended by section 3 of Act 94 of 1993)
(Section 12 repealed by section 50(1) of Act 107 of 1998)
13.
(Section 13 amended by section 5 of Act 79 of 1992)
(Section 13 amended by section 4 of Act 94 of 1993)
(Section 13 amended by section 3 of Part 1 of the Schedule of Proc. R.29 of 1995)
(Section 13 repealed by section 50(1) of Act 107 of 1998)
14.
(Section 14 amended by section 6 of Act 79 of 1992)
(Section 14 amended by section 5 of Act 94 of 1993)
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(Section 14 amended by section 4 of Part 1 of the Schedule of Proc. R.29 of 1995)
(Section 14 repealed by section 50(1) of Act 107 of 1998)
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(Section 14A inserted by section 6 of Act 94 of 1993)
(Section 14A repealed by section 50(1) of Act 107 of 1998)
- 14B.
(Section 14B inserted by section 6 of Act 94 of 1993)
(Section 14B repealed by section 50(1) of Act 107 of 1998)
- 14C.
(Section 14C inserted by section 6 of Act 94 of 1993)
(Section 14C repealed by section 50(1) of Act 107 of 1998)

15.

(Section 15 amended by section 5 of Part 1 of the Schedule of Proc. R.29 of 1995)

(Section 15 repealed by section 50(1) of Act 107 of 1998)

PART III

PROTECTION OF NATURAL ENVIRONMENT

16.

(Section 16 amended by section 1 of Act 115 of 1992)

(Section 16 amended by section 6 of Part 1 of the Schedule of Proc. R.29 of 1995)

(Section 16 repealed by section 90, Schedule, of Act 57 of 2003)

17.

(Section 17 amended by section 7 of Part 1 of the Schedule of Proc. R.29 of 1995)

(Section 17 repealed by section 90, Schedule, of Act 57 of 2003)

18.

(Section 18 amended by section 7 of Act 79 of 1992)

(Section 18 amended by section 7 of Act 94 of 1993)

(Section 18 amended by section 3 of the Schedule of Proc. R.43 of 1996)

(Section 18 repealed by section 90, Schedule, of Act 57 of 2003)

PART IV

CONTROL OF ENVIRONMENTAL POLLUTION

19.

(Section 19 repealed by section 80, Schedule 2, of Act 59 of 2008)

19A.

(Section 19A inserted by section 8 of Act 79 of 1992)

(Section 19A repealed by section 80, Schedule 2, of Act 59 of 2008)

20.

(Section 20 amended by section 9 of Act 79 of 1992)

(Section 20 substituted by section 1 of Act 50 of 2003)

(Section 20 repealed by section 80, Schedule 2, of Act 59 of 2008)

PART V

CONTROL OF ACTIVITIES WHICH MAY HAVE DETRIMENTAL EFFECT ON THE ENVIRONMENT

21. Identification of activities which will probably have detrimental effect on environment

- (1) The Minister may by notice in the *Gazette* identify those activities which in his opinion may have a substantial detrimental effect on the environment, whether in general or in respect of certain areas.
- (2) Activities which are identified in terms of subsection (1) may include any activity in any of the following categories, but are not limited thereto:
 - (a) Land use and transformation;
 - (b) water use and disposal;
 - (c) resource removal, including natural living resources;
 - (d) resource renewal;
 - (e) agricultural processes;
 - (f) industrial processes;
 - (g) transportation;
 - (h) energy generation and distribution;
 - (i) waste and sewage disposal;
 - (j) chemical treatment;
 - (k) recreation.
- (3) The Minister identifies an activity in terms of subsection (1) after consultation with—
 - (a) the Minister of each department of State responsible for the execution, approval or control of such activity;
 - (b) the Minister of State Expenditure; and
 - (c) the competent authority of the province concerned.

(Section 21(3) substituted by section 10 of Act 79 of 1992)

22. Prohibition on undertaking of identified activities

- (1) No person shall undertake an activity identified in terms of section 21(1) or cause such an activity to be undertaken except by virtue of a written authorization issued by the Minister or by a competent authority

or a local authority or an officer, which competent authority, authority or officer shall be designated by the Minister by notice in the *Gazette*.

- (2) The authorization referred to in subsection (1) shall only be issued after consideration of reports concerning the impact of the proposed activity and of alternative proposed activities on the environment, which shall be compiled and submitted by such persons and in such manner as may be prescribed.
- (3) The Minister or the competent authority, or a local authority or officer referred to in subsection (1), may at his or its discretion refuse or grant the authorization for the proposed activity or an alternative proposed activity on such conditions, if any, as he or it may deem necessary.
- (4) If a condition imposed in terms of subsection (3) is not being complied with, the Minister, any competent authority or any local authority or officer may withdraw the authorization in respect of which such condition was imposed, after at least 30 days' written notice was given to the person concerned.

(Section 22 substituted by section 11 of Act 79 of 1992)

23. Limited development areas

- (1) A competent authority may by notice in the *Official Gazette* declare any area defined by him or her, as a limited development area.
- (2) No person shall undertake in a limited development area any development or activity prohibited by the competent authority by notice in the *Official Gazette* or cause such development or activity to be undertaken unless he or she has on application been authorized thereto by the competent authority, or by a local authority designated by the competent authority by notice in the *Official Gazette*, on the conditions contained in such authorization.
- (3) In considering an application for an authorization referred to in subsection (2) the competent authority or the designated local authority may request the person to submit a report as prescribed, concerning the influence of the proposed activity on the environment in the limited development area.
- (4) A limited development area shall not be declared unless the competent authority—
 - (a) has given notice in the *Official Gazette* and in not fewer than one English and one Afrikaans newspaper circulating in the area in question of his or her intention to declare such area as a limited development area;
 - (b) has permitted not fewer than 60 days for the submission to the Director-General of the provincial administration concerned, of comment on the proposed declaration;
 - (c) has considered all representations received in terms of such notice; and

- (d) has consulted each Minister charged with the administration of any law which in the opinion of the competent authority relates to a matter affecting the environment in that area.

(Section 23 amended by section 12 of Act 79 of 1992)

(Section 23 substituted by section 8 of Part 1 of the Schedule of Proc. R.29 of 1995)

PART VI REGULATIONS

24.

(Section 24 amended by section 13 of Act 79 of 1992)

(Section 24 amended by section 2 of Act 50 of 2003)

(Section 24 repealed by section 80, Schedule 2, of Act 59 of 2008)

24A.

(Section 24A inserted by section 14 of Act 79 of 1992)

(Section 24A amended by section 9 of Part 1 of the Schedule of Proc. R.29 of 1995)

(Section 24A repealed by section 80, Schedule 2, of Act 59 of 2008)

24B.

(Section 24B inserted by section 3 of Act 50 of 2003)

(Section 24B repealed by section 80, Schedule 2, of Act 59 of 2008)

24C.

(Section 24C inserted by section 3 of Act 50 of 2003)

(Section 24C repealed by section 80, Schedule 2, of Act 59 of 2008)

25. Regulations regarding noise, vibration and shock

The Minister may make regulations with regard to the control of noise, vibration and shock, concerning—

- (a) the definition of noise, vibration and shock;
- (b) the prevention, reduction or elimination of noise, vibration and shock;
- (c) the levels of noise, vibration and shock which shall not be exceeded, either in general or by specified apparatus or machinery or in specified instances or places;
- (d) the type of measuring instrument which can be used for the determination of the levels of noise, vibration and shock, and the utilization and calibration thereof;
- (e) the powers of provincial administrations and local authorities to control noise, vibration and shock;
and

- (f) any other matter which he may deem necessary or expedient in connection with the effective control and combating of noise, vibration and shock.

26. Regulations regarding environmental impact reports

The Minister or a competent authority, as the case may be, may make regulations with regard to any activity identified in terms of section 21(1) or prohibited in terms of section 23(2), concerning—

(Words preceding section 26(a) substituted by section 15 of Act 79 of 1992)

(Words preceding section 26(a) substituted by section 10 of Part 1 of the Schedule of Proc. R.29 of 1995)

- (a) the scope and content of environmental impact reports, which may include, but are not limited to—
 - (i) a description of the activity in question and of alternative activities;
 - (ii) the identification of the physical environment which may be affected by the activity in question and by the alternative activities;
 - (iii) an estimation of the nature and extent of the effect of the activity in question and of the alternative activities on the land, air, water, biota and other elements or features of the natural and man-made environments;
 - (iv) the identification of the economic and social interests which may be affected by the activity in question and by the alternative activities;
 - (v) an estimation of the nature and extent of the effect of the activity in question and the alternative activities on the social and economic interests;
 - (vi) a description of the design or management principles proposed for the reduction of adverse environmental effects; and
 - (vii) a concise summary of the finding of the environmental impact report;
- (b) the drafting and evaluation of environmental impact reports and of the effect of the activity in question and of the alternative activities on the environment; and
- (c) the procedure to be followed in the course of and after the performance of the activity in question or the alternative activities in order to substantiate the estimations of the environmental impact report and to provide for preventative or additional actions if deemed necessary or desirable.

27. Regulations regarding limited development areas

The competent authority may make regulations with regard to limited development areas, concerning—

- (a) the imposition of restrictions on the nature and extent of development or activities in connection with development in such area;
- (b) the procedure to be followed for obtaining permission for development in such area; and
- (c) the repair of damage to the environment in such area by unauthorized development or activities.

(Section 27 amended by section 11 of Part 1 of the Schedule of Proc. R.29 of 1995)

27A.

(Section 27A inserted by section 4 of Act 52 of 1994)

(Section 27A repealed by section 50(1) of Act 107 of 1998)

28. General regulatory powers

Any regulation made under this Part—

- (a) may assign functions to any provincial administration or any local authority;
- (b) may relate to the qualifications, powers and duties of officers enforcing the provisions of this Act, including the power to seize any book, document, vehicle or other thing which such officer deems necessary in the execution of his functions;

- (c)

(Section 28(c) deleted by section 5 of Act 52 of 1994)

- (d) may provide that an officer, local authority or government institution may by notice call upon a person contravening a provision of this Act to take certain steps or to cease certain activities within a specified period;
- (e) may provide that any person who contravenes, or who fails to comply with, any provision thereof, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, and to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed, and, in the event of a continuing contravention, to a fine not exceeding R250 or to imprisonment for a period not exceeding 20 days or to both such fine and such imprisonment in respect of every day on which such contravention continues;

- (f) may be made in respect of different regions or different matters which the Minister or a competent authority, as the case may be, may deem necessary or expedient;

(Section 28(f) substituted by section 12 of Part 1 of the Schedule of Proc. R.29 of 1995)

- (g) may relate to any matter which in terms of this Act shall or may be prescribed by regulation;

- (h) may in general relate to any matter which aims at furthering the objects of this Act;

(i)

- (i) which will entail the expenditure of State funds shall be made only with the concurrence of the Minister of State Expenditure;

(ii)

(Section 28(i)(ii) deleted by section 16 of Act 79 of 1992)

(iii)

(Section 28(i)(iii) substituted by section 2 of Act 98 of 1991)

(Section 28(i)(iii) deleted by section 16 of Act 79 of 1992)

28A. Exemption to persons, local authorities and government institutions from application of certain provisions

- (1) Any person, local authority or government institution may in writing apply to the Minister or a competent authority, as the case may be, with the furnishing of reasons, for exemption from the application of any provision of any regulation, notice or direction which has been promulgated or issued in terms of this Act.
- (2) In order to enable him to make a decision on an application in terms of subsection (1), the Minister or a competent authority, as the case may be, may call for further information from the applicant.
- (3) The Minister or a competent authority, as the case may be, may after considering an application—
 - (a) refuse to grant exemption;
 - (b) in writing grant exemption from compliance with any of or all the provisions of any regulation, notice or direction, subject to such conditions as he may deem fit.
- (4) If any condition referred to in subsection (3)(b) is not being complied with, the Minister or a competent authority, as the case may be, may in writing withdraw the exemption concerned or at his discretion determine new conditions.

- (5) The Minister or a competent authority, as the case may be, may from time to time review any exemption granted or condition determined, and if he deems it necessary, withdraw such exemption or delete or amend such condition.

(Section 28A inserted by section 17 of Act 79 of 1992)

(Section 28A amended by section 13 of Part 1 of the Schedule of Proc. R.29 of 1995)

PART VII

OFFENCES, PENALTIES AND FORFEITURE

29. Offences and penalties[sic]

- (1) Any person—

- (a) who, having been duly summoned to appear at proceedings under section 15, fails without lawful excuse so to appear; or
- (b) who, having appeared as a witness at proceedings under section 15, refuses without lawful excuse to be sworn or to make affirmation or to produce any book, document or thing or to answer any question which he may be lawfully required to produce or answer,

shall be guilty of an offence.

- (2) Any person—

- (a) referred to in section 16(3) who contravenes any provision of a direction issued under section 16(2) or fails to comply therewith; or
- (b) who contravenes a provision of section 18(6) or a condition of an exemption in terms of section 18(7),

shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

- (3) Any person who fails to comply with a direction in terms of section 31A(1) or (2), or prevents any person authorized in terms of section 41A to enter upon such land or hinders him or her in the execution of his or her powers, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding three months.

(Section 29(3) substituted by section 18 of Act 79 of 1992)

Section 29(3) substituted by section 80, Schedule 2, of Act 59 of 2008)

- (4) Any person who contravenes a provision of section 20(1), 20(9), 22(1) or 23(2) or a direction issued under section 20(5) or fails to comply with a condition of a permit, permission, authorisation or direction

issued or granted under the said provisions shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both such fine and such imprisonment, and in addition to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed.

Section 29(4) substituted by section 80, Schedule 2, of Act 59 of 2008)

(Section 29(4) substituted by section 2 of Act 44 of 2008)

(Section 29(4) substituted by section 2 of Act 14 of 2009)

- (5) Any person convicted of an offence in terms of this Act for which no penalty is expressly provided, shall be liable to a fine not exceeding R500 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(Section 29(5) substituted by section 2 of Act 14 of 2009)

- (6) Any person convicted of an offence in terms of this Act, and who after such conviction persists in the act or omission which constituted such offence, shall be guilty of a continuing offence and liable on conviction to a fine not exceeding R1 000 per day or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment in respect of every day on which he or she so persists with such act or omission.

(Section 29(6) substituted by section 2 of Act 14 of 2009)

- (7) In the event of a conviction in terms of this Act the court may order that any damage to the environment resulting from the offence be repaired by the person so convicted, to the satisfaction of the Minister, the competent authority concerned or the local authority concerned.

- (8) If within a period of 30 days after a conviction or such longer period as the court may determine at the time of the conviction, an order in terms of subsection (7) is not being complied with, the Minister, the competent authority concerned or local authority concerned may itself take the necessary steps to repair the damage and recover the cost thereof from the person so convicted.

- (9) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act.

(Section 29 amended by section 14 of Part 1 of the Schedule of Proc. R.29 of 1995)

30. Forfeiture

- (1) Notwithstanding anything to the contrary in any law contained, a court convicting any person of an offence under this Act may declare any vehicle or other thing by means whereof the offence concerned was committed or which was used in the commission of such offence, or the rights of the convicted person to such vehicle or other thing, to be forfeited to the State.

- (2) A declaration of forfeiture under subsection (1) shall not affect the rights which any person other than the convicted person may have to the vehicle or other thing concerned, if it is proved that he did not know that the vehicle or other thing was used or would be used for the purpose of or in connection with the commission of the offence concerned or that he could not prevent such use.
- (3) The provisions of section 35(3) and (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall *mutatis mutandis* apply to any declaration of forfeiture under this section.

PART VIII

GENERAL PROVISIONS

31. Powers of Minister and competent authority in case of default by local authority

- (1) If in the opinion of the competent authority of the province in question, any local authority fails to perform any function assigned to it by or under this Act, that competent authority may, after affording that local authority an opportunity of making representations to him, in writing direct such local authority to perform such function within a period specified in the direction, and if that local authority fails to comply with such direction, the competent authority may perform such function as if he were that local authority and may authorize any person to take all steps required for that purpose.
- (2) Any expenditure incurred by the competent authority in the performance of any function by virtue of the provisions of subsection (1), may be recovered from the local authority concerned.
- (3) Whenever in the opinion of the Minister a local authority has failed to perform a function in terms of subsection (1), the Minister may request the competent authority in question to act in terms of subsection (1), and if the competent authority fails within 90 days after the date of such request to act accordingly, the Minister may do anything which the competent authority could have done, and the provisions of subsections (1) and (2) shall apply *mutatis mutandis* with reference to the Minister and anything done by him or under his authority.

31A. Powers of Minister, competent authority, local authority or government institution where environment is damaged, endangered or detrimentally affected

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

- (b) to take such steps as the Minister, competent authority, local authority or government institution, as the case may be, may deem fit,

within a period specified in the direction, with a view to eliminating, reducing or preventing the damage, danger or detrimental effect.

- (2) The Minister or the competent authority, local authority or government institution concerned may direct the person referred to in subsection (1) to perform any activity or function at the expense of such person with a view to rehabilitating any damage caused to the environment as a result of the activity or failure referred to in subsection (1), to the satisfaction of the Minister, competent authority, local authority or government institution, as the case may be.
- (3) If the person referred to in subsection (2) fails to perform the activity or function, the Minister, competent authority, local authority or government institution, depending on who or which issued the direction, may perform such activity or function as if he or it were that person and may authorize any person to take all steps required for that purpose.
- (4) Any expenditure incurred by the Minister, a competent authority, a local authority or a government institution in the performance of any function by virtue of the provisions of subsection (3), may be recovered from the person concerned.

(Section 31A inserted by section 19 of Act 79 of 1992)

32. Publication for comment

- (1) If the Minister, the Minister of Water Affairs, a competent authority or any local authority, as the case may be, intends to—
 - (a) issue a regulation in terms of the provisions of this Act;
(Section 32(1)(a) substituted by section 3 of Act 14 of 2009)
 - (b) make a declaration or identification in terms of section 16(1), 18(1), 21(1) or 23(1); or
 - (c) determine a policy in terms of section 2,

a draft notice shall first be published in the *Gazette* or the *Official Gazette* in question, as the case may be.

- (2) The draft notice referred to in subsection (1) shall include—
 - (a) the text of the proposed regulation, direction, declaration, identification or determination of policy;

- (b) a request that interested parties shall submit comments in connection with the proposed regulation, direction, declaration, identification or determination of policy within the period stated in the notice, which period shall not be fewer than 30 days after the date of publication of the notice;
 - (c) the address to which such comments shall be submitted.
- (3) If the Minister, competent authority or local authority concerned thereafter determines on any alteration of the draft notice published as aforesaid, it shall not be necessary to publish such alteration before finally issuing the notice.

33. Delegation

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

(Section 33 substituted by section 20 of Act 79 of 1992)

(Section 33 substituted by section 3 of Act 189 of 1993)

34. Compensation for loss

- (1) If in terms of the provisions of this Act limitations are placed on the purposes for which land may be used or on activities which may be undertaken on the land, the owner of, and the holder of a real right in, such land shall have a right to recover compensation from the Minister or competent authority concerned in respect of actual loss suffered by him consequent upon the application of such limitations.
- (2) The amount so recoverable shall be determined by agreement entered into between such owner or holder of the real right and the Minister or competent authority, as the case may be, with the concurrence of the Minister of State Expenditure.
- (3) In the absence of such agreement the amount so to be paid shall be determined by a court referred to in section 14 of the Expropriation Act, 1975 (Act No. 63 of 1975), and the provisions of that section and section 15 of that Act shall *mutatis mutandis* apply in determining such amount.

35. Appeal to Minister or competent authority

- (1) Any person who feels aggrieved at a decision referred to in section 20 in respect of which a power has been delegated to an officer or employee under section 33 may appeal against such decision to the Minister of Water Affairs in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.
- (2) Any person who feels aggrieved at a decision of an officer or employee enforcing a provision of this Act in respect of a protected natural environment may appeal against such decision to the competent authority concerned, in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.
- (3) Subject to the provisions of subsections (1) and (2) any person who feels aggrieved at a decision of an officer or employee exercising any power delegated to him in terms of this Act or conferred upon him by regulation, may appeal against such decision to the Minister or the competent authority concerned, as the case may be, in the prescribed manner, within the prescribed period and upon payment of the prescribed fee.

(Section 35(3) amended by section 15 of Part 1 of the Schedule of Proc. R.29 of 1995)

- (4) The Minister, the Minister of Water Affairs or a competent authority, as the case may be, may, after considering such an appeal, confirm, set aside or vary the decision of the officer or employee or make such order as he may deem fit, including an order that the prescribed fee paid by the applicant or such part thereof as the Minister or competent authority concerned may determine be refunded to that person.

36. Review by court

- (1) Notwithstanding the provisions of section 35, any person whose interests are affected by a decision of an administrative body under this Act, may within 30 days after having become aware of such decision, request such body in writing to furnish reasons for the decision within 30 days after receiving the request.
- (2) Within 30 days after having been furnished with reasons in terms of subsection (1), or after the expiration of the period within which reasons had to be so furnished by the administrative body, the person in question may apply to a division of the Supreme Court having jurisdiction, to review the decision.

37. Restriction of liability

No person, including the State, shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this Act.

38.

(Section 38 repealed by section 50(1) of Act 107 of 1998)

39.

(Section 39 repealed by section 16 of Part 1 of the Schedule of Proc. R.29 of 1995)

40. State bound

The provisions of this Act shall bind the State, including any provincial administration, except in so far as criminal liability is concerned.

41. Application of Act

- (1) This Act shall also apply in respect of the Prince Edward Islands as defined in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

- (2)

(Section 41(2) repealed by section 60 of Act 25 of 1999)

41A. Right to enter upon land

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

(Section 41A(1) amended by section 17 of Part 1 of the Schedule of Proc. R.29 of 1995)

- (2) A person authorized under subsection (1) shall not exercise any power or perform any duty unless he is in possession of the authorization concerned.
- (3) An authorized person shall produce his authorization at the request of any person having a material interest in the matter concerned.

(Section 41A inserted by section 21 of Act 79 of 1992)

42. Repeal of laws, and savings

- (1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.
- (2) Anything done under any provision of a law repealed by subsection (1) and which could have been done under a provision of this Act shall be deemed to have been done under the latter provision.

43. Amendment of section 1 of Act 88 of 1967, as substituted by section 1 of Act 73 of 1975 and amended by section 1 of Act 104 of 1977, section 1 of Act 51 of 1981, section 1 of Act 87 of 1983 and section 1 of Act 92 of 1985

Section 1 of the Physical Planning Act, 1967, is hereby amended by the deletion of the definition of "nature area".

44. Amendment of section 4 of Act 88 of 1967, as substituted by section 3 of Act 51 of 1981

- (1) Section 4 of the Physical Planning Act, 1967, is hereby amended by the deletion of paragraph (b) of subsection (1).
- (2) At the commencement of this Act, land reserved as a nature area in terms of section 4(1)(b) of the Physical Planning Act, 1967 (Act No. 88 of 1967), shall, notwithstanding the provisions of subsection (1), be deemed to be declared a protected natural environment in terms of section 16(1) of this Act.

(Section 44(2) substituted by section 2 of Act 115 of 1992)

45. Amendment of section 6 of Act 88 of 1967, as substituted by section 4 of Act 51 of 1981

Section 6 of the Physical Planning Act, 1967, is hereby amended by the substitution for subparagraph (i) of paragraph (e) of subsection (2) of the following subparagraph:

"(i) which has been reserved for the utilization of a particular natural resource **[or as a nature area]**";.

46. Short title

This Act shall be called the Environment Conservation Act, 1989.

Schedule

No. and year of law	Title	Extent of repeal
Act 100 of 1982	Environment Conservation Act, 1982	The whole
Act 45 of 1983	Environment Conservation Amendment Act, 1983	The whole
Act 61 of 1987	Environment Conservation Amendment Act, 1987	The whole