



AN BILLE UM BAINISTIÚ DRAMHAÍOLA (LEASÚ), 2001
WASTE MANAGEMENT (AMENDMENT) BILL, 2001

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Definition.
 2. Community acts given effect to by this Act.
 3. Amendment of section 5 of Act of 1996.
 4. Amendment of section 22 of Act of 1996.
 5. Consequential amendment of Act of 1996 related to *section 4*.
 6. Amendment of section 38 of Act of 1996.
 7. Amendment of section 39 of Act of 1996.
 8. Power to impose environmental levy.
 9. Consequential amendment of Act of 1996 related to *section 8*.
 10. Power to impose landfill levy.
 11. Environment Fund.
 12. Relationship between Act of 1996 and Environmental Protection Agency Act, 1992, with regard to certain activities.
 13. Provision with respect to certain monetary amount specified in Litter Pollution Act, 1997.
 14. Short title, collective citations and construction.
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ACTS REFERRED TO

City and County Management (Amendment) Act, 1955	1955, No. 12
County Management Acts, 1940 to 1994	
Environmental Protection Agency Act, 1992	1992, No. 7
Litter Pollution Act, 1997	1997, No. 12
Planning and Development Act, 2000	2000, No. 30
Waste Management Act, 1996	1996, No. 10



AN BILLE UM BAINISTIÚ DRAMHAÍOLA (LEASÚ), 2001
WASTE MANAGEMENT (AMENDMENT) BILL, 2001

BILL

entitled

5 AN ACT TO AMEND AND EXTEND THE WASTE MANAGE-
MENT ACT, 1996, AND, IN PARTICULAR, TO AMEND
THAT ACT WITH REGARD TO THE PROCEDURE FOR
THE MAKING OF WASTE MANAGEMENT PLANS
10 UNDER IT SO THAT ANY OBSTACLES TO THE STATE
BEING ABLE TO COMPLY FULLY WITH THE PRO-
VISIONS OF CERTAIN ACTS ADOPTED BY INSTI-
TUTIONS OF THE EUROPEAN COMMUNITIES BY
REASON OF ANY FAILURE OF LOCAL AUTHORITIES
15 TO MAKE SUCH PLANS ARE REMOVED, TO AMEND
THE FIRST SCHEDULE TO THE ENVIRONMENTAL
PROTECTION AGENCY ACT, 1992, TO AMEND THE LIT-
TER POLLUTION ACT, 1997, AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

20 **1.**—In this Act “Act of 1996” means the Waste Management Act, Definition.
1996.

2.—The purposes for which the provisions of this Act are enacted Community acts
include the purpose of giving effect to the following Community acts, given effect to by
namely— this Act.

- 25 (a) Council Directive 75/442/EEC of 15 July 1975 on waste⁽¹⁾;
- (b) Council Directive 91/156/EEC of 18 March 1991 amending
Directive 75/442/EEC on waste⁽²⁾; and
- (c) Council Directive 1999/31/EC of 26 April 1999 on the land-
fill of waste⁽³⁾.

⁽¹⁾ O.J. No. L 194/39, 25 July, 1975.

⁽²⁾ O.J. No. L 78/32, 26 March, 1991.

⁽³⁾ O.J. No. L 182/1, 16 July, 1999.

3.—Section 5(1) of the Act of 1996 is amended by—

- (a) the insertion after the definition of “emission into the atmosphere” of the following definition:

“‘Environment Fund’ has the meaning assigned to it by section 74;”, 5

- (b) the insertion after the definition of “European Waste Catalogue” of the following definition:

“‘executive function’ means a function other than a reserved function;”, and

- (c) the insertion after the definition of “local authority” of the following definition: 10

“‘manager’ means—

- (a) with respect to the corporation of a county borough, the manager for the purposes of the Acts relating to the management of the county borough, and 15

- (b) with respect to the council of a county, the manager for the purposes of the County Management Acts, 1940 to 1994;”.

4.—Section 22 of the Act of 1996 is amended by the substitution of the following subsection for subsection (10): 20

- “(10) (a) On and from the passing of the *Waste Management (Amendment) Act, 2001*, but without prejudice to paragraph (c), the duties of a local authority under this section with respect to the making of a waste management plan shall be carried out by the manager of the authority and, accordingly, the making of such a plan shall be an executive function. 25

- (b) For the avoidance of doubt, the waste management plans to which paragraph (a) applies include such a plan which a local authority indicated its intention, before the passing of the *Waste Management (Amendment) Act, 2001*, to make jointly with one or more other local authorities but which plan it subsequently (but before the said passing) decided not to make. 35

- (c) Where in the opinion of the manager of a local authority a waste management plan purporting to be made, before the passing of the *Waste Management (Amendment) Act, 2001*, by the authority jointly with one or more other local authorities is invalid because the decision of the authority purporting to make the plan, expressly or by implication, qualifies its assent to the plan — 40

- (i) by making its assent to the plan subject to one or more conditions being satisfied, or 45

(ii) by the authority purporting to reserve to itself a power to vary the plan, otherwise than pursuant to the powers conferred on it in that behalf by this section, or

(iii) in any other respect whatsoever,

the manager shall, not later than the date prescribed for the purposes of subsection (2), by order—

(I) declare that he or she is of that opinion, and

(II) make the said plan,

and the said plan, as so made, shall, accordingly, be deemed for all purposes to be the waste management plan made by the local authority, but without prejudice to any steps taken by that or any other local authority, before the date of the making of the said order, pursuant to the terms of the said plan as purported to be jointly made by those local authorities.

(d) Subject to paragraph (f), the review, variation or replacement of a waste management plan shall be a reserved function.

(e) A local authority shall not, without the consent of the manager of the authority, vary or replace, under subsection (4), a waste management plan within the period of 4 years beginning on the date of the making of the plan.

(f) Where, having published under section 23 a notice of a proposal to vary or replace, under subsection (4), a waste management plan, a local authority does not vary or replace that plan within the period of 3 months beginning on the expiration of the period specified in that notice for the purposes of subsection (2)(a)(i) of section 23 then, notwithstanding paragraph (d), the manager of the authority shall, within the period of 2 months after the expiration of the first-mentioned period, by order vary or replace the said plan (whether in the terms as originally proposed by the authority or with such amendments as the manager thinks fit).

(g) A local authority shall not, by resolution, under section 3 or 4 of the City and County Management (Amendment) Act, 1955, or section 179 of the Planning and Development Act, 2000, give a direction that works not be proceeded with or require any act, matter or thing to be done or effected where the effect of such direction or requirement would be contrary to, or inconsistent with, any provision (including any objective contained therein) of a waste management plan or would limit or restrict the proper implementation of such a provision and any resolution purporting to be passed under the said section 3, 4 or 179 which contravenes this paragraph shall be void.”.

Consequential amendment of Act of 1996 related to section 4.

5.—Section 22 of the Act of 1996 is further amended by the insertion in the definition of “waste management plan” in subsection (1) of “or subsection (10)(f)” after “subsection (4)”.

Amendment of section 38 of Act of 1996.

6.—Section 38 of the Act of 1996 is amended by the substitution for subsection (5) of the following subsection:

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“(5) Neither the provisions of this section nor the repeal of any enactment mentioned in Part I of the Fifth Schedule shall prejudice—

(a) the continued operation of waste disposal facilities by the corporation of a borough (other than a county borough) or the council of an urban district, or

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(b) the use of such facilities by such a corporation or council at a more intensive level than the level of the use that was being made of them on the commencement of this section (whether the more intensive use is constituted by an increased input of waste into the facilities or the use of a larger proportion of the facilities than was being used on the commencement of this section or otherwise),

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if—

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(i) in a case falling solely within paragraph (a), the said facilities were in operation upon the commencement of this section, and

(ii) in a case falling within paragraphs (a) and (b), subparagraph (i) is complied with and the use of the facilities at that more intensive level is provided for in the waste management plan in force in relation to the borough or urban district concerned.”.

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Amendment of section 39 of Act of 1996.

7.—Section 39 of the Act of 1996 is amended in subsection (6)—

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(a) by the substitution in paragraph (c) for “of the waste.”, where those words secondly occur, of “of the waste.”, and

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

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“(d) prohibit, or limit to a specified extent, the recovery or disposal of a specified class or classes of waste in a specified manner or in a specified class or classes of facility.”.

Power to impose environmental levy.

8.—The following section is inserted after section 71 of the Act of 1996:

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“72.—(1) In this section—

‘consumer price index number’ means the All Items Consumer Price Index Number compiled by the Central Statistics Office and references to the consumer price index number relevant to any financial year are references to the consumer price index

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number at such date in that year as is determined by the Minister with the consent of the Minister for Finance;

‘plastic bag’ means a bag—

(a) made wholly or in part of plastic, and

(b) designed and intended to be supplied to a customer at the point of sale in a supermarket, service station or other sales outlet,

other than a bag which falls within a class of bag specified in regulations under subsection (2) as being a class of bag excepted from this definition.

(2) The Minister may, with the consent of the Government, make regulations providing that there shall be chargeable, leviable and payable a levy (which shall be known as an ‘environmental levy’ and is in this section referred to as the ‘levy’) in respect of the supply to customers, at the point of sale to them of the goods or products to be placed in the bags, of plastic bags in or at a specified class or classes of supermarket, service station or other sales outlet.

(3) The amount of the levy shall be specified in the regulations under subsection (2) but shall not exceed an amount of 15p, or, in the case of levy payable on or after 1 January, 2002, 19 cents, for each plastic bag supplied to a customer.

(4) The levy shall be payable by the person who carries on the business of selling goods or products in or at the supermarket, service station or sales outlet concerned or, if two or more persons each carry on such a business in or at the particular premises, whichever of them causes to be made the particular supply of plastic bags concerned.

(5) Regulations under subsection (2) shall provide for the following matters—

(a) the specification of the person or persons to whom the levy shall be payable (who or each of whom is referred to in this section as a ‘collection authority’),

(b) the conferral of powers on a collection authority with respect to the collection and recovery of the levy (and, for this purpose, the regulations may adapt, with or without modifications, the provisions of any enactment relating to the estimation, collection and recovery of, or the inspection of records or the furnishing of information in relation to, any tax charged or imposed by that enactment).

(6) Regulations under subsection (2) may provide for all or any of the following matters—

(a) specifying the times at which payment of the levy shall be made and the form of such payment,

(b) requiring the notification to a collection authority by a person who carries on a business of the kind referred to in subsection (4) (being a business that involves the supply of plastic bags to customers in

the circumstances mentioned in subsection (2)) of that fact,

- (c) requiring specified records to be kept by a person referred to in subsection (4) in respect of matters connected with liability to pay levy and specifying the form of such records, 5
- (d) requiring the furnishing of such records and other specified information relating to liability as aforesaid at specified intervals to a collection authority and specifying the manner in which such records and information shall be so furnished, 10
- (e) requiring specified notices at the time of a specified act being done that involves a plastic bag to be given, in a specified manner and in a specified form, of the fact that the levy is payable (whether in relation to that act or a previous such act), 15
- (f) specifying a class of bag to be a class of bag excepted from the definition of plastic bag in subsection (1) (and such specification shall be made by reference only to the bag's size, composition or intended use or any combination of those matters), 20
- (g) providing for exemptions in specified circumstances from the liability to pay the levy,
- (h) enabling the payment of the levy by specified persons to be deferred in specified circumstances, 25
- (i) requiring specified records and accounts to be kept by collection authorities in respect of levy paid or payable to them,
- (j) enabling the refund of payments of levy to be made to specified persons in specified circumstances, 30
- (k) providing for the payment into the Environment Fund by collection authorities of amounts received by them on account of levy (subject to the deduction from such amounts of any amounts specified as being capable of being deducted therefrom for the purpose of defraying expenses incurred by collection authorities in collecting or recovering the levy), 35
- (l) any matters consequential on, or incidental to, the foregoing.

(7) The Minister may make an order once, and once only, in each financial year, beginning with the financial year following the financial year in which the *Waste Management (Amendment) Act, 2001*, is passed, amending subsection (3) by substituting for the amount standing specified in that subsection for the time being an amount equal to the amount obtained by multiplying 19 cents by the figure specified in subsection (8) and, if the amount so obtained is not a whole number of cents and the Minister considers it appropriate to do so and specifies in the order that the amount has been so rounded, rounding (up or down as he or she thinks fit) the amount to the nearest whole number of cents. 40 45 50

(8) The figure mentioned in subsection (7) is the quotient, rounded up to 3 decimal places, obtained by dividing the consumer price index number relevant to the financial year in which the order concerned is made by the consumer price index number relevant to the financial year 2001.

(9) A person who fails to—

(a) pay levy which is due and payable by virtue of regulations under subsection (2), or

(b) comply with a provision of regulations under that subsection,

shall be guilty of an offence.

(10) In proceedings for the recovery of levy or for an offence under subsection (9)(a), it shall be presumed, until the contrary is proved, that the bag or bags in respect of which the levy concerned is alleged not to have been paid was or were a plastic bag or bags within the meaning of this section.

(11) In proceedings for the recovery of levy or for an offence under subsection (9)(a), it shall be presumed, until the contrary is proved, that the number of plastic bags supplied to customers in or at the premises concerned in the circumstances mentioned in subsection (2) in a particular period was equal to the number of plastic bags acquired for the purposes of such supply in that period by the person who carried on, during that period, the business of selling goods or products in or at those premises or, if two or more persons each carried on, during that period, such a business in or at those premises, whichever of them caused to be made the particular supply of plastic bags concerned.

(12) (a) The Minister may make a provisional order extending the application of this section to such other types of article as he or she considers appropriate by—

(i) substituting for references to plastic bags in this section references to articles specified in the order (and the articles so specified shall include plastic bags), and

(ii) making such consequential amendments of this section (other than this subsection and subsection (13)) as he or she considers necessary or appropriate, and such amendments may include a provision—

(I) specifying that subsection (3) shall, in relation to a particular article or articles referred to in the order, apply as if, for the amount standing specified in that subsection for the time being, there were substituted an amount specified in the order (in clause (II) of this subparagraph referred to as the ‘altered amount’), and

(II) in consequence of that specification, specifying that—

(A) subsection (7) shall, in relation to the said article or articles, apply as if, for the reference in that subsection to 19 cents, there were substituted a reference to the altered amount, and 5

(B) subsection (8) shall, in relation to the said article or articles, apply as if, for the reference in that subsection to the consumer price index number relevant to the financial year 2001, 10 there were substituted a reference to the consumer price index number relevant to a financial year specified in the order.

(b) The Minister may make a provisional order amending or revoking a provisional order under this subsection (including a provisional order under this paragraph). 15

(13) A provisional order under subsection (12) shall not have effect unless or until it is confirmed by an Act of the Oireachtas.”. 20

Consequential amendment of Act of 1996 related to section 8.

9.—Section 7 of the Act of 1996 is amended—

(a) in subsection (3) by the substitution for “section 1(2), 8 or 69(1)” of “section 1(2), 8, 69(1) or 72(12)”, and

(b) in subsection (5), by the substitution for “(including an order under this paragraph)” of “(other than an order under section 72(12) but including an order under this paragraph)”. 25

Power to impose landfill levy.

10.—The following section is inserted after section 72 (inserted by this Act) of the Act of 1996: 30

“73.—(1) The Minister may, after consultation with any Minister of the Government concerned, make regulations providing that there shall be chargeable, leviable and payable a levy (which shall be known as a ‘landfill levy’ and is in this section referred to as the ‘levy’) in respect of— 35

(a) the carrying on of a specified class or classes of waste disposal activity (being an activity referred to in paragraph 1 of the Third Schedule), or

(b) the disposal by means of a waste disposal activity referred to in paragraph 1 of the Third Schedule, or a specified class or classes of such activity, of a specified class or classes of waste, or 40

(c) subject to subsection (2), both the carrying on of an activity referred to in paragraph (a) and an activity referred to in paragraph (b). 45

(2) Regulations under subsection (1)(c) shall not result in levy being payable twice in respect of a particular disposal of a particular quantity of waste.

(3) The amount of the levy shall be specified in the regulations under subsection (1) but shall not exceed an amount of £15, or, in the case of levy payable on or after 1 January 2002, €19, for each tonne of waste disposed of.

(4) The levy shall be payable by the person who carries on the waste disposal activity concerned.

(5) Regulations under subsection (1) shall—

(a) provide that the levy (not being levy chargeable by virtue of those regulations on the local authority) shall be payable to the local authority in whose functional area the waste disposal activity concerned is carried on, and

(b) confer on that local authority powers with respect to the collection and recovery of the levy (and, for this purpose, the regulations may adapt, with or without modifications, the provisions of any enactment relating to the estimation, collection and recovery of, or the inspection of records or the furnishing of information in relation to, any tax charged or imposed by that enactment).

(6) Regulations under subsection (1) may provide, in relation to levy under this section, for all the matters which regulations under section 72 may, by virtue of paragraphs (a), (c), (d) and (g) to (l) of subsection (6) of that section, provide in relation to levy under that section and those paragraphs shall, accordingly, apply for the purposes of this section with any necessary modifications (including such modifications as will enable like provision with respect to the payment into the Environment Fund of amounts received by a local authority on account of levy under this section to be made with respect to levy under this section chargeable on the local authority itself).

(7) The Minister may make an order once, and once only, in each financial year, beginning with the financial year following the financial year in which the *Waste Management (Amendment) Act, 2001*, is passed, amending subsection (3) by substituting for the amount standing specified in that subsection for the time being a greater amount, not being an amount that is greater than that amount by €5.

(8) A person who fails to—

(a) pay levy which is due and payable by virtue of regulations under subsection (1), or

(b) comply with a provision of regulations under that subsection,

shall be guilty of an offence.”.

11.—The following section is inserted after section 73 (inserted by Environment Fund. this Act) of the Act of 1996:

“74.—(1) There shall stand established, on the passing of the *Waste Management (Amendment) Act, 2001*, a fund which shall be known, and is in this Act referred to, as the ‘Environment Fund’.

(2) Subject to subsection (3), the Minister shall manage and control the Environment Fund.

(3) The Minister may by regulations delegate the management and control of all or part of the Environment Fund and any other functions under this section related to such management and control to a specified person and functions so delegated shall, accordingly, be performable by that person. 5

(4) The Environment Fund shall consist of such accounts as the Minister may determine.

(5) The said accounts shall be in such form and be prepared in such manner as the Minister may determine. 10

(6) As soon as may be after the end of each financial year, the Minister shall submit the accounts of the Environment Fund to the Comptroller and Auditor General for audit and the Minister shall cause a copy of an abstract of the accounts as so audited together with a copy of the report of the Comptroller and Auditor General thereon to be laid before each House of the Oireachtas. 15

(7) Subject to, and in accordance with, regulations under section 72 or 73, there shall be paid into the Environment Fund the amounts specified in those regulations of levy collected thereunder. 20

(8) The Minister may, out of moneys provided by the Oireachtas, pay into the Environment Fund in any financial year, such an amount as he or she determines, with the consent of the Minister for Finance, in relation to that year. 25

(9) Without prejudice to subsection (12), the Minister may from time to time pay out of the Environment Fund such amounts of moneys as he or she considers appropriate for any or all of the following purposes, namely— 30

- (a) to assist, support or promote any programmes or schemes established for the prevention or reduction of waste in the State or the establishment of such programmes or schemes,
- (b) to assist the establishment, equipping and, where appropriate, the operation of waste recovery activities, 35
- (c) to assist, support or promote research and development with respect to any aspect of waste management, 40
- (d) to assist, support or promote the production, distribution or sale of products of a particular class, being products which possess characteristics (whether characteristics of an inherent nature or related to the process by which they are manufactured) likely to render them less harmful to the environment than other products falling within the same class, 45
- (e) to assist, support or promote the development of initiatives by producers to prevent or reduce waste arising from activities carried on by them, 50

(f) to assist generally the implementation of waste management plans (within the meaning of Part III),

(g) to facilitate or assist the enforcement of the provisions of any enactment (including this Act) relating to waste management or the prevention of litter or otherwise relating to the protection of the environment,

(h) to facilitate or assist projects, commonly known as partnership projects, that involve local authorities and the purpose of which is to improve the quality of the environment in so far as it affects a particular local community or communities,

(i) to promote awareness of the need generally to protect the environment and, in particular, to assist, support or promote national and regional campaigns the objectives of which are to foster such awareness,

(j) to promote or support education and training that would facilitate the achievement of the objectives of campaigns as aforesaid,

(k) to assist the provision of the necessary resources (whether human or material) to enable such education and training to be carried out or facilitate the improvement of any such resources that exist for the time being,

(l) to assist, support or promote initiatives undertaken by community groups or other like persons with respect to the protection of any aspect of the environment, and

(m) such other purposes with respect to the protection of the environment as may be prescribed.

(10) Any payment of moneys out of the Environment Fund under any of paragraphs (a) to (m) of subsection (9) shall be made to the person or persons who carry on or, as the case may be, carried on the activity the principal purpose of which is, in the opinion of the Minister, the particular purpose in respect of which that payment is made.

(11) Without prejudice to the preceding provisions of this section, no payment shall be made out of the Environment Fund in respect of such activity as may be prescribed if the activity is carried on otherwise than in accordance with such guidelines as may be issued by the Minister for the purpose and the Minister shall cause copies of such guidelines to be laid before each House of the Oireachtas within 3 months after they have been issued.

(12) (a) The Minister may from time to time pay out of the Environment Fund such an amount of moneys as he or she determines for the purposes of defraying, in whole or in part, the expenses incurred, on or after the establishment of the Fund, by him or her, or by any person to whom functions are delegated under subsection (3), in connection with the administration of the Fund.

(b) Any amount of moneys paid out of the Environment Fund under paragraph (a) shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister, with the consent of the Minister for Finance, may determine. 5

(13) The Minister may establish a committee to advise the Minister with respect to the performance by him or her of the functions under subsection (9) or (11) and a committee so established may advise the Minister accordingly.”. 10

Relationship between Act of 1996 and Environmental Protection Agency Act, 1992, with regard to certain activities.

12.—(1) The First Schedule to the Environmental Protection Agency Act, 1992, is amended by the substitution for paragraphs 11.1, 11.2, 11.3 and 11.4 of the following paragraph:

“11.1 The recovery or disposal of waste in a facility, within the meaning of the Waste Management Act, 1996, which facility is connected or associated with another activity specified in this Schedule in respect of which a licence or revised licence under Part IV is in force or in respect of which a licence under the said Part is or will be required.”. 15

(2) Section 39(7) of the Act of 1996 is amended by the substitution for paragraph (a) of the following paragraph: 20

“(a) the recovery or disposal of waste at a facility referred to in paragraph 11.1 of the First Schedule to the Act of 1992,”.

Provision with respect to certain monetary amount specified in Litter Pollution Act, 1997.

13.—(1) In this section—

“Act of 1997” means the Litter Pollution Act, 1997; 25

“relevant period” means—

(a) the period of 3 years beginning on the date of the first exercise of the power under *subsection (4)* of this section, and

(b) each period of 3 years after the expiration of the period mentioned in *paragraph (a)* of this definition. 30

(2) The Litter Pollution Regulations, 1999 (S.I. No. 359 of 1999), are, by virtue of this subsection, confirmed.

(3) Section 28(1)(b) of the Act of 1997 is amended —

(a) with effect from 1 January 2002, by the substitution of “€60” for “£50”, and 35

(b) with effect from such day (being a day falling after 1 January 2002) as the Minister may appoint by order, by the substitution of “€125” for “€60” (inserted by *paragraph (a)* of this subsection).

(4) Subject to *subsection (7)* of this section, the Minister may, having regard to— 40

(a) changes in the value of money generally in the State since the passing of this Act or the last previous exercise of the power under this subsection, and

(b) the need to ensure the continued effectiveness of the procedures contained in section 28 of the Act of 1997 with respect to the enforcement of the provisions of that Act,

5 by order amend section 28(1)(b) of the Act of 1997 by substituting for the amount standing specified in that provision for the time being an amount that is greater than that amount.

(5) An order under *subsection (4)* of this section shall only be made subsequent to the making of an order under *subsection (3)(b)* of this section.

10 (6) The Minister may by order amend or revoke an order under *subsection (4)* of this section.

(7) The power under *subsection (4)* or *(6)* of this section shall not be exercised in such a manner as will result in the amount standing specified in section 28(1)(b) of the Act of 1997 on any date in any
15 relevant period being greater, by 25 per cent, than the amount that stood so specified on any other date in that period.

(8) Section 28(4) of the Act of 1997 is repealed.

14.—(1) This Act may be cited as the Waste Management (Amendment) Act, 2001. Short title, collective citations and construction.

20 (2) The Waste Management Act, 1996, and this Act (other than *section 13*) may be cited together as the Waste Management Acts, 1996 and 2001, and shall be construed together as one Act.

(3) The Litter Pollution Act, 1997, and *section 13* may be cited together as the Litter Pollution Acts, 1997 and 2001, and shall be
25 construed together as one Act.