

WASTE MANAGEMENT BILL, 2024

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WASTE MANAGEMENT BILL, 2024

A BILL ENTITLED

AN ACT to provide for the control, movement, safe management and disposal of waste and for connected.

ENACTED by the President and the National Assembly.

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PART I - PRELIMINARY

1. Short title

This Act may be cited as the Waste Management Act, 2024.

2. Interpretation

In this Act, unless the context otherwise requires -

"Agency" means the National Environment Agency;

"carrier" means a person who transports hazardous waste or other wastes;

"cesspool" means a settlement tank or any other tank for the reception or disposal of foul matter from buildings;

"clinical waste" includes medical and pharmaceutical waste;

"commercial waste" means waste from premises used wholly or mainly for the purpose of business, sports, recreation or entertainment;

"controlled waste" means household, industrial, commercial, hazardous, clinical, electronic and electrical or any other waste classified as such under this Act or Regulations made under it;

"Council" means National Environment Management Council;

"dumpsite" means a site officially designated as such by a Local Council and approved by the Agency, for the disposal of different types of waste;

"environment" includes land, water and air;

“electronic and electrical waste” means waste emanating from electronic and electrical sources;

“exhaust fumes” means fumes emanating from vehicle exhausts or generators, which have an adverse effect on the environment;

“hazardous waste” refers to waste material that pose substantial or potential threats to public health or the environment due to their inherent properties, and such properties may include toxicity, reactivity, flammability, corrosiveness or other characteristics that make the waste dangerous when improperly handled, stored, transported or disposed of;

"household waste" means waste from -

- (a) domestic property which is used wholly for the purposes of accommodation,
- (b) premises forming part of a university, school or any other educational establishment, or
- (c) any other source prescribed as such, by Regulations;

"industrial waste" means waste from –

- (a) a factory,
- (b) premises used for the purposes of, or in connection with, the provision of public transport services by land, water or air,
- (c) premises used for the purposes of, or in connection with, the supply of gas, water, electricity or sewage services,
- (d) premises used for the purposes of, or in connection with, the provision of postal or telecommunications services, or
- (e) any other waste prescribed as such, by Regulations;

“Local Council” means a City, Municipal or Area Council designated as a waste regulation, collection or disposal authority, as the case may be;

“management” means the collection, transport, storage, and disposal of waste, including after-care of disposal sites;

“Minister” means the Minister responsible for the Environment;

“person” includes a natural person and a corporate entity;

“privy” means a latrine which has a moveable receptacle;

“pollution” has the meaning assigned to it in the National Environment Management Act;

“public nuisance” means conduct which is offensive to the general public resulting from odour, dust, smoke, noise, vibration or illegal discharge of waste water or dumping of solid waste in a public place;

“waste disposal contractor” means a person who collects, keeps, treats or disposes of waste on commercial basis;

“waste” includes -

- (a) any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process,
- (b) any article which is disposed of as being broken, worn out, contaminated or otherwise spoiled,
- (c) any object which is disposed of, is intended to be disposed of, or is required to be disposed of by law,
- (d) anything which is discarded or otherwise dealt with as waste; or
- (e) any other substance, material or object that is designated by Regulations as waste

3. Administration of this Act

(1) The Agency shall administer this Act.

(2) The functions of the Agency under this Act shall be read together with its functions under the National Environment Management Act.

[Cap. 72:01]

PART II – WASTE MANAGEMENT BODIES

4. The Competent Authority and waste management entities

(1) The Agency is the Competent Authority and is responsible for the overall regulation and co-ordination of waste management in The Gambia.

(2) The Agency may by Order published in the *Gazette*, designate a Local Council as a waste regulation, collection or disposal authority for the area under its jurisdiction or such other area as may be specified in the Order.

(3) The Agency shall issue to designated Local Councils, guidelines and directives on the management of waste.

(4) A Local Council designated under sub-section (2) shall -

- (a) make administrative arrangements to separate its functions as a waste management authority from its functions as a waste collection or disposal authority;
- (b) submit details of the arrangements which it has made to the Agency;
- (c) comply with guidelines and directives issued by the Agency; and
- (d) comply with any permit or license issued by the Agency.

(5) The Agency may impose appropriate disciplinary measures on a Local Council which fails to comply with any guidelines or directives issued to it.

(6) The Agency –

- (a) shall monitor and supervise a Local Council in the performance of its functions; and
- (b) may issue directives relating to the arrangements made by a Local Council to keep its functions separate.

5. Establishment of the Waste Management Advisory Committee

(1) There is established for the National Environment Management Council, a Waste Management Advisory Committee.

(2) The Committee shall provide technical advice to the Agency on waste management.

6. Appointment and composition of the Waste Management Advisory Committee

(1) The non-ex-officio members of the Waste Management Advisory Committee shall be appointed by the Council from amongst relevant stakeholders in the waste management sector.

(2) The Committee shall comprise -

- (a) a Chairperson who shall be nominated by the Minister;
- (b) the Director of Health Services;
- (c) the Director Technical Services of the Agency;
- (d) the Programme Manager, Environment Quality of the Agency, who shall be the Secretary;
- (e) a representative of The Gambia Standards Bureau;
- (f) a representative of the Food Safety and Quality Authority;
- (g) a Chemist or Biologist;
- (h) a representative of the Local Councils;
- (i) a representative of the Gambia Chamber of Commerce and Industry;
- (j) the Legal Adviser of the Agency; and
- (k) the Director of Public Health.

7. Licensing of private waste disposal contractors

(1) A Local Council may issue a license to a waste disposal contractor for the collection and disposal of waste in the area specified in the license, after receiving an environmental clearance from the Agency.

(2) The terms of the license issued under sub-section (1) shall be in accordance with the waste collection and disposal plan of the Local Council that issued it.

8. Breach of license terms

A waste disposal contractor who engages in the business of waste disposal beyond the area specified in his or her license, commits an offense and is liable on conviction to a fine of fifteen thousand dalasis and in addition, may have his or her license revoked.

PART III – REGULATION OF THE DEPOSIT, HANDLING, TREATMENT AND DISPOSAL OF CONTROLLED WASTE

9. Prohibition of unauthorized or harmful deposit, treatment or disposal of controlled waste

(1) Subject to sub-section (3), a person shall not -

- (a) deposit controlled waste, or cause or permit controlled waste to be deposited on any land, unless he or she holds a waste management licence and acts in accordance with the licence;
- (b) treat, keep or dispose of controlled waste, or cause or permit controlled waste to be treated, kept or disposed of on any land or by means of any mobile plant, except in accordance with his or her waste management licence; or
- (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to the health of any other person.

(2) A person shall not treat, keep or dispose of controlled waste in a manner that may cause pollution of the environment, or harm to the health of humans, animals or plants.

(3) Sub-section (1) does not apply to -

- (a) household waste from a domestic property which is treated, kept or disposed of within the cartilage of the dwelling place, by or with the permission of the occupier of the dwelling place; and
- (b) cases prescribed by Regulations made by the Council, which may provide for different exceptions for different areas.

(4) In exercise of its power under sub-section (3)(b), the Council shall have regard to the expediency of excluding from controls imposed by waste management licences -

- (a) any deposits which are so small or of such a temporary nature that they may be excluded;
- (b) any means of treatment or disposal which is innocuous enough to be excluded; and
- (c) cases for which adequate controls are provided by another enactment other than this Act.

(5) Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of sub-section (1) (a), be treated as knowingly causing the waste to be deposited.

(6) A person who contravenes sub-section (1) or (2), or a term of a waste management licence, commits an offence and is liable on conviction –

- (a) in the case of a natural person, to a fine not exceeding ten thousand dalasis or imprisonment not exceeding six months, or to both the fine and imprisonment;
- (b) in the case of a corporate entity, to a fine of not less than fifty thousand dalasis.

(7) A person who commits an offence under this section, in relation to special waste is liable on conviction –

- (a) in the case of a natural person, to a fine not exceeding fifty thousand dalasis and not more than one hundred thousand dalasis or imprisonment of not less than one year and not more than three years, or to both the fine and imprisonment;

- (b) in the case of a corporate entity, to a fine of not less than two hundred thousand dalasis.

(8) It is a defence for a person charged under this section to prove that –

- (a) he or she took reasonable precautions and exercised due diligence to avoid the commission of the offence; or
- (b) the act alleged to constitute the contravention was done in an emergency in order to avoid danger to the public, and that as soon as reasonably practicable after it was done, particulars of it were furnished to the waste regulation authority in whose area the treatment or disposal of the waste took place.

10. Duty of authorized persons to handle controlled waste with care

(1) Subject to sub-section (2), a person who imports, produces, carries, keeps, treats, or disposes of controlled waste or, has control over controlled waste shall -

- (a) prevent a contravention of this Act by any person employed by him or her;
- (b) prevent the escape of the waste from his or her control; and
- (c) ensure that the-
 - (i) waste is only transferred to an authorized person for transport purposes as defined under sub-section (4), and
 - (ii) waste is accompanied by a written description as will enable any other person to avoid a contravention of this section.

(2) The duty imposed under sub-section (1) does not apply to an occupier of a domestic property in respect of household waste generated on the property.

(3) A person who contravenes sub-section (1) commits an offence and is liable on conviction –

- (a) in the case of a natural person, to a fine not exceeding fifteen thousand dalasis;
- (b) in the case of a corporate entity, to a fine not less than two hundred thousand dalasis.

(4) The following are “authorized persons” for the purpose of sub-section (1) (c) -

- (a) a Local council which has been designated by the Agency as a waste collection authority for the purposes of this Act;
- (b) the holder of a waste management licence or a waste disposal licence issued under this Act; and
- (c) a person registered as a carrier of controlled waste under this Act.

(5) The following are “authorized forms of transport” for the purposes of sub-section (1) (c) -

- (a) transportation of controlled waste within the same area;
- (b) transportation to a place in The Gambia of controlled waste imported from another country; and
- (c) transportation by air, sea or land of controlled waste for export to a place outside The Gambia.

(6) The Council may, by Regulations, impose requirements on any person who is subject to the duty imposed under sub-section (1), regarding the making and retention of documents and the furnishing of documents.

(7) The Agency may in consultation with the Waste Management Advisory Committee, prepare a Code of Conduct for the effective implementation of the various duties imposed under this section.

PART IV - WASTE MANAGEMENT LICENCES

11. Waste management licence

(1) A person shall not engage in the treatment, storage or disposal of controlled waste by any means, without a waste management licence issued by the appropriate Local Council in consultation with the Agency.

(2) A licence may be issued -

- (a) to a person in occupation of land for the treatment, storage or disposal of waste on the land; or
- (b) to a person who operates a mobile plant for the treatment or disposal of waste.

(3) A Local Council may issue a licence subject to the following conditions -

- (a) a restriction of the activities authorised by the license;
- (b) precautions to be taken and works to be carried out in connection with or in consequence of the activities authorised by the licence; and
- (c) requirements to be complied with by the Licensee before the activities authorised by the license are begun or after those activities have ceased.

(4) The conditions imposed under sub-section (3) may require –

- (a) the Licensee to carry out any work or do any other thing; and
- (b) any person whose consent is required to grant the Licensee such rights in relation to the land as will enable him or her comply with any requirement imposed on him or her.

(5) The Council may by Regulations, prescribe the conditions which may be included in a licence by a Local Council.

(6) Without prejudice to sub-section (5), the Agency may give to the Local Council, directions in respect of the terms and conditions which may be included in the licence.

(7) A licence –

- (a) is not transferable without the written consent of the Local Council that issued it;
- (b) shall not be surrendered by the Licensee except in accordance with section 16.

(8) Unless otherwise revoked, a licence shall be valid –

- (a) for one year from the date it is issued or renewed; or
- (b) until it is surrendered.

(9) A person who, without reasonable excuse, fails to comply with any requirement imposed under this section in relation to controlled waste, commits an offence and is liable on conviction –

- (a) in the case of a natural person, to a fine not exceeding fifteen thousand dalasis or imprisonment not exceeding two months, or to both the fine and imprisonment; or
- (b) in the case of a corporate entity, to a fine not less than two hundred thousand dalasis.

12. Application for a waste management licence

(1) An application for a –

- (a) site management licence shall be made to the Local Council in whose area the land is situated; and
- (b) mobile plant licence shall be made to the Local Council in whose area the operator of the plant has his or her principal place of business.

(2) The application shall be made in the prescribed form and accompanied by the prescribed fee.

(3) A licence shall not be issued in respect of land for which planning permission is required pursuant to the Physical Planning and Development Control Act, unless–

[Cap. 57:08]

- (a) a planning permission has been granted in relation to the use of the land; or

- (b) an established use certificate is in force under the State Lands Act.

[Cap. 57:02]

(4) Subject to sub-sections (3) and (5), a Local Council may reject an application for a licence-

- (a) if it is satisfied that the applicant is not fit to hold the licence; or
- (b) to mitigate pollution to the environment, harm to human, animal and plant health or serious harm to amenities of the locality.

(5) Where a local Council proposes to issue a licence to a prospective Licensee, it shall consider any representations made by other Local Councils, Government Departments and the general public during the allowed period.

(6) Where the Local Council proposes to issue a licence in respect of any part of land which has been designated under the Biodiversity and Wildlife Act, or the Forest Act, 2018 it shall –

- (a) refer the proposal to the appropriate institution responsible for the relevant Act; and
- (b) consider any representation about the proposal which the institution makes to it during the allowed period.

[Cap. 62:01] ; [Act No.3 of 2018]

(7) If within ninety days from the date on which the Local Council receives an application for a licence or within such longer period as the Local Council and the applicant agree in writing, the Local Council has not issued the licence or given notice to the applicant that it has rejected the application, it is deemed to have rejected the application.

(8) For the purpose of this section, the “allowed period” for the making of representations on a proposal under sub-sections (5) and (6) is twenty-one working days.

13. Modification of a licence

(1) A Local Council may -

- (a) on its own initiative, modify the conditions of a licence to any extent which, in its opinion, is desirable and unlikely to incur unreasonable expenses on the part of the Licensee and does not cause pollution of the environment, harm to human, animal or plant health, or seriously harm the amenities of the locality affected by the activities which the licence authorises; or
- (b) on the application of the Licensee, and the payment of the prescribed fee, modify the conditions of the licence to such extent as it considers fit.

(2) The modification of a licence shall be effected by notice served on the Licensee, stating the time at which it is to take effect.

(3) Where a Local Council proposes to modify a licence, it shall, before doing so, consider any representations made by other Local Councils, Government Departments or Agencies and the general public during the allowed period.

(4) If within -

- (a) sixty working days from the date on which a Local Council received an application for the modification of a licence; or
- (b) such longer period as the Agency and the applicant may agree in writing,

the Local Council has not granted a modification of the licence or given notice to the applicant that it has rejected the application, it is deemed to have rejected the application.

(5) For the purpose of this section, the “allowed period” for the making of representations on a proposal under sub-section (3) is twenty-one working days.

14. Revocation and suspension of licences

(1) Where it appears to a Local Council that -

- (a) a Licensee has ceased to be a fit and proper person by reason of having been convicted of an offence under this Act; or
- (b) the continuation of the activities authorised by the licence would cause pollution of the environment or harm to human, animal or plant health or would be seriously detrimental to the amenities of the locality affected; and
- (c) the pollution, harm or detriment cannot be avoided by modifying the conditions of the licence,

it may revoke or suspend licence.

(2) The Local Council may revoke or suspend-

- (a) a licence entirely; or
- (b) parts of the activities specified in the licence.

(3) Where it appears to a Local Council that the Licensee has ceased to be a fit and proper person because the management of the activities authorised by the licence has ceased to be in the hands of a technically competent person, it may revoke -

- (a) the licence entirely; or
- (b) some activities specified in the licence.

(4) The revocation of a licence does not affect the requirements imposed by the licence which the Local Council directs to continue to bind the Licensee.

(5) Where it appears to a Local Council that-

- (a) the Licensee has ceased to be a fit and proper person, by reason that the management of the activities authorised by the licence have ceased to be in the hands of a technically competent person; or

- (b) serious pollution of the environment or serious harm to human, animal or plant health has resulted from, or is likely to be caused by the activities authorized by the licence; and
- (c) the continuation of the activities, will cause serious pollution of the environment or serious harm to human, animal or plant health,

it may suspend the licence entirely or such parts of it as it specifies in the notice of suspension.

(7) The Agency may give a Local Council directions as to whether and in which manner, it should exercise its powers under this section.

(8) Where a licence has been suspended, the Local Council may require the Licensee to take such measures as it considers necessary to deal with or avert the pollution or harm.

(9) A person who without reasonable excuse, contravenes this section commits an offence and is liable on conviction –

(a) in the case of a natural person, to a fine not exceeding fifteen thousand dalasis or imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

(b) in the case of a corporate entity, to a fine of not less than two hundred thousand dalasis.

(10) A revocation or suspension of a licence, or requirement imposed during the period of suspension, shall be effected by a notice served on the Licensee, stating-

- (a) the time at which the revocation or suspension, or the requirement, is to take effect; and
- (b) in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease.

15. Procedure for the surrender of licence

(1) A waste management site licence may be surrendered by a Licensee to the Local Council which issued it.

(2) Notwithstanding sub-section (1), the licence may only be surrendered by the Licensee if the Local Council accepts the surrender.

(3) The Licensee who desires to surrender a licence shall apply to the Local Council in such form and with such information and fees as may be prescribed by Regulations.

(4) After the Local Council receives the application for the surrender of the licence, it shall-

- (a) inspect the land to which the licence relates; and
- (b) determine whether the continued use of the land for the treatment, storage or disposal of waste, will cause pollution of the environment or harm to human, animal or plant health.

(5) If the Local Council is of the opinion that the continued use of the land for the treatment, storage or disposal of waste-

- (a) will cause the pollution or harm mentioned in sub-section (4)(b), it shall not accept the surrender of the licence; or
- (b) is unlikely to cause the pollution or harm mentioned in sub-section (4)(b), it shall, subject to sub-section (6), accept the surrender of the licence.

(6) Where the Local Council proposes to accept the surrender of the licence, it shall consider any representations about the proposal made to it by other local Councils, Government Departments, Agencies and the general public during the allowed period.

(7) Where the surrender of the licence is accepted, the Local Council shall issue to the Licensee, a "certificate of completion", stating its satisfaction as per sub-section (4) (b) and the licence shall cease to have legal effect.

(8) If within-

- (a) ninety working days from the date on which a Local Council receives the application to surrender a licence; or

- (b) such longer period as the Local Council and the applicant may agree in writing,

the Local Council has not issued a certificate of completion or given notice that it has rejected the application, it is deemed to have rejected the application.

(9) The “allowed period” for the making of representations under sub-section (6), is twenty-one working days from the date on which the application for surrender is received by the Local Council or such longer period as it may grant.

16. Transfer of a licence

(1) Whether or not a waste management licence is partly revoked or suspended, a Licensee may transfer it to another person in accordance with sub-sections (2) to (6).

(2) Where the Licensee intends to transfer the licence to another person, the Licensee and the proposed transferee shall jointly make an application to the relevant Local Council.

(3) An application for the transfer of a licence shall be-

- (a) made in such a form and contain such information as may be prescribed in the Regulations made under this Act; and
- (b) accompanied by the prescribed fee.

(4) If the Local Council is satisfied that the proposed transferee is a fit and proper person, it shall effect a transfer of the licence to him or her.

(5) The Local Council shall effect a transfer of a licence by endorsing on it, the name and other particulars of the proposed transferee from the date specified in the endorsement.

(6) If within-

- (a) sixty working days from the date on which the Local Council receives an application for the transfer of a licence; or

- (b) such longer period as the Local Council and the applicants may agree in writing,

it has not effected a transfer of the licence or given notice to the applicants that it has rejected the application, it is deemed to have rejected the application.

17. Fees and charges for licences

(1) A Local Council shall levy in respect of applications for, and the holding of a licence, such fees and charges as may be provided under sub-section (2).

(2) The Local Council shall establish a scheme prescribing -

- (a) fees payable in respect of applications for licenses and other matters relevant to applications for licenses; and
- (b) charges payable during the subsistence of licenses.

(3) The following applications may be made under this section -

- (a) an application for a licenses or modification of the conditions of a license;
- (b) an application to surrender a license;
- (c) an application for the transfer of a license; and
- (d) such other applications as may be specified in the scheme.

(4) A scheme under sub-section (2) may, in particular -

- (a) provide for different fees or charges to be payable by the Licensee according to the description of the activities authorised by the licence and the descriptions and amounts of controlled waste to which the activities relate;
- (b) provide for the times and manner in which payments of fees or charges are to be made;
- (c) make such incidental, supplementary or transitional provisions as appear appropriate; and

- (d) provide for different schemes, which may be revised for different areas.

(5) If it appears to a Local Council that a Licensee has failed to pay a fee or a charge due in consideration of the subsistence of the licence, it may by notice in writing, revoke the licence entirely or so far as it authorises the carrying on of the activities specified in the licence.

18. Supervision of licensed activities

(1) While a licence is in force, the Local Council which issued it shall take the necessary steps to ensure that the-

- (a) activities authorised by the licence do not –
 - (i) cause pollution of the environment or harm to human, animal or plant health, or
 - (ii) become seriously detrimental to the amenities of the locality affected by it; and
- (b) conditions of the licence are complied with.

(2) Where at any time during the subsistence of a licence, it appears to the Local Council that water pollution is likely to be caused by the activities authorized by the licence, it shall consult the Department of Water Resources for advice.

(3) For the purpose of performing the duty imposed on a Local Council by sub-section (1), an officer of the Local Council authorised in writing for that purpose, may carry out work –

- (a) on the land;
- (b) in relation to the plant or equipment on the land; or
- (c) in relation to the mobile plant,

to which the licence relates.

(4) Where the Local Council incurs any expenditure by virtue of work carried out under sub-section (3), it may recover the amount of the expenditure-

- (a) from the Licensee; or

- (b) if the licence has been surrendered, from its previous holder,

unless the Licensee or previous holder shows that there was no necessity for the work or that some of the expenditure was unnecessary.

(5) Where it appears to the Local Council that a condition of a licence is not being complied with, it may -

- (a) require the Licensee to comply with the condition within a specified time; and
- (b) if in its opinion, the Licensee has not complied with the requirement -
 - (i) revoke the licence entirely or so far as it authorises the carrying on of the activities specified in the licence or such of them as it specifies, or
 - (ii) suspend the licence entirely or so far as it authorises the carrying on of the activities specified in the licence or, as the case may be, those activities specified by it.

19. Appeals to the Council

(1) Where -

- (a) an application for a licence or a modification of the condition of a licence is rejected;
- (b) a licence is granted subject to conditions;
- (c) the conditions of a licence are modified;
- (d) a licence has been suspended;
- (e) a licence has been revoked;
- (f) an application to surrender a licence has been rejected;
or

- (g) an application for the transfer of a licence has been rejected,

a person affected by the decision may appeal to the Council from the decision of the Local Council.

(2) The following persons may appeal under sub-section (1)-

- (a) the applicant for the licence;
- (b) the Licensee or previous holder of the licence; or
- (c) in the case of an application for a transfer, the proposed transferee.

(3) Where an appeal is made to the Council, it may -

- (a) refer any matter involved in the appeal to a committee or person appointed for that purpose; and
- (b) delegate its powers to such committee or person.

(4) If a party to an appeal so requests, or the Council so decides, the appeal shall be in the form of a hearing, which may be held in camera, if the committee or person hearing the appeal so decides.

(5) Where on an appeal, it is determined that the decision of the Local Council should be altered, the Local Council shall comply with the determination.

(6) While an appeal is pending in relation to a case falling within sub-section (1) (c) or (e), the decision in question shall, subject to sub-section (7), be suspended until the appeal is dismissed or withdrawn.

(7) Where an appeal is made in relation to a case falling within sub-section (1) (d), the filing of the appeal shall have no effect on the decision in question.

(8) Sub-section (6) shall not apply to a decision modifying the conditions of a licence or revoking a licence, where the notice effecting the modification or revocation includes a statement that in the opinion of the Local Council, it is necessary that sub-section (6) should not apply for the purpose of preventing or minimizing pollution of the environment, or harm to human, animal or plant health.

(9) Where an appeal is pending, the person hearing the appeal determines that the Local Council acted unreasonably in excluding the application of sub-section (6) or in suspending the licence-

- (a) if the appeal is still pending at the end of the day on which the determination is made, sub-section (6) shall apply to the decision from the end of that day; and
- (b) the Licensee or previous holder of the licence is entitled to recover compensation from the Local Council in respect of any loss suffered by him or her in consequence of the exclusion of the application of sub-section (6) or the suspension of the licence.

(10) A dispute as to a person's entitlement to compensation under sub-section (9)(b), or as to the amount of compensation, shall be determined by –

- (a) a single Arbitrator appointed by the parties; or
- (b) the Council, on the application of any of the parties.

(11) The Council may by Regulations, make provision with respect to appeals under this section and, in particular, as to the-

- (a) period within which and the manner in which appeals are to be brought; and
- (b) manner in which appeals are to be considered.

20. Appeals to the High Court

An applicant for a licence whose appeal has been dismissed by the Council may appeal to the High Court, for a review of the decision.

21. Offence of making false statements

A person who, in relation to an application for a modification of the conditions, the surrender or transfer of a licence -

- (a) makes a statement which he or she or it knows to be false in a material particular; or

- (b) recklessly makes a statement which is false in a material particular,

commits an offence and is liable on conviction -

- (i) in the case of a natural person, to a fine not exceeding fifteen thousand dalasis, and in default imprisonment not exceeding two months or to both the fine and imprisonment; or
- (ii) in the case of a corporate entity, to a fine not less than two hundred thousand dalasis.

PART V - COLLECTION, DISPOSAL AND TREATMENT OF CONTROLLED WASTE

23. Collection of controlled waste

(1) A Local Council shall, in its area of jurisdiction -

- (a) arrange for the collection of household waste; and
- (b) if requested by the occupier of any premises, collect commercial waste from the premises.

(2) A Local Council may –

- (a) if requested by the occupier of any premises, arrange for the collection of industrial waste;
- (b) charge for the collection and disposal of household waste, except in cases prescribed in Regulations made by the Council.

(3) A person at whose request waste, is collected under this section is liable to pay the Local Council which arranged for its collection, a reasonable charge for the collection and disposal of the waste, unless the Local Council decides otherwise in respect of commercial waste.

(5) A Local Council shall-

- (a) make arrangements for the disposal of privies serving one or more private dwelling places in its area, as it considers appropriate; and

- (b) if requested by the person who controls a cesspool serving one or more private dwelling places, remove the contents of the cesspool, on payment of a reasonable charge.

(6) A Local Council may –

- (a) if requested by the person who controls any privy or cesspool in its area, empty the privy or cesspool or remove from the cesspool such of its contents as it considers appropriate, on payment of a reasonable charge;
- (b) construct, lay and maintain, within or outside its area of jurisdiction, pipes and associated works for the purpose of collecting waste;
- (c) contribute towards the cost incurred by a person in providing or maintaining a plant or an equipment intended to deal with commercial or industrial waste before it is collected under arrangements made by the local Council under sub-section (1)(b) or (2).

(7) Any waste collected under arrangements made by a Local Council under this section belongs to it and may be dealt with by it accordingly.

23. Receptacles for household waste

(1) Where a Local Council arranges for the collection of household waste from any domestic premises, it may, by notice served on the occupier of the premises, require him or her to place the waste in prescribed receptacles, for collection.

(2) The Local Council may require the occupier of premises to keep separate receptacles or compartments of receptacles for waste which is to be recycled and waste which is not to be recycled.

(3) In making arrangements under sub-section (1), the Local Council may –

- (a) provide receptacles free of charge, or on payment of such sums as the occupier agrees in writing with the Local Council; or
- (b) require the occupier of premises to provide receptacles if he or she does not enter into any agreement with the Local Council under paragraph (a) within a specified period.

(4) In making arrangements in respect of receptacles under sub-section (1), a Local Council may by notice, prescribe -

- (a) the size, type and maintenance of receptacles;
- (b) the placement of the receptacles and access to them;
- (c) the placement of the receptacles on highways or roads, in consultation with National Roads Authority;
- (d) the substances or articles which may be disposed of into the receptacles or different compartments of the receptacles and the precautions to be taken where particular substances or articles are put in them; and
- (e) any other step required to be taken by occupiers of premises,

for the purpose of facilitating the disposal of their content.

(5) A receptacle shall not be placed on a highway or road unless -

- (a) the approval of the National Roads Authority is sought and obtained; and
- (b) arrangements have been made as to the liability for any damage caused to it.

(6) Where an occupier is required to provide receptacles, he or she may, within the period allowed by sub-section (7), appeal to the Council on the ground that -

- (a) the requirement is unreasonable; or
- (b) the receptacle in which household waste is placed for collection from the premises is adequate.

(7) The occupier of any premises may appeal against a requirement of sub-section (1) within twenty-one working days, commencing -

- (a) in a case where a period was specified under sub-section (3) (c), from the end of that period; and
- (b) where no period was specified, from the day on which the notice of the requirement was served on him or her.

(8) The Council shall confirm or modify the requirement, or dismiss the appeal.

(9) While the appeal against a requirement is pending -

- (a) the obligation shall be suspended, pending the determination of the appeal; and
- (b) no legal proceedings shall be commenced in relation to the requirement imposed.

24. Receptacles for commercial or industrial waste

(1) A person shall provide a receptacle for the collection of commercial or industrial waste generated by him or her.

(2) Where a person requests a Local Council to arrange for the collection of commercial or industrial waste, the Local Council may provide the receptacle for the collection of the waste.

(3) The Local Council shall charge a reasonable sum for any receptacle provided under sub-section (2), unless it decides otherwise in respect of a receptacle for commercial waste.

(4) If it appears to a Local Council that there is likely to be situated on any premises, commercial or industrial waste of a kind which is likely to –

- (a) cause a public nuisance; or
- (b) be detrimental to the amenities of the locality,

it may, by a notice served on the occupier of the premises, instructing him or her to provide prescribed receptacles for the keeping of the waste.

(5) In making a requirement in respect of receptacles under sub-section (4), the Local Council may prescribe -

- (a) the size, type and maintenance of the receptacles;
- (b) the placement of the receptacles and access to them;
- (c) the placement of the receptacles on highways or roads;

(d) the substances or articles which may not be put in the receptacles and the precautions to be taken where particular substances or articles are put in them; and

(e) any other step to be taken by occupiers of premises,

to facilitate the disposal of waste.

(6) A person who fails, without reasonable excuse, to comply with any requirements imposed under sub-section (4) or (5) commits an offence and is liable on conviction –

(a) in the case of a natural person, to a fine not exceeding fifteen thousand dalasis, or a prison term of not exceeding two months or both a fine and imprisonment, or

(b) in the case of a corporate entity, to a fine not less than two hundred thousand dalasis.

(7) Where an occupier is required under sub-section (4) to provide any receptacle, he or she may within the period allowed by sub-section (8), appeal to the Council against the requirement imposed, on the ground that the-

(a) requirement is unreasonable; or

(b) waste is not likely to cause a public nuisance or be detrimental to the amenities of the locality.

(8) The occupier of premises may appeal against a requirement within twenty-one working days from the day on which the notice was served on him or her.

(9) While an appeal against a requirement is pending -

(a) the requirement shall be suspended, pending the determination of the appeal; and

(b) no legal proceedings shall be commenced in respect of the requirement imposed.

(10) The Council may quash or modify the requirement, or dismiss the appeal

25. Duties of a Local Council in respect of disposal of waste collected

(1) Subject to sub-sections (2) and (6), a Local Council shall deliver for disposal, all types of waste collected by it, to designated sites.

(2) The duty imposed on a Local Council by sub-section (1) does not apply to household or commercial waste which it decides to retain for recycling.

(3) A Local Council which decides to make arrangements for recycling waste collected by it shall, as soon as reasonably practicable, by notice in writing, inform the relevant Local Council designated as the waste disposal authority or the waste disposal contractor for the area.

(4) A Local Council may provide plant and equipment for the sorting and baling of waste retained by it under sub-section (2).

(5) A Local Council may permit a person to use its plant and equipment and except in respect of household waste, charge a reasonable fee in respect of such use.

26. Waste management plans of Local Councils

(1) A Local Council shall, in respect of household and commercial waste-

- (a) inquire into the appropriate arrangements for dealing with the waste by separating, baling or otherwise packaging it for the purpose of recycling it;
- (b) decide what arrangements are needed for that purpose;
- (c) prepare a statement referred to as "the plan" of the arrangements made or proposed to be made for dealing with the waste;
- (d) carry out, from time to time, further inquiries with a view to deciding what changes in the plan are needed; and
- (e) make any modification of the plan in consequence of the further inquiry.

(2) In considering the arrangements for, or modifications of the plan, the Local Council shall have regard to the likely –

- (a) effect of the arrangements or modifications on the amenities of the affected locality; and
- (b) cost or saving to the Local Council, attributable to such arrangements or modifications.

(3) A Local Council shall include in its plan, information in respect of-

- (a) the type and quantity of controlled waste it expects to-
 - (i) collect during the period specified in its plans,
 - (ii) purchase during that period, or
 - (iii) deal with in the ways specified in sub-section (1)(a) during that period;
- (b) the arrangements it expects to make during the period, with waste disposal contractors to deal with waste in the ways provided for in the plan;
- (c) the plant and equipment it expects to provide; and
- (d) the estimated costs or savings attributable to the methods of dealing with the waste, in the ways provided for in its plan.

(4) A Local Council shall, before determining the content of the plan or a modification of it, send a copy of the draft to the Agency to determine whether sub-section (3) has been fully complied with.

(5) If a Local Council has finalised the contents of its plan or modifications, it shall -

- (a) take such steps as will give adequate publicity to the plan or modification in its area; and
- (b) send to the Agency, a copy of its plan or, as the case may be, particulars of the modification.

(6) A Local Council shall-

- (a) keep a copy of its plan and particulars of any modification to it, available at all reasonable times at its

principal offices, for inspection by members of the public, free of charge; and

- (b) supply a copy of the plan and the particulars of any modification to it, to any person who requests it, on payment of such reasonable charge as the Local Council may impose.

(7) The Council may give directions to a Local Council, regarding the time it is to perform any duty imposed by this section.

27. Waste disposal plans of Local Councils

(1) A Local Council shall-

- (a) carry out an inquiry with a view to deciding which arrangements are best suited for the purpose of treating or disposing of controlled waste which is-
 - (i) situated in its area, or
 - (ii) likely to be so situated;

so as to prevent or minimise pollution of the environment or harm to human, animal and plant health;

- (b) after carrying out an inquiry, decide what arrangements are needed for the purpose of treating or disposing of controlled waste and how it should discharge its functions in relation to licences;
- (c) prepare a plan of the arrangements made or proposed to be made with waste disposal contractors for the treatment or disposal of the controlled waste;
- (d) carry out, from time to time, inquiries with a view to deciding which changes in the plan are required; and
- (e) make modifications to the plan in consequence of such further inquiry.

(2) In considering any arrangements or modifications for the purposes of sub-section (1)(c) or (e), the Local Council shall have regard to the likely –

- (a) cost of the arrangements or modifications; and

(b) effects on the environment.

(3) A Local Council shall include in its plan, information in respect of-

- (a) the type and quantities of controlled waste it expects to be -
 - (i) situated in its areas during the period specified in the plan,
 - (ii) brought into or taken for disposal out of its area during the period, and
 - (iii) disposed of within its area during the period;
- (b) the methods, and the priorities for the methods by which controlled waste in its area should be disposed of or treated during the period of the plan;
- (c) the sites and equipment which persons are providing and are expected to provide for the disposal of controlled waste during the period of the plan; and
- (d) the estimated cost of the methods of disposal or treatment provided for in the plan.

(4) A Local Council may by Regulations, prescribe matters to be taken into account in preparing its plan and any modifications of the plan.

(5) In considering which information to include in its plans under sub-section (3)(b), a Local Council shall have regard to the desirability, where reasonably practicable, of giving priority to recycling waste.

(6) A Local Council shall-

- (a) in preparing its plan and any modification of it, consult Government Agencies or Departments and such other persons as are likely to be, engaged in the commercial disposal or treatment of controlled waste, in its area; and
- (b) before finalising the contents of its plan or modification of it, take such steps as will -
 - (i) give adequate publicity to the plan or modification in its area, and

- (ii) provide members of the public with an opportunity to make representations about it; and
 - (c) consider any representation made by the general public, and make such change as it considers appropriate.
- (7) A Local Council shall not be required to take steps under sub-section (6)(b) in respect of a modification if in the opinion of the Agency, no person will be prejudiced if those steps are not taken.
- (8) Without prejudice to the duty of a Local Council under sub-section (6), it shall, in preparing its plan or any modification of the plan, consider, in consultation with the relevant Local Council designated as the waste collection authority for the area, make-
- (a) arrangements that can reasonably be made for recycling waste; and
 - (b) provisions that shall be included in the plan for that purpose.
- (9) When a Local Council finally determines contents of its plan or modification of the plan, it shall -
- (a) take such steps as shall give adequate publicity to the plan or modification; and
 - (b) send to other Local Councils, copies of the plan or particulars of the modification.

28. Functions of Local Councils designated as waste disposal authorities

- (1) A Local Council shall arrange for –
- (a) the disposal, by itself or the appropriate Local Council, of the controlled waste collected in its area;
 - (b) places at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited; and
 - (c) places for the deposit of household waste or other controlled waste by other persons, free of charge or on such payment terms as it determines.

(2) The arrangements made by a Local Council under sub-section (1)(b) shall ensure that each place provided is-

- (a) situated either within the area of the Local Council or reasonably accessible to persons resident in its area;
- (b) available for the deposit of waste at all reasonable times; and
- (c) available for the deposit of waste free of charge by persons resident in the area,

(3) The Local council may restrict the availability of specified places to specified types of waste.

(4) For the purpose of discharging its duty under sub-section (1)(a) in respect of controlled waste, a Local Council -

- (a) shall give directions to the appropriate Local Council and waste disposal contractors within its area, as to the person to whom a licence has been issued, and stipulates places at which the waste is to be deposited;
- (b) may arrange for the provision of places at which the waste may be treated or kept prior to its removal for treatment or disposal, within or outside its area, by waste disposal contractors or Licensees;
- (c) may make available to waste disposal contractors or Licensees, plant and equipment to keep the waste prior to its removal for disposal or for the purpose of facilitating its transportation;
- (d) may make land available to waste disposal contractors or Licensees, to treat, keep or dispose of the waste in or on the land; and
- (f) may contribute towards the cost incurred by persons or who or produce commercial or industrial waste in providing and maintaining-
 - (i) the plant or equipment intended to deal with the waste before it is collected, and
 - (ii) pipes or associated works connecting with pipes provided by a Local Council within its jurisdiction.

(5) For the purpose of discharging its duties under sub-section (1)(b) in respect of household waste, a Local Council may-

- (a) arrange for the provision of places at which the waste may be treated or kept prior to its removal for treatment or disposal, within or outside its area, by waste disposal contractors or Licensees;
- (b) make available to waste disposal contractors or Licensees plant and equipment to keep the waste prior to its removal for disposal or to treat the waste in connection with safe keeping for the purpose of facilitating its transportation; and
- (c) make land available to waste disposal contractors or Licensee to treat, keep or dispose of the waste in or on the land.

29. Payments for recycling and disposal etc. of waste

(1) Where a Local Council retains for recycling, waste collected by it, the Local Council responsible for the disposal of waste for that jurisdiction shall pay to the first Local Council, in respect of the waste so retained, such amounts representing its net saving of expenditure on the disposal of the waste as the Local Council determines.

(2) Where a waste disposal contractor or Licensee collects waste, which is the responsibility of a Local Council to collect, the Local Council shall pay to the waste disposal contractor or Licensee, in respect of the waste so collected, such amounts representing its net saving of expenditure on the collection of the waste as the Local Council determines.

(3) Where a person other than a Local Council, for the purpose of recycling, collects waste which is the responsibility of the Local Council to dispose of, the Local Council shall pay the person, such amounts representing its net saving of expenditure on the disposal of the waste as it determines.

(4) Where a person other than a Local Council, collects waste which is the responsibility of the Local Council to collect, for the purpose of recycling, the Local Council shall pay the person, in respect of the waste collected, such amounts representing its net saving of expenditure on the collection of the waste as the Local Council determines.

(5) The Council may by Regulations, require Local Councils to make payments corresponding to the payments which are authorised by sub-section (3), to such persons, in such circumstances, and in respect of such descriptions or quantities of waste as are specified in those Regulations.

(6) For the purposes of sub-sections (1) and (3), the net saving of expenditure of a Local Council on the disposal of any waste retained or collected for recycling is the amount of the expenditure which the Local Council would have, but for the retention or collection, incurred in having it disposed of, less any amount payable by the Local Council to any person in consequence of the retention or collection for recycling, instead of the disposal, of the waste.

(7) For the purposes of sub-sections (2) and (4), the net saving of expenditure of a Local Council and the contractors on the collection of any waste, not failing to be collected by it, is the amount of the expenditure which the Local Council and the contractors would have, if it had to collect the waste, incurred in collecting it.

31. Recycling of waste

(1) A Local Council may-

- (a) make arrangements with waste disposal contractors or Licensees to recycle waste which it has a duty to dispose of or treat;
- (b) make arrangements with waste disposal contractors or Licensees to enable them use waste to produce heat or electricity;
- (c) buy or otherwise acquire waste with a view to its recycling; or
- (d) use, sell or otherwise dispose of waste which it has the duty to deal with or anything produced from that waste.

(2) A Local Council may-

- (a) buy or otherwise acquire waste with a view to recycling it; or
- (b) use, or dispose of to another person, by way of sale or otherwise, waste belonging to it or anything produced from that waste.

32. Power of Agency to require waste to be accepted, treated, disposed of or delivered

(1) The Agency may by notice in writing, direct a waste management Licensee to accept and keep, accept and treat or dispose of, controlled waste at specified places, and on specified terms and conditions.

(2) The Agency may by notice in writing, direct a person who is keeping controlled waste on any land, to deliver the waste to a specified person, on specified terms and conditions, with a view to its being treated or disposed of by that person.

(3) A direction under sub-section (2) may require the person who is directed to deliver the waste to pay the specified person, his or her reasonable costs of treating or disposing of the waste.

(4) A person who fails, without reasonable excuse, to comply with a direction under this section commits an offence and is liable on conviction –

(a) in the case of a natural person, to a fine not exceeding fifteen thousand dalasis or imprisonment not exceeding two months; and

(b) in the case of a corporate entity, to a fine not less than two hundred thousand dalasis.

32. Power to require removal of waste unlawfully deposited

(1) If controlled waste is deposited in or on any land in contravention of this Act, the relevant Local Council may by notice served on the occupier of the land, require him or her to -

(a) remove the waste within a specified period, not exceeding twenty-one working days from the date on which the notice was served on the occupier; or

(b) take specified steps within the period mentioned in paragraph (a), to eliminate or reduce the consequences of the deposit of that waste.

(2) A person on whom a requirement is imposed under sub-section (1) may within twenty-one working days, appeal to the Council against the requirement.

(3) On an appeal under sub-section (2), the Council-

- (a) may quash the requirement if it is satisfied that-
 - (i) the appellant did not deposit or knowingly cause or permit the deposit of the waste, or
 - (ii) there is a material defect in the notice; and
- (b) shall, in any other case, modify the requirement or dismiss the appeal.

(4) While an appeal is pending against a requirement imposed under sub-section (1), the requirement shall be suspended pending the determination of the appeal, and where the Court modifies the requirement or dismisses the appeal, it may extend the period specified in the notice.

(5) Where a person on whom a requirement is imposed under sub-section (1) fails to comply with the requirement, he or she commits an offence and is liable on conviction-

- (a) in the case of a natural person, to a fine not exceeding fifteen thousand dalasis or imprisonment not exceeding two months; or
- (b) in the case of a corporate entity, to a fine of not less than two hundred thousand dalasis; and
- (b) a further fine of one hundred dalasis for each day on which the failure continues after the conviction and before the Local Council begins to exercise its powers under sub-section (6).

(6) Where a person on whom a requirement has been imposed under sub-section (1) fails to comply with the requirement, the local Council may carry out the requirement and recover from him or her, any expenses reasonably incurred in so doing it.

(7) If it appears to a Local Council that waste has been deposited in or on any land in contravention of this Act and that-

- (a) in order to remove or prevent land, water or air pollution or harm to human, animal or plant health, it is necessary that the waste is immediately removed or other steps are taken to eliminate or reduce the consequences of the deposit;

- (b) there is no occupier of the land; or
- (c) the occupier did not make or knowingly permit the deposit of the waste,

it may remove the waste from the land or take other steps to eliminate or reduce the consequences of the deposit.

(8) Except such cost as the occupier or depositor shows was incurred unnecessarily, where a Local Council exercises any of the powers conferred on it by sub-section (7), it is entitled to recover the cost incurred by it -

- (a) in a case falling within sub-section (7)(a), from the occupier of the land, unless the occupier proves that he or she did not make or knowingly cause or permit the deposit of that waste; or
- (b) in any other case, from the person who deposited or knowingly caused or permitted the deposit of that waste.

(9) A waste removed by a Local Council under sub-section (7) may be utilised by it for any purpose.

33. Interference with waste sites and receptacles

(1) A person shall not sort through or interfere with -

- (a) any waste deposited by a waste disposal contractor or Licensee under arrangements made with a Local Council;
- (b) any waste deposited by another Local Council or by a waste management Licensee in a receptacle provided by a Local Council, whether for public or private use; or
- (c) the contents of any waste receptacle placed on any road or highway or in any other place for the purpose of its being emptied,

unless he or she has the relevant consent or right to do so.

(2) The relevant consent or right for the purpose of sub-section (1) is, in the case of-

- (a) paragraph (a), the consent of the Local Council, waste disposal contractor or Licensee or other person who provides the place for the deposit of the waste;

- (b) paragraph (b), the consent of the Local Council, waste disposal contractor or Licensee or other person who provides the receptacle for the deposit of the waste; and
 - (c) paragraph (c), the consent of the person having custody of the receptacle or the right to empty the receptacles.
- (3) A person who contravenes sub-section (1) commits an offence and is liable on conviction –
- (a) in the case of a person, to a fine not exceeding twenty fifteen dalasis or imprisonment not exceeding two months or both; or
 - (b) in the case of a corporate entity, to a fine not less than two hundred thousand dalasis.

34. Duty of Local Councils in respect of closed landfills

- (1) Except in respect of land in relation to which a waste management site licence is in force, a Local Council shall cause any land to be inspected from time to time, to detect whether it is in such a condition as to cause pollution of the environment or harm to human, animal or plant health.
- (2) The matters affecting land relevant for the purpose of this section are the concentration or accumulation in, or the emission or discharge from the land, of noxious gases or noxious liquids caused by deposits of controlled waste on the land.
- (3) For the purpose of discharging the duty imposed by sub-section (1), a Local Council may enter and inspect any land -
- (a) in or on which controlled waste has been deposited under the authority of a waste management licence or a waste disposal licence; or
 - (b) in which there are, or the Local Council has reason to believe there may be, concentrations or accumulations of noxious gases or noxious liquids.
- (4) Where it appears to the Local Council that the condition of any land is such as is specified in sub-section (1), it shall from time to time during the period of its responsibility for the land, enter and inspect the land for the purpose of keeping its condition under review.

(5) Where at any time during the period of its responsibility for any land, it appears to a Local Council that the condition of the land is, by reason of those relevant matters affecting the land, that water pollution is likely to be caused, the Local Council shall consult the Department of Water Resources.

(6) The “period of responsibility” for land for the purposes stipulated in sub-sections (4) and (5), extends from the time from which the condition of the land first appears to the Local Council to be such as is referred to in that sub-section (1) until the Council is satisfied that no pollution of the environment or harm to human, animal or plant health will be caused by reason of the relevant matters affecting the land.

(7) Where on an inspection by a Local Council of any land under this section, it appears to it that the condition of the land is by reason of the relevant matters affecting the land, such that environment pollution or harm to human, animal or plant health is likely to be caused, it shall carry out such works and take such other steps, whether on the land affected or on adjacent land, as appear to it to be reasonable to avoid the pollution or harm.

(8) A Local Council or any person acting under its direction shall not be liable for trespass in relation to the entry on any land for the purpose of effecting works or taking steps to prevent pollution or harm.

(9) Where a Local Council exercises, in relation to waste on any land, the duty imposed by sub-section (7), it is, except in a case falling within sub-section (11), entitled to recover the cost or part of the cost incurred in doing so from the owner of the land, except such of the cost as that person shows was incurred unreasonably.

(10) Sub-section (9) does not apply in a case where the Local Council accepted the surrender of the waste management licence which authorised the activities in the course of which the waste was deposited.

(11) In deciding whether to recover the cost it is entitled to recover under sub-section (9), the Local Council shall have regard to any hardship which the recovery may cause to the owner of the land.

(12) Local Councils shall have regard to any guidance issued to them by the Agency in respect of the discharge of their functions under this section.

PART VI - SPECIAL WASTE

35. Regulations in respect of special waste

(1) If the Council considers that controlled waste of any kind is or may be so dangerous or difficult to treat, keep or dispose of, that a special provision is required for dealing with it, it shall make Regulations for the treatment, custody or disposal of the “special waste”.

(2) Without prejudice to the generality of sub-section (1), the Regulations may include provisions -

- (a) for the giving of directions by a Local Council with respect to the treatment, custody or disposal of special waste;
- (b) for ensuring that special waste is not, while awaiting treatment or disposal, kept at any one place, in quantities greater than those, and in circumstances which differ from those which are prescribed;
- (c) in connection with requirements imposed on consignors or consignees of special waste;
- (d) requiring the occupier of premises on which special waste is situated to give notice of that fact and other relevant information to a prescribed authority;
- (e) for the keeping of records by Local Councils and persons who import, export, produce, keep, treat or dispose of special waste or deliver it to another person for treatment or disposal, for the inspection of those records and for the furnishing of copies of or information derived from the records to local Council;
- (f) for the keeping of copies of such records, or such information derived from those records, as may be prescribed.

(3) Without prejudice to the generality of sub-section (1), the Regulations may include provisions -

- (a) for the supervision by Local Councils, of activities authorised by the Regulations and for the recovery of the costs incurred by them from persons carrying on those activities;

(b) for the recovery of expenses or imposition of other charges, for the treatment, keeping or disposal or re-delivery of special waste; and

(c) for appeals to the Council from decisions of Local Councils.

36. Special provision in respect of waste, other than controlled waste

(1) A person who –

(a) deposits waste, other than controlled waste; or

(b) knowingly causes or permits the deposit of any waste other than controlled waste,

without a waste management licence, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dalasis or two years imprisonment.

(2) A person shall not be liable under sub-section (1) if the act was done under, or in accordance with any consent, licence, approval or authority granted under any law.

PART VII – HAZARDOUS WASTE

37. Dumping or disposal of toxic or hazardous waste in Gambian territory

(1) A person shall not dump on, or dispose of toxic or hazardous waste within Gambian territory.

(2) A person who breaches sub-section (1) commits an offence and is liable on conviction -

(a) in the case of a natural person, to a fine not less than ten million dalasis or in default, imprisonment for not less than twenty-five years, or to both the fine and imprisonment;

(b) in the case of a corporate entity, to a fine of not less than fifty-five million dalasis; and

(c) in accordance with “the Polluter Pays Principle”, to pay for the clean-up cost of the offence concerned.

38. Duty to re-import

When a trans-boundary movement of hazardous waste to which the consent of the countries concerned has been given cannot be completed in accordance with the terms of the contract, the state of export shall ensure that the waste in question is taken back into the state of export, if alternative arrangements cannot be made for their disposal in an environmentally sound manner within ninety days.

39. Illegal traffic of hazardous waste

(1) A person shall not plan, carry out or assist in the illegal traffic of hazardous waste.

(2) The following situations shall be deemed to be illegal traffic –

- (a) if carried out without notification to all states concerned, pursuant to the Bamako and Basel Conventions;
- (b) if carried out without the consent of a state concerned;
- (c) if consent is obtained from states concerned through falsification, misrepresentation or fraud;
- (d) if it does not conform in a material way with the documents; or
- (e) if it results in deliberate disposal of hazardous wastes.

(3) A person who breaches sub-section (1) commits an offence and is liable on conviction -

- (a) in the case of a natural person, to a fine not less than ten dalasis or in default, imprisonment for not less than twenty-five years, or to both the fine and imprisonment;
- (b) in the case of a corporate entity, to a fine of not less than fifty-five million dalasis;

PART VIII - REGISTERS AND REPORTS

40. Public registers of licences

(1) Each Local Council shall maintain a register containing particulars of -

- (a) applications made for licences;

- (b) licences granted;
 - (c) applications rejected;
 - (d) applications made to it for the modifications of licences;
 - (e) notices issued effecting the modifications of licences;
 - (a) notices issued for effecting the revocation or suspension of licences or imposing requirements on Licensees;
 - (g) appeals relating to its decision;
 - (h) certificates of completion;
 - (i) notices issued imposing requirements on Licensees;
 - (j) convictions of Licensees for any offence under this Act;
 - (k) the occasions in which it has discharged any function;
 - (l) the directions given to it under this Act by the Agency or the Council;
 - (m) such matters relating to the treatment, custody or disposal of waste and any environmental pollution caused thereby; and
 - (n) any other information required to be kept in the register under this Act.
- (2) Where information of any description is excluded from any register, a statement shall be entered in the register indicating the existence of information of that description.
- (3) The Agency and each Local Council shall –
- (a) ensure that any register maintained under this section is open to inspection at its principal office during working hours by members of the general public, free of charge; and
 - (b) afford to members of the general public on payment of reasonable charges, facilities for obtaining, copies of entries in the register.

41. Exclusion of information from registers

- (1) A Local Council shall not enter information in a register if in its opinion, the inclusion of that information would be contrary to national security interest.
- (2) The Council may give to Local Councils, directions specifying -
 - (a) information to be excluded from their registers; or
 - (b) descriptions of information to be referred to the Council for its determination.
- (3) Information referred to the Council pursuant to sub-section (2) (b) shall be excluded in a register until it is determined that it should be included.
- (4) A Local Council shall notify the Council of any information excluded from its register pursuant to directions received under sub-section (2).
- (5) A person may, in relation to any information which appears to him or her to be subject to sub-section (1), give notice to the Council specifying the information and indicating its apparent nature.
- (6) Where a person gives notice to the Council under sub-section (5)-
 - (a) he or she shall also notify the relevant Local Council concerned; and
 - (b) the information so notified shall be excluded from the register until the Council has determined that it should be included.

42. Exclusion of commercially confidential information from registers

- (1) Information relating to the affairs of an individual or business entity shall not be included in a register without the consent of the individual or the manager of that business, if the information -
 - (a) is commercially confidential for him or her; and
 - (b) is not required to be included in the register, pursuant to directions given by the Council.

(2) Where information is furnished to the Local Council maintaining a register for the purpose of -

- (a) an application for, or the modification of, a licence;
- (b) complying with a condition of a licence; or
- (c) complying with a notice;

the person furnishing it may apply to the Local Council to have the information excluded from the register on the ground that it is commercially confidential for himself or herself or another person.

(3) Information shall not be considered to be commercially confidential for the purpose of this section unless it is determined to be so by the Local Council maintaining the register or by the Council.

(4) A determination under sub-section (3) shall be made within fourteen working days from the date of the application, and if the Local Council fails to make a determination within that period, the information shall be deemed not be commercially confidential.

(5) Where it appears to a Local Council maintaining a register that any information other than information furnished in accordance with sub-section (2), may be commercially confidential, it shall give to the person to whom or whose business the information relates -

- (a) notice that the information is required to be included in the register; and
- (b) a reasonable opportunity of-
 - (i) objecting to the inclusion of the information on grounds that it is commercially confidential, and
 - (ii) making representations for the purpose of justifying the objection.

(6) If a representation is made under sub-section (5)(b), the Local Council shall take the representation into account and determine whether the information is commercially confidential or not.

(7) Where the Local Council determines that any information is not commercially confidential -

- (a) the information shall not be entered in the register until the end of twenty-one working days from the date on which the determination is notified to the person concerned; and
- (b) the person concerned may appeal to the Council against the decision.

(8) Where an appeal is brought in respect of any information, it shall not be entered in the register until the final determination or withdrawal of the appeal.

(9) The provisions of section 19 (3) and (9) shall apply in relation to appeals under sub-section (7).

(10) Notwithstanding the fact that information may be commercially confidential, the Agency may give to the Local Council maintaining a register, directions as to specified information to be included in the registers in the public interest.

(11) Subject to sub-section (12), information excluded from a register shall be treated as ceasing to be commercially confidential for the purpose of this section at the expiry of four years from the date of the determination of exclusion.

(12) After the expiry of four years, the person who furnished excluded information may apply to the Local Council for the information to remain excluded from the register on the grounds that it is still commercially confidential.

(13) If the Local Council determines the excluded information continues to be confidential, it may by order published in the *Gazette*, substitute for the period specified in sub-section (11), such other period as it considers appropriate.

(12) For the purposes of a determination under this section, information is deemed to be commercially confidential in relation to a person if its disclosure in a register may prejudice to an unreasonable degree, the commercial interests of that person.

43. Annual reports

(1) A Local Council shall, in each financial year, prepare and publish a report on the discharge of its functions under this Act.

(2) The report shall include information in respect of -

- (a) the licences applied for, granted, modified, revoked, suspended, surrendered or transferred during the year and the appeals made against decisions taken in respect of them;
- (b) the exercise by the Local Council of its powers under this Act or under any relevant Regulations;
- (c) the implementation of the Local Council's plan, with particular reference to recycling waste;
- (d) the number of prosecutions brought under this Act; and
- (e) the cost incurred, and the sums received, by the local Council in discharging its functions under this Act.

(3) Each Local Council shall –

- (a) publish its annual report not later than six months following the end of the year to which the report relates; and
- (b) on the publication of the report, send a copy to the Council and the Agency.

PART IX – SUPERVISION AND ENFORCEMENT

44. Appointment of Inspectors and their powers

(1) The Agency shall appoint Inspectors for the administration of this Act, and publish their appointment in the *Gazette*.

(2) An Inspector may -

- (a) at any reasonable time enter any premises, where in his or her opinion, there is an imminent risk of serious environmental pollution or serious harm to human, animal or plant health;
- (b) while entering the premises, take with him or her any–
 - (i) person duly authorised by the Agency, and
 - (ii) equipment or material for any purpose for which the power of entry is being exercised;

- (c) carry out such examination and investigation as may be necessary;
- (d) direct that the premises or any part of it, or anything contained therein, be left undisturbed, for so long as it is reasonably necessary for the purpose of any examination or investigation under paragraph (c);
- (e) take such measures and make such recordings as he or she considers necessary, for the purpose of examination or investigation;
- (f) take samples of any article or substance found on the premises, or in its vicinity;
- (g) cause to be dismantled or subjected to any process or test, any article or substance found in the premises which appears to him or her to have caused or is likely to cause environmental pollution or harm to human, animal or plant health,;
- (h) take possession of any article or substance and seize it for as long as necessary, to –
 - (i) examine it and do to it anything which he or she has the power to do under paragraph (g),
 - (ii) ensure that it is not tampered with before its examination is completed, and
 - (iii) ensure that it is available for use as evidence in any judicial proceedings;
- (i) require any person who he or she has reasonable cause to believe to be able to give information relevant to any examination or investigation under paragraph (c), answer such questions as he or she thinks fit to ask;
- (j) require the production of any record which is required to be kept or is necessary for him or her to see, for the purpose of an examination or investigation under paragraph (c);
- (k) require any person to afford him or her such facilities and assistance with respect to any matter or thing within the person's control or in relation to which that person has responsibility, to enable him or her exercise any of the powers conferred on him or her by this section; and

- (l) seize and render harmless in any way he or she sees fit, an article or a substance.

(3) An Inspector may arrest a person who obstructs him or her in the execution of his or her duty and hand over the alleged offender to a police station.

(4) An Inspector may exercise any of those powers specified in sub-section (2) for the purpose of –

- (a) discharging the functions conferred on the Council, the Agency or a Local Council; and
- (b) determining whether any provision of this Act or of any Regulations made under it has been complied with.

(5) The powers specified under sub-section (2) are exercisable in relation to land-

- (a) in or on which, or vessels in or by means of which, waste is being or has been deposited, treated, kept or disposed of;
- (b) in or on which, or vessels in or by means of which, waste is believed to have been, deposited, treated, kept or disposed of; and
- (c) which is, or is believed to be affected by the deposit, treatment, custody or disposal of waste on other land.

(6) The Council may by Regulations, make provision as to the procedure to be followed in connection with the taking of, and the dealing with samples under sub-section (2)(f).

(7) Where an Inspector intends to exercise the power conferred on him or her by sub-section (2)(g) he or she shall, if so requested by a person who at the time is present on and has responsibility in relation to those premises, cause anything which is to be done by virtue of that power, to be done in the presence of that person.

(8) Before exercising the power conferred on him or her by sub-section (2)(g), an Inspector shall consult any person for the purpose of ascertaining which dangers, if any, there may be in doing anything which he or she proposes to do under that power.

(9) Where an Inspector takes possession of an article or a substance found on any premises, he or she shall inform the person concerned or affix in a conspicuous position, a notice, giving particulars of the article or substance and stating that he or she has taken possession of it under that power.

(10) Before taking possession of an article or a substance under the power conferred by sub-section (2) (h), an Inspector shall, if practicable, take a sample of it and give it to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(11) An answer given by a person pursuant to sub-section (2) (i) is admissible in evidence in any Judicial proceedings.

(12) A person who -

- (a) fails, without reasonable excuse, to comply with any requirement imposed under this section;
- (b) prevents another person from appearing before or answering a question to which an Inspector requires an answer; or
- (c) intentionally obstructs an Inspector in the exercise or performance of his or her powers or duties,

commits an offence and is liable on conviction -

- (i) in the case of a natural person, to a fine not exceeding fifteen thousand Dalasis or imprisonment of not exceeding two months or both, or
- (ii) in the case of a corporate entity, to a fine of not less than two hundred and fifty thousand Dalasis.

(13) The powers conferred by sub-section (2)(a), (c), (e) and (f) on an Inspector may also be exercisable by any person authorized for that purpose in writing by the Agency.

(14) Nothing in this section shall be taken to compel the production by a person, of a document which if he or she tenders in judicial proceedings will –

- (a) be detrimental or prejudicial to public interest; or
- (b) breach legal professional privilege.

45. Power to deal with cause of imminent danger of serious pollution

(1) Where an Inspector enters any premises, and finds an article or substance which he or she has reasonable cause to believe may be the cause of imminent danger of serious environmental pollution or serious harm to human, animal or plant health, he or she may seize it and cause it to be rendered harmless.

(2) Before an article or a substance is rendered harmless under sub-section (1), the Inspector shall take a sample of it and give, to a responsible person at the premises where the article or substance was found, a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as practicable after an article or a substance has been seized and rendered harmless under sub-section (1), the Inspector shall -

- (a) prepare a written report giving particulars of the circumstances in which the article or substance was seized and dealt with by him or her; and
- (b) give a copy of the report to the owner or a responsible person at the premises where the article or substance was found;

46. Obtaining information from persons and authorities

(1) The Council may, for the purpose of discharging its functions under this Act, serve on the Agency or Local Council, a notice requiring the Agency or Local Council to furnish to it, such information as it may need.

(2) The Agency may, for the purpose of discharging its functions under this Act, serve on a Local Council, a notice requiring it to furnish to the Agency, such information as it may need.

(3) The Council, the Agency, or a Local Council, may, for the purpose of discharging its functions under this Act, serve on a person, a notice requiring him or her to furnish such information as the Council, Agency or Local Council may need.

(4) A person who—

- (a) fails, without reasonable excuse, to comply with a requirement imposed under sub-section (3); or

- (b) in furnishing information, makes a statement which he or she knows to be false or misleading, or recklessly makes a statement which is false or misleading in a material particular,

commits an offence and is liable on conviction –

- (i) in the case of a natural person, to a fine not exceeding fifteen thousand Dalasis or imprisonment not exceeding twelve months, or to both the fine and imprisonment, and
- (ii) in the case of a corporate entity, to a fine of not less than two hundred and fifty thousand Dalasis.

47. Power of the Council to order the remedy of defaults

(1) If the Council is satisfied that a Local Council has failed to discharge any of its functions under this Act, it may make an Order declaring the local Council to be in default, and shall publish the Order in the *Gazette*.

(2) An Order made under sub-section (1) may -

- (a) direct the Local Council to perform any function specified in the Order; and
- (b) specify the manner in which and the time within which the function is to be performed by it.

(3) If the defaulting Local Council fails to comply with any direction contained in an Order, the Council may make arrangements for carrying out that function of the defaulting Local Council specified in the Order.

(4) Where the Council makes the arrangement in sub-section (3) any expenses incurred by the Council in performance of those functions shall on demand, be refunded by the defaulting Local Council.

(5) Any expenses required to be paid by a defaulting Local Council under sub-section (4) shall be defrayed by the Local Council in like manner, and be debited to the like account, as if the expenses had been incurred by the Local Council in performing them.

(6) The Council may vary or revoke any Order previously made by it under this section.

(7) Where the Council revokes an Order, it may issue such directives, as are considered appropriate with respect to the property, rights, liabilities or obligations vested in it for the purposes of the transferred function.

PART X – OFFENCES

48. General offences

A person who commits an offence under this Act or any Regulations made thereunder for which no penalty is provided, is liable on conviction -

- (a) in the case of a natural person, to a fine of not less than fifteen thousand dalasis or to a term of imprisonment of not less than two months or both; and
- (b) in the case of a corporate entity, to a fine of not less than two hundred and fifty thousand dalasis.

49. Environmental pollution from exhaust fumes

(1) The owner or person in charge of –

- (a) a motor vehicle;
- (b) a motor cycle;
- (c) a ship, boat or vessel;
- (d) a generator; or
- (e) any other mechanical device or conveyance,

shall prevent the release of toxic fumes that pollute the environment resulting from its use.

(2) A person who breaches sub-section (1) commits an offence and is liable -

- (a) in a case of a natural person, to a fine of not less than fifteen thousand dalasis or imprisonment of two months, or to both the fine and imprisonment;

- (b) in a case of a corporate entity, to a fine of not less than two hundred and fifty thousand dalasis.

50. Importation of “end of life span” electrical and electronic equipment or gadgets

(1) A person shall not import an electronic or electrical equipment or gadget that is at the end of its lifespan.

(2) A person who breaches sub-section (1) commits an offence and is liable on conviction -

- (a) in the case of a natural person, to a fine of not less than one hundred thousand dalasis or imprisonment of one year, or to both the fine and imprisonment;
- (b) in the case of a corporate entity, to a fine of not less than one million dalasis; and
- (c) to return the equipment or gadget to its country of origin.

51. Discharge of waste water into the environment

(1) A person shall not discharge waste water into the environment, in a manner as would constitute a public nuisance.

(2) A person who breaches sub-section (1) commits an offence, and is liable on conviction -

- (a) in the case of a natural person, to a fine of not less than fifteen thousand dalasis or imprisonment of two months, or to both the fine and imprisonment;
- (b) in the case of a corporate entity, to a fine of not less than two hundred and fifty thousand dalasis

PART XI – MISCELLANEOUS

53. Appeals and civil liability

(1) Where a Local Council makes a decision, it shall include in the document by which it notifies the decision, a statement indicating the right of appeal and specifying the time within which it must be filed.

(2) Where any damage is caused by waste which has been deposited or disposed of in or on land, a person who deposited it or disposed of it, or knowingly caused or permitted it to be deposited or disposed of, commits a civil wrong and is liable to refund the cost of the damage, except where the damage was-

- (a) due wholly to the fault of the person who suffered it; or
- (b) suffered by a person who voluntarily accepted the risk of the damage being caused.

54. Liability for corporate offences

Where a corporate entity commits an offence, every director and manager is deemed to have committed the offence, unless he or she proves that –

- (a) the offence was committed without his or her consent or connivance; or
- (b) he or she exercised all due diligence as he or she ought to have exercised to prevent the commission of the offence, having regard to the nature of his or her functions and all the circumstances of the case.

55. Inconsistency between this Act and other laws

Where a provision of this Act is inconsistent with the provision of any existing Act, other than the National Environment Management Act, the provisions of this Act shall prevail.

[Cap. 72:01]

56. Public information, awareness and education

(1) The Agency shall promote and facilitate-

- (a) awareness creation among its policy and decision makers with regards to waste management;
- (b) the provision to the public of all available information on waste management;
- (c) development and implementation of educational and public awareness programs on waste management as well as on their health and environmental effects;

- (d) public participation in addressing waste management and their health and environmental effects and in developing adequate responses;
- (e) training of workers, scientists, educators and technical and managerial personnel;
- (f) development and exchange of educational and public awareness materials at the national and international levels; and
- (g) development and implementation of education and training programs at the national level.

(2) The Agency shall ensure that the public has access to the public information referred to in sub-section (1) and that the information is kept up-to-date.

(3) The Agency shall encourage industry and professional users to promote and facilitate the provision of the information referred to in sub-section (1).

(4) In providing information on waste management, the Agency may use safety data sheets, reports, mass media and other means of communication, and may establish information centres across the country.

57. Regulations

(1) The Council may make Regulations to give effect to the provisions of this Act.

(2) Without prejudice to the generality of sub-section (1), the Regulations may provide for -

- (a) the procedure for the application and renewal of licenses and any information that is required;
- (b) the form of any licence to be issued under this Act and any conditions to be attached to those licences;
- (c) the environmentally sound disposal of waste;
- (d) qualifications and duties of Environmental inspectors;
- (e) the records to be kept and how they shall be kept; and

- (f) notification and control procedures for the trans-boundary movement of waste, including the implementation of any international arrangement or agreement relating to waste, which The Gambia has signed, ratified and domesticated.

OBJECTS AND REASONS

This Bill primarily seeks to provide guidance on the avoidance and reduction of waste to the minimum level possible, re-use of usable components of waste, sustainable development through protection and saving of natural resources, prevention of negative impacts of waste on the environment, human life and health, and environmentally acceptable waste disposal.

The Bill also seeks to provide guidance on high level of protection of the environment, human life and health, protection of illegal trade in waste and transboundary movements of hazardous and other related waste.

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HON. ROHEY JOHN MANJANG
HON. MINISTER OF THE ENVIRONMENT, CLIMATE CHANGE AND NATURAL
RESOURCES

