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*Number 48 of 2022*

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**Water Environment (Abstractions and Associated Impoundments) Act 2022**

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*Number 48 of 2022*

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**WATER ENVIRONMENT (ABSTRACTIONS AND ASSOCIATED IMPOUNDMENTS)  
ACT 2022**

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[No. 48.]

*Water Environment (Abstractions  
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SCHEDULE



## ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919 (9 & 10 Geo. 5, c. 57)  
Canals Act 1986 (No. 3)  
Companies Act 2014 (No. 38)  
Electricity (Supply) (Amendment) (No. 2) Act 1934 (No. 38)  
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Environmental Protection Agency Act 1992 (No. 7)  
Lands Clauses Consolidation Act 1845 (8 & 9 Vict.) c. 18  
Liffey Reservoir Act 1936 (No. 54)  
Local Government (Sanitary Services) Act 1964 (No. 29)  
Local Government (Water Pollution) Act 1977 (No. 1)  
Local Government Act 2001 (No. 37)  
Planning and Development Act 2000 (No. 30)  
Shannon Electricity Act 1925 (No. 26)  
Shannon Fisheries Act 1935 (No. 4)  
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Wildlife (Amendment) Act 2000 (No. 38)  
Wildlife Act 1976 (No. 39)

[No. 48.]

*Water Environment (Abstractions  
and Associated Impoundments) Act 2022.*

[2022.]



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*Number 48 of 2022*

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**WATER ENVIRONMENT (ABSTRACTIONS AND ASSOCIATED IMPOUNDMENTS)  
ACT 2022**

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An Act to provide for the regulation of water abstractions and their associated impoundments; to give further effect to Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000<sup>1</sup> establishing a framework for Community action in the field of water policy; to provide for the Minister for Housing, Local Government and Heritage to regulate water abstractions not requiring a licence; to provide for the Minister to make regulations to exempt certain categories of water abstraction from certain requirements of the Act; to provide for the establishment of a register of water abstractions; to provide for licensing of water abstractions; to provide for the Minister to specify by order the daily rate of an abstraction that requires registration and licensing; to provide for the conferral of licensing and certain enforcement functions on the Environmental Protection Agency; to give further effect to Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>2</sup> on the assessment of the effects of certain public and private projects on the environment amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>3</sup>; to provide for Irish Water to carry out abstractions for the purpose of the performance of its functions; to provide for certain temporary and emergency abstractions required to be carried out by Irish Water and for those abstractions to be exempt from certain requirements of the Act; to provide for compensation for certain abstractions carried out by Irish Water; to provide for abstractions by Irish Water from reservoirs of the Electricity Supply Board; to provide for particular arrangements relating to abstractions from canals or navigable waters; to confer certain enforcement functions on local authorities; to repeal the Water Supplies Act 1942 and certain provisions of the Local Government (Sanitary Services) Act 1964 and the Local Government (Water Pollution) Act 1977 and to revoke the European Union (Water Policy) (Abstractions Registration) Regulations 2018 (S.I. No. 261 of 2018); to amend the Canals Act 1986, the Shannon Navigation Act 1990 and the

1 OJ No. L327, 22.12.2000, p. 1

2 OJ No. L26, 28.1.2012, p. 1

3 OJ No. L24, 25.4.2014, p. 1

Planning and Development Act 2000; and to provide for related matters.

[20th December, 2022]

**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL

#### **Citation and commencement**

1. (1) This Act may be cited as the Water Environment (Abstractions and Associated Impoundments) Act 2022.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

#### **Interpretation**

2. (1) In this Act—

“abstraction” has the meaning given to it by *section 3(1)*;

“abstraction point” means the point at which an abstraction takes place and includes any borehole, well, sump or inlet pipe;

“Act of 1942” means the Water Supplies Act 1942;

“Act of 1990” means the Shannon Navigation Act 1990;

“Act of 1992” means the Environmental Protection Agency Act 1992;

“Act of 2000” means the Planning and Development Act 2000;

“Agency” means the Environmental Protection Agency;

“applicant” means a person who applies for a licence in accordance with *section 21, 29 or 37*;

“associated impoundment” has the meaning given to it by *section 3(5)*;

“Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009<sup>4</sup> on the conservation of wild birds, amended by Council Directive 2013/17/EU of 13 May 2013<sup>5</sup> and Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019<sup>6</sup>;

“Board” means An Bord Pleanála;

<sup>4</sup> OJ No. L20, 26.1.2010, p. 7

<sup>5</sup> OJ No. L158, 10.6.2013, p. 193

<sup>6</sup> OJ No. L170, 25.6.2019, p. 115

“body of groundwater” means a distinct volume of groundwater within an aquifer or aquifers;

“body of surface water” means a discrete and significant element of surface water such as a lake, a reservoir, a stream, river or canal, or part of a stream, river or canal;

“canal” means the Royal Canal, the Grand Canal, the Grand Canal Barrow line, and the canalised section of the Shannon Erne Waterway;

“cease carrying out an abstraction” means, in relation to an abstraction, discontinuing the abstraction permanently;

“compliance notice” means a compliance notice given by a local authority under *section 97* or given by the Agency under *section 98*;

“daily rate”, in relation to an abstraction, means the volume of water abstracted in any 24 hour period;

“development” has the same meaning as it has in the Act of 2000;

“District Court” means the District Court in the district court district in which the abstraction takes place;

“ecological status” is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters when so classified by the Agency in accordance with the Regulations of 2009;

“EIA Directive” means Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011<sup>7</sup> on the assessment of the effects of certain public and private projects on the environment, amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014<sup>8</sup>;

“enactment” means—

- (a) an Act of the Oireachtas,
- (b) a statute that was in force in Saorstát Éireann immediately before the date of coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or
- (c) an instrument made under an Act of the Oireachtas or a statute referred to in *paragraph (b)*;

“environmental objectives” means—

- (a) in relation to a body of surface water, the objectives established by Article 28 of the Regulations of 2009, subject to the application of Articles 29 to 34 of those Regulations,
- (b) in relation to a body of groundwater, the objectives established by Regulation 4(b) of the Regulations of 2010, subject to the application of Regulations 16 to 20 of those Regulations, or

<sup>7</sup> OJ No. L26, 28.1.2012, p. 1

<sup>8</sup> OJ No. L24, 25.4.2014, p. 1

- (c) in relation to a protected area, the standards and objectives established by the Birds Directive, the Habitats Directive or the Regulations of 2011, as the case may be, under which the protected area has been designated;

“ESB” means the Electricity Supply Board;

“European Site” has the same meaning as it has in the Regulations of 2011;

“groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“groundwater status” means the status of a body of groundwater that is determined by the poorer of its quantitative status and its chemical status as classified by the Agency in accordance with the Regulations of 2010;

“Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992<sup>9</sup> on the conservation of natural habitats and of wild fauna and flora amended by Council Directive 97/62/EC of 27 October 1997<sup>10</sup>, Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003<sup>11</sup>, Council Directive 2006/105/EC of 20 November 2006<sup>12</sup> and Council Directive 2013/17/EU of 13 May 2013<sup>13</sup>;

“hydrological regime” means—

- (a) in relation to a river, the quantity and dynamics of flow in the river together with the resultant connection to groundwater,
- (b) in relation to a lake, the quantity and dynamics of flow, lake water level and the estimated time for replacement of all of its water and the resultant connection to groundwater, and
- (c) in relation to a body of groundwater, the level of groundwater, including any alterations to its flow direction brought about by anthropogenic changes to the water level of the body of groundwater, together with the resultant connection to surface water and terrestrial ecosystems which depend directly on the body of groundwater;

“impoundment” has the meaning given to it by *section 3(10)*;

“joint licence” has the meaning given to it by *section 47(1)*;

“local authority” has the same meaning as it has in the Local Government Act 2001;

“licence” means a licence granted under *section 27, 35 or 44*;

“licensee” means the holder or holders of a licence;

“licensing threshold” means—

- (a) the daily rate prescribed under *section 16(1)(b)*, or

9 OJ No. L206, 22.7.1992, p. 7

10 OJ No. L305, 8.11.1997, p. 42

11 OJ No. L284, 31.10.2003, p. 1

12 OJ No. L363, 20.12.2006, p. 368

13 OJ No. L158, 10.6.2013, p. 158

- (b) if no rate is prescribed under that section, 2,000 cubic metres or more in any 24 hour period;

“Minister” means the Minister for Housing, Local Government and Heritage;

“morphological condition” means—

- (a) in relation to a river, its channel patterns, width and depth variation and flow velocities as well as the condition of its substrate and the structure and condition of its riparian zones, and
- (b) in relation to a lake, its depth variation, the quantity and structure of its substrate and the structure and condition of the lake shore zone;

“navigable water” shall not include a canal and means—

- (a) the Shannon navigation, within the meaning of the Act of 1990, and
- (b) the Ballinamore and Ballyconnell navigation, within the meaning of section 5 of the Act of 1990,
- (c) the Erne and Lough Oughter navigation, within the meaning of section 5 of the Act of 1990, and
- (d) the Barrow navigation;

“planning authority” has the same meaning as it has in the Act of 2000;

“prescribe” means prescribe by regulations made by the Minister under this Act or by order made by the Minister under *section 16* or *section 80*;

“protected area” means an area designated as requiring special protection under the Birds Directive, the Habitats Directive or the Regulations of 2011 for the protection of its surface water and groundwater or for the conservation of habitats and species of European sites directly dependent on water, and entered in the register established by the Agency in accordance with Article 8 of the Regulations of 2003;

“public abstraction” means an abstraction or increase of an abstraction by Irish Water for the purpose of the performance by Irish Water of any of its functions under any enactment;

“public authority” means a body specified in the *Schedule*;

“quantitative status” is an expression of the degree to which a body of groundwater is affected by direct or indirect abstraction as determined by the Agency in accordance with the test procedures specified in Schedule 3 to the Regulations of 2010;

“register” means the register of abstractions established under *section 10*;

“registration threshold” means—

- (a) the daily rate prescribed under *section 16(1)(a)*, or
- (b) if no rate is prescribed under that section, 25 cubic metres or more in any 24 hour period;

“Regulations of 2001” means the Planning and Development Regulations 2001 (S.I. No. 600 of 2001);

“Regulations of 2003” means the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003);

“Regulations of 2009” means the European Communities Environmental Objectives (Surface Waters) Regulations 2009 (S.I. No. 272 of 2009);

“Regulations of 2010” means the European Communities Environmental Objectives (Groundwater) Regulations 2010 (S.I. No. 9 of 2010);

“Regulations of 2011” means the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011);

“Regulations of 2018” means the European Union (Water Policy) (Abstractions Registration) Regulations 2018 (S.I. No. 261 of 2018);

“River Basin Management Plan” means a plan made under Regulation 13 of the Regulations of 2003;

“river continuity” means the level of anthropogenic disturbance to a water body of a river affecting the undisturbed migration of aquatic organisms and the transport of sediment along that water body;

“significant abstraction” shall be construed in accordance with *section 18(1)*;

“single abstraction” shall be construed in accordance with *section 3(3)*;

“surface water” means all standing or flowing fresh water on the surface of the land;

“surface water status” means the status of a body of surface water that is determined by the poorer of its ecological status and its chemical status as classified by the Agency in accordance with the Regulations of 2009;

“transboundary state” means any state, other than Ireland, which is a party to the United Nations Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo (Finland) on 25 February 1991;

“water body” means a body of surface water or a body of groundwater;

“water environment” means any, or any part of any, water body;

“Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000<sup>14</sup> establishing a framework for Community action in the field of water policy;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

- (2) A word or expression that is used in this Act and is also used in the EIA Directive or the Water Framework Directive has, unless the context otherwise requires, the same meaning in this Act as it has in the Directive concerned.

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14 OJ No. L327, 22.12.2000, p. 1



**Application of Act and supplemental provisions relating to abstractions and associated impoundments**

3. (1) This Act shall apply to the removal or diversion of water from the water environment (in this Act referred to as an “abstraction”).
- (2) An abstraction may be carried out by mechanical means, through a pipe, or by diverting the flow of water or by means of a structure or works for that purpose.
- (3) Two or more abstractions from different abstraction points in the same water body which join to form one abstraction serving the same person shall be considered to be a single abstraction for the purposes of—
- (a) the registration threshold, and
- (b) the licensing threshold.
- (4) An abstraction may be carried out for the purpose of transfer of water from one part of the water environment to another.
- (5) This Act shall apply to an impoundment where an abstraction cannot be carried out without an impoundment (in this Act referred to as an “associated impoundment”).
- (6) In this Act, unless the context otherwise requires, a reference to an abstraction which cannot be carried out without an impoundment shall include a reference to its associated impoundment.
- (7) A reference in this Act to a licence includes a reference to a joint licence.
- (8) Where a joint licence is granted, a reference in this Act to a licensee includes a reference to the persons carrying out the abstraction and operating the associated impoundment the subject of that licence.
- (9) This Act shall apply to a licence amended under *section 51* or *52* as it applies to a licence and a reference in this Act to a licence includes a reference to a licence so amended.
- (10) In this section, “impoundment” means the doing of anything whereby the water level or flow in surface waters or the continuity of the morphological condition of a body of surface water is permanently or temporarily changed by means of a structure, including a dam or weir, situated in the water and built or maintained for the purpose of an abstraction or works situated in the water and carried out for that purpose.

**Regulations and orders**

4. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed and different regulations may be made in respect of different classes of persons or matters the subject of the prescribing concerned and for different circumstances or classes of circumstances in relation to such different matters or different classes of matters.

- (2) Regulations under this Act or an order under *section 16* or *80* may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations or order.
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (4) An order under *section 16* shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.

### **Expenses of Minister**

5. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

### **Giving of notices**

6. (1) Subject to *subsections (2)* and *(4)*, a notice that is required to be given to a person under this Act shall be in writing and addressed to the person concerned by name, and may be so given to the person in one or more than one of the following ways:
  - (a) by delivering it to the person;
  - (b) by leaving it at the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, at that address;
  - (c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address;
  - (d) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and the notice relates to land, by delivering it to a person over the age of 16 years resident or employed at the land, or by affixing it in a conspicuous position at or near the land;
  - (e) by electronic means to the e-mail address of the person, in a case in which the person giving the notice concerned reasonably believes that the e-mail address is being used by the first mentioned person.
- (2) Where a notice under this Act is to be given to a person who is the owner or occupier of land and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words “the owner” or, as the case may require, “the occupier”.

- (3) Where a notice under this Act is to be given—
- (a) to the owner of land and there are 2 or more co-owners of the land, it shall be sufficient to give notice to one or more of those co-owners, or
  - (b) to the occupier of land and there are 2 or more persons who share occupation of the land, it shall be sufficient to give notice to one or more of those persons.
- (4) For the purpose of this section, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

### **Repeals and revocations**

7. (1) Each of the following is repealed:
- (a) the Act of 1942;
  - (b) section 4 of the Local Government (Sanitary Services) Act 1964;
  - (c) subsections (2) and (8) of section 9 of the Local Government (Water Pollution) Act 1977.
- (2) The Regulations of 2018 are revoked.

## PART 2

### REGULATIONS FOR CERTAIN ABSTRACTIONS

#### **Regulations for certain abstractions**

8. (1) The Minister, as soon as practicable after the coming into operation of this section, and following consultation with the Agency, shall make regulations for the purpose of regulating—
- (a) an abstraction in respect of which a licence is not required under this Act, and
  - (b) an abstraction that was being carried out immediately before the coming into operation of *section 15* in respect of which a licence is required under this Act, until such time as the Agency makes a decision to grant the licence.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under this section may prescribe all or any of the following:
- (a) requirements in relation to measuring or estimating the daily rate and the maintenance of records relating to the daily rate;
  - (b) limits on the rate of water that may be abstracted from a body of surface water having regard to the surface water status;

- (c) measures to provide for the migration of fish and other aquatic species, including the maintenance of natural flow patterns and sediment transport within a body of surface water;
  - (d) controls relating to the abstraction of groundwater to protect the quantitative status of a body of groundwater including, in particular, terrestrial ecosystems associated with and dependent on that body of groundwater;
  - (e) requirements in relation to the maintenance of pipework, storage tanks and other equipment associated with an abstraction for the purposes of controlling water leakage;
  - (f) requirements in relation to the construction, extension and operation of any well, borehole or other works through which water may be abstracted in order to avoid the entry of pollutants or water of a different chemical composition into the water environment;
  - (g) requirements in relation to the introduction of drilling fluids into a well or borehole in order to test the hydraulic properties of an aquifer;
  - (h) requirements in relation to a well or borehole which is no longer required for an abstraction, including backfilling or sealing to the extent necessary to prevent loss of groundwater from an aquifer and to avoid the entry of pollutants or water of a different chemical composition into the water environment.
- (3) Regulations under this section may—
- (a) prescribe different requirements, limits, measures or controls by reference to different environmental objectives and different classes of abstraction, and
  - (b) prescribe periods within which persons or different classes of person carrying out an abstraction are required to comply with different requirements, limits, measures or controls.
- (4) A person who contravenes a provision of regulations made under this section that is declared in the regulations to be a penal provision shall be guilty of an offence.
- (5) The Minister shall, from time to time for the purpose of achieving the environmental objectives, conduct a review of the operation of regulations made under this section.
- (6) In conducting a review under *subsection (5)*, the Minister shall consult as appropriate with the Agency.

### PART 3

#### EXEMPTIONS

##### **Exemption for certain abstractions**

9. (1) The Minister may by regulations prescribe certain abstractions or activities relating to abstractions to be exempt from regulations under *section 8* or the requirements of

*section 11* where he or she is satisfied that prescribing the abstraction or activity to be so exempt has or will have no significant impact on surface water status or groundwater status.

- (2) Before prescribing under *subsection (1)*, the Minister shall consult with and consider any recommendations of the Agency and the Minister shall have regard to—
  - (a) the environmental objectives for the water body concerned,
  - (b) the obligation to protect species and habitats under the Habitats Directive and Birds Directive, and
  - (c) the requirements of the EIA Directive.
- (3) Without prejudice to the generality of *subsection (1)*, the following abstractions or activities relating to abstractions may be prescribed:
  - (a) an abstraction from a borehole or well to provide drinking water to a domestic dwelling;
  - (b) a temporary abstraction to facilitate the carrying out of works;
  - (c) an abstraction stored in an impoundment or an artificial storage pond built for the purpose of storing water which receives its inflow from an abstraction entered in the register;
  - (d) an abstraction for testing or investigative reasons;
  - (e) a temporary abstraction to facilitate any works or operations authorised by or under an enactment;
  - (f) an abstraction that is required for fire-fighting;
  - (g) works relating to an associated impoundment of an exempted abstraction;
  - (h) such other abstraction or activity relating to an abstraction as the Minister may prescribe.
- (4) Regulations under this section may provide for all or any of the following matters:
  - (a) the nature, scale and duration of the abstraction or activity relating to an abstraction;
  - (b) the application of the exemption to all or part of the State;
  - (c) the volume of water that may be abstracted in any 24 hour or other period;
  - (d) any other requirement or condition which the Minister considers necessary.
- (5) A person who contravenes a provision of regulations made under this section declared in the regulations to be a penal provision shall be guilty of an offence.

## PART 4

## REGISTER OF ABSTRACTIONS

**Requirement for Agency to keep register**

10. (1) The Agency shall, as soon as practicable after the coming into operation of this section, establish and maintain a register.
- (2) The register shall comprise of parts consisting of such particulars, provided to the Agency under and in accordance with this Act, as it considers appropriate to enter in the register relating to—
- (a) every abstraction which meets or exceeds the registration threshold, other than an abstraction which requires a licence,
  - (b) every abstraction for which a licence is granted and in force, and
  - (c) every public abstraction to which *Chapter 2 of Part 6* applies.
- (3) The register shall be maintained in such form, including electronic form, as the Agency may determine.
- (4) The Agency shall, in relation to an entry in the register—
- (a) correct a clerical inaccuracy or error that it becomes aware of,
  - (b) record a change in circumstances that is likely to have a bearing on the accuracy of the entry,
  - (c) record a surrender of a licence under *section 49* including as appropriate any conditions to which the surrender is subject,
  - (d) record a transfer of a licence under *section 50* including the name of the person to whom the licence is transferred, and any other matter relating to the transfer as it considers appropriate,
  - (e) record a change in conditions attached to a licence following a review under *section 51* or *52*,
  - (f) record a revocation or suspension of a licence under *section 53*,
  - (g) record a termination of a suspension under *section 54*, and
  - (h) record an amendment of a licence of a clerical or technical nature under *section 59*.
- (5) The register shall be kept at the principal office of the Agency.
- (6) The Agency shall make the register available for inspection by any person free of charge during office hours, and provide a copy of an entry in the register, or an extract from an entry, to any person on request free of charge.

- (7) The Agency may publish any of the information contained in the register as it considers appropriate on the internet or in such other manner as it considers appropriate.

### **Submission of information to Agency**

11. (1) A person who carries out an abstraction referred to in *section 10(2)(a)* shall give notice of that abstraction to the Agency, in such manner and form as the Agency may specify, within one month of the commencement of the abstraction, for entry by the Agency in the register.
- (2) Information submitted to the Agency under *subsection (1)* shall, in the case of a single abstraction, be submitted in respect of each abstraction point.
- (3) Where an abstraction which meets or exceeds the registration threshold and its associated impoundment are carried out and operated by different persons, information submitted to the Agency under *subsection (1)* shall be submitted—
- (a) by the person carrying out the abstraction, on the persons own behalf and on behalf of the person operating the associated impoundment, or
  - (b) jointly by both of those persons,
- and in both cases each person shall be responsible jointly and severally for the accuracy of the information so submitted.
- (4) A notice under *subsection (1)* shall—
- (a) state the name, address and contact details of the person or persons carrying out the abstraction,
  - (b) state the postal address and location, including the grid coordinates, of the abstraction point,
  - (c) state the name, address and contact details, if applicable, of a person registering the abstraction on behalf of the person referred to in *paragraph (a)*,
  - (d) contain details in relation to the source and purpose of the abstraction,
  - (e) include copies of any planning permission, other authorisations or court orders relating to the abstraction,
  - (f) specify the maximum daily rate, and
  - (g) include such other information as the Agency may require, including the proposed duration of the abstraction and details of any associated impoundment.
- (5) The Agency shall, as soon as is practicable after the particulars of an abstraction have been entered in the register, issue a registration number to the person carrying out the abstraction.
- (6) An abstraction referred to in *section 10(2)(a)* may be transferred by the person who carries out the abstraction to any person provided the first mentioned person—

- (a) gives notice to the Agency of the transfer within one month after the date of that transfer,
  - (b) provides such particulars in relation to the transfer as the Agency may require, and
  - (c) provides information relating to the abstraction, including the registration number, to the person to whom the abstraction is to be transferred.
- (7) Where an abstraction is transferred under *subsection (6)*, the person to whom that abstraction is transferred shall within one month after the date of the transfer give notice to the Agency of any change to the information specified in *subsection (4)* and the Agency shall amend the register as it considers necessary.
- (8) Where a person ceases carrying out an abstraction referred to in *section 10(2)(a)*, he or she shall give notice to the Agency of the cessation within one month after the date of that cessation and the Agency shall amend the register as it considers necessary.
- (9) The entry of an abstraction in the register shall not be construed as authorising that abstraction.
- (10) A person who fails to comply with *subsection (1), (6), (7) or (8)* shall be guilty of an offence.

#### **Provision of information to Agency**

- 12.** (1) The Agency may request a person carrying out an abstraction to submit such information as the Agency reasonably considers necessary for the purposes of the register within the period and in the manner specified by the Agency.
- (2) A person carrying out an abstraction referred to in *section 10(2)(a)* shall give notice to the Agency of any material change to the particulars specified in *section 11(4)*.
- (3) A person carrying out an abstraction referred to in *section 10(2)(b)* shall give notice to the Agency of any material change to the particulars furnished to the Agency on foot of an application under *Part 5* within one month after becoming aware of the change and the Agency shall amend the register as it considers necessary.
- (4) A person who fails to comply with a request under *subsection (1)* shall be guilty of an offence.
- (5) A person who contravenes *subsection (2) or (3)* shall be guilty of an offence.

#### **Evidential value of entries in register**

- 13.** (1) Every document purporting to be a copy of an entry in the register and purporting to be certified by an officer of the Agency to be a true copy of the entry shall, without proof of the signature of the person purporting so to certify or that he or she was that officer, be received in evidence in any legal proceedings and shall, unless the contrary is proved, be deemed to be a true copy of the entry and to be evidence of the terms of the entry.



- (2) Evidence of an entry in the register may be given by production of a copy of it certified under this section and it shall not be necessary to produce the register itself.
- (3) If the register is kept otherwise than in legible form, references in this section to a copy of an entry in the register shall be construed as including references to a legible copy or reproduction of an entry in the register.

## PART 5

## LICENSING OF ABSTRACTIONS

## CHAPTER 1

*Abstractions requiring licence***Interpretation (Part 5)****14.** (1) In this Part—

“combined application for a licence” has the meaning given to it by *section 37(1)*;

“development plan” has the same meaning as it has in the Act of 2000;

“EIA portal” has the same meaning as it has in the Act of 2000;

“EIAR” means an environmental impact assessment report of the effects on the environment, if any, which can reasonably be expected to occur because of the proposed abstraction and prepared in accordance with *section 23(2)* and regulations made under *section 57*;

“EIA” means an environmental impact assessment—

(a) consisting of—

- (i) the preparation of an EIAR by the applicant,
- (ii) the carrying out of consultations in accordance with this Act and regulations made under *section 57*,
- (iii) the examination by the Agency of—
  - (I) the information presented in the EIAR,
  - (II) any supplementary information provided, where necessary, by the applicant in accordance with *section 23(6)* or *section 26(1)*, and
  - (III) any relevant information received through the consultations carried out pursuant to *subparagraph (ii)*,
- (iv) the reasoned conclusion of the Agency on the significant effects of the proposed abstraction on the environment, taking into account the results of the examination carried out pursuant to *subparagraph (iii)* and, where appropriate, its own supplementary examination, and

(v) the integration of the reasoned conclusion of the Agency into the Agency's decision on the licence application,

and

(b) which includes an examination, analysis and evaluation, carried out by the Agency in accordance with this Act and regulations made under *section 57*, that identifies, describes and assesses, in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of the proposed abstraction, including significant effects derived from the vulnerability of the abstraction to risks of major accidents and disasters relevant to it on—

(i) population and human health,

(ii) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Birds Directive,

(iii) land, soil, water, air and climate,

(iv) material assets, cultural heritage and the landscape, and

(v) the interaction between the factors mentioned in *subparagraphs (i) to (iv)*;

“grant of permission” means—

(a) a grant of permission for development under Part III of the Act of 2000,

(b) an approval for development under *section 175*, *177AE*, *181(2L)*, *181B*, *182B*, *182D* or *226* of the Act of 2000, or

(c) a grant of substitute consent under *section 177K* of the Act of 2000;

“local area plan” has the same meaning as it has in the Act of 2000;

“retrospective EIA” means a retrospective environmental impact assessment—

(a) consisting of—

(i) the identification of the existence of exceptional circumstances within the meaning of *section 30(3)*,

(ii) the preparation of a retrospective EIAR by the applicant,

(iii) the carrying out of consultations in accordance with this Act and regulations made under *section 57*,

(iv) the examination by the Agency of—

(I) the information presented in the retrospective EIAR,

(II) any supplementary information provided, where necessary, by the applicant in accordance with *section 23(6)*, as modified by *section 31(3)*, or *section 40(2)* as the case may be, *section 26(1)*, as modified by *section 34*, *section 30(2)* or that section as modified by *section 39(2)* as the case may be, and *section 43(1)*, and

- (III) any relevant information received through the consultations carried out pursuant to *subparagraph (iii)*,
  - (v) the reasoned conclusion of the Agency on the significant effects of the abstraction on the environment, taking into account the results of the examination carried out pursuant to *subparagraph (iv)* and, where appropriate, its own supplementary examination, and
  - (vi) the integration of the reasoned conclusion of the Agency into the Agency's decision on the licence application,
- and
- (b) which includes an examination, analysis and evaluation, carried out by the Agency in accordance with this Act and regulations made under *section 57*, that identifies, describes and assesses, in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of the abstraction, including significant effects derived from the vulnerability of the abstraction to risks of major accidents and disasters relevant to it on—
    - (i) population and human health,
    - (ii) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Birds Directive,
    - (iii) land, soil, water, air and climate,
    - (iv) material assets, cultural heritage and the landscape,
    - (v) the interaction between the factors mentioned in *subparagraphs (i) to (iv)*;

“retrospective EIAR” means a retrospective environmental impact assessment report of the effects on the environment, if any, which have occurred, which are occurring or which can reasonably be expected to occur because of the abstraction and prepared in accordance with *section 31(2)* and regulations made under *section 57*;

“retrospective screening determination” has the meaning given to it by *section 32(1)*;

“revised abstraction” has the meaning given to it by *section 15(5)*;

“screening determination” has the meaning given to it by *section 24(1)*.

- (2) For the purposes of *Part 5*, Schedules 6, 7 and 7A to the Regulations of 2001 shall apply to an abstraction as they apply to a development, subject to the following modifications—
  - (a) subject to *paragraph (b)*, a reference in those Schedules to a development shall be read as a reference to an abstraction,
  - (b) a reference to development in paragraph 1(b) and paragraph 3(g) of Schedule 7 shall be read as including a reference to an abstraction, and
  - (c) any other necessary modifications.

**Requirement for a licence to abstract**

15. (1) A person shall require a licence under this Act to carry out—
- (a) an abstraction that meets or exceeds the licensing threshold,
  - (b) an abstraction that requires a licence as determined by the Agency under *section 17(10)(a)(i)*,
  - (c) a significant abstraction, or
  - (d) an abstraction that requires a licence as determined by the Agency under *section 19*.
- (2) A person who—
- (a) continues to carry out, after the coming into operation of this section, an abstraction specified in *subsection (1)(a)* that he or she was carrying out immediately before that coming into operation shall, subject to *subsection (4)*, make an application for a licence under *section 21* no later than 6 months after the coming into operation of this section, or
  - (b) intends to carry out, after the coming into operation of this section, an abstraction specified in *subsection (1)(a)*, shall make an application for a licence under *section 21* and he or she shall not commence that abstraction until the licence has been granted.
- (3) Subject to *subsection (4)*, where the Agency makes a determination that an abstraction is an abstraction specified in *paragraph (b), (c) or (d) of subsection (1)*, the person who carries out that abstraction shall make an application for a licence under *section 21* no later than 6 months after the date on which the Agency makes that determination.
- (4) A person who was carrying out, immediately before the coming into operation of this section, and who continues to carry out, after the coming into operation of this section, an abstraction that is an abstraction—
- (a) specified in *paragraph (a), (b), (c) or (d) of subsection (1)*, and
  - (b) of a class specified in—
    - (i) *paragraph (a) of section 29(3)*, or
    - (ii) Part 2 of Schedule 5 to the Regulations of 2001 but does not equal or exceed, as the case may be, the relevant quantity or area specified in that Part such that a determination as to whether an environmental impact assessment was required should have been made prior to, or after, the commencement of the abstraction,
- shall, subject to *subsection (5)*, make an application for a licence under *section 29*, in the case of an abstraction specified in *paragraph (a) of subsection (1)*, no later than 6 months after the coming into operation of this section, or in the case of an abstraction specified in *paragraph (b), (c) or (d) of subsection (1)*, no later than 6 months after the date on which the Agency makes the determination concerned.

- (5) A person referred to in *subsection (4)* shall make an application for a licence under *section 37* where he or she intends to increase or vary the abstraction referred to in *subsection (4)* (in this Part referred to as a “revised abstraction”), in the case of an abstraction specified in *paragraph (a)* of *subsection (1)*, no later than 6 months after the coming into operation of this section, or, in the case of an abstraction specified in *paragraph (b), (c) or (d)* of *subsection (1)*, no later than 6 months after the date on which the Agency makes the determination concerned.
- (6) A person shall not commence a revised abstraction until a licence has been granted under *section 44* for that abstraction.
- (7) The Agency may, as it considers appropriate, on the written application of the person carrying out the abstraction, extend the period referred to in *subsection (2)(a), (3), (4) or (5)*.
- (8) A person who fails to comply with any of *subsections (2) to (6)* shall be guilty of an offence.

### **Registration and licensing thresholds**

16. (1) The Minister may for the purposes of this Act, if he or she considers it necessary for the sustainable management of water resources, by order—
  - (a) specify or reduce the registration threshold, or
  - (b) specify or vary the licensing threshold.
- (2) The Agency may, at any time it considers appropriate and shall, as soon as practicable following the publication of each River Basin Management Plan, prepare and provide a written report to the Minister which shall contain a recommendation whether or not an order should be made under *paragraph (a) or (b)* of *subsection (1)* and that report shall contain the reasons for the Agency’s recommendation.
- (3) The Agency shall have regard to the matters listed in *paragraph (a) to (d)* of *subsection (5)* in the preparation of a report under *subsection (2)*.
- (4) Prior to making an order under *subsection (1)*, the Minister shall consider a report of the Agency under *subsection (2)*.
- (5) In determining whether to make an order under *subsection (1)*, the Minister shall have regard to—
  - (a) the impact of abstractions on groundwater status and surface water status,
  - (b) the need to protect the environment from abstractions,
  - (c) the expected environmental benefit of reducing the registration threshold or varying the licensing threshold, as the case may be,
  - (d) the River Basin Management Plan,
  - (e) any submissions received under *subsection (6)(a)(i)*, and

- (f) the economic and societal impact of varying the registration threshold or the licensing threshold.
- (6) Where the Minister determines—
- (a) that an order under *subsection (1)* should be made, he or she shall cause a notice to be published on the Department’s website of—
- (i) the proposal to make an order and that submissions may be made in respect of that proposal, and
- (ii) the main reasons for the determination,
- or
- (b) that an order under *subsection (1)* should not be made, he or she shall inform the Agency of the main reasons for the determination.
- (7) Submissions under *subsection (6)(a)(i)* shall be made in such manner and within such period as the Minister may specify.
- (8) Where an order under *subsection (1)(a)* reduces the registration threshold, that order may specify the period within which a person who carries out an abstraction that meets or exceeds the registration threshold as so reduced is required to comply with *section 11(1)*.
- (9) A person who carries out an abstraction that meets or exceeds the registration threshold as reduced by order under *subsection (1)(a)* and fails to comply with *section 11(1)* within the period specified in the order shall be guilty of an offence.
- (10) Where an order under *subsection (1)(b)* reduces the licensing threshold, that order may specify the period within which a person who carries out an abstraction that meets or exceeds the licensing threshold as so reduced is required to apply for a licence under this Part.
- (11) A person who carries out an abstraction that meets or exceeds the licensing threshold specified in an order under *subsection (1)(b)* and fails to apply for a licence under this Part within the period specified in the order shall be guilty of an offence.

#### **Agency opinion that licence required**

17. (1) The Agency shall give notice under *subsection (10)* to a person carrying out an abstraction that is less than the licensing threshold and that does not otherwise require a licence under *paragraph (c) or (d) of section 15(1)* where the Agency has formed an opinion under and in accordance with this section that the abstraction is required to be subject to a licence in order to facilitate the proper regulation of the abstraction.
- (2) A public authority may give notice to the Agency of the opinion of the authority that an abstraction that is less than the licensing threshold and that does not otherwise require a licence under *paragraph (c) or (d) of section 15(1)* is required to be subject to a licence in order to facilitate the proper regulation of the abstraction.
- (3) A notice under *subsection (2)* shall—

- (a) state the main reasons for the opinion of the public authority,
  - (b) contain information concerning any impact or likely impact of the abstraction concerned on the performance of the functions of the public authority, and
  - (c) be accompanied by such documents and information as may be relevant to the opinion of the public authority.
- (4) For the purpose of forming an opinion under *subsection (1)*, the Agency may give notice to the person carrying out the abstraction requiring him or her to submit, within the period specified in the notice, such information relating to the abstraction as the Agency may reasonably require.
- (5) In forming an opinion under *subsection (1)*, the Agency shall have regard to—
  - (a) the sufficiency, for the purpose of the proper regulation of the abstraction, of regulations made under *section 8*,
  - (b) the reasons why a licence is not required under *paragraph (c) or (d) of section 15(1)*,
  - (c) the information contained in any notice under *subsection (2)*,
  - (d) information provided by the person carrying out the abstraction under *subsection (4)*,
  - (e) the River Basin Management Plan, and
  - (f) any other matter the Agency considers relevant.
- (6) The Agency may consult with such persons as the Agency considers appropriate prior to forming an opinion under *subsection (1)*.
- (7) The Agency shall give notice to the person carrying out the abstraction of its proposed opinion that the abstraction is required to be subject to a licence to facilitate its proper regulation and where a notice is given under *subsection (2)* in relation to the abstraction, a copy of that notice.
- (8) The Agency shall, where a notice is given under *subsection (2)*, consult the public authority concerned and the Agency shall give notice to the public authority of its proposed opinion under *subsection (1)*.
- (9) A notice under *subsection (7) or (8)* shall—
  - (a) state the main reasons for the proposed opinion of the Agency, and
  - (b) invite the person carrying out the abstraction or the public authority, if applicable, to make observations, in writing, in relation to the proposed opinion and any other matter relating to the abstraction not later than 6 weeks from the date of the notice.
- (10) The Agency shall, having considered any observations made under *subsection (9)(b)*, give notice to the person carrying out the abstraction and, where applicable, to the public authority concerned of—

- (a) its opinion that—
    - (i) the abstraction requires a licence, or
    - (ii) the abstraction does not require a licence,and
  - (b) the main reasons for that opinion.
- (11) In the case of an opinion referred to in *subsection (10)(a)(i)*, the notice shall require the person carrying out the abstraction to make an application for a licence under this Part.

### **Identification of significant abstractions**

- 18.** (1) A significant abstraction means an abstraction that the Agency determines, following an assessment under *subsection (3)*, on its own or together with other abstractions—
- (a) alters, or is likely to alter, the hydrological regime of a body of surface water or a body of groundwater such that the water body fails or is likely to fail to meet its environmental objectives,
  - (b) alters or modifies, or is likely to alter or modify, the flow condition, continuity or morphological condition of a body of surface water as a result of the existence or operation of an associated impoundment, such that the water body fails or is likely to fail to meet its environmental objectives, or
  - (c) causes or is likely to cause a protected area to fail to achieve its environmental objectives.
- (2) A person shall give notice to the Agency where he or she intends to carry out an abstraction that meets or exceeds the registration threshold and is less than the licensing threshold (in this section referred to as a “proposed abstraction”).
- (3) For the purpose of determining if an abstraction is a significant abstraction, the Agency shall assess each—
- (a) proposed abstraction notified to it under *subsection (2)*, and
  - (b) abstraction in the part of the register referred to in *section 10(2)(a)*.
- (4) In carrying out an assessment under *subsection (3)*, the Agency shall have regard to—
- (a) in the case of an abstraction from a body of surface water—
    - (i) the hydrological regime of the body of surface water and the impact of the abstraction on river continuity and the morphological condition of that water body, and
    - (ii) the impact or likely impact of the abstraction on the applicable biological quality elements set out in Schedule 5 to the Regulations of 2009,
  - (b) in the case of an abstraction from a body of groundwater—



- (i) changes or likely changes to the level of the body of groundwater, taking account of the available groundwater resource and the long-term annual average rate of abstraction,
  - (ii) the balance between the abstraction and the recharge of water in the body of groundwater,
  - (iii) the impact or likely impact of the abstraction on the status of surface waters which are hydrologically connected to the body of groundwater,
  - (iv) the impact or likely impact of the abstraction on a terrestrial ecosystem which depends directly on the body of groundwater, and
  - (v) any sustained alteration to the flow direction of water which may cause salt water or other intrusion to the body of groundwater,
- and
- (c) in the case of all abstractions—
    - (i) the impact or likely impact of the abstraction on a protected area,
    - (ii) the results of monitoring programmes undertaken under Article 10 of the Regulations of 2003, and
    - (iii) the results of analyses and reviews undertaken under Article 7 of the Regulations of 2003.
- (5) For the purposes of an assessment under *subsection (3)*, the Agency may give notice to the person referred to in *subsection (2)* requiring him or her to submit, within the period specified in the notice, such information relating to the abstraction as the Agency may reasonably require, including information in relation to—
- (a) the proposed period for which the abstraction is intended to operate,
  - (b) the maximum daily rate that is possible having regard to the existing or proposed infrastructure,
  - (c) seasonal and temporal variations in the rate of abstraction, and
  - (d) the operation of any associated impoundment and any related works.
- (6) The Agency shall give notice to the person referred to in *subsection (2)* or to the person carrying out the abstraction where the Agency is of the opinion that the abstraction is likely to be a significant abstraction and the Agency shall invite the person to make observations in writing, in relation to that opinion, not later than 6 weeks from the date of the notice.
- (7) The Agency shall, within 2 months of receipt of a notice under *subsection (2)* or the date of receipt of observations under *subsection (6)*, whichever occurs later and having considered any observations made under *subsection (6)*, determine whether a proposed abstraction is a significant abstraction and the Agency shall give notice accordingly to the person referred to in *subsection (2)*.

- (8) The Agency shall, as soon as practicable and having considered any observations made under *subsection (6)*, determine whether an abstraction referred to in *subsection (3)(b)* is a significant abstraction and the Agency shall give notice accordingly to the person carrying out the abstraction.
- (9) The Agency shall, not less than once in every period of 6 years, review its assessment of an abstraction under *subsection (3)* and *subsections (4)* and *(6)* shall apply to a review under this subsection as they apply to an assessment under *subsection (3)* subject to any necessary modifications.
- (10) Where the Agency determines, following a review under *subsection (9)* and having considered any observations made under *subsection (6)*, that the abstraction—
  - (a) is no longer a significant abstraction, the Agency shall give notice to the licensee that the licence is no longer required, or
  - (b) has become a significant abstraction, the Agency shall give notice to the person carrying out the abstraction of its determination.
- (11) Where the Agency determines that an abstraction is a significant abstraction under *subsection (7)*, *(8)* or *(10)(b)*, a notice under those subsections shall—
  - (a) state the main reasons for the Agency's determination, and
  - (b) require the person carrying out the abstraction or the person referred to in *subsection (2)*, as the case may be, to make an application for a licence under this Part.

#### **Assessment of certain abstractions**

- 19.** (1) For the purpose of determining if an abstraction should be subject to a retrospective EIA, the Agency shall assess an abstraction that—
  - (a) is deemed to be entered in the appropriate part of the register pursuant to *section 113(2)*,
  - (b) is of a class specified in Part 2 of Schedule 5 to the Regulations of 2001 but does not equal or exceed, as the case may be, the relevant quantity or area specified in that Part, and
  - (c) is less than the licensing threshold and does not otherwise require a licence under *paragraphs (b)* or *(c)* of *section 15(1)*.
- (2) For the purpose of determining if an abstraction should be subject to an EIA, the Agency may assess an abstraction, other than an abstraction referred to in *subsection (1)(a)*, that—
  - (a) is of a class specified in Part 2 of Schedule 5 to the Regulations of 2001 but does not equal or exceed, as the case may be, the relevant quantity or area specified in that Part, and
  - (b) is less than the licensing threshold and does not otherwise require a licence under *paragraphs (b)* or *(c)* of *section 15(1)*.

- (3) For the purposes of an assessment under *subsection (1) or (2)*, the Agency may give notice to the person carrying out the abstraction requiring him or her to submit, within the period specified in the notice, such information relating to the abstraction and the environmental effects of that abstraction as the Agency may reasonably require, including information in relation to any permission or consent relating to the abstraction granted under any enactment.
- (4) The Agency may enter into consultations with such public authorities as the Agency considers appropriate.
- (5) In carrying out an assessment under *subsection (1) or (2)*, the Agency shall have regard to—
  - (a) the information in the register in relation to the abstraction, if applicable,
  - (b) any information submitted under *subsection (3)*, and
  - (c) such other information relating to the effects on the environment arising from the abstraction that is available to the Agency.
- (6) The Agency shall, as soon as practicable after the coming into operation of this section, carry out an assessment under *subsection (1)* of an abstraction referred to in that subsection and where the Agency concludes that—
  - (a) there have been no significant effects on the environment arising from the abstraction and there is no real likelihood of such significant effects, the Agency shall determine that a retrospective EIA is not required,
  - (b) there is a significant and realistic doubt as to the likelihood of whether there have been or there may be significant effects on the environment arising from the abstraction, the Agency shall determine that a screening assessment is required, or
  - (c) there have been significant effects on the environment arising from the abstraction or there is a real likelihood of significant effects on the environment, the Agency shall determine that a retrospective EIA is required.
- (7) If the Agency carries out an assessment under *subsection (2)* of an abstraction referred to in that subsection and concludes that—
  - (a) there have been no significant effects on the environment arising from the abstraction and there is no real likelihood of such significant effects, the Agency shall determine that an EIA is not required,
  - (b) there is a significant and realistic doubt as to the likelihood of whether there have been or there may be significant effects on the environment arising from the abstraction, the Agency shall determine that a screening assessment is required, or
  - (c) there have been significant effects on the environment arising from the abstraction or there is a real likelihood of significant effects on the environment, the Agency shall determine that an EIA is required.

- (8) The Agency shall give notice to the person carrying out the abstraction of—
- (a) its determination under *subsection (6) or (7)*,
  - (b) the main reasons for the determination, and
  - (c) in the case of a determination under *subsection (6)(c) or (7)(c)*, the requirement to make an application for a licence, accompanied by an EIAR or a retrospective EIAR under *section 21, 29 or 37*, as appropriate.
- (9) Where the Agency makes a determination under *subsection (6)(b) or (7)(b)*, the Agency shall give notice to the person carrying out the abstraction requiring him or her to submit, within the period specified in the notice, the information specified in *section 24(2)* and he or she may also submit a description of features or measures, if any, incorporated or envisaged to avoid or prevent what might otherwise be or have been significant adverse effects on the environment.
- (10) The Agency shall assess whether the abstraction specified in *subsection (9)* has had or is likely to have significant effects on the environment (in this section referred to as a “screening assessment”).
- (11) In carrying out a screening assessment, the Agency shall have regard to the information submitted under *subsection (9)* and to the matters specified in *paragraphs (a), (c), (d) and (f) of section 24(4)*.
- (12) Where the Agency, having carried out a screening assessment, concludes—
- (a) that the abstraction has had or is likely to have significant effects on the environment, the Agency shall give notice to the person carrying out the abstraction of—
    - (i) the main reasons for that conclusion with reference to the relevant criteria specified in Schedule 7 to the Regulations of 2001, and
    - (ii) the requirement to make an application for a licence, accompanied by an EIAR or a retrospective EIAR, as appropriate, under *section 21, 29 or 37*,or
  - (b) that the abstraction has not had and is not likely to have significant effects on the environment, the Agency shall give notice to the person carrying out the abstraction of—
    - (i) the main reasons for that conclusion with reference to the relevant criteria specified in Schedule 7 to the Regulations of 2001, and
    - (ii) any features or measures proposed by that person to avoid or prevent significant adverse effects on the environment.
- (13) Subject to *subsection (14)*, the Agency shall give notice under *subsection (12)* as soon as practicable and within 8 weeks after the date on which the person carrying out the abstraction has submitted all of the information required under *subsection (9)*.

- (14) The Agency may, in exceptional cases, including where it is justified by the nature, complexity, location or size of the abstraction, extend the 8 week period referred to in *subsection (13)* and in such cases, it shall give notice to the person carrying out the abstraction of the reasons justifying the extension and of the date when the notice can be expected.
- (15) In this section, a reference to the person carrying out the abstraction shall be read as including a reference to a proposal by Irish Water to carry out a temporary abstraction, within the meaning of *section 74*.

### **Grant of licences**

- 20.** (1) The Agency may decide to grant or refuse to grant a licence under *section 27, 35* or *44* on an application being made to it and—
- (a) the Agency may attach such conditions to the licence as it considers appropriate, and
  - (b) the licence shall, subject to any conditions concerning its duration, remain in force for an indefinite period, subject to its surrender, suspension or revocation.
- (2) In considering an application for a licence, the Agency shall have regard to—
- (a) the environmental objectives for the water body concerned,
  - (b) the water resources plan prepared by Irish Water for the purposes of the water services strategic plan prepared under *section 33* of the Water Services (No. 2) Act 2013,
  - (c) any directive issued by the Minister under *section 110* concerning the grant of licences,
  - (d) the matters specified in *section 18(4)(a)*, in the case of an abstraction from a body of surface water,
  - (e) the matters specified in *section 18(4)(b)*, in the case of an abstraction from a body of groundwater,
  - (f) the matters specified in *section 18(4)(c)*,
  - (g) in the case of an application relating to a public abstraction or an abstraction that may affect a public abstraction, the functions of Irish Water,
  - (h) in the case of an application relating to a public abstraction from a reservoir of the ESB, or an abstraction by the ESB, the functions of the ESB referred to in *section 87(8)*, and
  - (i) in the case of an application relating to an abstraction from a canal or navigable water, the functions conferred on Waterways Ireland under the Canals Act 1986 and the Act of 1990.
- (3) The Agency shall not grant a licence unless it is satisfied that the abstraction, carried out in accordance with such conditions as may be attached to the licence will not—

- (a) cause a deterioration in the status of the body of surface water concerned or the body of groundwater concerned, and
  - (b) compromise compliance with any standards and objectives established for a protected area, where applicable.
- (4) The Agency may decide to refuse to grant a licence where the Agency considers that the abstraction, notwithstanding any conditions that may be attached to the licence, is unacceptable on environmental grounds.
- (5) The Agency shall attach conditions to a licence consistent with the environmental objectives of the water body concerned, including conditions that aim to protect or restore—
- (a) the hydrological regime of that water body, and
  - (b) in the case of a body of surface water, the continuity or morphological condition of that water body.
- (6) Conditions attached to a licence may—
- (a) specify limits on—
    - (i) the daily rate, and
    - (ii) the rate of water which may be abstracted in any 12 month period,
  - (b) specify measures to be taken to protect the water body concerned from the effects of short-term high-intensity abstractions,
  - (c) specify periods during which a person may or may not carry out an abstraction,
  - (d) specify the means, including the provision, operation, maintenance and supervision of plant and other facilities, to be used for controlling an abstraction,
  - (e) require the provision, operation and maintenance of meters, gauges, manholes, inspection chambers or other means for the purpose of monitoring the nature, extent and effects of the abstraction,
  - (f) require the taking of and analysis of samples, the making of measurements, the keeping of records and the submission of information to the Agency, or to any other specified person,
  - (g) specify the date by which a condition is to be complied with,
  - (h) specify the measures, if any, to be taken on the cessation of the abstraction,
  - (i) specify the requirements for the surrender of a licence,
  - (j) require measures to be taken relating to the effect of the abstraction on the environment, including any appropriate monitoring measures,
  - (k) specify measures to be taken, including a reduction in the rate of water that may be abstracted, in the event of a temporary abstraction or an emergency abstraction within the meaning of *section 60*, and

- (l) specify such other matters as may be prescribed.
- (7) The Agency may, in accordance with regulations under *section 57*, specify a fee to be charged by the Agency and paid by the licensee to discharge the costs incurred by the Agency—
  - (a) in determining whether there has been compliance with the conditions attached to the licence,
  - (b) in relation to steps taken for the purpose of monitoring the abstraction, or
  - (c) otherwise in relation to the abstraction.
- (8) For the avoidance of doubt and notwithstanding any other enactment the Agency is not required to make a screening determination or carry out an EIA for the purposes of considering—
  - (a) a water abstraction agreement referred to in *section 83*,
  - (b) an opinion of Waterways Ireland referred to in *section 84*,
  - (c) an agreement to abstract water from a canal referred to in *section 85*, or
  - (d) further information furnished by the ESB referred to in *section 87(3)*.

## CHAPTER 2

*Licence application and EIA***Application for licence for abstraction**

- 21.** (1) A person referred to in *subsection (2) or (3) of section 15* shall—
- (a) make an application to the Agency for a licence within the period specified in that subsection, as the case may be, and
  - (b) publish notice of the application in the prescribed form.
- (2) The applicant shall provide the prescribed information in electronic form to the EIA portal prior to—
- (a) the making of an application under *subsection (1)(a)*, where that application is accompanied by an EIAR, or
  - (b) the submission of an EIAR following a screening determination.
- (3) Subject to *section 22*, an EIA shall be carried out by the Agency in respect of an application for a licence under *subsection (1)* where the abstraction is of a class—
- (a) specified in Part 1 or Part 2 of Schedule 5 to the Regulations of 2001 and the abstraction would equal or exceed, as the case may be, any relevant quantity or area specified in that Part, or
  - (b) specified in Part 2 of Schedule 5 to the Regulations of 2001 but does not equal or exceed, as the case may be, the relevant quantity or area specified in that Part and

the Agency, the planning authority or the Board determines that the abstraction is likely to have significant effects on the environment.

### Coordination of EIA

22. (1) Where an application for a licence under *section 21(1)* is in respect of an abstraction that involves development or proposed development that is or was the subject of an environmental impact assessment (within the meaning of the Act of 2000) by a planning authority or the Board under the Act of 2000, the EIA required to be carried out by the Agency under *section 21(3)* may be carried out by the Agency in whole or in part by way of the sharing of information and documentation relating to the effects of the abstraction or development on the environment with, consultation with, or the submission of observations to, that planning authority or the Board in accordance with *section 25*.
- (2) The Agency shall, where appropriate, coordinate the EIA with any other assessment of the abstraction under the Regulations of 2011.

### EIAR for an abstraction

23. (1) Where an application for a licence is subject to an EIA under *section 21(3)*, the applicant shall submit, in electronic form, an EIAR to the Agency—
- (a) where the application is in respect of an abstraction specified in *section 21(3)(a)*, at the time of the application for a licence under *section 21(1)*, or
  - (b) where the application is in respect of an abstraction specified in *section 21(3)(b)*, within such period as may be specified by the Agency in a screening determination under *section 24*.
- (2) The applicant shall ensure that an EIAR—
- (a) is prepared by competent experts,
  - (b) subject to *subsection (3)*, contains the following information:
    - (i) a description of the abstraction comprising information on the site, design, size and other relevant features of the abstraction;
    - (ii) a description of the likely significant effects of the abstraction on the environment;
    - (iii) a description of any features of the abstraction and of any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
    - (iv) a description of the reasonable alternatives studied by the applicant which are relevant to the abstraction and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the abstraction on the environment;



- (v) any additional information specified in paragraph 2 of Schedule 6 to the Regulations of 2001 that is relevant to the specific characteristics of the abstraction and to the environmental features likely to be affected;
  - (vi) a non-technical summary of the information referred to in *subparagraph (i)* to (v);
  - (vii) a reference list detailing the sources used for the descriptions and assessments included in the report,
- and
- (c) takes into account the available results of other relevant assessments carried out pursuant to European Union legislation or any enactment with a view to avoiding duplication of assessments.
- (3) The applicant may, in accordance with regulations under *section 57*, request the Agency to issue an opinion on the scope and level of detail of the information to be included in the EIAR and where the Agency issues such an opinion, the EIAR shall be based on that opinion and shall include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the abstraction on the environment, taking into account current knowledge and methods of assessment.
  - (4) In carrying out an EIA, the Agency shall ensure it has, or has access as necessary to, sufficient expertise to examine the EIAR to ensure its completeness and quality and may have regard to and adopt in whole or in part any reports prepared by its officials or by consultants, experts or other advisers.
  - (5) The Agency shall consider whether an EIAR submitted under this section identifies and describes adequately the likely direct and indirect significant effects of the abstraction on the environment.
  - (6) The Agency may give notice to the applicant requiring him or her to submit, within the period specified in the notice, any additional information specified in Schedule 6 to the Regulations of 2001 which is necessary to ensure the completeness and quality of the EIAR and which is directly relevant to enable the Agency to reach a reasoned conclusion on the significant effects of the abstraction on the environment.

### **Screening determination**

- 24. (1) Where the Agency receives an application for a licence in respect of an abstraction of a class specified in *section 21(3)(b)*, and that application does not include an EIAR, the Agency shall, where the application does not involve development or proposed development for which a grant of permission is required, determine whether or not the abstraction is likely to have significant effects on the environment (in this Part referred to as a “screening determination”).
- (2) An application referred to in *subsection (1)* shall contain the following information:
  - (a) a description of the nature and extent of the abstraction;

- (b) its characteristics;
  - (c) its likely significant effects on the environment (including the information specified in Schedule 7A to the Regulations of 2001); and
  - (d) where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to any enactment or under European Union legislation (other than the EIA Directive) have been taken into account.
- (3) In addition to the information specified in *subsection (2)*, the application may contain a description of the features, if any, of the abstraction and the measures, if any, incorporated or envisaged to avoid or prevent what might otherwise be or have been significant adverse effects on the environment.
- (4) Before making a screening determination, the Agency shall have regard to—
- (a) the criteria for determining whether the abstraction should be subject to an EIA, specified in Schedule 7 to the Regulations of 2001,
  - (b) the information submitted under *subsections (2) and (3)*,
  - (c) the environmental objectives for the water body concerned,
  - (d) the groundwater status or surface water status of the source of the abstraction and the likely impact of the abstraction on that water status,
  - (e) its assessment and determination under *section 18*, if applicable, and
  - (f) in respect of an abstraction which would be located on, or in, or have the potential to impact on—
    - (i) a European site,
    - (ii) land the subject of a notice under section 16(2)(b) of the Wildlife (Amendment) Act 2000,
    - (iii) land designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000,
    - (iv) land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act 1976,
    - (v) land designated as a refuge for flora or as a refuge for fauna under section 17 of the Wildlife Act 1976,
    - (vi) a place, site or feature of ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan, draft development plan or draft local area plan, or proposed variation of a development plan, for the area in which the abstraction is proposed, or
    - (vii) a place or site which has been included by the Minister in a list of proposed Natural Heritage Areas published on the National Parks and Wildlife Service website,

the likely significant effects of the abstraction on such site, land, place or feature, as appropriate.

- (5) Where the Agency determines under *subsection (1)* that—
- (a) the abstraction is likely to have significant effects on the environment, the application shall be subject to an EIA and the Agency shall specify in its screening determination—
    - (i) the main reasons for that determination with reference to the relevant criteria specified in Schedule 7 to the Regulations of 2001, and
    - (ii) the period within which an EIAR is to be submitted to the Agency,
 or
  - (b) the abstraction is not likely to have significant effects on the environment, the application shall not be subject to an EIA and the Agency shall specify in its screening determination—
    - (i) the main reasons for that determination with reference to the relevant criteria specified in Schedule 7 to the Regulations of 2001, and
    - (ii) any features of the abstraction and measures proposed by the applicant to avoid or prevent significant adverse effects on the environment.
- (6) Subject to *subsection (7)*, the Agency shall give notice to the applicant of its screening determination as soon as practicable and within 8 weeks after the date on which the applicant has submitted all of the information required under *subsection (2)*.
- (7) The Agency may, in exceptional cases, including where it is justified by the nature, complexity, location or size of the abstraction, extend the 8 week period referred to in *subsection (6)* and in such cases, it shall inform the applicant in writing of the reasons justifying the extension and of the date when its screening determination can be expected.

#### **Coordination of EIA with planning authority or Board**

25. (1) In *subsections (2) to (6)*, “environmental impact assessment”, “environmental impact assessment report” and “permission” have the same meanings as in the Act of 2000.
- (2) Where an application for a licence under *section 21(1)* is made to the Agency in respect of an abstraction that involves development or proposed development for which a grant of permission is required, the applicant shall, as soon as practicable, submit to the Agency—
- (a) confirmation in writing from a planning authority or the Board that an application for permission comprising or for the purposes of the abstraction is currently under consideration by the planning authority concerned or the Board, and in that case, shall also submit to the Agency either—
    - (i) a copy of the environmental impact assessment report where one is required by or under the Act of 2000 relating to that application for permission, or

- (ii) confirmation in writing from the planning authority or the Board that an environmental impact assessment is not required by or under the Act of 2000,  
or
- (b) a copy of a grant of permission comprising or for the purposes of the abstraction that was issued by the planning authority concerned or the Board and in that case shall also submit to the Agency either—
  - (i) where the planning authority or the Board accepted or required the submission of an environmental impact assessment report in relation to the application for permission, a copy of the environmental impact assessment report, or
  - (ii) confirmation in writing from the planning authority or the Board that an environmental impact assessment was not required by or under the Act of 2000.
- (3) Where an application for a licence is made to the Agency in respect of an abstraction that involves development or proposed development for which a grant of permission is required but the applicant does not comply with *subsection (2)*, the Agency shall refuse to consider the application and shall inform the applicant accordingly.
- (4) The Agency, on receipt of an application where an environmental impact assessment report is required under *subsection (2)(a)(i)*, shall—
  - (a) within 2 weeks after the date of receipt of such application, give notice to the planning authority in whose functional area the abstraction is or will be situate or the Board, that it has received an application to which *subsection (2)(a)(i)* applies and request the planning authority or the Board, within 4 weeks after receipt of the notice, to furnish to the Agency any observations that the planning authority or the Board has in relation to the application for a licence,
  - (b) consider any observations made to the Agency by the planning authority or the Board following a request under *paragraph (a)* before giving notice of its proposed decision under *section 27*,
  - (c) enter into consultations, as the Agency considers appropriate, with the planning authority or the Board in relation to any environmental impacts of the proposed development, and
  - (d) ensure that a grant of permission has been made or a decision has been made to refuse a grant of permission for development comprising or for the purposes of the abstraction to which the application relates and the period for any appeal under section 37 of the Act of 2000 has expired without an appeal being made before giving notice of its proposed decision under *section 27*.
- (5) The Agency, on receipt of an application where an environmental impact assessment report was required under *subsection (2)(b)(i)*, shall—
  - (a) within 2 weeks after the date of receipt of such application, give notice to the planning authority in whose functional area the abstraction is or will be situate or

the Board, that it has received an application to which *subsection (2)(b)(i)* applies and request the planning authority or the Board to respond to the Agency within 4 weeks after receipt of the notice—

- (i) stating whether the abstraction is permitted by the grant of permission referred to in *subsection (2)(b)*,
    - (ii) furnishing all documents relating to the environmental impact assessment carried out by the planning authority or the Board in respect of the development or proposed development to which the grant of permission referred to in *subsection (2)(b)* refers, and
    - (iii) furnishing any observations that the planning authority or the Board wishes to make in relation to the application for a licence,
  - (b) consider the statement and documents furnished to the Agency and any observations made to the Agency by the planning authority or the Board following a request under *paragraph (a)* before giving notice of its proposed decision under *section 27*, and
  - (c) enter into consultations, as the Agency considers appropriate, with the planning authority or the Board in relation to any environmental impacts of the development comprising or for the purposes of the abstraction to which the application relates.
- (6) Where—
- (a) a planning authority or the Board gives notice to the Agency of an application for permission comprising or for the purposes of an abstraction that is the subject of an application for a licence under *section 21(1)*, and
  - (b) the application for permission is accompanied by an environmental impact assessment report or an environmental impact assessment report was sought by the planning authority or the Board in relation to the application,
- the Agency shall—
- (i) satisfy itself that the development or proposed development the subject of the application for permission is development comprising or for the purposes of an abstraction that is the subject of an application for a licence under *section 21(1)*,
  - (ii) forward to the planning authority or the Board, as the case may be, such observations as it has on the application for permission, including the environmental impact assessment report, and
  - (iii) enter into such consultations with the planning authority or the Board in relation to the environmental impacts of the proposed development as the Agency, the planning authority or the Board consider necessary to enable completion of the environmental impact assessment.
- (7) Where a planning authority or the Board, in relation to an application for permission comprising or for the purposes of an abstraction that is the subject of an application for a licence under *section 21(1)*, is obliged under the Act of 2000 to make a

determination whether an environmental impact assessment is required, the Agency shall, when requested by the planning authority or the Board, consult with or provide observations to that planning authority or the Board for the purpose of its deliberations in relation to the determination and the Agency shall accept the determination of the planning authority or the Board so made.

- (8) Where an application for a licence under *section 21(1)* is made to the Agency in respect of an abstraction that involves development or proposed development for which a grant of permission is not required and an EIAR is submitted to the Agency in accordance with *paragraph (a) or (b) of section 23(1)*, the Agency shall—
- (a) within 2 weeks after the date of receipt of the report, give notice to the planning authority in whose functional area the abstraction is or will be situate, that it has received an EIAR in respect of the application for a licence and request the planning authority, within 4 weeks after receipt of the notice, to furnish to the Agency any observations that the planning authority has in relation to the EIAR and the application for a licence,
  - (b) before giving notice of its proposed decision under *section 27*, consider any observations made to the Agency by the planning authority following a request under *paragraph (a)*, and
  - (c) enter into consultations, as the Agency considers appropriate, with the planning authority in relation to any environmental impacts of the development or proposed development comprising or for the purposes of the abstraction to which the application relates.

### **Submission of information for purposes of *Chapter 2***

26. (1) The Agency may give notice to an applicant for a licence under *section 21(1)* requiring him or her to submit, within the period specified in the notice, any further information that the Agency considers necessary—
- (a) to consider the application, or
  - (b) to enable the Agency to carry out an EIA.
- (2) Where information required by the Agency under *subsection (1)* or *section 23(6)* is not submitted by the applicant within the period specified, or any further period as may be specified by the Agency, the application for a licence shall be deemed to be withdrawn.

### **Grant or refusal of licence application under *section 21***

27. (1) Subject to *subsection (3)* and *section 28*, the Agency shall, within 8 weeks after receipt of an application for a licence under *section 21(1)*, or where additional information has been requested in relation to the application, within 8 weeks after the receipt of the additional information, give notice to the applicant and inform the public of—
- (a) its proposed decision to grant or refuse the licence,

- (b) the proposed conditions to be attached to the licence, if applicable, and
  - (c) the right to make observations, in writing, in relation to the matters referred to in *paragraphs (a) and (b)* to the Agency not later than 28 days after the date of the notice.
- (2) The Agency shall, within 8 weeks after the date for receipt of observations under *subsection (1)(c)* and having considered any such observations, decide to grant or refuse to grant the licence and the Agency shall give notice to the applicant and inform the public of—
- (a) its decision to grant or refuse to grant the licence, and
  - (b) the conditions attached to the licence, if applicable.
- (3) The Agency may extend the period of 8 weeks referred to in *subsection (1)* by such period as the Agency considers reasonable and necessary—
- (a) for the completion of consultation with the planning authority or the Board under *section 25*,
  - (b) to enable the Agency to comply with *section 25(4)(d)*,
  - (c) for the completion of consultations with a Member State or a transboundary state in accordance with regulations under *section 57*, or
  - (d) for the completion of consultation with Waterways Ireland under *section 84* or *85*.
- (4) Where the Agency extends the 8 week period referred to in *subsection (1)*, the Agency shall inform the applicant in writing of the main reasons justifying the extension and of the date when its decision can be expected.
- (5) A person who carries on an abstraction after an application for a licence which refers to the abstraction has been refused by the Agency under *subsection (2)*, or after an application has been withdrawn, shall be guilty of an offence.

#### **Decision where application was subject to EIA**

- 28.** (1) Where an application for a licence under *section 21* is subject to an EIA, the Agency, before making a decision under *section 27* to grant or refuse the licence, shall—
- (a) carry out an examination of—
    - (i) the information presented in the EIAR,
    - (ii) any supplementary information provided by the applicant,
    - (iii) any submissions or observations validly made in relation to the environmental effects of the abstraction in accordance with regulations under *section 57*, and
    - (iv) if applicable, observations or information provided by the planning authority or the Board under *section 25*,

- (b) take into account the views, if any, provided by any other Member State or a transboundary state following consultation in accordance with regulations under *section 57*, and
  - (c) reach a reasoned conclusion on the significant effects of the abstraction on the environment.
- (2) In the case of an application referred to in *subsection (1)*, the Agency's decision under *section 27(2)* shall include—
- (a) the reasoned conclusion on the significant effects of the abstraction on the environment, taking into account the results of the Agency's examination of the EIAR and where appropriate, its own supplementary examination,
  - (b) any conditions relating to the environment, attached to the licence, which shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment, including conditions regarding monitoring measures, parameters to be monitored and the duration of monitoring,
  - (c) a description of the features of the abstraction and measures, if any, envisaged to avoid, prevent, reduce or offset the significant adverse effects of the abstraction on the environment,
  - (d) the main reasons and considerations on which the decision is based, including—
    - (i) information on the public's participation in the decision-making process,
    - (ii) a summary of the results of the consultations and the information gathered from the EIAR, submissions or observations made by members of the public and the views, if any, furnished by other states pursuant to regulations under *section 57*, and
    - (iii) a description of how the results referred to in *subparagraph (ii)* have been incorporated or otherwise addressed by the Agency,and
  - (e) information on the judicial review procedures under *section 56* by which a person may seek to question the validity of the Agency's decision.
- (3) The Agency shall be satisfied that the reasoned conclusion referred to in *subsection (2)(a)* is still up to date when it makes its decision under *section 27(2)*.
- (4) The Agency may, if appropriate to avoid duplication of monitoring, identify existing monitoring measures to be used for the purpose of *subsection (2)(b)*.

## CHAPTER 3

*Licence application requiring retrospective EIA or screening for retrospective EIA***Application for licence requiring retrospective EIA or screening for retrospective EIA**

29. (1) A person referred to in *section 15(4)* shall—



- (a) make an application to the Agency for a licence within the period specified in that subsection, and
  - (b) publish notice of the application in the prescribed form.
- (2) The applicant shall provide the prescribed information in electronic form to the EIA portal prior to—
- (a) the making of an application under *subsection (1)*, where that application is accompanied by a retrospective EIAR, or
  - (b) the submission of a retrospective EIAR following a retrospective screening determination.
- (3) A retrospective EIA shall be carried out by the Agency in respect of an application for a licence under *subsection (1)(a)* where the abstraction is of a class specified in—
- (a) Part 1 or Part 2 of Schedule 5 to the Regulations of 2001 and the abstraction would equal or exceed any relevant quantity or area specified in that Part and an environmental impact assessment should have been carried out prior to, or after, the commencement of the abstraction, or
  - (b) Part 2 of Schedule 5 to the Regulations of 2001 but does not equal or exceed the relevant quantity or area specified in that Part such that a determination as to whether an environmental impact assessment was required should have been made prior to, or after, the commencement of the abstraction and the Agency determines that the abstraction has had or is likely to have significant effects on the environment.
- (4) The Agency shall, where appropriate, coordinate a retrospective EIA with any other assessment of the abstraction under the Regulations of 2011.

### **Exceptionality test**

- 30.** (1) An application for a licence that requires a retrospective EIA under *section 29(3)* shall not be granted unless the Agency is satisfied that exceptional circumstances exist such that it is appropriate to carry out a retrospective EIA.
- (2) The Agency may give notice to an applicant requiring him or her to submit, within the period specified in the notice, any information that the Agency considers necessary for the purposes of this section.
- (3) In considering whether exceptional circumstances exist under *subsection (1)*, the Agency shall have regard to the following matters:
- (a) whether carrying out a retrospective EIA would circumvent the purpose and objectives of the EIA Directive;
  - (b) whether the ability to carry out an EIA and the ability of the public to participate in that process has been substantially impaired;
  - (c) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the abstraction;

- (d) whether the abstraction is being or has been managed and operated in accordance with a previous authorisation, if applicable;
  - (e) whether the applicant has complied with previous licenses issued by the Agency under any enactment;
  - (f) such other matters as the Agency considers relevant.
- (4) Where the Agency is not satisfied that exceptional circumstances exist, the Agency shall not carry out a retrospective EIA and the application for a licence shall be refused under *section 35*.
- (5) Where information required by the Agency under *subsection (2)* is not submitted by the applicant within the period specified, or any further period as may be specified by the Agency, the application for a licence shall be deemed to be withdrawn.

### Retrospective EIAR

31. (1) Where an application for a licence is subject to a retrospective EIA under *section 29(3)*, the applicant shall submit, in electronic form, a retrospective EIAR to the Agency—
- (a) where the application is in respect of an abstraction specified in *section 29(3)(a)*, at the time of the application for a licence under *section 29(1)*, or
  - (b) where the application is in respect of an abstraction specified in *section 29(3)(b)*, within such period as may be specified by the Agency in a retrospective screening determination under *section 32*.
- (2) The applicant shall ensure that a retrospective EIAR—
- (a) is prepared by competent experts,
  - (b) subject to *subsection (3)*, contains the following:
    - (i) a statement of the significant effects, if any, on the environment, which have occurred or which are occurring or which can reasonably be expected to occur because of the abstraction;
    - (ii) details of—
      - (I) any appropriate remedial measures undertaken or proposed to be undertaken by the applicant to remedy any significant adverse effects on the environment, and
      - (II) the period within which any proposed remedial measures will be carried out by or on behalf of the applicant;
    - (iii) the information specified in *section 23(2)(b)*, subject to any necessary modifications,
- and

- (c) takes into account the available results of other relevant assessments carried out pursuant to European Union legislation or any enactment with a view to avoiding duplication of assessments.
- (3) *Subsections (3) to (6) of section 23* shall apply to a retrospective EIAR as they apply to an EIAR, subject to—
- (a) the modification that a reference in those subsections to an EIA shall be read as a reference to a retrospective EIA,
  - (b) the modification that a reference in those subsections to an EIAR shall be read as a reference to a retrospective EIAR, and
  - (c) any other necessary modifications.

### **Retrospective screening determination**

32. (1) Where the Agency receives an application for a licence for an abstraction of a class specified in *section 29(3)(b)* and that application does not include a retrospective EIAR, the Agency shall determine whether or not the abstraction has had or is likely to have significant effects on the environment (in this Part referred to as a “retrospective screening determination”).
- (2) *Subsections (2) to (7) of section 24* shall apply to an application for a licence referred to in *subsection (1)* and to a retrospective screening determination as they apply to a screening determination, subject to—
- (a) the modification that a reference in those subsections to a screening determination shall be read as a reference to a retrospective screening determination,
  - (b) the modification that a reference in those subsections to an EIAR shall be read as a reference to a retrospective EIAR,
  - (c) the modification that, in *section 24(5)(a)*, the words “the abstraction has had or is likely to have” shall be substituted for the words “the abstraction is likely to have”,
  - (d) the modification that, in *section 24(5)(b)*, the words “the abstraction has not had or is not likely to have” shall be substituted for the words “the abstraction is not likely to have”, and
  - (e) any other necessary modifications.

### **Consultation with planning authority**

33. Where an application for a licence under *section 29* is subject to a retrospective EIA, the Agency shall—
- (a) within 2 weeks after the date of receipt of a retrospective EIAR, give notice to the planning authority in whose functional area the abstraction is situate, that it has received a retrospective EIAR in respect of the application for a licence and

request the planning authority, within 4 weeks after receipt of the notice, to furnish to the Agency any observations that the planning authority has in relation to the retrospective EIAR and the application for a licence,

- (b) consider any observations made to the Agency by the planning authority following a request under *paragraph (a)* before giving notice of its proposed decision under *section 35*, and
- (c) enter into consultations, as the Agency considers appropriate, with the planning authority in relation to any environmental impacts of the abstraction.

### **Submission of information for purposes of Chapter 3**

34. *Section 26* shall apply to a retrospective EIA as it applies to an EIA, subject to the modification that the reference in that section to an EIA shall be read as a reference to a retrospective EIA and subject to any other necessary modifications.

### **Grant or refusal of licence application under section 29**

35. (1) Subject to *subsection (3)* and *section 28*, as modified by *section 36*, the Agency shall, within 8 weeks after receipt of an application for a licence under *section 29(1)*, or where additional information has been requested in relation to the application, within 8 weeks after the receipt of the additional information, give notice to the applicant and inform the public of—
- (a) its proposed decision to grant or refuse the licence,
  - (b) the proposed conditions to be attached to the licence, if applicable, and
  - (c) the right to make observations, in writing, in relation to the matters referred to in *paragraphs (a)* and *(b)* to the Agency not later than 28 days after the date of the notice.
- (2) The Agency shall, within 8 weeks after the date for receipt of observations under *subsection (1)(c)* and having considered any such observations, decide to grant or refuse to grant the licence and the Agency shall give notice to the applicant and inform the public of—
- (a) its decision to grant or refuse to grant the licence, and
  - (b) the conditions attached to the licence, if applicable.
- (3) The Agency may extend the period of 8 weeks referred to in *subsection (1)* by such period as the Agency considers reasonable and necessary—
- (a) for the completion of consultations with the planning authority under *section 33*,
  - (b) for the completion of consultations with a Member State or a transboundary state in accordance with regulations under *section 57*, or
  - (c) for the completion of consultation with Waterways Ireland under *section 84* or *85*.

- (4) Where the Agency extends the 8 week period referred to in *subsection (1)*, the Agency shall inform the applicant in writing of the main reasons justifying the extension and of the date when its decision can be expected.
- (5) A person who carries on an abstraction after an application for a licence which refers to the abstraction has been refused by the Agency under *subsection (2)*, or after an application has been withdrawn, shall be guilty of an offence.

#### **Decision where application was subject to a retrospective EIA**

36. (1) *Section 28* shall apply to a decision on an application for a licence under *section 35* as it applies to a decision on an application for a licence under *section 21*, subject to—
- (a) the following modifications:
    - (i) a reference to *section 27* shall be read as a reference to *section 35*;
    - (ii) a reference to an EIA shall be read as a reference to a retrospective EIA;
    - (iii) a reference to an EIAR shall be read as a reference to a retrospective EIAR,
    - and
  - (b) any other necessary modifications.

#### CHAPTER 4

#### *Combined application for a licence and EIA*

#### **Combined application for licence**

37. (1) A person referred to in *section 15(5)* shall make an application for a licence for—
- (a) an abstraction referred to in *section 15(4)* (in this Chapter referred to as an “existing abstraction”), and
  - (b) a revised abstraction,
- in one application (in this Part referred to as a “combined application for a licence”).
- (2) Where an applicant makes a combined application for a licence, he or she shall—
- (a) make an application to the Agency within the period specified in *section 15(5)*, and
  - (b) publish notice of the application in the prescribed form.
- (3) A combined application for a licence may be subject to—
- (a) a retrospective EIA by the Agency in respect of the existing abstraction, and
  - (b) an EIA by the Agency in respect of the revised abstraction, or where the revised abstraction involves development or proposed development, an EIA by the planning authority or the Board under the Act of 2000.

- (4) The applicant shall provide the prescribed information in electronic form to the EIA portal prior to—
- (a) the making of an application under *subsection (2)*, where that application is accompanied by a retrospective EIAR or an EIAR, or
  - (b) the submission of a retrospective EIAR or an EIAR following a determination by the Agency, the planning authority or the Board that the existing abstraction or the revised abstraction has had or is likely to have significant effects on the environment.
- (5) A retrospective EIA shall be carried out by the Agency in respect of an existing abstraction where the abstraction is of a class—
- (a) specified in Part 1 or Part 2 of Schedule 5 to the Regulations of 2001 and the abstraction would equal or exceed, as the case may be, any relevant quantity or area specified in that Part and an environmental impact assessment should have been carried out prior to, or after, the commencement of the abstraction, or
  - (b) specified in Part 2 of Schedule 5 to the Regulations of 2001 but does not equal or exceed, as the case may be, the relevant quantity or area specified in that Part such that a determination as to whether an environmental impact assessment was required should have been made prior to, or after, the commencement of the abstraction and the Agency determines that the abstraction has had or is likely to have significant effects on the environment.
- (6) An EIA shall be carried out by the Agency in respect of a revised abstraction where the abstraction, on its own or together with the existing abstraction, is of a class—
- (a) specified in Part 1 or Part 2 of Schedule 5 to the Regulations of 2001 and the abstraction would equal or exceed, as the case may be, any relevant quantity or area specified in that Part, or
  - (b) specified in Part 2 of Schedule 5 to the Regulations of 2001 but does not equal or exceed, as the case may be, the relevant quantity or area specified in that Part and the Agency, the planning authority or the Board determines that the abstraction is likely to have significant effects on the environment.

### **Coordination of EIA for combined application for licence**

- 38.** (1) Where a combined application for a licence under *section 37(1)* comprises a revised abstraction that involves development or proposed development that is or was the subject of an environmental impact assessment (within the meaning of the Act of 2000) by the planning authority or the Board under the Act of 2000, the EIA required to be carried out by the Agency under *section 37(6)* may be carried out by the Agency in part or in whole by way of the sharing of information and documentation relating to the effects of the abstraction or development on the environment with, consultation with, or the submission of observations to, that planning authority or the Board in accordance with *section 25*, as modified by *section 42*.

- (2) The Agency shall, where appropriate, coordinate the EIA or the retrospective EIA with any other assessment of the abstraction under the Regulations of 2011.

#### **Exceptionality test for combined application for licence**

39. (1) A combined application for a licence that requires a retrospective EIA under *section 37(5)* shall not be granted unless the Agency is satisfied that exceptional circumstances exist such that it is appropriate to carry out a retrospective EIA.
- (2) *Subsections (2) to (5) of section 30* shall apply to an application referred to in *subsection (1)* as they apply to an application referred to in *section 30(1)* subject to any necessary modifications.

#### **Retrospective EIAR and EIAR**

40. (1) Where an existing abstraction is subject to a retrospective EIA under *section 37(5)*, the applicant shall submit, in electronic form, a retrospective EIAR to the Agency—
- (a) where the application is in respect of an abstraction specified in *section 37(5)(a)*, at the time of the application for a licence under *section 37(1)*, or
  - (b) where the application is in respect of an abstraction specified in *section 37(5)(b)*, within such period as may be specified by the Agency in a retrospective screening determination under *section 41(1)*.
- (2) *Section 31(2)* shall apply to a retrospective EIAR required under this section, subject to any necessary modifications, and *subsections (3) to (6) of section 23* shall apply to a retrospective EIAR submitted under *subsection (1)* as they apply to an EIAR, subject to—
- (a) the modification that a reference in those subsections to an EIA shall be read as a reference to a retrospective EIA,
  - (b) the modification that a reference in those subsections to an EIAR shall be read as a reference to a retrospective EIAR, and
  - (c) any other necessary modifications.
- (3) Where a revised abstraction is subject to an EIA under *section 37(6)*, the applicant shall submit, in electronic form, an EIAR to the Agency—
- (a) where the application is in respect of an abstraction specified in *section 37(6)(a)*, at the time of the application for a licence under *section 37(1)*, or
  - (b) where the application is in respect of an abstraction specified in *section 37(6)(b)*, within such period as may be specified by the Agency in a screening determination under *section 41(3)*.
- (4) *Subsections (2) to (6) of section 23* shall apply to an EIAR submitted under *subsection (3)* subject to any necessary modifications.

**Screening determinations for combined application for licence**

41. (1) Where the Agency receives a combined application for a licence that comprises an existing abstraction of a class specified in *section 37(5)(b)* and that application does not include a retrospective EIAR, the Agency shall make a retrospective screening determination.
- (2) *Subsections (2) to (7) of section 24* shall apply to an application for a licence referred to in *subsection (1)* and to a retrospective screening determination under *subsection (1)* as they apply to a screening determination, subject to—
- (a) the modification that a reference in those subsections to a screening determination shall be read as a reference to a retrospective screening determination,
  - (b) the modification that a reference in those subsections to an EIAR shall be read as a reference to a retrospective EIAR,
  - (c) the modification that, in *section 24(5)(a)*, the words “the abstraction has had or is likely to have” shall be substituted for the words “the abstraction is likely to have”,
  - (d) the modification that, in *section 24(5)(b)*, the words “the abstraction has not had or is not likely to have” shall be substituted for the words “the abstraction is not likely to have”, and
  - (e) any other necessary modifications.
- (3) Where a revised abstraction on its own or together with the existing abstraction concerned is of a class specified in *section 37(6)(b)* and the combined application for a licence does not include an EIAR, the Agency shall, where the application does not involve development or proposed development for which a grant of permission is required, make a screening determination and where it determines that the abstraction is likely to have significant effects on the environment, the revised abstraction shall be subject to an EIA.
- (4) *Subsections (2) to (7) of section 24* shall apply to an application for a licence referred to in *subsection (3)* and to a screening determination under *subsection (3)* subject to any necessary modifications.

**Coordination of EIA with planning authority or Board for combined application for licence**

42. (1) *Section 25* shall apply to a combined application for a licence under *section 37(1)* that comprises a revised abstraction that involves development or proposed development as it applies to an application for a licence under *section 21(1)*, subject to—
- (a) the following modifications:
    - (i) a reference to *section 21(1)* shall be read as a reference to *section 37(1)*;
    - (ii) a reference to an abstraction shall be read as a reference to a revised abstraction;



- (iii) a reference to *section 27* shall be read as a reference to *section 44*;
  - (iv) a reference to *paragraph (a)* or *(b)* of *section 23(1)* shall be read as a reference to *paragraph (a)* or *(b)* of *section 40(3)*, as appropriate,
- and
- (b) any other necessary modifications.
- (2) Where *section 25* does not apply to a combined application for a licence, *section 33* shall apply to such an application as it applies to an application for a licence under *section 29*, subject to the modification that a reference to *section 35* shall be read as a reference to *section 44* and subject to any other necessary modifications.

#### **Submission of information for purposes of Chapter 4**

- 43.** (1) The Agency may give notice to the applicant for a licence under *section 37(1)* requiring him or her to submit, within the period specified in the notice, any further information that the Agency considers necessary—
- (a) to consider an application under *section 37(1)*, or
  - (b) to enable the Agency to carry out a retrospective EIA or an EIA, as the case may be.
- (2) Where information required by the Agency under *subsection (1)* or *section 23(6)*, as modified by *section 40*, is not submitted by the applicant within the period specified, or any further period as may be specified by the Agency, the combined application for a licence shall be deemed to be withdrawn.

#### **Grant or refusal of licence application under section 37**

- 44.** (1) Subject to *subsection (3)* and *section 28*, as modified by *section 45*, the Agency shall, within 8 weeks after receipt of an application for a licence under *section 37(1)*, or where additional information has been requested in relation to the application, within 8 weeks after the receipt of the additional information, give notice to the applicant and inform the public of—
- (a) its proposed decision to grant or refuse the licence,
  - (b) the proposed conditions to be attached to the licence, if applicable, and
  - (c) the right to make observations, in writing, in relation to the matters referred to in *paragraph (a)* and *(b)* to the Agency not later than 28 days after the date of the notice.
- (2) The Agency shall, within 8 weeks after the date for receipt of observations under *subsection (1)(c)* and having considered any such observations, decide to grant or refuse to grant the licence and the Agency shall give notice to the applicant and inform the public of—
- (a) its decision to grant or refuse to grant the licence, and

- (b) the conditions attached to the licence, if applicable.
- (3) The Agency may extend the period of 8 weeks referred to in *subsection (1)* by such period as the Agency considers reasonable and necessary—
  - (a) for the completion of consultation with the planning authority or the Board under *section 25*, as modified by *section 42*,
  - (b) to enable the Agency to comply with *section 25(4)(d)*, as modified by *section 42*,
  - (c) for the completion of consultations with a Member State or a transboundary state in accordance with regulations under *section 57*, or
  - (d) for the completion of consultation with Waterways Ireland under *section 84* or *85*.
- (4) Where the Agency extends the 8 week period referred to in *subsection (3)*, the Agency shall inform the applicant in writing of the main reasons justifying the extension and of the date when its decision can be expected.
- (5) A person who carries on an existing abstraction after a combined application for a licence which refers to the abstraction has been refused by the Agency under *subsection (2)*, or after an application has been withdrawn, shall be guilty of an offence.

#### **Decision where application was subject to EIA or retrospective EIA**

- 45.** *Section 28* shall apply to a decision on a combined application for a licence under *section 44* as it applies to a decision on an application for a licence under *section 21*, subject to—
- (a) the following modifications:
    - (i) a reference to *section 27* shall be read as a reference to *section 44*;
    - (ii) a reference to an EIA shall be read as a reference to an EIA or a retrospective EIA, as the case may be;
    - (iii) a reference to an EIAR shall be read as a reference to an EIAR or a retrospective EIAR, as the case may be,
  - and
  - (b) any other necessary modifications.

#### CHAPTER 5

#### *Obligations, joint licences, surrenders, transfers, reviews, revocations or suspensions*

#### **General provisions relating to licensee**

- 46.** (1) A licensee shall comply with the licence and any condition to which the licence is subject.

- (2) The Agency shall only grant a licence under this Part to a person who—
- (a) has not been convicted of an offence under this Act or any other enactment or rule of law relating to environmental objectives or other standards relating to protection of water quality in circumstances which are, in the opinion of the Agency, of such seriousness as to warrant a refusal to grant the licence,
  - (b) has not come to the attention of the Agency in respect of a breach of a licence under this Act or other licence or authorisation howsoever called granted by the Agency under another enactment where the breach is, in the opinion of the Agency, of such seriousness as to warrant a refusal to grant the licence,
  - (c) in the opinion of the Agency has, or any individual employed by the person to direct or control the carrying out of the abstraction has, the requisite technical knowledge or qualifications to carry out the abstraction in accordance with the licence and requirements of this Act, and
  - (d) in the opinion of the Agency, is likely to be in a position to meet the financial commitments or liabilities that the Agency reasonably considers have been or will be entered into or incurred in carrying out the abstraction to which the licence relates or will relate, in accordance with the conditions to which the licence is likely to be subject or in consequence of ceasing to carry out the abstraction.
- (3) *Subsection (2)* applies—
- (a) in a case where more than one person applies for a licence, to each of the persons who applies for the licence, and
  - (b) in a case where a person applies for a licence on behalf of persons who may include the first mentioned person, to the person who applies for the licence and each of the persons on behalf of whom the application is made.
- (4) Where in a case referred to in *paragraph (a)* or *(b)* of *subsection (3)*, each of the persons to whom any licence is granted shall be responsible jointly and severally for the licence and conditions to which it is subject.
- (5) In *subsection (2)*, where the person applying to be the licensee is a body corporate, the Agency shall only grant a licence to that body corporate where each of its directors, managers, secretary or other officers of the body corporate purporting to act in that capacity would, if an applicant, satisfy the Agency in relation to the requirements specified in *subsection (2)*.
- (6) A person who contravenes *subsection (1)* shall be guilty of an offence.

### **Application for joint licence**

47. (1) Where an abstraction and its associated impoundment are carried out and operated by different persons, an application under this Part for a licence may be made—
- (a) by the person carrying out the abstraction, on the person's own behalf and on behalf of the person operating the associated impoundment, or

- (b) jointly by both of those persons,
- and in the case of an application for a licence under *paragraph (a) or (b)*, (in this Act referred to as a “joint licence”), the person carrying out the abstraction and the person operating the associated impoundment shall, subject to *subsection (6)*, be responsible jointly and severally for any joint licence that may be granted and for compliance with any conditions to which it may be subject.
- (2) The Agency may require the applicant for a joint licence to furnish information and documents relating to any agreement providing for the abstraction and associated impoundment entered into between the person carrying out the abstraction and the person operating the associated impoundment.
- (3) The Agency may take account of the terms and conditions contained in an agreement referred to in *subsection (2)* when determining an application for a joint licence.
- (4) The Agency shall only grant a joint licence in respect of an application referred to in *subsection (1)* where the Agency is satisfied, taking the terms and conditions of any agreement referred to in *subsection (2)* into account, that—
- (a) the person operating the associated impoundment has agreed to the abstraction,
- (b) the person operating the associated impoundment is aware that any joint licence granted by the Agency will be subject to conditions, which will apply to the associated impoundment, and
- (c) there is agreement between the person carrying on the abstraction and the person operating the associated impoundment—
- (i) concerning the cesser of the abstraction, and
- (ii) to ensure that the cesser or amendment of the abstraction, including by operation of *section 49, 50, 51, 52 or 53* will not affect the continued operation of the associated impoundment concerned as an associated impoundment to which a joint licence (other than the joint licence the subject of the application under *subsection (1)*) applies.
- (5) Where, on an application for a joint licence, the associated impoundment is the subject of an existing licence or joint licence relating to a different abstraction, the Agency may only grant a joint licence on foot of the application where the Agency is satisfied that the grant of the joint licence—
- (a) will not give rise to any alteration to the impoundment concerned, including its operation, such as to cause the water body concerned to fail or be likely to fail to meet its environmental objectives, and
- (b) will not affect the continued operation of the associated impoundment concerned as an associated impoundment to which the existing licence or joint licence applies.
- (6) Notwithstanding *subsection (1)*, the Agency may, having considered an application for a joint licence, require on the grant of the licence that one only of the joint holders of the licence shall be responsible for the licence or for one or more than one condition

to which it is subject, where the Agency is satisfied that such requirement will not affect the need to protect environmental objectives and—

- (a) where one of the joint holders of the licence is a public authority, the requirement is necessary for the proper performance of the public authority's functions, or
  - (b) on the basis of the application, that compliance with the joint licence and the conditions to which it is subject will not be affected.
- (7) The obligations under this section in relation to an application for a joint licence shall operate in addition to and not in substitution for the obligations of an applicant or the Agency on an application for a licence under *section 21, 29 or 37*.
- (8) On an application referred to in *subsection (1)(b)*, the Agency where granting a joint licence, shall grant it to both of the persons who jointly applied for it.
- (9) In this section, a reference to an abstraction being carried out or an associated impoundment being operated includes as necessary a reference to an abstraction proposed to be carried out or an associated impoundment proposed to be operated.

#### **Owner of impoundment not identified**

48. (1) Notwithstanding *section 47*, where an application under this Part relates to an abstraction and its associated impoundment, but the identity, existence or whereabouts of the person who is the holder of a right, title or interest in the associated impoundment cannot be established by taking reasonable measures, the applicant shall furnish to the Agency such particulars as the Agency may specify concerning searches made by or on behalf of the applicant to establish that identity, existence or whereabouts.
- (2) The Agency may grant a licence to an applicant referred to in *subsection (1)* that is not a joint licence where the Agency is satisfied—
- (a) that all reasonable measures referred to in that subsection were taken to identify the holder of a right, title or interest in the associated impoundment, and
  - (b) the applicant has agreed to be liable under the licence for the operation of the associated impoundment and compliance with any conditions under the licence relating to the associated impoundment.
- (3) The licensee and holder of the right, title or interest in the associated impoundment shall comply with matters prescribed under *section 57* where the holder becomes known after the grant of the licence.

#### **Surrender of licence**

49. (1) A licensee who has ceased or who intends to cease carrying out an abstraction to which the licence relates may, subject to this section, surrender the licence.
- (2) A licensee who has ceased carrying out an abstraction shall immediately, on the occurrence of the cesser, give notice of it to the Agency.

- (3) The cesser of an abstraction to which a licence relates shall not affect the obligations of the licensee to comply with the requirements of the licence, any conditions to which the licence is subject or this Act.
- (4) The surrender of a licence shall not affect the obligations of the person who surrendered the licence to comply with any conditions to which the surrender of the licence is subject or this Act.
- (5) A licensee referred to in *subsection (1)* shall make an application to the Agency for a decision to accept a surrender of the licence, in such form and accompanied by such information, including but not limited to evidence of the cessation of the abstraction, as may be prescribed under *section 57*.
- (6) On receipt of an application under *subsection (5)*, the Agency may—
  - (a) inspect the site of the abstraction and, as appropriate, any abstraction still being carried out, and
  - (b) require the person who makes the application to submit to the Agency, within such period as the Agency may specify, such further information as the Agency may specify.
- (7) The Agency may give notice to a person who makes an application under *subsection (5)*, requiring the person to carry out, or have carried out, any monitoring, sampling or investigation, within the period and in the manner specified in the notice, as the Agency considers necessary for the purpose of considering the application.
- (8) Before the Agency makes a decision to accept the surrender of a licence on foot of an application under *subsection (5)*, it shall consult with such persons it considers appropriate and in accordance with such procedures as may be prescribed under *section 57*.
- (9) The Agency shall only make a decision on an application under *subsection (5)* to accept a surrender of the licence concerned where it is satisfied—
  - (a) that the carrying out of the abstraction has ceased,
  - (b) in the case of an application relating to a licence referred to in *section 48* or a joint licence—
    - (i) that the associated impoundment has ceased operating, or
    - (ii) that the cesser or proposed cesser of the abstraction will not affect the continued operation of the associated impoundment concerned as an associated impoundment to a different abstraction which is the subject of a joint licence (other than the joint licence the subject of the application under *subsection (5)*),and
  - (c) that acceptance of the surrender will not adversely affect the environmental objectives of the water body concerned.

- (10) The Agency shall give notice of its decision on an application under *subsection (5)* to the licensee who makes the application and shall give the main reasons for the decision.
- (11) The surrender of a licence under this section may be subject to such conditions as the Agency considers necessary.
- (12) Where the surrender of a licence under this section is subject to conditions—
  - (a) the conditions to which the surrender is subject shall be entered in the register by the Agency, and
  - (b) the licence may not be surrendered until the Agency gives notice to the licensee that the Agency is satisfied that the conditions have been complied with.
- (13) Subject to *subsections (3) and (4)*, where the decision on an application under *subsection (5)* is to accept a surrender of a licence, the licence shall be taken to be surrendered on the date of the giving of the notice under *subsection (10)* or, if applicable under, *subsection (12)(b)*.
- (14) Where the decision on an application under *subsection (5)* is to accept a surrender of the licence the Agency shall give notice of the decision to—
  - (a) the local authority in whose functional area the abstraction is being or has been carried out, and
  - (b) any person consulted by the Agency under *subsection (8)*.

### **Transfer of licence**

- 50.** (1) A licence may only be transferred from the licensee to another person in accordance with this section.
- (2) The licensee and the person to whom the licence is proposed to be transferred (in this section referred to as the “proposed transferee”) shall jointly make an application to the Agency requesting the Agency to transfer the licence.
  - (3) An application under *subsection (2)* shall be made in such form and include such information as may be prescribed under *section 57* and shall be accompanied by the licence concerned.
  - (4) The Agency may require the provision of such further information by the licensee or the proposed transferee as it considers appropriate for the purposes of considering an application under *subsection (2)*.
  - (5) The Agency may only make a decision on an application under *subsection (2)*, and any further information provided in respect thereof to effect the transfer of the licence where the Agency is satisfied—
    - (a) that the proposed transferee would if an applicant for a like licence in respect of the abstraction concerned, satisfy the requirements for the grant of a like licence under this Part, including in particular the requirements of *section 46*,

- (b) in the case of a joint licence—
    - (i) that the persons jointly and severally responsible for the licence under *section 47* have jointly made the application under *subsection (2)*, and
    - (ii) where the abstraction and its associated impoundment are, following the transfer, to be carried out and operated by different persons, as to the matters referred to in *section 47*,and
  - (c) as to such other matters as may be prescribed under *section 57*.
- (6) The Agency shall give notice of its decision on an application under *subsection (2)* to the persons who make the application and shall give the main reasons for the decision.
- (7) A person to whom a licence is transferred under this section shall be deemed to have assumed and accepted all liabilities, requirements and obligations provided for in or arising under the licence, regardless of how and in respect of what period, including a period prior to the transfer of the licence, that such liabilities, requirements and obligations may arise.
- (8) In this section, “like licence” does not require that the same number of persons hold a transferred licence as held the licence before the transfer.

#### **Review of conditions attached to licence on application by licensee**

- 51.** (1) The Agency may carry out a review of and, if appropriate, amend the conditions attached to a licence for an abstraction, other than an abstraction of a class referred to in *section 21(3)(a)*, on application to it in that behalf by the licensee where the application is made in such form and accompanied by such information as may be specified by the Agency.
- (2) A licensee who requires the Agency to carry out a review of the conditions attached to a licence for an abstraction of a class referred to in *section 21(3)(a)*, shall make an application, accompanied by an EIAR, under *section 21* for a new licence.
- (3) Where the application for a review under *subsection (1)* relates to a licence for an abstraction of a class referred to in *section 21(3)(b)*, the application for the review shall include—
- (a) a description, with particular reference to the conditions under review, of the nature and extent of the abstraction, its characteristics, its likely significant effects on the environment (including the information specified in Schedule 7A to the Regulations of 2001), and
  - (b) where relevant, information, with particular reference to those conditions, on how the available results of other relevant assessments of the effects on the environment carried out pursuant to any enactment or under European Union legislation (other than the EIA Directive) have been taken into account.



- (4) The Agency shall carry out a screening for EIA and make a screening determination in respect of an application referred to in *subsection (3)* within 8 weeks after receipt of the application, or where further information is required under *subsection (5)*, within 8 weeks after the receipt of that information, whichever occurs later.
- (5) For the purposes of a review or a screening determination under this section, the Agency may require the licensee who applies for the review to furnish to the Agency such further information, within such period, as the Agency may specify.
- (6) Where, on foot of the screening determination, the Agency decides that an amendment of any condition is likely to have significant effects on the environment, the Agency shall, as soon as practicable give notice to the licensee—
  - (a) of the decision to refuse the application under *subsection (1)*,
  - (b) of the main reasons for that decision with reference to the relevant criteria specified in Schedule 7 to the Regulations of 2001, and
  - (c) of the requirement, if the licensee wishes to amend the conditions attached to the licence, to make an application, accompanied by an EIAR, under *section 21* for a new licence.
- (7) The Agency may decide on an application under this section (other than in relation to an application where it has made a decision under *subsection (6)*)—
  - (a) to refuse the application,
  - (b) to review the conditions of the licence and—
    - (i) amend the conditions attached to the licence,
    - (ii) amend the conditions subject to modifications, or
    - (iii) refuse to amend the conditions.
- (8) In carrying out a review under this section, the Agency shall have regard to the matters referred to in *paragraphs (a) to (i) of section 20(2)* and the Agency shall not amend the conditions attached to the licence unless it is satisfied that the abstraction, carried out in accordance with such conditions as may be attached to the licence, will not—
  - (a) cause a deterioration in the status of the body of surface water concerned or the body of groundwater concerned, and
  - (b) compromise compliance with any standards and objectives established for a protected area, where applicable.
- (9) The Agency shall, as soon as practicable after making a decision under *subsection (7)*, give notice of the decision to the licensee together with the main reasons for the decision.

**Review by Agency of conditions attached to licence**

- 52.** (1) The Agency may not more frequently than once in every 3 year period after the date of the grant of a licence, carry out a review of the licence and the abstraction to which it relates and, if appropriate, amend the conditions attached to a licence where—
- (a) in the opinion of the Agency, the continued abstraction without review of the conditions of the licence is likely to cause deterioration in the status of the body of groundwater or body of surface water from which the abstraction is carried out,
  - (b) in the opinion of the Agency, the continued abstraction without review of the conditions of the licence is likely to cause the body of groundwater or body of surface water from which the abstraction is carried out to fail or be likely to fail to meet its environmental objectives,
  - (c) the Agency forms the view that a review is warranted because information or evidence relating to one or more of the conditions, not considered by the Agency when the licence was granted, comes before the Agency,
  - (d) the Agency forms the view that a review is warranted due to the requirements of this Act or any other enactment or rule of law regarding environmental objectives, or other standards relating to protection of water quality, or
  - (e) in accordance with the conditions of the licence, the holder of the licence informs the Agency of a material change to the abstraction or an increase in the daily rate.
- (2) Where the Agency proposes a review of conditions under *subsection (1)* it shall give notice to the licensee of the proposal which shall—
- (a) contain the main reasons for the proposal,
  - (b) in the case of a licence for an abstraction of a class referred to in *section 21(3)(a)*, inform the licensee of its opinion that the licensee is required to make an application, accompanied by an EIAR, under *section 21* for a new licence,
  - (c) in the case of a licence for an abstraction of a class referred to in *section 21(3)(b)*, request the licensee to provide—
    - (i) a description, with particular reference to the conditions the Agency proposes to review, of the nature and extent of the abstraction, its characteristics, its likely significant effects on the environment (including the information specified in Schedule 7A to the Regulations of 2001), and
    - (ii) where relevant, information with particular reference to those conditions, on how the available results of other relevant assessments of the effects on the environment carried out pursuant to any enactment or under European Union legislation (other than the EIA Directive) have been taken into account,
- and

- (d) request the licensee to provide observations in writing to the Agency on the proposal, and any other information which the Agency may request, within the period specified in the notice.
- (3) Where, having considered any observations and information provided under *subsection (2)(d)*, the Agency decides that the licensee referred to in *subsection (2)(b)* is required to make an application, accompanied by an EIAR under *section 21* for a new licence it shall, as soon as practicable, give notice to the licensee—
  - (a) giving the main reasons for the decision of the Agency and that it may be appealed under *section 55*, and
  - (b) of the requirement to make an application, accompanied by an EIAR, under *section 21* for a new licence within the period specified in the notice.
- (4) Having considered any observations and information provided under *subsection (2)(d)*, the Agency may carry out a review of the abstraction and, in relation to a proposal to review an abstraction referred to in *subsection (2)(c)*, the Agency shall carry out a screening for EIA and make a screening determination in respect of the review under this section within 8 weeks after receipt of the description and information referred to in *subsection (2)(c)*.
- (5) For the purposes of a screening determination under this section the Agency may require the licensee to furnish to the Agency such further information within such period as the Agency may specify.
- (6) Where, on foot of the screening determination the Agency decides that an amendment of any condition is likely to have significant effects on the environment, the Agency shall, as soon as practicable, give notice of the decision to the licensee—
  - (a) giving the main reasons for that decision with reference to the relevant criteria specified in Schedule 7 to the Regulations of 2001 and that it may be appealed under *section 55*, and
  - (b) of the requirement to make an application, accompanied by an EIAR, under *section 21* for a new licence within the period specified in the notice.
- (7) Other than in respect of a licence the subject of a decision of the Agency under *subsection (3)* or *(6)*, the Agency may decide—
  - (a) to amend the conditions attached to the licence, or
  - (b) not to amend the conditions attached to the licence.
- (8) In carrying out a review under this section, the Agency shall have regard to the matters referred to in *paragraphs (a) to (i)* of *section 20(2)* and the Agency shall not amend the conditions attached to the licence unless it is satisfied that the abstraction, carried out in accordance with such conditions as may be attached to the licence, will not—
  - (a) cause a deterioration in the status of the body of surface water concerned or the body of groundwater concerned, and

- (b) compromise compliance with any standards and objectives established for a protected area, where applicable.
- (9) The Agency shall, as soon as practicable after making a decision under *subsection (7)*, give notice of the decision to the licensee together with the main reasons for the decision and that the decision may be appealed under *section 55*.
- (10) A licensee who fails to comply with a notice under *subsection (3)* or *(6)* shall be guilty of an offence.

### **Revocation or suspension of licence**

- 53.** (1) The Agency may revoke a licence or suspend the operation of a licence if—
- (a) the licensee fails to comply with an order of the Circuit Court under *section 101*,
  - (b) it appears to the Agency that the licensee no longer satisfies the requirements specified in *section 46(2)* in circumstances which are, in the opinion of the Agency, of such seriousness as to warrant the revocation of the licence or the suspension of its operation,
  - (c) it appears to the Agency that the licensee has provided information to the Agency which is false or misleading in a material particular, in purported compliance with this Act or regulations under this Act in circumstances which are, in the opinion of the Agency, of such seriousness as to warrant the revocation of the licence or the suspension of its operation,
  - (d) the carrying out of the abstraction to which the licence relates has not been substantially commenced within 3 years after the date on which the licence was granted, or
  - (e) the abstraction to which the licence relates has ceased to be carried out and has not resumed within 3 years after that cessation in circumstances where the licensee has not made an application for its surrender under *section 49*.
- (2) Where the Agency proposes to revoke or suspend a licence under this section, it shall, in accordance with procedures prescribed under *section 57*, give notice to the licensee of its proposal and shall give the licensee an opportunity to make observations in writing to it in relation to the matter.
- (3) The Agency may give notice to any person it considers appropriate of a proposal to revoke or suspend a licence and may request information from the person in relation to the proposal to be provided to the Agency within the period specified in the notice.
- (4) The Agency may, having considered any observations made by the licensee and information provided by any person referred to in *subsection (3)*, decide to revoke or suspend the licence and shall give notice to the licensee of its decision, the main reasons for it, and that the decision may be appealed under *section 55*.
- (5) The Agency may attach conditions to the revocation or suspension of a licence and the person who was the licensee in the case of a revocation, or the licensee in the case of

a suspension, shall be liable to comply with the conditions notwithstanding that revocation or suspension.

- (6) An appeal under *section 55* against a decision of the Agency under this section shall operate to suspend the decision until an order of the High Court is made under *section 55(5)* unless—
- (a) the Agency applies to the High Court to have its decision stand pending the making of the order, and
  - (b) the High Court, where it considers it appropriate to do so in all the circumstances of the case, orders that the decision of the Agency, or such particular effects of the decision as the High Court may order, shall stand pending an order under *section 55(5)*.

### **Termination of suspension**

- 54.** (1) A licensee whose licence has been suspended under *section 53* may apply to the Agency, upon the compliance by the licensee with a condition attached under *section 53(5)*, or having otherwise remedied the reasons for the suspension and in accordance with regulations under *section 57*, to terminate the suspension.
- (2) The licensee who makes an application under *subsection (1)* shall furnish information, in such form as may be specified by the Agency, to satisfy the Agency that the suspension of the licence may be terminated.
- (3) The Agency may request the licensee concerned to furnish additional documents or information for the purpose of making a decision on an application under *subsection (1)*.
- (4) Where the Agency makes a request under *subsection (3)*, the application under *subsection (1)* shall not be considered until the licensee concerned complies with that request.
- (5) The Agency, having considered an application under *subsection (1)* and any information furnished under *subsection (2)* or *(3)*, may decide to—
- (a) terminate the suspension of the licence, or
  - (b) refuse to terminate the suspension of the license.
- (6) The Agency shall give notice to the licensee of its decision, the main reasons for it and, in the case of a decision under *subsection (5)(b)*, that the decision may be appealed under *section 55*.

### **Appeal to High Court against certain decisions of Agency**

- 55.** (1) The licensee may, within 8 weeks after the date of the notice under *subsection (3)*, *(6)* or *(9)* of *section 52*, *section 53(4)* or *54(6)*, in the case of a decision under *section 54(5)(b)*, appeal to the High Court against the decision.

- (2) The High Court may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, issue directions in respect of the conduct of the appeal.
- (3) The High Court shall dismiss an appeal which is vexatious, frivolous, an abuse of process or without substance of foundation.
- (4) The High Court may on the application of the licensee to whom a notice under *section 52(9)* has been given, extend the period for the making of an appeal under *subsection (1)* where satisfied that—
  - (a) there is good and sufficient reason for doing so, and
  - (b) the circumstances that resulted in the failure to bring the appeal within the period referred to in *subsection (1)* were outside the control of the licensee.
- (5) Following the consideration of an appeal under this section, the High Court may—
  - (a) confirm the decision of the Agency, or
  - (b) where on the hearing of the appeal, it decides that the Agency, in making its decision committed a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error—
    - (i) set aside the decision of the Agency,
    - (ii) set aside the decision of the Agency and replace it with such other decision as the Court considers just or appropriate to make, or
    - (iii) remit the decision for reconsideration by the Agency, subject to such directions as the Court considers appropriate.

## CHAPTER 6

*Miscellaneous provisions relating to licences***Judicial review**

- 56.** (1) Where a point of law arises on any matter with which the Agency is concerned under *section 27, 35, 44, 49, 50 or 51*, with which the Board is concerned under *section 67* or with which the Minister is concerned under *section 81*, the Agency, Board or the Minister may refer the point to the Court for decision.
- (2) A person shall not question the validity of any decision made or other act done by the Agency under *section 27, 35, 44, 49, 50 or 51* a decision made or Act done by the Board under *section 67* or a decision made or other act done by the Minister under *section 81* otherwise than by way of an application for judicial review under Order 84.
  - (3) The Agency, the Board or the Minister may, at any time after the bringing of an application for leave to apply for judicial review of any decision or other act to which *subsection (2)* applies and which relates to a matter for the time being before the Agency, the Board or the Minister, apply to the Court to stay the proceedings pending

the making of a decision by the Agency, the Board or the Minister in relation to the matter concerned.

- (4) On the making of such an application, the Court may, where it considers that the matter before the Agency, the Board or the Minister is within the jurisdiction of the Agency, the Board or the Minister, make an order staying the proceedings concerned on such terms as it thinks fit.
- (5) Subject to *subsection (6)*, an application for leave to apply for judicial review under Order 84 in respect of a decision or other act to which *subsection (2)* applies (in this section referred to as an “application for leave”) shall be made within the period of 8 weeks beginning on the date of the Agency giving notice of its decision under *section 27, 35, 44, 49, 50 or 51*, the Board giving notice of its decision under *section 67(3)* or the Minister making an order under *section 80(4)* or giving notice under *section 80(6)* or, as the case may be, the date of the doing of the act by the Agency, the Board or the Minister, as appropriate.
- (6) The Court may extend the period provided for in *subsection (5)* within which an application for leave may be made but shall only do so if it is satisfied that—
  - (a) there is good and sufficient reason for doing so, and
  - (b) the circumstances that resulted in the failure to make the application for leave within the period so provided were outside the control of the applicant for the extension.
- (7)
  - (a) An application for leave shall be made by motion *ex parte* and shall be grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave.
  - (b) The Court hearing the *ex parte* application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the respondent or another party, or for other good and sufficient reason, that the application for leave should be conducted on an *inter partes* basis and may adjourn the application on such terms as it may direct in order that a notice may be served on that person.
  - (c) If the Court directs that the leave hearing is to be conducted on an *inter partes* basis it shall be by motion on notice (grounded in the manner specified in Order 84 in respect of an *ex parte* motion for leave)—
    - (i) to the Agency, the Board or the Minister, as the case may be, and
    - (ii) to any other person specified for that purpose by order of the Court.
  - (d) The Court may—
    - (i) on the consent of all of the parties, or
    - (ii) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances,

treat the application for leave as if it were the hearing of the application for judicial review and may for that purpose adjourn the hearing on such terms as it may direct.

- (8) The Court shall not, on an application for leave, grant the leave unless it is satisfied that—
- (a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed, and
  - (b) the person applying for leave—
    - (i) has a sufficient interest in the matter which is the subject of the application, or
    - (ii) where the decision or act concerned relates to an abstraction identified in accordance with *Part 5* as an abstraction which may have significant effects on the environment—
      - (I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection,
      - (II) has, during the period of 12 months preceding the date of the application for leave, pursued those aims or objectives, and
      - (III) satisfies such requirements as may be prescribed under *section 57(2)(q)*.
- (9) A sufficient interest for the purposes of *subsection (8)(b)* is not limited to an interest in land or other financial interest.
- (10) If the Court, on an application for leave, grants the leave, no grounds shall be relied upon in the application for judicial review under Order 84 other than those determined by the Court to be substantial under *subsection (8)(a)*.
- (11) The Court may, as a condition for granting leave, require the applicant for such leave to give an undertaking as to damages.
- (12) The determination of the Court of an application for leave or of an application for judicial review on foot of such leave shall be final and no appeal shall lie from the decision of the Court to the Court of Appeal in either case save with leave of the Court which leave shall only be granted where the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.
- (13) *Subsection (12)* shall not apply to a determination of the Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.
- (14) If an application is made for judicial review under Order 84 in respect of part only of a decision or other act to which *subsection (2)* applies, the Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the



decision or other act, and if the Court does so, it may make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate.

- (15) The Court shall, in determining an application for leave or an application for judicial review on foot of such leave, act as expeditiously as possible consistent with the administration of justice.
- (16) On an appeal from a determination of the Court in accordance with *subsection (12)* in respect of an application for leave or an application for judicial review on foot of such leave, the Court of Appeal shall—
  - (a) have jurisdiction to determine only the point of law certified by the Court under *subsection (12)* (and to make only such order in the proceedings as follows from such determination), and
  - (b) in determining the appeal, act as expeditiously as possible consistent with the administration of justice.
- (17) Rules of court may make provision for the expeditious hearing of applications for leave and applications for judicial review on foot of such leave.
- (18) In this section—

“Court”, where used without qualification, means the High Court (but this definition shall not be construed as meaning that *subsections (8) to (11) and (14)* do not extend to and govern the exercise by the Court of Appeal of jurisdiction on any appeal that may be made);

“Order 84” means Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986).

### **Regulations relating to licences**

57. (1) The Minister may by regulations prescribe such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of this Part.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under this section may provide for any or all of the following:
    - (a) the form and manner in which an application for a licence, an application for the surrender of a licence, an application for the transfer of a licence, an application for the review of the conditions to which a licence is subject and an application to terminate a suspension of a licence, shall be made, including by electronic means;
    - (b) the form and manner of a notice of a review by the Agency under *section 52*, and any information to be provided by the licensee to the Agency for the purpose of the review;
    - (c) the form and manner in which notice is to be given under *section 18(2)*;
    - (d) any fees to be charged by the Agency in order to consider an application, or class of application, specified in *paragraph (a)*;

- (e) the information to be provided by an applicant in relation to an application specified in *paragraph (a)* and the form and manner in which that information is to be provided;
- (f) the information and particulars to be provided by an applicant to the Agency to enable it to form an opinion under *paragraph (c)* or *(d)* of *section 46(2)*;
- (g) the information and particulars, including reports and technical assessments relating to an EIA or retrospective EIA, to be provided by an applicant to the Agency;
- (h) the information to be provided by an applicant and the Agency to the EIA portal;
- (i) the period within which any information and particulars specified in *paragraph (b)*, *(e)*, *(f)*, *(g)* or *(h)* shall be provided;
- (j) procedures to be followed by the Agency where an applicant requests that technical, financial or commercial information provided in relation to an application specified in *paragraph (a)* is confidential;
- (k) procedures to be followed by applicants for a joint licence under *section 47*;
- (l) information and particulars to be provided by a licensee who holds a licence referred to in *section 48(2)* and procedures to be followed by the licensee, the holder of the right, title or interest in the associated impoundment and the Agency where the holder becomes known after the grant of the licence;
- (m) procedures to be followed by the Agency and licensee on a revocation or suspension of a licence under *section 53*, or termination of a suspension under *section 54*;
- (n) the publication of a notice or notices by an applicant in respect of an application specified in *paragraph (a)* within a specified period and the form, manner and information to be included in such a notice;
- (o) the making available of specified information and documents by the Agency to specified public bodies and members of the public, on the website of the Agency or otherwise, in relation to—
  - (i) an application specified in *paragraph (a)*,
  - (ii) a review under *section 52*,
  - (iii) the fact that an application is subject to an EIA or a retrospective EIA,
  - (iv) an EIAR or a retrospective EIAR,
  - (v) the main reports and advice issued to the Agency in relation to an EIA or a retrospective EIA,
  - (vi) the existence of exceptional circumstances under *section 30* or *39*,
  - (vii) a proposed decision and decision on an application specified in *paragraph (a)* including the main reasons for the decision,

- (viii) the times and places at which, and the means by which, information will be available, and
- (ix) the arrangements for public participation and consultation;
- (p) the procedures to be followed by the Agency in respect of an application specified in *paragraph (a)*, a review under *section 52*, an assessment under *section 19*, and in respect of the revocation or suspension of a licence, including the procedures for consultation with members of the public and such bodies as the Agency considers appropriate in relation to such application, any EIA or retrospective EIA, the Agency's consideration of exceptional circumstances under *section 30* or *39*, the Agency's proposed decision and decision under *section 27*, *35* or *44* and the timeframe for submissions or observations;
- (q) additional requirements which a body or organisation referred to in *section 56(8)(b)(ii)* shall satisfy in order to be granted leave under that section, being requirements of a general nature and for the purposes of transparency and accountability in the operation of such body or organisation including requirements—
  - (i) in relation to its membership,
  - (ii) that the pursuit of its aims or objectives be otherwise than for profit,
  - (iii) in relation to the possession of a specified legal personality and the possession of a constitution or rules, or
  - (iv) that the area of environmental protection to which its aims or objectives relate is relevant to the class of matter to which the decision of the Agency, the Board or the Minister, the subject of the application for leave to apply for judicial review, falls;
- (r) the extension of time limits;
- (s) such provisions as may be required for the purpose of giving effect to the EIA Directive and otherwise in relation to an EIA or retrospective EIA of an abstraction, including the issuing of an opinion by the Agency on the scope and level of detail of the information to be included in an EIAR or a retrospective EIAR, the procedures for carrying out an EIA and a retrospective EIA where both assessments are required in respect of a combined application for a licence and the carrying out of an EIA or a retrospective EIA by the Agency in circumstances where a screening determination or a retrospective screening determination has not been made;
- (t) the manner and form in which notice is to be given to the Agency under *section 19*;
- (u) the conditions that may be attached to a licence under *section 20*;
- (v) the fees which may be imposed on the licensee by the Agency to discharge the costs incurred by the Agency specified in *section 20(7)*;

- (w) notification to, the provision of information to, and consultations with a Member State or a transboundary state and members of the public in that state in respect of an application for a licence that is likely to have had or is likely to have significant effects on the environment of a Member State or a transboundary state;
  - (x) the timeframe for any notification, provision of information and consultation under *paragraph (w)* and the extension of time limits in respect of a decision on an application for a licence to facilitate such consultation;
  - (y) procedures for receipt of a notification from another Member State or a transboundary state regarding an abstraction, including notification to the Agency by the Minister and the notification and consultation procedures to be undertaken by the Agency, including the timeframe for such notification and consultation;
  - (z) such incidental, supplementary and consequential matters as appear to the Minister to be necessary or expedient for the purposes of giving effect to this Part.
- (3) A person who contravenes a provision of regulations under this section declared in the regulations to be a penal provision shall be guilty of an offence.

**Agency guidelines**

- 58.** (1) The Agency shall, as soon as may be, and following consultation with the Minister and such public authorities as the Agency considers appropriate, prepare and issue technical guidelines on the categories of abstraction that are likely to require a retrospective EIA or a retrospective screening determination under this Part, including the abstractions that are considered to be of a class specified in—
- (a) *subparagraph (ii) of section 15(4)(b)*,
  - (b) *paragraph (a) or (b) of section 29(3)*, and
  - (c) *paragraph (a) or (b) of section 37(5)*.
- (2) Before making guidelines under *subsection (1)*, the Agency shall have regard to the EIA Directive and may have regard to the Act of 2000 and the Regulations of 2001.
- (3) The Agency shall have regard to the EIA Directive and to the Regulations of 2001 in the preparation of guidelines under *subsection (1)*.
- (4) The Agency shall, as soon as practicable, publish on its website guidelines issued under *subsection (1)*.
- (5) The Agency shall, at such intervals as it considers appropriate, revise guidelines issued under *subsection (1)* and the provisions of this section shall apply to the preparation, issuing and publication of such revised guidelines as they apply to the guidelines first issued.

- (6) A failure on the part of any person to observe any provision of guidelines issued and published under this section shall not, of itself, render that person liable to any proceedings.

**Clerical or technical amendment of licence**

59. (1) The Agency may amend a licence for the purposes of—
- (a) correcting any clerical error therein,
  - (b) facilitating the doing of any thing pursuant to a condition attached to the licence where the doing of that thing may reasonably be regarded as having been contemplated by the terms of the condition or the terms of the licence taken as a whole but which was not expressly provided for in the condition, or
  - (c) otherwise facilitating the operation of the licence, where the making of the amendment does not result in the requirements of this Part ceasing to be satisfied.
- (2) The Agency shall, where appropriate, consult with the licensee before exercising the power under *subsection (1)*.
- (3) The Agency shall, as soon as may be after the exercise of the power under *subsection (1)*, notify particulars of the amendment effected by that exercise to the licensee and the planning authority or person consulted by the Agency in relation to the application for the licence.

## PART 6

## ABSTRACTION BY IRISH WATER

## CHAPTER 1

*Public abstraction by Irish Water***Definitions and provision relating to notices**

60. (1) In this Part—

“Act of 1845” means the Lands Clauses Consolidation Act 1845;

“Act of 2007” means the Water Services Act 2007;

“ancillary operations” means embanking, damming, dredging, deepening, widening, straightening, diverting, altering the level of or otherwise affecting a source of water or any river, lake, pond, or other water on or connected (directly or indirectly) with a public abstraction;

“EIA” has the same meaning as it has in *Chapter 1 of Part 5*;

“emergency abstraction” has the meaning given to it by *section 78(1)*;

“land” has the same meaning as it has in the Act of 2007;

“materially adversely affected” in relation to a right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water, means an actual material impediment to the use or enjoyment of that right, title or interest or actual material loss suffered and shall not include a trivial impediment or loss;

“objection” has the meaning given to it by *section 64(1)*;

“supply of public water” means all services related to the provision of water intended for human consumption, including the storage, treatment or distribution of surface water, groundwater or water supplied by a water services authority (within the meaning of the Act of 2007);

“temporary abstraction” has the meaning given to it by *section 74(1)*.

- (2) Failure by Irish Water to give a notice to every person, other than the Agency and Waterways Ireland, that is required under this Part, shall not in relation to the public abstraction, temporary abstraction or emergency abstraction to which the notice refers, of itself invalidate—
  - (a) the carrying out of the abstraction concerned,
  - (b) any consideration by the Board under *section 66*,
  - (c) any assessment by the Agency under *section 77*,
  - (d) the consideration by the Minister under *section 80*, or
  - (e) the hearing of an appeal by the District Court under *section 81*.
- (3) Where *subsection (2)* applies, a person referred to in that subsection may make an application to the District Court and the Court may—
  - (a) direct Irish Water to give a notice to that person, and
  - (b) make such other ancillary orders as the Court thinks reasonable.

### **Power to carry out public abstraction**

- 61.** (1) Subject to the requirements of this Act and any other enactment, Irish Water may carry out a public abstraction and undertake any ancillary operations as are necessary for the purpose of carrying out the public abstraction.
- (2) For the purpose of *subsection (1)*, Irish Water may—
  - (a) control and from time to time alter or otherwise affect the level of any river, lake, pond, or other water on or connected (directly or indirectly) with the public abstraction,
  - (b) control and from time to time divert or otherwise interfere with, the flow of water in any river, lake, pond or other water connected (directly or indirectly) with the public abstraction,
  - (c) carry out the public abstraction notwithstanding the right of any person to prevent or restrict the public abstraction,

- (d) restrict or otherwise interfere with any easement, way-leave, water right, fishing right or other right over or in respect of any water, and
- (e) carry out the public abstraction notwithstanding that Irish Water has not acquired the right, title or interest of any person in an easement, way-leave, water right, fishing right or other right over or in respect of the water in the source of water from which the public abstraction shall be carried out, or to the uninterrupted flow of water from that source of water into or through any watercourse, whether natural or artificial.

### **Notice of proposal to carry out public abstraction**

- 62.** (1) Irish Water shall, not less than 42 days before the date on which it proposes to commence carrying out a public abstraction, give notice of the proposal in accordance with this section.
- (2) A notice under *subsection (1)* shall be—
- (a) given to the owner and occupier of the land where the abstraction point or points at which Irish Water proposes to carry out the public abstraction is or are located,
  - (b) given to any person who, to the knowledge of Irish Water having made reasonable inquiry, has a right, title or interest in any easement, way-leave, water right, fishing right or other right over or in respect of the water to which the proposal to carry out a public abstraction relates,
  - (c) given to the Agency, and
  - (d) published in accordance with *section 63*.
- (3) A notice under *subsection (1)* shall—
- (a) state that Irish Water proposes to carry out a public abstraction,
  - (b) specify the date on which Irish Water proposes to commence carrying out the public abstraction,
  - (c) identify, by means of such particulars, maps, plans or drawings as Irish Water considers appropriate the source of water from which the public abstraction is proposed to be carried out and its location,
  - (d) identify, by means of such particulars, maps, plans or drawings as Irish Water considers appropriate the abstraction point or points at which the public abstraction is proposed to be carried out and its or their location,
  - (e) specify the proposed daily rate of the public abstraction and, if applicable, specify different daily rates proposed to be abstracted at different times during a 12 month period,
  - (f) where the water is to be abstracted from a source of water that is a lake, provide an estimate of the effect of the proposed public abstraction on the level of the lake,

- (g) where the water is to be abstracted from a source of water that is not a lake, provide an estimate of the effect of the proposed public abstraction—
  - (i) on the flow of water in a river or stream, or
  - (ii) on the level of groundwater,
- (h) where a canal forms part of the hydrological regime of the source of water, provide an estimate of the impact of the proposed public abstraction, if any, on the structural integrity of the canal,
- (i) identify any entry of the public abstraction in the register and confirm whether any application has been made under *Part 5* for a licence for the public abstraction,
- (j) where any ancillary operations associated with the carrying out of the public abstraction are subject to a grant of permission for development under Part III of the Act of 2000, or a requirement to apply for such permission under that Act, include information on where the grant of planning permission or the application for permission may be inspected,
- (k) state that any person who believes that his or her right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water would be materially adversely affected by the proposed public abstraction may make an objection to the proposal in accordance with this Part,
- (l) state that any person whose right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water has been materially adversely affected by the carrying out of the public abstraction may, in accordance with *section 69*, claim compensation from Irish Water in respect of any damage suffered in consequence of the public abstraction, and
- (m) contain such other information as may be prescribed by the Minister under *section 73*.

**Provision supplemental to *section 62***

- 63.** (1) Irish Water shall cause a notice under *section 62(1)* to be published on its website, in one national newspaper and in one local newspaper, if there is one, circulating in the area where the abstraction point or points at which the proposed public abstraction is proposed to be carried out.
- (2) Notwithstanding *section 62(3)*, a notice published in accordance with *subsection (1)* in a national or local newspaper is not required to contain the information referred to in *paragraphs (c) to (j)* of *section 62(3)* but shall give notice where the information concerned shall be made available, including by publication on the website of Irish Water.
- (3) A notice under *section 62(1)* shall specify the times and places at which, and the period (within 42 days after the date of the notice) during which a copy of the notice



and all the information referred to in *section 62(3)* may be inspected free of charge or purchased on payment of a fee prescribed under *section 73*.

- (4) Notwithstanding *section 6(1)(d)*, where, for the purpose of giving a notice under *section 62(2)(a)*, the owner or occupier of land cannot be ascertained by reasonable inquiry, Irish Water, as well as complying with *section 62(2)*, shall, on the same day as giving notice under *section 62*, erect on or near the land or affix to a structure on the land, for a period of not less than 42 days, the notice in a form that is weatherproof and visible from the public roadway.

### **Objection to proposal to carry out public abstraction**

- 64.** (1) A person who believes that his or her right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water would be materially adversely affected by a proposed public abstraction may, in accordance with this Part make an objection to the Board (in this Part referred to as an “objection”).
- (2) An objection shall be made within 42 days after the date of the giving of the notice in relation to the proposed public abstraction under *section 62(1)*.
- (3) An objection shall—
- (a) be in writing,
  - (b) give the name, address and contact information of the person making the objection,
  - (c) be in a form specified by the Board,
  - (d) identify the proposal to carry out a public abstraction to which the objection relates,
  - (e) provide information on the right, title or interest of the person making the objection in the easement, way-leave, water right, fishing right or other right over or in respect of water,
  - (f) provide information relating to the exercise by the person making the objection, of his or her right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water,
  - (g) provide information on the likely effect of the proposed carrying out of the public abstraction on the exercise by the person making the objection of his or her right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water,
  - (h) be accompanied by such other particulars, maps, plans or drawings as may be prescribed by the Minister for the purpose of identifying the right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water of the person making the objection, and
  - (i) be accompanied by the prescribed fee.

**No objection or objection withdrawn**

- 65.** (1) Irish Water may, subject to the requirements of this and any other enactment, carry out a public abstraction where, in relation to the proposal to carry out the public abstraction—
- (a) no objection is made to the Board within the period referred to in *section 64(2)*,
  - (b) an objection is made and the person who made the objection gives notice to the Board, at any time before the Board makes a decision under *section 67(3)* in relation to it, that he or she has withdrawn the objection, or
  - (c) an objection is made and is deemed to be withdrawn under *section 66(6)*.
- (2) The Board shall give notice to Irish Water, as soon as may be, following the occurrence of a matter referred to in *paragraph (a), (b) or (c) of subsection (1)*.
- (3) Irish Water may only commence carrying out a public abstraction under this Chapter where the Board has, in respect of the abstraction, given notice under *subsection (2)*.

**Consideration of objection by Board**

- 66.** (1) The Board shall, as soon as may be following receipt of an objection, give notice to Irish Water of the objection, furnish copies of it and the information referred to in *paragraphs (d) to (h) of section 64(3)* to Irish Water and shall require Irish Water to provide its observations on the objection to the Board for its consideration within the period specified in the notice.
- (2) Irish Water may, not later than the period specified in the notice under *subsection (1)*, prepare and submit to the Board a report setting out the views of Irish Water in relation to the objection, having regard in particular to—
- (a) any application for a licence under *Part 5* or licence granted under that Part for the public abstraction concerned,
  - (b) any application for permission for development, or grant of that permission, under the Act of 2000, required for the carrying out of the public abstraction or its ancillary operations, and
  - (c) the requirement for the abstraction for the purpose of the performance by Irish Water of its functions.
- (3) The Board may, before making a decision under *section 67(3)*, require the person who made the objection to submit, within such period as the Board may specify, such further information as the Board may specify.
- (4) The Board may, before making a decision under *section 67(3)*, invite—
- (a) the Agency,
  - (b) the planning authority to whom an application for permission referred to in *subsection (2)(b)* has been made or by whom such a permission has been granted, and

- (c) any other person or body as the Board considers necessary to assist it in making the decision,
- to make submissions or observations in relation to the objection within such period as the Board may specify.
- (5) The Board may, at any time after the expiration of the period within which submissions or observations may be made under *subsection (4)*, make a decision under *section 67* in relation to the objection.
- (6) Where the person who made the objection fails or refuses to comply with *subsection (3)*, the objection concerned is deemed to have been withdrawn.
- (7) For the avoidance of doubt and notwithstanding any other enactment, the Board is not required to carry out a screening for environmental impact assessment (within the meaning of the Act of 2000) or an environmental impact assessment (within the meaning of the Act of 2000) of a public abstraction for the purposes of considering an objection.

**Decision by Board in respect of objection**

67. (1) When making a decision in respect of an objection the Board may consider any information before it that it considers relevant to the proposal to carry out the public abstraction.
- (2) Without prejudice to the generality of *subsection (1)*, the Board shall, in making its decision, have regard to—
- (a) the objection,
  - (b) a report under *section 66(2)*, information submitted under *section 66(3)* or submissions or observations submitted under *section 66(4)*,
  - (c) the likely effects of the proposed carrying out of the public abstraction on the exercise by the person making the objection of their right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water,
  - (d) the requirement to carry out the proposed public abstraction for the proper performance by Irish Water of its functions,
  - (e) the water services policy statement prepared and published under section 32A of the Water Services (No. 2) Act 2013, and
  - (f) the water services strategic plan prepared and published under section 33 of the Water Services (No. 2) Act 2013.
- (3) The Board may make a decision—
- (a) to reject the objection, or
  - (b) to accede to the objection.

- (4) In the case of a decision referred to in *subsection (3)(a)*, Irish Water may, subject to this Act and any other enactment, proceed to carry out the public abstraction referred to in the notice under *section 62*.
- (5) In the case of a decision referred to in *subsection (3)(b)*, Irish Water shall not proceed to carry out the public abstraction referred to in the notice under *section 62* notwithstanding that—
  - (a) a licence was granted to Irish Water under *Part 5* for that public abstraction, or
  - (b) a permission for development was granted under the Act of 2000, in respect of development required for the carrying out of the public abstraction or its ancillary operations.

**Provision supplemental to *section 67***

- 68.** (1) The Board shall give notice of a decision under *section 67(3)* to—
- (a) the person who made the objection,
  - (b) Irish Water, and
  - (c) the Agency, planning authority, or other person or body referred to in *section 66(4)(c)*, who made a submission or objection under *section 66(4)*.
- (2) The notice referred to in *subsection (1)* shall—
- (a) state the main reasons and considerations on which the decision under *section 67(3)* is based,
  - (b) state that a person may, in accordance with *section 56* question the validity of the decision of the Board by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts,
  - (c) specify the sum due to be paid to the Board by Irish Water for the purpose of contributing to the reasonable costs of the Board in performing its functions under this Chapter,
  - (d) specify the sum due to be paid to the Agency or a planning authority by Irish Water for the purpose of contributing to the reasonable costs of the Agency or the planning authority in making submissions or observations under *section 66(4)*.
- (3) Irish Water shall be liable to pay to the Board, Agency or planning authority any sum specified by the Board under *paragraph (c)* or *(d)* of *subsection (2)*.
- (4) Subject to *subsections (5) to (7)*, it shall be the objective of the Board to ensure that a decision is made by the Board under *section 67(3)*—
- (a) within the period of 18 weeks beginning on the last day for submitting further information in accordance with *section 66(3)*, or
  - (b) within such other period as the Minister may prescribe, either generally or in respect of a particular class or classes of matter, where it appears to the Minister to be necessary, by virtue of exceptional circumstances relating to the need to

balance administrative efficiency and efficacy of procedures relating to objections with the need for the Board to have all necessary information in order to perform its functions under this Chapter.

- (5) Where the Board forms a view that it would not be possible or appropriate, because of the particular circumstances of the objection with which the Board is concerned, to make its decision within the period referred to in *paragraph (a) or (b) of subsection (4)*, the Board shall give notice to Irish Water and to the person who made the objection before the expiration of that period informing them of the Board's view and the notice shall specify the date before which the Board intends to make that decision.
- (6) Where a notice has been given under *subsection (5)*, the Board shall take all reasonable steps to ensure that a decision is made under *section 67(3)* before the date specified in the notice.
- (7) The Board shall include in each report made under section 118 of the Act of 2000 a statement of the number of decisions made by the Board under *section 67(3)*, the period within which the decision was made, and such other information as to the time taken to make the decision as the Minister may direct.

#### **Claim for compensation**

69. (1) Any person whose right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water has been materially adversely affected by the carrying out of a public abstraction may claim compensation from Irish Water for damage suffered by the person in consequence of that public abstraction.
- (2) Subject to *subsection (3)*, a claim under *subsection (1)* shall be made within 52 weeks from the date of the commencement of the carrying out of the public abstraction.
- (3) The High Court may, on the application of a person referred to in *subsection (1)*, extend the period referred to in *subsection (2)* for the making of a claim under *subsection (1)* where the Court is satisfied that—
  - (a) there is good and sufficient reason for so doing, and
  - (b) the circumstances that resulted in the failure to bring the claim under *subsection (1)* within the period referred to in *subsection (2)* were outside the control of the person.

#### **Determination of claim for compensation**

70. (1) Sections 68 to 79 of the Act of 1845 shall apply and have effect for the purposes of the determination of a claim for compensation under *section 69*, including a claim for injurious affection, and for the purposes of such application Irish Water shall be deemed to be the promoter of the undertaking and this Chapter shall be deemed to be the special Act.
- (2) A claim for compensation under *section 69*, including a claim for injurious affection, shall, in default of agreement, be determined by arbitration under the Acquisition of

Land (Assessment of Compensation) Act 1919 and for this purpose Irish Water shall be deemed to be a public authority under that Act.

- (3) Notwithstanding any provision of the Act of 1845, for the purposes of the determination of a claim for compensation under *section 69*—
  - (a) any question of disputed compensation under the Act of 1845 shall be determined in accordance with *subsection (2)*, and
  - (b) compensation under section 68 of the Act of 1845 shall be available in respect of the carrying out of a public abstraction.
- (4) Without prejudice to the generality of *subsection (3)*, in an arbitration held under and by virtue of *subsection (2)*—
  - (a) the arbitrator shall refuse to award compensation unless he or she is satisfied that the right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water in relation to which the claim is made has been, or will be, materially adversely affected by the carrying out of the public abstraction concerned,
  - (b) the arbitrator shall have jurisdiction to determine the amount of compensation payable and may make a nil award,
  - (c) the arbitrator shall deduct from an award of compensation the amount equivalent to the value of the benefit conferred, by the carrying out of the public abstraction, on the person claiming compensation,
  - (d) where the arbitrator determines that compensation is payable, he or she may also determine—
    - (i) the time or times at which it shall be paid, and
    - (ii) any interest to be paid on the amount of outstanding or unpaid compensation,
  - (e) the arbitrator shall have regard to any undertaking given by Irish Water to the person claiming compensation to provide an alternative or additional water supply, and
  - (f) where applicable, the arbitrator shall have regard to any compensation awarded under the provisions specified in *paragraphs (a) to (d) of section 72* to the person claiming compensation.

### **Recovery of compensation**

71. (1) So much of section 69 to 83 of the Act of 1845 as is appropriate shall apply to compensation referred to in *section 70* as if such compensation were purchase money or compensation under that Act of 1845, with any modifications that may be prescribed and any other necessary modifications.
- (2) Where money is paid into court by Irish Water under section 69 of the Act of 1845, as applied by this section, no costs shall be payable by Irish Water to any person in

respect of any proceedings for the investment, payment of income, or payment of capital of that money.

- (3) All costs and expenses of parties to an arbitration to determine the amount of any compensation shall, in so far as the costs and expenses are payable by Irish Water, be recoverable from Irish Water as a simple contract debt in any court of competent jurisdiction.

### **Double compensation**

**72.** A person who has been compensated by Irish Water under and in accordance with any of—

- (a) this Chapter or *Chapter 2*,
- (b) Part 7 or section 97 of the Act of 2007,
- (c) section 11 of the Local Government (Sanitary Services) Act 1964, or
- (d) sections 14 to 16 of the Act of 1942,

whether by agreement or otherwise, and who retains a right, title or interest in any easement, way-leave, water right, fishing right or other right over or in respect of water in relation to which a claim for compensation under *section 69* or *82* is made, may make a claim under *section 69* or *82* only in relation to damage suffered by the person in consequence of the public abstraction for which the person was not otherwise compensated under any of the provisions specified in *paragraphs (a) to (d)*.

### **Regulations relating to public abstraction**

**73.** (1) The Minister may, for the purposes of this Part, prescribe—

- (a) information, other than that specified in *section 62, 75* or *79*, required to be provided by Irish Water in a notice under those sections,
- (b) information, other than that specified in *section 80*, required to be provided by Irish Water in an application under that section,
- (c) fees that may be charged by Irish Water under *section 63* for providing a copy of a proposal under that section,
- (d) fees that may be charged by the Board under *section 64* for considering an objection,
- (e) procedures for the consideration and consolidation by the Board of 2 or more objections together,
- (f) modifications for the purpose of *section 71(1)* or *82(4)*, and
- (g) the information to be provided to Irish Water by a person making a claim for compensation, including evidence of his or her claim, and information as to his or her right, title or interest in the easement, way-leave, water right, fishing right or other right over or in respect of water to which the claim relates.

- (2) A person who contravenes a provision of regulations made under this section declared in the regulations to be a penal provision shall be guilty of an offence.

## CHAPTER 2

*Temporary Abstraction by Irish Water***Temporary abstraction**

74. (1) Subject to the requirements of this Act and any other enactment, Irish Water may take immediate action to carry out a public abstraction on a temporary basis in order to maintain a supply of public water, where it forms the view that there is an immediate and serious risk to the supply of public water or to human health directly or indirectly resulting from—
- (a) prolonged drought,
  - (b) another severe weather event or a combination of severe weather events, or
  - (c) damage to any water services infrastructure required for the supply of public water,
- (in this Part referred to as a “temporary abstraction”).
- (2) For the purposes of *subsection (1)*, Irish Water may enter on land and carry out a temporary abstraction and any operations required to carry out the abstraction, including but not limited to the sinking or re-opening of boreholes or abstraction points, replacement or repair of water services infrastructure or installation of temporary water services infrastructure, as are necessary to secure the supply of public water.
- (3) For the purposes of *subsection (1)*, *section 61(2)* shall apply to a temporary abstraction as it applies to a public abstraction.

**Notice of proposal to carry out a temporary abstraction**

75. (1) Where Irish Water proposes to carry out a temporary abstraction it shall, as soon as may be, give notice of the proposal to—
- (a) the Agency,
  - (b) the owner and occupier of the land referred to in *section 74(2)*,
  - (c) any person who, to the knowledge of Irish Water having made reasonable enquiry, has a right, title or interest in any easement, way-leave, water right, fishing right or other right over or in respect of the water to which the proposal to carry out the abstraction relates, and
  - (d) Waterways Ireland, in the case of an abstraction from a canal or navigable water.
- (2) Where it is not practical to give notice to the persons referred to in *subsection (1)* of the proposal to carry out the temporary abstraction, Irish Water shall give notice to those persons within 48 hours after the commencement of the abstraction.



- (3) A notice under *subsection (1)* shall include the following information—
- (a) the matter referred to in *paragraph (a), (b) or (c) of section 74(1)* which gives rise to the need to carry out the temporary abstraction,
  - (b) the date or intended date of the commencement of the abstraction,
  - (c) the expected duration of the abstraction and the date of intended cessation of the abstraction,
  - (d) the daily rate proposed to be abstracted,
  - (e) the source of water, identified by means of such particulars, maps, plans or drawings as Irish Water considers appropriate, from which the abstraction is proposed to be carried out and its location,
  - (f) the abstraction point or points, identified by means of such particulars, maps, plans or drawings as Irish Water considers appropriate, at which the abstraction is proposed to be carried out,
  - (g) such other information as may be prescribed by the Minister under *section 73*,
  - (h) in respect of a notice to the persons specified in *paragraphs (b) to (d) of subsection (1)*, that the person may, under *section 81*, appeal the proposal to carry out, or the carrying out of, the abstraction, and
  - (i) in respect of a notice to the Agency, where the proposed abstraction is an abstraction of a class specified in *section 77(1)(b)*, the information referred to in *section 24(2)*.
- (4) Irish Water shall publish a notice containing the information in *paragraphs (a) to (g) of subsection (3)* on its website within 48 hours after the commencement of the temporary abstraction.
- (5) The Agency may give notice to Irish Water requiring it to submit, within the period specified in the notice, any further information in relation to the temporary abstraction that the Agency may reasonably require.

### **Temporary nature of abstraction**

76. (1) A temporary abstraction under *section 74* may be carried out for a period of not more than 8 weeks.
- (2) The period referred to in *subsection (1)* may be extended, once and once only, by a period of not more than 8 weeks upon notice by Irish Water to the persons who were given notice under *section 75(1)* and with the agreement of those persons.
- (3) Where the persons specified in *subsection (2)* do not agree to the extension of the temporary abstraction, Irish Water may apply to the District Court for an order to extend, by no more than 8 weeks, the period of the temporary abstraction.

**Requirement for licence for temporary abstraction**

77. (1) Irish Water shall not—

- (a) commence a temporary abstraction that meets or exceeds the licensing threshold until a licence has been granted for that abstraction,
- (b) commence a temporary abstraction that is of a class specified in Part 2 of Schedule 5 to the Regulations of 2001 but does not equal or exceed, as the case may be, the relevant quantity or area specified in that Part, until the Agency gives notice under *subsection (8) or (12) of section 19* that an EIA is not required or that the abstraction is not likely to have significant effects on the environment, or
- (c) carry out, or continue to carry out, a temporary abstraction, where the Agency gives notice under *subsection (8) or (12) of section 19* that the abstraction requires a licence, until a licence has been granted for that abstraction.

(2) The Agency—

- (a) shall assess a temporary abstraction referred to in *subsection (1)(b) under section 19(2)*, and
- (b) may assess a temporary abstraction not otherwise referred to in *paragraph (a) or (b) of subsection (1) under section 19(2)*.

(3) The Agency shall give such priority to an assessment of a temporary abstraction under *section 19(2)* as is necessary in the circumstances.

**Emergency abstraction**

78. (1) Where Irish Water is of the opinion that the nature or extent of the immediate and serious risk to the supply of public water or to human health referred to in *paragraph (a), (b) or (c) of section 74(1)* gives rise to a civil emergency, in accordance with Article 1(3) of the EIA Directive, and that the application of *Part 5* to the temporary abstraction, including the requirement to apply for a licence or the carrying out of an EIA, would have an adverse effect on the response to the civil emergency (in this Part referred to as an “emergency abstraction”), Irish Water may take immediate action to carry out that abstraction.

(2) For the purposes of *subsection (1)*—

- (a) Irish Water may enter on land and undertake any of the operations specified in *section 74(2)*, and
- (b) *section 61(2)* shall apply to an emergency abstraction as it applies to a public abstraction.

**Notice of emergency abstraction**

79. (1) Subject to *section 80*, where Irish Water proposes to carry out an emergency abstraction, it shall no later than—

- (a) 24 hours prior to the commencement of the abstraction give notice of the proposal to the Agency, and
  - (b) 48 hours after the commencement of the abstraction, give notice of the abstraction to the persons specified in *paragraphs (b) to (d) of section 75(1)*, as appropriate.
- (2) A notice under *subsection (1)* shall include the following information—
- (a) the matter referred to in *paragraph (a), (b) or (c) of section 74(1)* which gives rise to the need to carry out the abstraction,
  - (b) the nature of the civil emergency and the risks to the supply of public water or to human health which gives rise to the need to carry out the emergency abstraction, and
  - (c) the information referred to in each of *paragraphs (b) to (g) of section 75(3)*.
- (3) Irish Water shall publish a notice containing the information referred to in *paragraphs (a) to (c) of subsection (2)* on its website within 48 hours after the commencement of the emergency abstraction.
- (4) The Agency may give notice to Irish Water requiring it to submit, within the period specified in the notice, any further information in relation to the emergency abstraction that the Agency may reasonably require.

#### **Application for exemption**

- 80.** (1) Where Irish Water proposes to carry out an emergency abstraction, it shall apply to the Minister for an exemption from the requirements of all or any provision of *Part 5*.
- (2) An application under *subsection (1)* shall—
- (a) be made no later than 24 hours after the commencement of the emergency abstraction,
  - (b) be in such form as may be specified by the Minister,
  - (c) include the information specified in *section 79(2)*,
  - (d) state the main reasons for the opinion of Irish Water that an emergency abstraction is required and the requirement for the abstraction in response to the civil emergency,
  - (e) contain information on how the application of *Part 5* would have an adverse effect on the response to the civil emergency,
  - (f) for the purposes of *subsection (6)* only, provide contact information for the persons specified in *paragraphs (b) to (d) of section 75(1)*,
  - (g) be accompanied by such documents and information as may be relevant to the opinion of Irish Water, and

- (h) contain such other information as may be prescribed by the Minister under *section 73*.
- (3) The Minister shall immediately consider the application under *subsection (1)* and, in any case, no later than 7 days after the receipt of that application, shall—
  - (a) make an order under *subsection (4)*, or
  - (b) give notice under *subsection (6)*.
- (4) The Minister may, on an application being made to him or her under *subsection (1)*, make an order exempting the emergency abstraction from the requirements of all or any provision of *Part 5* where he or she considers that—
  - (a) there is a civil emergency justifying the exemption,
  - (b) the sole purpose of the abstraction is the response to that civil emergency, and
  - (c) the carrying out of an EIA would have an adverse effect on the response to the civil emergency, in which case the order shall exempt the abstraction from the requirement to carry out an EIA.
- (5) Before making an order under *subsection (4)*, the Minister shall consult with any Minister of the Government as he or she considers appropriate and the Agency.
- (6) The Minister shall give notice to Irish Water, the Agency and the persons specified in *paragraphs (b) to (d) of section 75(1)*, as appropriate, where he or she decides not to make an order under *subsection (4)*.
- (7) An order under *subsection (4)* shall—
  - (a) refer to the nature of the civil emergency that poses an immediate and serious risk to the supply of public water or to human health,
  - (b) state the main reasons for the opinion of the Minister that a civil emergency has arisen and the requirement for the emergency abstraction in response to that emergency,
  - (c) provide that the emergency abstraction shall be exempt from the requirements of *Part 5*, or any provision of *Part 5*, as determined by the Minister,
  - (d) specify the duration of the emergency abstraction, which shall not be more than 8 weeks,
  - (e) specify the location, nature, and maximum daily rate of the temporary abstraction, and
  - (f) specify any other requirement or condition which the Minister considers necessary, including reporting requirements and conditions consistent with the environmental objectives of the water body concerned.
- (8) The period of 8 weeks specified in *subsection (7)(d)* may be extended once and once only by order under *subsection (4)* for a further period of not more than 8 weeks.

- (9) Irish Water shall be guilty of an offence if it contravenes a provision of an order made under this section that is declared in the order to be a penal provision.

### **Appeal to District Court against notice of temporary abstraction**

- 81.** (1) A person to whom a notice is given under *section 75(1)* may within 14 days after the date of the giving of the notice, appeal against the proposed temporary abstraction or the temporary abstraction the subject of the notice to the District Court on any one or more of the following grounds:
- (a) in the case of a person referred to in *section 75(1)(b)*—
    - (i) that the person is not the owner or occupier of the land,
    - (ii) that the entry on to land and carrying out of the abstraction would cause or is causing unreasonable expense or unreasonable interference with the person's use or enjoyment of the land,
    - (iii) the proposed carrying out or carrying out of the abstraction would cause or is causing the person's right, title or interest in any easement, way-leave, fishing right or other right over or in respect of water to be materially adversely affected, or
    - (iv) insufficient time was given to the person to enable him or her to reasonably facilitate the proposed carrying out or carrying out of the temporary abstraction;
  - (b) in the case of a person referred to in *section 75(1)(c)*, that the proposed carrying out or carrying out of the abstraction would cause or is causing the person's right, title or interest in any easement, way-leave, fishing right or other right over or in respect of water to be materially adversely affected;
  - (c) in the case of Waterways Ireland, that the carrying out of the abstraction from a canal or navigable water would interfere or is interfering with navigation on the canal or navigable water;
  - (d) the proposed duration of the abstraction or the proposed abstraction is a disproportionate response to the matter referred to in *paragraph (a), (b) or (c)* of *section 74(1)* which gives rise to the need to carry out the temporary abstraction;
  - (e) reasonable alternative solutions are available to Irish Water to secure and maintain a supply of public water.
- (2) Notice of an appeal under this section shall be given to Irish Water and Irish Water shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.
- (3) An appeal against a notice given under *section 75(1)* shall not operate to suspend the operation of the notice unless—
- (a) the appellant, in addition to making an appeal under this section, also applies to the District Court to have the operation of the notice suspended until such time as the appeal is determined, and

- (b) the District Court, where it considers it appropriate to do so having regard to all the circumstances of the case, orders that the operation of the notice, or such particular effects of the notice as the Court may order, are suspended until the appeal is determined, or until such other time as the Court may order.
- (4) The District Court may dismiss an appeal which is frivolous or vexatious or without substance or foundation.
- (5) On the hearing of the appeal the District Court may, as it thinks proper, either—
  - (a) affirm the giving of the notice,
  - (b) affirm the giving of the notice subject to such modifications, alterations or additions as the Court thinks reasonable, or
  - (c) allow the appeal and cancel the notice.
- (6) Where the District Court makes a decision referred to in *subsection (5)(b)*, the notice shall have effect subject to the modifications, alterations or additions ordered by the Court.
- (7) Where the District Court makes a decision referred to in *subsection (5)(c)*, it shall make such ancillary orders as are necessary to enable Irish Water to leave the land or carry out any necessary works to repair or reinstate the land.

**Claim for compensation for temporary or emergency abstraction****82. (1) A person—**

- (a) who is the owner or occupier of land referred to in *section 74(2)* or *78(2)(a)*, who suffers damage or whose use of the land suffers interference caused by the carrying out of a temporary abstraction or emergency abstraction, or
- (b) whether or not a person referred to in *paragraph (a)*, whose right, title or interest in any easement, way-leave, water right, fishing right or other right over or in respect of water has been materially adversely affected by the carrying out of a temporary abstraction or emergency abstraction,

may claim compensation from Irish Water for damage suffered by the person in consequence of the temporary abstraction or emergency abstraction.

- (2) Subject to *subsection (3)*, a claim under *subsection (1)* shall be made not later than 52 weeks after the date on which the temporary or emergency abstraction ends.
- (3) The High Court may, on the application of a person referred to in *subsection (1)*, extend the period referred to in *subsection (2)* for the making of a claim under *subsection (1)* where it considers that the interests of justice so require.
- (4) *Sections 70 to 71* shall apply to a claim for compensation under *subsection (1)* as it applies to a claim for compensation under *section 69* subject to the following and any other necessary modifications:

- (a) that a reference to *section 69* in *sections 70* and *71* shall be read as a reference to *section 82*,
- (b) that in *section 70(4)(a)* “the arbitrator shall, in the case of a claim referred to in *section 82(1)(b)*, refuse” is substituted for “the arbitrator shall refuse”, and
- (c) that the following paragraph is contained in *section 70(4)*:
  - “(aa) the arbitrator shall, in relation to a claim referred to in *section 82(1)(a)* refuse to award compensation unless he or she is satisfied that any damage or interference results from the exercise by Irish Water of its powers to carry out a temporary or an emergency abstraction under this Chapter.”.

## CHAPTER 3

*Abstraction by Irish Water from reservoirs of Electricity Supply Board***Abstraction by Irish Water from reservoirs of Electricity Supply Board**

- 83.** (1) Irish Water and the ESB may enter into an agreement whereby Irish Water may abstract and the ESB may permit Irish Water to abstract water from a reservoir owned or operated by the ESB, (in this section referred to as a “water abstraction agreement”) upon such terms and subject to such conditions as may be specified in the water abstraction agreement.
- (2) The Minister may, following a request by Irish Water and having consulted with the Minister for the Environment, Climate and Communications, give a direction to Irish Water and the ESB to enter into a water abstraction agreement upon such terms and subject to such conditions as may be determined by the Minister.
  - (3) Irish Water and the ESB shall comply with a direction of the Minister within the period specified in the direction.
  - (4) The Agency shall only consider an application under *Part 5* by Irish Water for a licence for an abstraction from a reservoir owned or operated by the ESB where Irish Water provides a water abstraction agreement relating to that abstraction to the Agency.
  - (5) Where the Agency is provided with a water abstraction agreement under *subsection (4)*, it may require further documents or information from Irish Water or the ESB concerning the water abstraction agreement as the Agency considers necessary and Irish Water or the ESB shall furnish the information to the Agency within the period specified by the Agency.
  - (6) The ESB shall not be liable to pay compensation to a person whose right, title or interest in an easement, way-leave, water right, fishing right or other right over or in respect of water has been materially adversely affected by a public abstraction from a reservoir owned or operated by the ESB.

## PART 7

## WATERWAYS IRELAND

**Abstraction from navigable waters**

84. (1) Where the Agency receives an application under *Part 5* for a licence for an abstraction from navigable water from an applicant other than Waterways Ireland, it shall give notice of the application to Waterways Ireland.
- (2) (a) Waterways Ireland shall, if it is of the opinion that the abstraction in accordance with a licence granted on foot of an application referred to in *subsection (1)* would pose a material risk or impediment to navigation of the navigable water concerned, give notice of that opinion to the Agency giving the main reasons for it and furnish any information in relation to the opinion to the Agency as it considers appropriate.
- (b) Waterways Ireland shall give notice of its opinion under *paragraph (a)* within 42 days after the date of the notice under *subsection (1)*.
- (3) The Agency may request additional information from Waterways Ireland in relation to its opinion under *subsection (2)* as it considers necessary and Waterways Ireland shall furnish that information to the Agency within the period specified in the request.
- (4) The Agency may require the applicant to furnish further information to it concerning any matter arising from any consultation with Waterways Ireland as the Agency requires for the purposes of considering an application referred to in *subsection (1)* and the applicant shall furnish the further information within the period specified by the Agency.
- (5) The Agency may consult with any person as it considers appropriate for the purpose of considering an application referred to in *subsection (1)*.
- (6) The Agency shall, having considered any opinion of Waterways Ireland and the main reasons for it, information provided by Waterways Ireland, any further information referred to in *subsection (4)* and the results of any consultation under *subsection (5)*, make a decision under *Part 5* in respect of an application referred to in *subsection (1)*—
- (a) to grant the licence subject to any conditions it considers appropriate for the purpose of protecting navigation of the navigable water concerned, or
- (b) to refuse to grant the licence where it is satisfied—
- (i) that the abstraction under consideration would pose a material risk or impediment to navigation of the navigable water, and
- (ii) that no reasonable condition that the Agency could attach to the grant of the licence would be sufficient to protect navigation while allowing the abstraction to take place.



- (7) Before attaching conditions to a licence for an abstraction from navigable water, the Agency shall consult with Waterways Ireland.
- (8) The Agency shall give its main reasons to the applicant where it attaches conditions to a licence for an abstraction from navigable water or where it refuses to grant such a licence.
- (9) The Agency shall give its main reasons to Waterways Ireland where, contrary to the opinion of Waterways Ireland, the Agency grants a licence for an abstraction from navigable water or where it refuses to grant such a licence.
- (10) The Agency may, in making a decision on an application referred to in *subsection (1)*, proceed on the basis that Waterways Ireland has no objection to the grant of a licence if Waterways Ireland does not give notice of its opinion to the Agency under *subsection (2)*.
- (11) In any proceedings relating to a grant of a licence for an abstraction referred to in *subsection (1)*, the Agency may, if appropriate, inform the court that the Agency proceeded in accordance with *subsection (10)* in making its decision on the application for the licence.
- (12) Nothing in this section shall prevent Waterways Ireland from applying under *Part 5* for a licence for an abstraction from navigable water or the Agency, in respect of that application, from attaching conditions referred to in *subsection (6)(a)* to the licence or refusing to grant the licence where it is satisfied as to the matters referred to in *subsection (6)(b)*.

#### **Abstraction from canals**

- 85.** (1) A person shall only carry out an abstraction from a canal having entered into an agreement with Waterways Ireland whereby the person may abstract and Waterways Ireland may facilitate the person in carrying out the abstraction upon such terms and subject to such conditions as may be specified in the agreement.
- (2) The Agency shall only consider an application under *Part 5* for a licence for an abstraction from a canal, by an applicant other than Waterways Ireland, where the applicant provides an agreement referred to in *subsection (1)* to the Agency relating to the abstraction.
  - (3) Where, in relation to an application referred to in *subsection (2)*, the Agency is provided with an agreement referred to in *subsection (1)* it may request further documentation or information from the applicant or Waterways Ireland concerning the agreement as it considers necessary and the applicant or Waterways Ireland shall furnish the information to the Agency within the period specified in the request.
  - (4) The Agency may require the applicant to consult further with Waterways Ireland in relation to the application and furnish further information to the Agency concerning any matter arising from the consultation as the Agency requires for the purposes of considering an application referred to in *subsection (2)* and the applicant shall consult and furnish the further information within the period specified by the Agency.

- (5) The Agency may consult with any person as it considers appropriate for the purpose of considering an application referred to in *subsection (2)*.
- (6) The Agency shall, having considered the agreement referred to in *subsection (1)*, any further information referred to in *subsections (3) and (4)* and the results of any consultation under *subsection (5)*, make a decision under *Part 5* in respect of an application referred to in *subsection (2)*—
  - (a) to grant the licence subject to any conditions it considers appropriate for the purpose of protecting navigation of the canal concerned, or
  - (b) to refuse to grant the licence where it is satisfied—
    - (i) that the abstraction under consideration would pose a material risk or impediment to navigation of the canal, and
    - (ii) that no reasonable condition that the Agency could attach to the grant of the licence would be sufficient to protect navigation while allowing the abstraction to take place.
- (7) Before attaching conditions to a licence for an abstraction from a canal, the Agency shall consult with Waterways Ireland.
- (8) The Agency shall give its main reasons to the applicant where it attaches conditions to a licence for an abstraction from a canal or where it refuses to grant such a licence.
- (9) Nothing in this section shall prevent Waterways Ireland from applying under *Part 5* for a licence for an abstraction from a canal or the Agency, in respect of that application, from attaching conditions referred to in *subsection (6)(a)* to the licence or refusing to grant the licence where it is satisfied as to the matters referred to in *subsection (6)(b)*.

### **Operation and maintenance of navigable water by Waterways Ireland**

- 86.** (1) Other than in relation to an abstraction, nothing in this Act shall operate to limit the functions of Waterways Ireland.
- (2) Without prejudice to the generality of *subsection (1)*, or *section 20(2)(i)*, the Agency, in considering an application by Waterways Ireland under *Part 5* for a licence stated in the application to be necessary for the management, operation or maintenance of navigable water or a canal or navigation thereon, shall have due regard to the functions conferred on Waterways Ireland under the Canals Act 1986 and the Act of 1990 and the need to protect navigation in navigable waters or canals.

## PART 8

## ELECTRICITY SUPPLY BOARD

**Operation and safety of hydro-electric schemes**

87. (1) Only the ESB may apply for a licence for an abstraction for the purposes of a hydro-electric scheme.
- (2) Without prejudice to the generality of *section 20(2)(h)*, in considering an application under *Part 5* by the ESB for a licence, stated in the application to be necessary for carrying out an abstraction for the purposes of a hydro-electric scheme, the Agency shall have regard to the functions of the ESB.
- (3) The Agency may require the ESB to furnish further information to it concerning an application referred to in *subsection (2)* as the Agency requires for the purposes of considering the application.
- (4) The Agency shall, having considered any further information referred to in *subsection (3)*, and following consultation with the ESB and any other person as it sees fit, make a decision under *Part 5* in respect of an application referred to in *subsection (2)* and shall only grant a licence where it is satisfied that the licence is required for the purposes of—
- (a) the management of water levels at a hydro-electric scheme,
  - (b) the control or operation of an abstraction including discharge and flow rates of water, necessary for the operation or safety of a hydro-electric scheme, or
  - (c) the management of flow of water into and out of a hydro-electric scheme.
- (5) The Agency may attach conditions to the licence referred to in *subsection (4)* to ensure that all measures, that are technically feasible and cost effective to mitigate the adverse impact of the abstraction on the status of the water body from which water is abstracted, shall be taken.
- (6) The Agency shall not attach conditions to a licence referred to in *subsection (5)* that would operate to affect the performance of the functions of the ESB in such a way as to compromise the safety of a hydro-electric scheme by—
- (a) restricting water levels or discharge or flow rates of water contrary to the levels and rates that are necessary for the operation of the scheme,
  - (b) affecting compliance by the ESB with the requirements of an enactment referred to in the definition of the functions of the ESB in *subsection (8)*, or
  - (c) controlling water levels in, or the operation of, an associated impoundment.
- (7) Each hydro-electric scheme established by or under an enactment referred to in the definition of the functions of the ESB in *subsection (8)* shall be regarded as a single abstraction, within the meaning of *section 3(5)*, for the purposes of an application referred to in *subsection (2)*, and not more than one licence may be granted in relation to an abstraction for the purposes of each hydro-electric scheme.

(8) In this section—

“functions of the ESB” means the functions conferred on the ESB by or under the following enactments in so far as they relate to the abstraction of water for the purpose of the operation and management of a hydro-electric scheme:

- (a) the Shannon Electricity Act 1925;
- (b) the Electricity (Supply) Act 1927;
- (c) the Electricity (Supply) (Amendment) Act 1931;
- (d) the Electricity (Supply) (Amendment) Act 1934;
- (e) the Electricity (Supply) (Amendment) (No. 2) Act 1934;
- (f) the Shannon Fisheries Act 1935;
- (g) the Liffey Reservoir Act 1936;
- (h) the Shannon Fisheries Act 1938;
- (i) the Electricity (Supply) (Amendment) Act 1945;
- (j) the Electricity (Supply) (Amendment) Act 1961;
- (k) the River Erne Hydro-Electric Scheme Approval Order 1945 (S.I. No. 86 of 1945);
- (l) the River Liffey (Leixlip) Hydro-Electric Scheme Approval Order 1945 (S.I. No. 154 of 1945);
- (m) the River Lee Hydro-Electric Scheme Approval Order 1949 (S.I. No. 321 of 1949);
- (n) the River Liffey (Leixlip) Hydro-Electric Scheme Approval Order, 1945 (Amendment) Order 1950 (S.I. No. 183 of 1950);
- (o) the River Erne Hydro-Electric Scheme Approval Order 1945 (Amendment) Order 1950 (S.I. No. 236 of 1950);
- (p) the River Erne Hydro-Electric Scheme Approval Order 1945 (Amendment) Order 1952 (S.I. No. 245 of 1952);
- (q) the River Lee Hydro-Electric Scheme Approval Order, 1949 (Amendment) Order 1953 (S.I. No. 168 of 1953);
- (r) the River Clady Hydro-Electric Scheme Approval Order 1953 (S.I. No. 320 of 1953);
- (s) the River Lee Hydro-Electric Scheme Approval Order 1949 (Amendment) Order 1955 (S.I. No. 44 of 1955);
- (t) the River Lee Hydro-Electric Scheme Approval Order 1949 (Amendment) Order 1957 (S.I. No. 71 of 1957);

(u) the River Lee Hydro-Electric Scheme Approval Order 1949 (Amendment) Order 1958 (S.I. No. 34 of 1958);

(v) the River Lee Hydro Electric Scheme (Non-application of section 33(1) of Electricity (Supply) (Amendment) Act 1945) Order 1958 (S.I. No. 35 of 1958);

“hydro-electric scheme” means any of the following hydro-electric schemes operated by the ESB:

(a) the River Shannon hydro-electric power scheme;

(b) any of the 3 River Liffey hydro-electric power schemes;

(c) any of the 2 River Lee hydro-electric power schemes;

(d) any of the 2 River Erne hydro-electric power schemes;

(e) the River Clady hydro-electric power scheme.

## PART 9

### ENFORCEMENT

#### **Definitions (*Part 9*)**

**88.** In this Part—

“authorised person” means—

(a) a person appointed under *section 91* to be an authorised person, or

(b) a person appointed under *section 93* to be an authorised person;

“compliance notice” means a compliance notice given by a local authority under *section 97* or the Agency under *section 98*;

“environmental inspection” means, in relation to an abstraction, all actions undertaken by or on behalf of the Agency or a local authority under this Part, including site visits, monitoring the impact of the abstraction on the environment including the water environment, checking reports and documents created by the person carrying out the abstraction, verifying self-monitoring by the person carrying out the abstraction, and checking the techniques used to protect the water environment and the adequacy of management of the water environment by the person carrying out the abstraction for the purpose of monitoring and promoting compliance by the person carrying out the abstraction with—

(a) the licence to carry out the abstraction or conditions attached to that licence, or

(b) regulations under *section 8* or *9*;

“premises” includes land and any fixed or movable structure and a vessel, aircraft, vehicle and any other means of transport;

“site visit” means a visit by the Agency or a local authority to the premises where an

abstraction is being carried out or has ceased to be carried out, for the purpose of an environmental inspection;

“specified date” has the meaning given to it by *section 99(9)*.

### Regulations for purpose of environmental inspections

- 89.** (1) The Minister may, for the purposes of achieving the environmental objectives and ensuring compliance with this Act, make regulations providing for the carrying out by the Agency or a local authority of environmental inspections.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for all or any of the following—
- (a) the organisation, prioritisation and carrying out of environmental inspections,
  - (b) the preparation of plans for environmental inspections, the procedures to be followed in the preparation of such plans, the scope and contents of such plans, arrangements for their review, and the period in respect of which they are to apply,
  - (c) the frequency of site visits and the matters to be examined in the course of such visits,
  - (d) the preparation of reports following site visits and the making available to the public of certain information in relation to those reports, and the period within which each of those things is to be done,
  - (e) the investigation of incidents relating to an abstraction that may cause or are likely to cause a failure to meet the environmental objectives, and
  - (f) the period during which and purpose (including the purpose of preparing River Basin Management Plans) for which a record of an environmental inspection may be retained by a local authority or the Agency.

### Functions of local authorities under this Part

- 90.** (1) A local authority shall, within its administrative area, carry out environmental inspections and take measures necessary to ensure compliance with regulations under *sections 8 and 9* by persons carrying out abstractions to which those regulations apply.
- (2) In performing its functions referred to in *subsection (1)* a local authority shall—
- (a) have regard to any code of practice for the time being published and approved by the Agency under *section 76* of the Act of 1992 in so far as it relates to regulations under *section 8 or 9*, and
  - (b) consult to such extent as it considers necessary with the Agency, the Minister or such other person as it considers appropriate.
- (3) Each local authority shall, as far as practicable, develop coordination arrangements with other local authorities with a view to promoting consistency of approach in

performing its functions under *subsection (1)* and to avoid any unnecessary duplication of administrative procedures.

- (4) A local authority shall in accordance with regulations under *section 89*—
- (a) maintain a record of environmental inspections carried out by it, and
  - (b) make the record available to the Minister or Agency when requested by the Minister or Agency.

#### **Authorised person appointed by local authority**

91. (1) The chief executive of a local authority may, for the purpose of the performance of the functions of the local authority under this Part, appoint such and so many members of staff of the local authority as he or she considers appropriate to be authorised persons.
- (2) A person appointed to be an authorised person under *subsection (1)* shall on his or her appointment be furnished with a warrant of his or her appointment, and when exercising a power under this Act shall, if requested by any person affected thereby, produce the warrant to that person for inspection.
- (3) An appointment under *subsection (1)* shall cease—
- (a) if the chief executive of the local authority revokes the appointment,
  - (b) if the appointment is for a fixed period, on expiry of that period, or
  - (c) if the person appointed ceases to be a member of staff of the local authority.

#### **Functions of Agency under this Part**

92. (1) The Agency shall carry out environmental inspections and take measures necessary to ensure compliance with this Act and regulations (other than regulations under *sections 8* and *9*) made under it by persons carrying out abstractions.
- (2) The Agency shall, in accordance with regulations under *section 89*—
- (a) maintain a record of environmental inspections carried out by it, and
  - (b) make the record available to the Minister when requested by the Minister.

#### **Authorised person appointed by Agency**

93. (1) A Director General of the Agency may, for the purpose of the performance by the Agency of its functions under *section 92*, appoint such and so many members of staff of the Agency as he or she considers appropriate to be authorised persons.
- (2) A person appointed to be an authorised person under *subsection (1)* shall on his or her appointment be furnished with a certificate of his or her appointment, and when exercising a power under this Act shall, if requested by any person affected thereby, produce the certificate to that person for inspection.
- (3) An appointment under *subsection (1)* shall cease—

- (a) if the Director General of the Agency revokes the appointment,
- (b) if the appointment is for a fixed period, on expiry of that period, or
- (c) if the person appointed ceases to be a member of staff of the Agency.

**Power of authorised person to enter premises**

**94.** (1) Subject to *subsection (2)*, an authorised person—

- (a) appointed by a local authority may, for the purpose of the performance by the local authority of its functions under *section 90*, or
- (b) appointed by the Agency may, for the purpose of the performance by the Agency of its functions under *section 92*,

at all reasonable times, and if necessary by use of reasonable force, enter any premises which the authorised person has reasonable grounds to believe are being or have been used for the carrying out of an abstraction or, at, on or in which the authorised person has reasonable grounds to believe that records relating to the carrying out of an abstraction are kept.

(2) An authorised person shall not enter a dwelling otherwise than—

- (a) with the consent of the occupier, or
- (b) pursuant to a warrant under *section 96*.

**Powers of authorised person**

**95.** (1) An authorised person who has entered a premises under *section 94* may—

- (a) at such premises inspect and take copies of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom that he or she finds in the course of his or her inspection,
- (b) remove any such books, records, documents, labels or packaging from such premises and retain them for such period as he or she reasonably considers to be necessary for the purposes referred to in *section 90* or *92*, as appropriate,
- (c) conduct, or cause to be conducted, such examinations and inspections of—
  - (i) any abstraction being carried out at the premises (including by monitoring and measuring the abstraction),
  - (ii) abstraction works, pipework, storage tanks or any other equipment that may be used in the abstraction of water on the premises, or
  - (iii) any equipment, machinery or plant found at the premises as he or she reasonably considers to be necessary for the purposes referred to in *section 90* or *92*, as appropriate,
- (d) require any person at the premises, the owner or person in charge of the premises or any person employed therein to—



- (i) give to the authorised person such assistance and information, and
  - (ii) produce to the authorised person books, documents or other records (and in the case of documents or records stored in non-legible form, a legible reproduction thereof), that are in that person's possession or procurement, as the authorised person may reasonably require for the purposes referred to in *section 90* or *92*, as appropriate,
  - (e) require any person at the premises (including the owner, person in charge of the premises and any person employed therein) to answer such questions as the authorised person may ask relative to any matter in connection with compliance with this Act,
  - (f) for the purposes of analysis and examination, take samples of water, soil or any other substance found at the premises,
  - (g) direct that any water, soil, other substance or any matter or thing that is found at the premises not be moved from the premises without his or her consent,
  - (h) secure for later inspection the premises, or any part of the premises, in which an abstraction is being carried out or in which water, soil or any other matter, or anything referred to in *paragraph (b)* is found or ordinarily kept, for such period as may reasonably be necessary for the purposes referred to in *section 90* or *92*, as appropriate,
  - (i) take possession of, remove from the premises and retain (for such period as he or she considers reasonably necessary for the purposes of his or her functions under this Act) anything referred to in *paragraph (b)* found at the premises, or
  - (j) take any other actions necessary for the purposes of an environmental inspection.
- (2) Where an authorised person—
- (a) appointed under *section 91*, upon reasonable grounds, believes that a person has committed an offence under a regulation under *section 8* or *9* declared to be a penal provision, or
  - (b) appointed under *section 93*, upon reasonable grounds, believes that a person has committed an offence under this Act, a regulation under *section 57* or *73* declared to be a penal provision or an article of an order under *section 80* declared to be a penal provision,
- the authorised person may require the person to provide the authorised person with his or her name and the address at which he or she ordinarily resides and documentary confirmation thereof.
- (3) A statement or admission made by a person pursuant to a requirement under *paragraph (d)* or *(e)* of *subsection (1)* shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under *section 103(b)*).

- (4) An authorised person may be accompanied by such and so many members of the Garda Síochána as he or she considers necessary when exercising a power under this Part.
- (5) In this section “person in charge” means, in relation to a premises—
  - (a) the person under whose direction and control any activities at that premises are being conducted, or
  - (b) the person whom the authorised person reasonably believes to be directing and controlling any activities taking place at that premises.

**Warrant required to enter certain premises**

96. (1) Upon the sworn information of an authorised person, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that information, books, records or other documents (including information, books, records or documents stored in non-legible form) relating to the carrying out of an abstraction, are kept at a dwelling, issue a warrant authorising a named authorised person, accompanied by such other authorised persons or members of the Garda Síochána as the judge considers necessary to—
- (a) enter the dwelling (if necessary by the use of reasonable force),
  - (b) inspect the dwelling, and
  - (c) exercise all or any of the powers of an authorised person under *paragraphs (a) to (j) of section 95(1)*.
- (2) Where an authorised person in the exercise of his or her powers under this Part—
- (a) is prevented, or otherwise refused permission, from entering any premises,
  - (b) has reason to believe—
    - (i) in the case of an authorised person appointed under *section 91* that evidence related to a suspected offence under a regulation under *section 8* or *9* declared to be a penal provision, or
    - (ii) in the case of an authorised person appointed under *section 93* that evidence related to a suspected offence under this Act, a regulation under *section 57* or *73* declared to be a penal provision or an article of an order under *section 80* declared to be a penal provision,may be present in any premises and that evidence may be removed therefrom or destroyed, or
  - (c) has reason to believe that there is a risk to the water environment,
- the authorised person or the person by whom he or she was appointed may apply to the District Court for a warrant authorising the entry by the authorised person onto the premises.

- (3) If, on application to him or her under *subsection (2)*, a judge of the District Court is satisfied on the sworn information of the authorised person that he or she—
- (a) has been prevented, or otherwise refused, from entering onto a premises,
  - (b) has reason to believe that evidence related to a suspected offence under this Act, any regulations made under this Act or an order under *section 80* may be present on the premises and that evidence may be removed therefrom or destroyed, or
  - (c) has reason to believe that there is a risk to the water environment,

the Court may issue a warrant authorising that person, accompanied by other authorised persons or by a member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so requested, to enter, if need be by reasonable force, the premises concerned and exercise all or any of the powers conferred on an authorised person under this section or *section 95*.

#### **Local authority may give compliance notice**

- 97.** (1) Where it appears to a local authority, as respects its administrative area, that it is necessary to do so in order to prevent or limit failure by a water body to meet its environmental objectives, caused by the carrying out of an abstraction, the local authority may give a compliance notice to the person carrying out the abstraction.
- (2) *Subsection (1)* shall only apply in relation to an abstraction to which regulations under *section 8* or *9* apply.
- (3) The local authority shall, in giving a compliance notice, have regard to any code of practice for the time being published and approved by the Agency under *section 76* of the Act of 1992 in so far as it relates to compliance with regulations under *section 8* or *9*.
- (4) Where the abstraction to which a compliance notice to be given under this section relates is situated in the administrative area of more than one local authority, one of the local authorities concerned may with the agreement of the other local authority concerned give the compliance notice on behalf of that other local authority.

#### **Agency may give compliance notice**

- 98.** (1) Where it appears to the Agency that it is necessary to do so in order to prevent or limit failure by a water body to meet its environmental objectives, caused by the carrying out of an abstraction, the Agency may give a compliance notice to the person carrying out the abstraction.
- (2) *Subsection (1)* shall not apply in relation to an abstraction referred to in *section 97(2)*.
- (3) Without prejudice to the generality of *subsection (1)* where it appears to the Agency that the continuation of an abstraction, pending its decision on an application for a licence under *section 35* or *44* in relation to that abstraction is likely to cause

significant adverse effects on the environment, the Agency shall give a compliance notice to the person carrying out the abstraction.

- (4) Where the application for a licence under *section 35* or *44* involves development or proposed development the Agency shall give notice, as soon as may be, to the planning authority in whose area the development is or is to be carried out or the Board of the giving of the compliance notice.

### **Supplemental provisions relating to compliance notices**

- 99.** (1) Without prejudice to the generality of *section 97(1)* or *98(1)*, a compliance notice shall—
- (a) require the taking of specified measures which the local authority or Agency considers necessary in order to prevent or limit failure by a water body to meet its environmental objectives caused by an abstraction or prevent a recurrence thereof,
  - (b) in the case of a compliance notice referred to in *section 98(3)* require the taking of specified measures which the Agency considers necessary in order to prevent or limit significant adverse effects on the environment caused by an abstraction,
  - (c) as the local authority or Agency considers necessary, require the suspension or cessation of the abstraction,
  - (d) require the mitigation or remedying of any effects of any abstraction aforesaid in a specified manner,
  - (e) state the specified date, and
  - (f) advise the recipient of his or her right, under *section 100*, to appeal against or apply to suspend the operation of the compliance notice.
- (2) Subject to *section 100*, a compliance notice shall take effect on the specified date.
- (3) A compliance notice—
- (a) may be given whether or not there has been a prosecution for an offence under this Act in relation to the abstraction concerned, and
  - (b) shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the abstraction concerned.
- (4) At any time where it considers it appropriate or necessary having regard to its functions under this Act, a local authority or the Agency may give a compliance notice amending a compliance notice (including a compliance notice amended under this subsection) and save where the context does not admit such a construction, references in this Part to a compliance notice shall, if the notice has been amended under this subsection, be construed as references to the compliance notice as so amended.
- (5) A compliance notice shall remain in force—
- (a) unless it is discharged on appeal or varied,

- (b) until the local authority or the Agency revokes it, or
  - (c) until the local authority or the Agency gives notice to the recipient stating that the compliance notice has been complied with.
- (6) A person who fails to comply with a compliance notice by the specified date shall be guilty of an offence.
- (7) A person who continues to fail to comply with a compliance notice after the specified date shall be guilty of an offence.
- (8) Where a person does not comply with a compliance notice by the specified date—
- (a) the local authority or the Agency which gave the compliance notice may take any measures it considers necessary to protect or restore the water body, and
  - (b) in the case of a compliance notice referred to in *section 98(3)*, the Agency may take any measures it considers necessary to mitigate or remedy the significant adverse effects on the environment,
- and the local authority or the Agency, as the case may be, may recover the cost of such measures from the person to whom the compliance notice is given as a simple contract debt in a court of competent jurisdiction.
- (9) In this section, “specified date” means—
- (a) where the compliance notice provides that it is to take effect regardless of any appeal under *section 100*, the date the compliance notice is received by the person to whom it is given, or on such later date as may be specified in the compliance notice, or
  - (b) where the compliance notice does not so provide—
    - (i) where no appeal is brought under *section 100* against the compliance notice, on the date on which the period during which an appeal may be taken expires, or if later than that date, the date specified in the compliance notice as the day on which it is to come into effect, or
    - (ii) where an appeal is brought under *section 100*, the date on which the compliance notice is confirmed on appeal, or the appeal is withdrawn, or if later than that date, the date specified in the compliance notice as the day on which it is to come into effect.

### **Appeal against or application to suspend compliance notice**

- 100.** (1) The bringing of an appeal against a compliance notice which is to take effect in accordance with *section 99(9)(a)* shall not have the effect of suspending the operation of the compliance notice but the appellant may apply to the District Court to have the operation of the compliance notice suspended until the appeal is disposed of and the judge, if he or she is satisfied that there are reasonable grounds for so doing in the interests of justice and having regard to the need to prevent or limit failure by a water body to meet its environmental objectives, or if applicable, prevent or limit significant

adverse effects on the environment, may direct that the operation of the compliance notice is suspended until the appeal is disposed of.

- (2) A person to whom a compliance notice is given may within 28 days beginning on the day on which the compliance notice is given to him or her, appeal against the compliance notice to the District Court and in determining the appeal the judge may, if he or she is satisfied that there are reasonable grounds for so doing in the interests of justice and having regard to the need to prevent or limit failure by a water body to meet its environmental objectives, or if applicable, prevent or limit significant adverse effects on the environment—
  - (a) confirm the compliance notice, with or without modification, or
  - (b) discharge the compliance notice.
- (3) Where, on the hearing of an appeal under this section a compliance notice is confirmed, the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the compliance notice for such period as, in the circumstances of the case in the interests of justice and having regard to the need to prevent or limit failure by a water body to meet its environmental objectives, or if applicable, prevent or limit significant adverse effects on the environment, the judge considers appropriate.
- (4) The person who appeals against a compliance notice or who applies to have the operation of the compliance notice suspended, shall at the same time notify the local authority or the Agency of the appeal or application and the local authority or the Agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

### **Application to Court**

- 101.** Subject to *section 100*, where a person to whom a compliance notice is given fails to comply with the compliance notice by the specified date, the local authority or the Agency, may, on notice to the person, apply in a summary manner to the Circuit Court for an order requiring the person to comply with the compliance notice (or to take such varied or other measures for the like purpose) and the Circuit Court—
- (a) may—
    - (i) make the order sought, or
    - (ii) make the order sought subject to such variations as may be specified in the order, or make the order sought subject to such other measures for the like purpose as may be specified in the order,
  - or
  - (b) may dismiss the application,
- and, whether *paragraph (a)* or *(b)* is applicable, may make such order as to costs as it thinks fit in respect of the application.

**False or misleading information**

**102.** A person who knowingly or recklessly provides information which is false or misleading in a material particular in purported compliance with this Act, regulations under this Act or an order under *section 80*, to—

- (a) the Agency, or
- (b) a local authority.

shall be guilty of an offence.

**Obstruction**

**103.** A person who—

- (a) obstructs or interferes with an authorised person or a member of the Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under *section 96* or impedes the exercise by the authorised person or member, as the case may be, of such power,
- (b) fails or refuses to comply with a requirement of an authorised person or member of the Garda Síochána pursuant to *paragraph (d) or (e) of section 95(1)* or in purported compliance with such requirement gives information or makes a declaration to the authorised person or member that he or she knows to be false or misleading in any material respect, or
- (c) fails or refuses to comply with a direction of an authorised person or member of the Garda Síochána pursuant to *section 95(1)(g)*,

shall be guilty of an offence.

**Offences and penalties**

**104.** (1) A person guilty of an offence under *section 8(4), 9(5), 11(10), subsection (4) or (5) of section 12, section 15(8), subsection (9) or (11) of section 16, section 52(10), 57(3), 73(2), 80(9), or subsection (6) or (7) of section 99* shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(2) A person guilty of an offence under *section 46, 102 or 103* shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(3) A person guilty of an offence under *section 27(5), 35(5), or 44(5)* shall be liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

- (b) on conviction on indictment, to a fine not exceeding €15,000,000 or imprisonment for a term not exceeding 10 years or both.

### **Offence by body corporate**

- 105.** Where an offence is committed by a body corporate and it is proved that the offence was committed with the consent, connivance or approval of, or was attributable to any wilful neglect on the part of any director, manager, secretary or other officer of the body corporate, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

### **Continuing offence**

- 106.** Where a person, after conviction of an offence under *section 99(7)* continues to fail to comply with the compliance notice, he or she shall be guilty of an offence on every day or part of a day on which the contravention continues and for each such offence he or she shall be liable on summary conviction to a class A fine.

### **Evidentiary presumptions**

- 107.** (1) An authorised person may arrange for the carrying out of tests, examinations and analyses of a sample or thing removed from a premises under *section 95(1)* by a person specified for that purpose by the Agency or a local authority.
- (2) In any proceedings, a certificate purporting to be signed by an authorised person in respect of a test, examination or analysis referred to in *subsection (1)* may, without proof of the signature of the person signing the certificate or that he or she is authorised to sign the certificate, be produced in court and in all proceedings under this Act and is evidence, unless the contrary is shown, of the matter the subject of the certificate.

### **Prosecution by local authority**

- 108.** (1) A prosecution for an offence under *section 8(4)* or *9(5)* or, in so far as it relates to a compliance notice given by the local authority under *section 97(1), subsection (6)* or *(7)* of *section 99* may be taken by the local authority in whose administrative area the abstraction concerned is situate, or the local authority which gave the notice.
- (2) Where a person is convicted of an offence referred to in *subsection (1)* in proceedings brought by a local authority, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay the local authority the costs and expenses, measured by the court, incurred by the local authority in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations or analyses and in respect of the remuneration and other expenses of employees of the local authority, or consultants and advisers engaged by the local authority.



- (3) Where a court imposes a fine for an offence referred to in *subsection (1)* in proceedings brought by a local authority it shall, on the application of the local authority concerned (made before the time of such imposition), provide by order for the payment of the amount of the fine to the local authority as if the payment were due to that local authority on foot of an order made by the court in civil proceedings.
- (4) The amount of any fine paid to, or recovered by a local authority under *subsection (3)* shall be disposed of by it in such manner as the Minister for Finance directs.

### **Prosecution by Agency**

- 109.** (1) A prosecution for an offence under *section 11(10), subsection (4) or (5) of section 12, section 15(8), subsection (9) or (11) of section 16, section 52(10), 57(3), 73(2), 80(9)*, or, in so far as it relates to a compliance notice given by the Agency under *section 98(1), subsection (6) or (7) of section 99* may be taken by the Agency.
- (2) Where a person is convicted of an offence referred to in *subsection (1)* in proceedings brought by the Agency the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay the Agency the costs and expenses, measured by the court, incurred by the Agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations or analyses and in respect of the remuneration and other expenses of directors or employees of the Agency, or consultants and advisers engaged by the Agency.
  - (3) Where a court imposes a fine in proceedings referred to in *subsection (1)* brought by the Agency it shall, on the application of the Agency (made before the time of such imposition), provide by order for the payment of the amount of the fine to the Agency as if the payment were due to the Agency on foot of an order made by the court in civil proceedings.
  - (4) The amount of any fine paid to, or recovered by the Agency under *subsection (3)* shall be disposed of by it in such manner as the Minister for Finance directs.

## PART 10

### MISCELLANEOUS AND TRANSITIONAL PROVISIONS

#### **Minister may give general policy directives to Agency**

- 110.** (1) The Minister may, having regard to the matters specified in *subsection (2)*, issue a general directive to the Agency as to policy (in this section referred to as a “directive”) and the Agency shall, in performing its functions under this Act, have regard to such a directive.
- (2) Before issuing a directive under *subsection (1)*, the Minister shall have regard to—
    - (a) the need to protect the water environment and the requirements of the Water Framework Directive,

- (b) the objectives of a River Basin Management Plan,
  - (c) sustainable development, socio-economic needs and the need to maintain important sustainable human development activities,
  - (d) human safety and the protection of property, and
  - (e) matters of overriding public interest.
- (3) The Minister may amend or revoke a directive.
- (4) Nothing in this section shall be construed as enabling the Minister to exercise any power or control in relation to the performance by the Agency of a function assigned to it by or under this Act.
- (5) The Minister shall, as soon as practicable after issuing a directive, or making an amendment or revocation under *subsection (3)*, cause a copy of the directive, amendment or revocation to be laid before each House of the Oireachtas.
- (6) A directive, or an amendment or revocation made under *subsection (3)*, shall be published in *Iris Oifigiúil* as soon as practicable after it is issued or made.

#### **Transitional arrangements consequent upon repeal of Act of 1942**

- 111.** (1) Notwithstanding the repeal of the Act of 1942 by *section 7(1)(a)*, Irish Water may, in respect of a proposal that remains in force immediately before the date of the coming into operation of *section 7(1)(a)*, continue to perform the functions referred to in paragraphs (a), (b) and (c) of *section 13(1)* of the Act of 1942 under and in accordance with the Act of 1942.
- (2) Irish Water shall make an application for a licence in respect of a proposal referred to in *subsection (1)* that comprises an abstraction referred to in *section 15(1)* within the period referred to in *subsections (2), (3), (4) or (5)* of *section 15*, as appropriate.
- (3) *Subsection (1)* shall no longer apply to a proposal that comprises an abstraction referred to in *section 15(1)* on and from the later of—
- (a) the date the Agency has, in relation to the abstraction, made a decision under *Part 5* to grant or refuse the licence, or
  - (b) where Irish Water appeals a decision of the Agency under *Part 5* to refuse the licence, the date the court has made an order on foot of that appeal.
- (4) Where an application for compensation under sections 14 to 16 of the Act of 1942 has not been determined pursuant to those sections before the date of the coming into operation of *section 7(1)(a)*, the Act of 1942 shall continue to apply to the application for compensation notwithstanding the repeal of that Act by *section 7(1)(a)*.
- (5) In this section, “proposal” has the same meaning as it has in the Act of 1942.

**Transitional provisions consequent upon repeal of Local Government (Sanitary Services) Act 1964**

- 112.** A water agreement, within the meaning of section 4 of the Local Government (Sanitary Services) Act 1964, entered into prior to the coming into operation of *section 7(1)(b)* shall be deemed to be a water abstraction agreement under *section 83* and *section 83* shall apply to such water agreement as it applies to a water abstraction agreement subject to any necessary modifications.

**Transitional arrangements consequent upon revocation of Regulations of 2018**

- 113.** (1) A person carrying out an abstraction on the coming into operation of *section 11* which meets or exceeds the registration threshold and which abstraction is entered in the register of abstractions on or before that coming into operation shall be taken to have complied with the requirements of *subsections (1), (2), (3) and (4)* of *section 11*.
- (2) An abstraction referred to in *subsection (1)* that is entered in the register of abstractions shall, on the coming into operation of *section 11*, be deemed to be entered in the appropriate part of the register.
- (3) A registration number issued under Regulation 4(2) of the Regulations of 2018 shall be deemed to be a registration number under *section 11(5)*.
- (4) Notwithstanding the revocation of the Regulations of 2018 by *section 7(2)*, where a person made a notification of information under Regulation 4 of the Regulations of 2018 prior to revocation of those Regulations, that notification shall be treated as a notice given to the Agency under *section 11(1)*.
- (5) In this section, “register of abstractions” means the register established by the Agency under Regulation 3 of the Regulations of 2018.

## PART 11

## AMENDMENT OF OTHER ACTS

**Amendment of Canals Act 1986**

- 114.** The Canals Act 1986 is amended—

- (a) in section 1(1), by the insertion of the following definition:

“ ‘Act of 2022’ means the *Water Environment (Abstractions and Associated Impoundments) Act 2022*;”,

- (b) in section 6—

- (i) by the substitution of “and shall, without prejudice to the generality of the foregoing and subject to the *Act of 2022*,” for “and shall without prejudice to the generality of the foregoing;”, and
- (ii) by the substitution of the following paragraph for paragraph (g):

“(g) lease or let to any person canal property and licence (other than an abstraction within the meaning of the *Act of 2022*) the use of the canals and canal water by any person.”,

(c) in section 7, by the insertion of the following subsection after subsection (1A):

“(1B) Bye-laws under this section insofar as they relate to an abstraction (within the meaning of the *Act of 2022*) from the canals shall be subject to the provisions of that Act.”,

and

(d) in section 12(1)(b), by the insertion of “subject to the *Act of 2022*,” before “supplies of water”.

### **Amendment of Act of 1990**

**115.** The Act of 1990 is amended—

(a) in section 1(1), by the insertion of the following definition:

“ ‘Act of 2022’ means the *Water Environment (Abstractions and Associated Impoundments) Act 2022*;”,

(b) in section 2, by the insertion of “and subject to the *Act of 2022*” after “to their powers under that Act”, and

(c) in section 3—

(i) in subsection (1)—

(I) by the insertion, in paragraph (h), of “and subject to the *Act of 2022*” after “abstract water from the navigation channel”, and

(II) by the substitution, in paragraph (l)(ii), of “the use of water of or the abstraction of water from the canals and locks referred to in paragraph (b) of the definition of the Shannon navigation” for “the use of water of or the abstraction of water from the navigation channel”,

and

(ii) by the insertion of the following subsection after subsection (1A):

“(1B) Bye-laws under this section, in so far as they relate to an abstraction (within the meaning of the *Act of 2022*) from the Shannon navigation shall be subject to the provisions of that Act.”.

### **Amendment of Act of 2000**

**116.** The Act of 2000 is amended—

(a) in section 2(1), by the insertion of the following definitions:

“ ‘abstraction’ has the same meaning as in the *Water Environment (Abstractions and Associated Impoundments) Act 2022*;

‘abstraction licence’ means a licence granted by the Environmental Protection Agency under *Part 5* of the *Water Environment (Abstractions and Associated Impoundments) Act 2022;*”,

(b) in section 7(2), by the substitution in paragraph (c) of “an integrated pollution control licence, an abstraction licence” for “an integrated pollution control licence”,

(c) in section 34(2), by the insertion of the following paragraph after paragraph (c):

“(ca) Where an application under this section relates to development which comprises or is for the purposes of an activity for which an abstraction licence is required, a planning authority shall take into consideration that the control of abstractions is a function of the Environmental Protection Agency.”,

(d) in section 37F, by the substitution in subsection (5) of “an integrated pollution control licence, an abstraction licence” for “an integrated pollution control licence”,

(e) in section 37G—

(i) by the insertion of the following subsection after subsection (4):

“(4A) Where an application under section 37E relates to proposed development which comprises or is for the purposes of an activity for which an abstraction licence is required, the Board shall not, where it decides to grant permission, subject that permission to conditions which are for the purposes of controlling the abstraction related to the operation of the activity.”,

and

(ii) by the substitution, in subsection (5), of “an integrated pollution control licence, an abstraction licence” for “an integrated pollution control licence”,

(f) by the insertion of the following section after section 173C:

**“Environmental impact assessment relating to abstractions**

**173D.**(1) Where a planning authority or the Board is considering an application for permission referred to in *subsection (2)(a)* of *section 25* of the *Act of 2022*, it shall, upon the request in writing of the person who made the application and not later than 3 working days from the date of the request, provide that person with—

(a) the confirmation first-mentioned in the said *subsection (2)(a)*, and

(b) in circumstances where an environmental impact assessment is not required, the confirmation referred to in *subparagraph (ii)* of the said *subsection (2)(a)*.

(2) Where a planning authority or the Board grants a permission referred to in *subsection (2)(b)* of *section 25* of the *Act of 2022* but did not

require an environmental impact assessment in relation to the application for that permission, it shall, upon the request in writing of the person to whom the permission was granted, provide that person with the confirmation referred to in *subparagraph (ii)* of the said *subsection (2)(b)*.

- (3) A planning authority or the Board, as may be appropriate, shall comply with a request of the Environmental Protection Agency under *subsection (4)(a)* of *section 25* of the *Act of 2022* within 4 weeks of receipt of the request.
- (4) A planning authority or the Board, as may be appropriate, shall comply with a request of the Environmental Protection Agency under *subsection (5)(a)* of *section 25* of the *Act of 2022* within 4 weeks of receipt of the request.
- (5) A planning authority shall comply with a request of the Environmental Protection Agency under *subsection (8)(a)* of *section 25* of the *Act of 2022* within 4 weeks of receipt of the request.
- (6) Where a planning authority or the Board is considering an application for permission in respect of development—
  - (a) belonging to a class specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001, and
  - (b) that in its opinion requires an abstraction licence,

it shall, for the purpose of making a determination as to whether or not an environmental impact assessment is required, invite the Environmental Protection Agency to make observations within such period as may be specified by the planning authority or the Board, as may be appropriate, in relation to the application, and the planning authority or the Board, as may be appropriate, shall take account of any such observations when making that determination.

- (7) A person who—
  - (a) makes an application for permission to a planning authority or the Board, and
  - (b) has made an application, or proposes to make an application, for an abstraction licence in connection with an application referred to in paragraph (a),

shall, when making the application referred to in paragraph (a), inform the planning authority concerned or the Board, as may be appropriate, in writing of his or her having so made the application referred to in paragraph (b) or his or her proposal to make such an application, as the case may be.

- (8) In this section—

‘permission’ means—

- (a) permission under Part III,
  - (b) approval for development under section 175, 177AE, 181(2L), 181B, 182B, 182D or 226, or
  - (c) substitute consent under section 177K.”.
- (g) in section 175(10)—

- (i) by the insertion of the following paragraph after paragraph (a):

“(aa) Where an application under this section relates to proposed development which comprises or is for the purposes of an activity for which an abstraction licence is required, the Board shall not, where it decides to approve the proposed development, subject that approval to conditions which are for the purposes of controlling the abstraction related to the operation of the activity.”,

and

- (ii) by the substitution, in paragraph (b), of “an integrated pollution control licence, an abstraction licence” for “an integrated pollution control licence”,

- (h) in section 177AE(10)—

- (i) by the insertion of the following paragraph after paragraph (a):

“(aa) Where an application under this section relates to proposed development which comprises or is for the purposes of an activity for which an abstraction licence is required, the Board shall not, where it decides to approve the proposed development, subject that approval to conditions which are for the purposes of controlling the abstraction related to the operation of the activity.”,

and

- (ii) by the substitution, in paragraph (b), of “an integrated pollution control licence, an abstraction licence” for “an integrated pollution control licence”,

- (i) in the Fourth Schedule by the insertion of the following paragraph after paragraph 20C:

“20D. The proposed development would not be consistent with the objectives of a river basin management plan made under Regulation 13 of the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003).”,

and

- (j) in the Seventh Schedule, by the substitution in paragraph 3 of “A groundwater abstraction, artificial groundwater recharge scheme or a surface water abstraction” for “A groundwater abstraction or artificial groundwater recharge scheme”.

SCHEDULE

1. The Board.
2. Bord na Móna plc.
3. Commissioners of Public Works in Ireland.
4. ESB.
5. Geological Survey of Ireland.
6. Health Service Executive.
7. Inland Fisheries Ireland.
8. Irish Water.
9. A local authority.
10. A Minister of the Government.
11. National Roads Authority.
12. Waterways Ireland.