



**An Bille um Chomhshaol Uisce (Astógálacha agus
Gaibhnithe Gaolmhara), 2022**
**Water Environment (Abstractions and Associated
Impoundments) Bill 2022**

Meabhrán Míniúcháin
Explanatory Memorandum



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EXPLANATORY MEMORANDUM

Introduction

The primary purpose of the Bill is to provide for a modern registration, licensing and control regime for water abstractions. The proposed system of registration and licensing is to be administered by the Environmental Protection Agency, with local authorities also maintaining an ongoing enforcement role.

The legislation transposes requirements under the EU Water Framework Directive for controls over, and the prior authorisation of, abstraction of surface water and groundwater, and impoundment of surface water, and responds to infringement proceedings initiated by the European Commission.

The Bill;

- Modernises the regime for water abstractions which is outdated and limited in scope, being based on legislation enacted in 1942 and 1964;
- Provides for a simple registration system for water abstractions, subject to minimum threshold where registration is not required;
- Provides a licensing regime, administered by the EPA, for water abstractions over a specified threshold;
- Provides an updated power for Uisce Eireann/Irish Water, as the national authority for water services, to take abstractions, subject to EPA licensing, and also subject to an appeal to An Bord Pleanála in relation to possible impacts on third party water rights. Emergency powers will be available to Uisce Eireann/Irish Water to take abstractions where required due to drought or other stated reasons;
- Provides for compensation for material adverse effects caused by interference with water rights as a result of a public abstraction;
- Makes specific provision to allow Uisce Eireann/Irish Water abstract water from ESB reservoirs with the agreement of the ESB,
- Gives specific recognition and protection for canals and other navigable waters under the control of Waterways Ireland; recognises the role of the ESB and Waterways Ireland.
- Gives necessary environmental protections to water sources.

Financial Implications

Additional resources will be required by the EPA to undertake the significant new functions that have been assigned to them in the bill. In addition, some local authorities will need additional staff to enforce the requirements of the bill in their functional areas. There is not expected to be a significant additional direct cost to the exchequer. Principal costs will be covered by fees associated with licensing and enforcement of significant abstractions.

Provisions of the Bill

Part 1 – Preliminary and General

Section 1. Citation and commencement

This section provides for the citation of the Act as the Water Environment (Abstractions and Associated impoundments) Act 2022. Subsection 2 provides for the commencement of the Bill on certain days.

Section 2. Interpretation

This section contains definition provisions for the Act. This section includes definition of the thresholds above which registration of abstractions and applying for a licence to abstract are required. It also defines the “Agency” as the Environmental Protection Agency.

Section 3. Application of Act and supplemental provisions relating to abstractions and associated impoundments

This section defines the meaning of an abstraction, how it may be carried out, provides that multiple abstraction points that join to form a single abstraction shall be considered a single abstraction for the purposes of registration and licensing, applies the provisions of the Act to impoundments associated with an abstraction, and defines the meaning of an impoundment.

Section 4. Regulations and Orders

This section contains the power of the Minister to make regulations under this Act, what the regulations and Ministerial Orders under section 16 may contain, and requirements relating to the laying of regulations and orders under section 16 before the Oireachtas.

Section 5. Expenses of Minister

This section provides that expenses of the Minister in relation to this Act shall be paid out of monies provided by the Oireachtas.

Section 6. Giving of notices

This section provides for how a notice under this Act may be given to a person or a registered company, including where a person’s name cannot be ascertained by reasonable enquiry.

Section 7. Repeals and Revocations

This section provides for the repeal of the Water Supplies Act 1942, section 4 of the Local Government (Sanitary Services) Act 1964 and subsections 9(2) and 9(8) of the Local Government (Water Pollution) Act 1977, and the revocation of the European Union (Water Policy) (Abstractions Registration) Regulations 2018.

Part 2 – Regulations for certain abstractions

Section 8. Regulations for certain abstractions

Subsection 1 provides that the Minister shall make regulations to regulate abstractions that do not require a licence and abstractions where a licence application is pending. Subsections 2 and 3 provides for what these regulations may contain and what they may prescribe. Subsections 4 to 6

provide that contravention of the regulations is an offence, for the review of the operation of the regulations and for consultation with the EPA in carrying out a review of the regulations.

Part 3 – Exemptions

Section 9. Exemption for certain abstractions

This section grants the Minister the power to exempt certain abstractions or activities from the regulations under sections 8 and 11 where they are satisfied it will have no significant impact on surface water or groundwater status. Subsection 2 requires the Minister to consult with the EPA before making regulations under subsection 1. Subsection 3 contains detail on what abstractions or activities may be exempted, and subsection 4 lists matters that may be provided for in regulations. Subsection 5 provides that contravention of these regulations is an offence.

Part 4 – Register of abstractions

Section 10. Requirement for Agency to keep register

This section provides for the register of abstractions to be kept by the EPA and details of that register including; what shall be contained in the register, the form in which the register will be maintained, matters that the Agency will record in the register in relation to an entry e.g. recording changes in circumstances that have a bearing on the entry, a surrender or transfer of a licence etc., that the register shall be kept at the principal office of the Agency, and specifies how the register shall be shared or may be published.

Section 11. Submission of information to the Agency

Section 11 contains the requirement for a person who carries out an abstraction above the registration threshold to give notice to the EPA, and that the notice shall include information in respect of each abstraction point used for the abstraction. Subsection 3 provides that where an abstraction and its associated impoundment are operated by different persons the information shall be provided to the Agency either jointly by both persons, or by the person carrying out the abstraction on behalf of both persons, but that either way both parties are jointly and severally liable for the accuracy of the information. Subsection 4 sets out what is to be contained in a notification to the Agency. Subsection 5 provides for the EPA to issue a registration number for an abstraction. Subsections 6 to 8 provide for requirements to submit information to the EPA where an abstraction is transferred from one person to another, or where an abstraction is ceased. Subsection 9 provides that registration of an abstraction may not be construed as authorisation, and subsection 10 provides that non-compliance with subsections 1, 6, 7, or 8 is an offence.

Section 12. Provision of information to Agency

Section 12 contains further requirements regarding information the Agency may request from a person carrying out an abstraction, and notification requirements where material changes to the abstraction occur, including where a licence has been granted in relation to the abstraction. It shall be an offence not to comply with the requirements of section 12.

Section 13. Evidential value of entries in register

Section 13 provides that entries in the register, and copies of entries, shall be received as evidence in any legal proceedings.

Part 5 – Licensing of abstractions

Chapter 1 – Abstractions requiring licence

Section 14. Interpretations (*Part 5*)

Section 14 contains definitions for terms used in Part 5, including terms in relation to Environmental Impact Assessment, and Retrospective Environmental Impact Assessment. Subsection 2 applies Schedules 6, 7, and 7A of the Planning and Development Regulations of 2001 to abstractions under this act, subject to any necessary modifications.

Section 15. Requirement for a licence to abstract

Subsection 1 establishes the types of abstractions that will require a licence to abstract under this Act.

Subsection 2 provides that where a person carried out an abstraction that is above the licensing threshold before the commencement of this section, they are required to submit a licence application within 6 months of the commencement of this section. Where a person intends to carry out a new abstraction above the licensing threshold they shall not commence the abstraction until the licence has been granted.

Subsection 3 provides that where the Agency determines a licence is required under subsection 1, the person shall submit an application within 6 months of the determination.

Subsection 4 provides for the requirement to apply for a licence where an abstraction is of a type listed in subsection 1 and a retrospective EIA was required according to section 29. Subsection 5 provides that persons under subsection 4 that also wishes to increase the rate of their abstraction, or vary it in some other respect, must also apply for a license for this increased or varied abstraction.

Subsection 7 allows for an application to extend the period in which to make a licence application and subsection 8 provides that non-compliance with this section is an offence.

Section 16. Registration and licensing thresholds

Section 16 grants the power to the Minister to specify or reduce the registration threshold or specify or vary the licensing threshold, for the purpose of the sustainable management of water resources. Under this section the EPA may submit a report to the Minister recommending an order to alter the thresholds and the Minister shall consider this report along with a number of other matters listed in subsection 5.

Subsections 8 to 11 provide that following an order to change the licensing or registration thresholds, an abstractor will have to register or submit a licence application where their abstraction now meets the new thresholds, and it shall be an offence not to do so.

Section 17. Agency opinion that licence required

Section 17 gives the Agency the power to notify an abstractor of its opinion that their abstraction, that does not otherwise require a licence, requires a licence to facilitate the proper regulation of the abstraction. A public authority may notify the Agency of its opinion that an abstraction should require a licence to facilitate its proper regulation. The section provides the procedure whereby the Agency shall issue its opinion and allow observations from a person carrying out an abstraction prior to its determination that a licence is required.

Section 18. Identification of significant abstractions

This section defines the meaning of significant abstraction. Under this section the Agency shall assess each proposed abstraction above the registration threshold and below the licensing threshold to determine if it is a significant abstraction. Where the Agency determines an abstraction is significant it will give the reasons for its opinion and require an application for a licence to be made. Each assessment of significance shall be reviewed not less than once every 6 years.

Section 19. Assessment of certain abstractions

This section provides for the Agency to assess abstractions in certain categories to determine if they should be subject to an Environmental Impact Assessment or a Retrospective EIA. This assessment will result in a determination that either no EIA is required, an EIA screening assessment is required, or an EIA is required, based on whether there have been or may be significant effects on the environment arising from the abstraction. Where the Agency concludes that an EIA is required, the person carrying out an abstraction shall be required to submit a licence application. The section also outlines the process of an EIA screening assessment.

Section 20. Grant of licences

This section empowers the Agency to grant or refuse licence applications and attach such conditions to the licence it considers appropriate. The licence shall be indefinite however the Agency may impose conditions concerning its duration. Subsection 3 provides that the Agency shall not grant a licence unless it is satisfied that the abstraction subject to the licence conditions shall not cause a deterioration in in the status of the water body or compromise compliance with standards or objectives for a protected area. Subsection 4 provides that the Agency may refuse a licence where they deem it unacceptable on environmental grounds. Subsection 5 provides that the Agency shall attach conditions consistent with the environmental objectives of the water body. The section contains an outline of the matters the Agency shall have regard for in considering the application as well as the conditions that may be attached to a licence. The Agency may charge a fee to discharge costs of monitoring and ensuring compliance with the licence. Subsection 8 specifies the circumstances in which the Agency shall not have to carry out an EIA screening assessment or EIA.

Chapter 2 – Licence application and EIA

Section 21. Application for licence for abstraction

This section provides for applications for abstraction licences that do not require retrospective EIA or a combined application for an increase in the abstraction taking place. It states that the person shall apply for a licence and provide all of the prescribed information to the EPA's EIA portal. Subsection 3 provides that the EPA will carry out an EIA for certain classes of abstractions.

Section 22. Coordination of EIA

This section provides that where the Agency is required to carry out an EIA under section 21, that it may do so in consultation with a planning authority or An Bord Pleanála, and that the EIA will be coordinated with any assessments of the abstraction under the EU Habitats Directive or Birds Directive.

Section 23. EIAR for an abstraction

This section requires an applicant to submit an Environmental Impact Assessment Report for abstractions that require an EIA. The section contains details of what must be included in an EIAR, the issuing of an opinion on the scope and detail required in an EIAR by the Agency, and the Agency's consideration of the EIAR submitted.

Section 24. Screening determination

This section defines a screening assessment in relation to applications that do not contain an EIAR and do not involve development or proposed development. The Agency will determine if an abstraction is likely to have significant effects on the environment. Following this screening the Agency will determine either that the abstraction shall be subject to an EIA or that it will not. The section describes the matters to be considered in, and process of, the assessment.

Section 25. Coordination of EIA with Planning Authority or Board

This section addresses EIA in relation to abstractions that involve development or proposed development for which a grant of permission is required. The applicant will have to provide confirmation and evidence that a grant of permission has been applied for or granted, including a copy of the relevant EIAR or confirmation from the planning authority that no EIA was required under the Planning and Development Act. If a required grant of permission is not evidenced by the applicant, the abstraction licence will not be granted. Subsections 4 to 8 outline the procedure for communication, observations and consultation between the planning authority and the Agency before the Agency makes its determination to grant or refuse a licence, or in relation to an EIA being conducted by the planning authority.

Section 26. Submission of information for purposes of Chapter 2

This section provides that the Agency may request further information necessary to assess an application or carry out an EIA.

Section 27. Grant or refusal of licence application under *section 21*

This section provides that the Agency will make and publish its proposed decision within 8 weeks following the submission of the application or any further information and invite observations. This period may be extended for specified reasons. Within 8 weeks following the submission of observations it will make and publish its decision. Subsection 5 makes it an offence to carrying on an abstraction where a licence has been refused.

Section 28. Decision where application was subject to EIA

This section outlines the steps the Agency shall take and matters it will consider in relation to assessing an application that is subject to an EIA, and the details to be included in the decision made to grant or refuse a licence.

Chapter 3 – Licence application requiring retrospective EIA or screening for retrospective EIA

Section 29. Application for licence requiring retrospective EIA or screening for retrospective EIA

This section requires a person to apply for a licence where a retrospective EIA or screening for retrospective EIA is required. The section provides for information to be submitted to the EPA's EIA portal. Subsection 3 provides for the classes of abstraction for which the EPA is responsible for carrying out an EIA.

Section 30. Exceptionality Test

This section provides for the carrying out of a test to establish if exceptional circumstances exist that make it appropriate to carry out a retrospective EIA on an abstraction. Where the Agency is not satisfied these circumstances exist, the retrospective EIA shall not be carried out, and a licence shall be refused under section 35.

Section 31. Retrospective EIAR

This section contains the requirements for submitting a retrospective EIAR to the EIA portal, and what is to be contained in a retrospective EIAR. The section applies subsections 3 to 6 of section 23 on EIARs to retrospective EIARs.

Section 32. Retrospective screening determination

This section provides that where an application for a licence for a class of abstraction that may require retrospective EIA is not accompanied by a retrospective EIAR, the Agency will conduct a retrospective screening determination to establish whether the abstractions has had or is likely to have significant effects on the environment. This section applies provisions in relation to a screening assessment for an EIA at section 24, to a screening determination for retrospective EIAs.

Section 33. Consultation with planning authority

This section provides that where a licence application requiring retrospective EIA is submitted, the Agency will request observations from the relevant planning authority and consider these observations, and the results of any other consultations it deems necessary, before giving notice of its proposed decision.

Section 34. Submission of information for purposes of Chapter 3

This section applies the provisions of section 26 to retrospective EIA as it applies to EIA. These provisions relate to submission of any further information necessary for the Agency to consider the application or carry out an EIA/retrospective EIA.

Section 35. Grant or refusal of licence application under section 29

This section provides for the timeline within which the EPA will make its proposed decision on an application for a licence requiring retrospective EIAR, and its final decision following the receipt of observations. This timeline will be 8 weeks following the application or receipt of further information for its proposed decision, followed by 28 days for observations to be submitted, followed by a further 8 weeks to make its final decision having considered received observations. It will be an offence to abstract where a licence application under this part has been refused.

Section 36. Decision where application was subject to a retrospective EIA

This section applies the provisions regarding the making of a decision on an application by the Agency at section 28, to applications that require a retrospective EIA.

Chapter 4 – Combined application for a licence and EIA**Section 37. Combined application for licence**

This section provides for applications for licences that comprise an existing abstraction, in operation prior to the commencement of this Act, and a revised abstraction, which will increase the existing abstraction. These abstractions may be subject to EIA and/or retrospective EIA. The section provides for the applicant to submit the relevant information to the EPA's EIA portal.

Section 38. Coordination of EIA for combined application for licence

This section provides that where an EIA is to be carried out by the Agency and the combined application comprises a revised abstraction involving development or proposed development, the EIA may be carried out in consultation with the planning authority. The EIA or retrospective EIA shall be coordinated with any assessment under the Habitats Directive or the Birds Directive.

Section 39. Exceptionality test for combined application for licence

This section established an “Exceptionality Test” for the existing abstraction forming part of a combined application for a licence, where the retrospective EIA shall not be carried out unless the Agency is satisfied that there are exceptional circumstances that warrant it. If the retrospective EIA is not carried out, the licence will be refused under section 44. This section applies the provisions in relation to exceptionality tests under section 30, to exceptionality tests under chapter 4.

Section 40. Retrospective EIAR and EIAR

This section provides that a retrospective EIAR be submitted to the Agency where the existing abstraction is subject to a retrospective EIA. It also applies the provisions in relation to an EIAR under section 23, to a retrospective EIAR in respect of an existing abstraction that forms part of a combined application for a licence under this part. The EIAR provisions under section 23 shall also apply to the EIAR submitted in respect of the revised abstraction in a combined application for a licence.

Section 41. Screening determinations for combined application for licence

This section provides for a screening determination for both a retrospective EIA for the existing abstraction, and a screening determination for an EIA for the revised abstraction, as part of the combined application for a licence. The provisions of section 24 in relation to screening for EIA on an application are also applied to screening determinations under chapter 4, in this section.

Section 42. Coordination of EIA with planning authority or Board for combined application for licence

This section applies the provisions at section 25 or section 33 where applicable, to the coordination of an EIA between the EPA and a planning authority in relation to a combined application for a licence under Chapter 4.

Section 43. Submission of information for purposes of Chapter 4

This section provides for the Agency to give notice to the applicant requiring them to submit any further necessary information for consideration of the application or for the carrying out of an EIA or retrospective EIA. It also provides for the withdrawal of an application where further necessary information is not provided within the specified period.

Section 44. Grant or refusal of licence application under *section 37*

This section sets out the timelines for the decision of the Agency in relation to combined applications for a licence. Similarly to sections 27 and 35, this timeline will be 8 weeks following the application or receipt of further information for its proposed decision, followed by 28 days for observations to be submitted, followed by a further 8 weeks to make its final decision having considered received observations. It will be an offence to abstract where a licence application under this part has been refused.

Section 45. Decision where application was subject to EIA or retrospective EIA

This section applies the provisions of section 28 to a decision on a combined application for a licence under section 44. The matters to be considered, steps to be taken and items for inclusion in a decision that requires an EIA or retrospective EIA, are to apply to decisions on combined applications for a licence as they do to decisions under section 21.

Chapter 5 – Obligations, joint licences, surrenders, transfers, reviews, revocation or suspensions

Section 46. General provisions relating to licensee

This section specifies the requirements a licensee must fulfil in order to be granted a licence and the obligations of a licensee. It states the requirement to comply with a licence, that the obligations of a licensee apply to each of the persons who apply for a licence if there is more than one person applying, and that each of the persons granted a licence will be jointly and severally responsible for the licence and its conditions. Subsection 2 also lists a set of standards an applicant must meet to be granted a licence. Subsection 6 provides that it is an offence not to comply with the licence and any conditions of a licence.

Section 47. Application for joint licence

This section provides that where an abstraction and associated impoundment are operated by different persons, a licence application may be made by one on behalf of both, or by both persons jointly. It provides for joint and several liability for the licence, but that the licence may allocate responsibility for certain conditions to one of the licence holders, subject to certain requirements. The section provides that the Agency may require evidence and terms of an agreement between both persons applying for a joint licence. Subsections 4 and 5 set out when and under what conditions the Agency may grant a joint licence.

Section 48. Owner of impoundment not identified

This section provides that the Agency may grant an abstraction licence with an associated impoundment when the owner of the impoundment cannot be identified, where all reasonable measures to identify the impoundment owner have been taken, and the abstractor agrees to be liable under the licence, for the operation and any conditions relating to the impoundment.

Section 49. Surrender of licence

This section provides for the method by which a licensee may surrender a licence, which will be via application to the Agency for a decision to accept a surrender. These provisions ensure that the obligations on a licensee are not affected by the cessation of an abstraction, and that the EPA may satisfy itself that the acceptance of the surrender will not adversely affect the environmental objectives of the water body concerned or the continued operation of an associated impoundment, prior to accepting the surrender.

Section 50. Transfer of licence

This section provides for the transfer of a licence from one person to another. It provides for the application to the Agency by the licensee and proposed licensee and the when the Agency may accept an application to transfer the licence. The section also provides that the person to whom the licence is transferred accepts all liabilities, requirements and obligations associated with the licence.

Section 51. Review of conditions attached to licence on application by licensee

This section provides for how and under what terms a licensee may apply to the Agency for a review of the conditions attached to a licence. Licences for abstractions of a class at section 21(3)(a) must apply for a new licence, should the licensee wish to review the conditions attached to the licence. The Agency may refuse the application or review the conditions and amend the conditions, amend the conditions subject to modifications or refuse to amend the conditions. Subsections 4 to 6 also address potential EIA implications arising as part of a review of licence conditions.

Section 52. Review by Agency of conditions attached to licence

This section provides for the manner in which the Agency may initiate a review of the conditions attached to a licence. It may not do so more frequently than once in every 3 year period after the date of the grant of the licence. The reasons for which the Agency may initiate a review are listed at subsection 1(a)-(e). The section contains notice requirements by the Agency, the right for a licensee to make representations in relation to the review, and potential EIA requirements arising as a result of the review of the conditions attached to a licence. The Agency may amend or not the conditions of a licence. The licensee may appeal the decision of the Agency under section 55.

Section 53. Revocation or suspension of licence

This section grants the power to the Agency to revoke or suspend a licence. Revocation and suspension are part of the chain of enforcement steps as set out in Part 9 and may follow a failure to comply with a court order under section 101. Revocation or suspension may also occur where a person does not satisfy the requirements of a licensee under section 46, where the abstraction has not commenced within, or ceased and not recommenced within 3 years, or where false or misleading information was provided to the Agency and the Agency deems it of such seriousness to revoke or suspend the licence. This section contains the procedure by which the Agency may revoke or suspend a licence. It also allows the Agency to attach conditions to a revocation and suspension with which the licensee must comply. Subsection 6 provides that an appeal against the revocation or suspension under section 54 shall suspend the decision until the High Court has made an order in relation to the appeal.

Section 54. Termination of suspension

This section provides for an application by a licensee to the Agency to terminate a licence suspension. It provides for the power of the Agency to do so, and the manner in which it may do so.

Section 55. Appeal to High Court of certain decisions of the Agency

This section provides for the right of a licensee to appeal a revocation or suspension to the High Court, within 8 weeks of issue of the notice of the revocation or suspension. Subsection 5 provides that the High Court is to consider whether the Agency committed a serious error of law or fact in making its decision, and may confirm, set aside, or replace the decision of the Agency, or remit it to the Agency for reconsideration.

Chapter 6 – Miscellaneous Provisions relating to licences

Section 56. Judicial Review of decision of Agency or Minister

This section provides for Judicial Review of a decision of the Agency under sections 27, 35, and 44 (in relation to the grant of a licence), 49, 50 or 51 (in relation to the surrender, transfer or review of conditions attached to a licence). It provides for Judicial Review of a decision of An Bord Pleanála under section 67, and an order made by the Minister under section

80. It provides for how an application for Judicial Review is to be made, and how the High Court is to deal with the application for Judicial Review. Subsection 8 provides for when the Court may grant leave for Judicial Review.

Section 57. Regulations relating to licences

This section provides for regulation making powers of the Minister in relation to Part 5. Subsection 2(a)-(z) lists the matters regulations under this section may provide for.

Section 58. Agency guidelines

This section requires the Agency to prepare and issue technical guidelines on the categories of abstraction likely to require retrospective EIA or screening for retrospective EIA. Subsection 5 provides for the Agency to revise these guidelines at intervals it considers appropriate.

Section 59. Clerical or technical amendment of licence

This section empowers the Agency to make amendments to the face of a licence. This power may be used to correct clerical errors, make amendments that could be reasonably regarded as being contemplated by the terms of a licence condition that were not explicitly stated, or otherwise facilitate the operation of the licence. The Agency shall consult with the licensee when making amendments, where appropriate.

Part 6 – Abstraction by Irish Water

Chapter 1 – Public abstraction by Irish Water

Section 60. Definitions for Part 6

This section contains definitions for this Part.

Section 61. Power to carry out public abstraction

This section empowers Uisce Eireann/Irish Water to carry out a public abstraction. Subsection 2 lists what Uisce Eireann/Irish Water may do in carrying out a public abstraction. Public abstraction is defined in the interpretations at section 2.

Section 62. Notice of proposal to carry out public abstraction

This section provides for the notification requirements for Uisce Eireann/Irish Water where it intends to carry out a public abstraction using its powers under section 61. This includes timelines, recipients of a notice and contents of a notice.

Section 63. Provision supplemental to *section 62*

This section provides for the requirements of publishing of a notice under section 62(1) in relation to a public abstraction by Uisce Eireann/Irish Water, and what is to be contained in the published notice. Subsection 4 also provides that where the owner or occupier of land cannot be ascertained by reasonable enquiry, that Uisce Eireann/Irish Water shall erect or affix a notice on the land for a period of not less than 42 days.

Section 64. Objection to proposal to carry out public abstraction

This section provides for the right of a person who believes his or her right, title or interest in any easement, way-leave, water right, fishing right or other right over or in respect of water would be materially adversely affected by a public abstraction by Uisce Eireann/Irish Water, to object to An Bord Pleanála. This section contains the timeline for objecting and means by which an objection may be made.

Section 65. No objection or objection withdrawn

This section provides that where no objection is made or an objection is withdrawn, that Uisce Eireann/Irish Water may carry out its proposed public abstraction. Uisce Eireann/Irish Water may only commence a public abstraction when it receives confirmation from the Board that no objections have been made or they have been withdrawn.

Section 66. Consideration of objection by Board

This section provides for the procedure according to which An Bord Pleanála is to consider an objection, including the notification of Uisce Eireann/Irish Water and receipt of Uisce Eireann/Irish Water's views in relation to the objection. The section also provides for the Board to consult with other bodies in making its decision. Subsection 7 provides that the Board is not required to carry out an EIA or EIA screening to consider the objection.

Section 67. Decision by Board in respect of objection

This section contains what the Board may consider, and what it shall have regard to, when making a decision on an objection. It may decide to reject or accede to the objection. Where the objection is rejected, Uisce Eireann/Irish Water may proceed with the public abstraction. Where it is acceded to, Uisce Eireann/Irish Water may not continue with the public abstraction notwithstanding if it has been granted an abstraction licence by the EPA, or any relevant planning permission.

Section 68. Provision supplemental to section 67

This section provides for notification by the Board of its decision under section 67, the recipients of the notification and contents of the notification. It provides that Uisce Eireann/Irish Water is liable to pay any sum specified by the Board to contribute to the reasonable costs of the Board in making its decision, or of the Agency or planning authority of making submissions or observations. Subsection 4 to 6 provide for the timeline in which it will be the objective of the Board to make a decision on an objection, and circumstances in which it may be extended. Decisions under section 67(3) will also be included in reports by the Board under section 118 of the Act of 2000.

Section 69. Claim for compensation

This section provides for the right for 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 the carrying out of a public abstraction, to claim compensation from Uisce Eireann/Irish Water. It provides that a claim for compensation shall be made within 52 weeks, however the High Court may extend this period upon application.

Section 70. Determination of claim for compensation

This section provides for the manner in which a claim for compensation is to be determined. Claims for compensation will be determined via arbitration in the absence of agreement. Arbitration will be held under the Acquisition of Land (Assessment of Compensation) Act 1919 and relevant section of the Land Clauses Consolidation Act 1845. Subsection 4 outlines the rules the arbitrator shall apply and their powers in relation to the making of an award.

Section 71. Recovery of compensation

This section provides for the rules on recovery of compensation, by applying the relevant sections of the Land Clauses Consolidation Act 1845. Subsection 3 provides that costs and expenses payable by Uisce Eireann/Irish Water are recoverable from Uisce Eireann/Irish Water as a simple contract debt in a court of competent jurisdiction.

Section 72. Double compensation

This section provides that where Uisce Eireann/Irish Water has previously paid compensation for interference with a person's rights under sections 93 or 97 of the Water Services Act 2007, Chapters 1 and 2 of Part 6 of this Act, section 4 of the Local Government (Sanitary Services) Act 1964 or sections 14 and 15 of the Water Supplies Act 1942, a person may only claim compensation under section 69 in relation to damage suffered in consequence of the public abstraction for which they were not otherwise compensated previously.

Section 73. Regulations relating to public abstraction

This section provides for the Regulation making power of the Minister in relation to public abstractions under Chapter 1 and temporary and emergency abstractions under Chapter 2 of Part 6.

Chapter 2 – Temporary abstraction by Irish Water**Section 74. Temporary abstraction**

This section empowers Uisce Eireann/Irish Water to take immediate action to carry out a temporary public abstraction to maintain a public supply of water where there is a risk to the supply of public water or to human health and safety, from a number of listed causes. Subsection 2 empowers Uisce Eireann/Irish Water to enter onto land to conduct such temporary abstractions and operations required to carry out the abstraction.

Section 75. Notice of proposal to carry out a temporary abstraction

This section contains the requirements for notification by Uisce Eireann/Irish Water where it intends to carry out a temporary abstraction under section 74. Notification is required as soon as may be, or where that is not practical, within 48 hours of the commencement of the abstraction. Subsections 3 and 4 contain requirements in relation to the contents of the notice and its publication. Subsection 5 provides that the Agency may require Uisce Eireann/Irish Water to submit further information in relation to the temporary abstraction.

Section 76. Temporary nature of abstraction

This section defines "temporary" in relation to a temporary abstraction. A temporary abstraction may only be carried out for 8 weeks, with the possibility of a single 8 week extension upon notice to the persons given a notice under section 75(1). Should the extension not be agreed to, Uisce Eireann/Irish Water may apply to the District Court for an order to extend.

Section 77. Requirement for licence for temporary abstraction

This section provides that commence certain classes of temporary abstraction, until a licence has been granted. It is also provided that the Agency shall assess a temporary abstraction of a class specified in Part 2 of Schedule 5 to the Regulations of 2001 under section 19(2) to determine if an EIA is required, and may assess other abstractions under this section also. Subsection 3 provides that the Agency will give priority to assessment of temporary abstractions where necessary.

Section 78. Exemption for emergency abstraction

This section empowers Uisce Eireann/Irish Water to take immediate action to carry out an emergency abstraction where it is of the opinion that there is a serious risk to public water supply or human health so severe as to constitute a Civil Emergency in accordance with Article 1(3) of the EIA Directive. Subsection 2 empowers Uisce Eireann/Irish Water to enter land and undertake the activities specified in section 74(2) and 61(2)

Section 79. Notice of emergency abstraction

This section contains the notice provisions in relation to an emergency abstraction under section 78. Uisce Eireann/Irish Water must notify the Agency of the abstraction 24 hours prior to its commencement and to the notice parties at section 75(1) within 48 hours of commencement. Subsection 2-4 contain the requirements in relation to the contents of the notice, publication of the notice and provision of further information required by the Agency.

Section 80. Application for exemption

This section provides that where Uisce Eireann/Irish Water intends to carry out an emergency abstraction, it must apply to the Minister for an exemption from the requirements of part 5 including the carrying out of an EIA. The application must be made no later than 24 hours after the commencement of the abstraction. The Minister is required to consider this application and make an order, following consultation with the Agency, within 7 days. The Minister may make an order, or not, exempting the emergency abstraction from any or all requirements under part 5, on the basis that there is a civil emergency, the abstraction is for the sole purpose of responding to the emergency and would be hindered by the requirements of part 5 and/or the carrying out of an EIA. This exemption will be for 8 weeks with the possibility of a single extension of no more than 8 weeks. Where the Minister declines to make such an order, an abstraction shall be considered to be a temporary abstraction subject to section 77.

Section 81. Appeal to District Court against notice of temporary abstraction

This section provides for the right of a person given notice of a temporary abstraction under section 75, to appeal to the District Court against the notice within 14 days, on a list of grounds. The section provides for the appeal to be heard and the District Court to rule on the appeal/notice. Subsection 3 provides that the appeal shall not suspend the operation of the notice, unless the appellant applies for the notice to be suspended and the Court orders that the notice be suspended until the appeal is determined.

Section 82. Claim for compensation for temporary or emergency abstraction

This section provides for a right to compensation for damage to or interference with land, or material adverse effect on rights, titles or interests in easements, way-leaves, water rights, fishing rights or other rights over or in respect of water, in consequence of the carrying out of a temporary or emergency abstraction by Uisce Eireann/Irish Water under this Part. A claim for compensation is to be made within 52 weeks. This section applies sections 70 (Determination of claim for compensation), 71 (Recovery of compensation), and 72 (Double Compensation) to claims for compensation as a result of temporary or emergency abstraction by Uisce Eireann/Irish Water.

Chapter 3 – Abstraction by Irish Water from reservoirs of Electricity Supply Board

Section 83. Abstraction by Irish Water from reservoirs of Electricity Supply Board

This section provides for agreements between Uisce Eireann/Irish Water and the ESB governing the abstraction by Uisce Eireann/Irish Water from ESB reservoirs. Subsections 2 and 3 give the Minister the power, following consultation with the Minister for Environment, Climate and Communications, to direct Uisce Eireann/Irish Water and ESB to enter such an agreement. Subsections 4 and 5 provide that the Agency will only consider a licence application from Uisce Eireann/Irish Water, for an abstraction from an ESB reservoir, where a water abstraction agreement between Uisce Eireann/Irish Water and ESB is provided to it. Subsection 6 provides that ESB shall not pay compensation where Uisce Eireann/Irish Water has already paid compensation under chapters 1 and 2 of Part 6.

Part 7 – Waterways Ireland

Section 84. Abstraction from navigable waters

This section provides that where an application for a licence to abstract from navigable waters is made, the Agency shall notify Waterways Ireland, and Waterways Ireland may give its opinion as to whether the abstraction would pose a material risk or impediment to navigation of the navigable water. The section provides for consultation with Waterways Ireland in relation to licence determinations.

Section 85. Abstraction from canals

This section provides that abstraction from canals will only be with the agreement of Waterways Ireland, and that any licence applications will only be considered by the Agency where the applicant provides said agreement with Waterways Ireland, to the Agency. The Agency will consult with Waterways Ireland in relation to the licence application and conditions to be attached to the licence.

Section 86. Operation and maintenance of navigable water by Waterways Ireland

This section provides that this Act shall not operate to limit the functions of Waterways Ireland. In considering a licence application from Waterways Ireland that is necessary for the management, operation or maintenance of a navigable water or canal, the Agency shall have due regard to the functions of Waterways Ireland and the need to protect navigation.

Part 8 – Electricity Supply Board

Section 87. Operation and safety of hydro-electric schemes

This section provides that the Agency shall have regard to the functions of the ESB when considering an application for a licence relating to abstract in association with a hydro-electric scheme. The section outlines when the Agency will grant a licence and states that the Agency will not attach any conditions that would affect the performance of the functions of the ESB such as to compromise the safety of a hydro-electric scheme. Subsection 7 provides that each hydro-electric scheme will be regarded as a single abstraction, and only one licence may be granted for the purposes of each scheme.

Part 9 – Enforcement

Section 88. Definitions (*Part 9*)

This section contains definitions for Part 9. A key definition here is the definition of environmental inspections.

Section 89. Regulations for purpose of environmental inspections

This section provides for the power of the Minister to make regulations providing for the undertaking of environmental inspections by the Agency or Local Authorities. Subsection 2 contains matters that regulations under this section may provide for.

Section 90. Functions of local authorities under this Part

This section provides for the responsibilities and functions of a local authority in relation to environmental inspections and ensuring compliance with the regulations under sections 8 and 9, relating to abstractions below the licensing threshold or those with pending licence applications.

Section 91. Authorised person appointed by local authority

This section provides for the power of a local authority to appoint an authorised person or persons for the performance of its enforcement functions under this part.

Section 92. Functions of Agency under this part

This section provides for the requirement that the Agency carry out environmental inspections and take measures to ensure compliance with this Act and regulations, other than those made under section 8 and 9 that are the jurisdiction of a local authority.

Section 93. Authorised person appointed by Agency

This section provides for the power of the Agency to appoint an authorised person or persons to perform its enforcement functions under this Act and regulations.

Section 94. Power of authorised person to enter premises

This section empowers authorised persons appointed by a local authority or the Agency to enter certain premises for the performance of their functions. It sets the rules for entry by an authorised person and provides that an authorised person shall not enter a dwelling without the occupiers consent or a warrant.

Section 95. Powers of authorised person

This section provides for what actions an authorised person may take, or require a person to take, having entered a premises in the performance of their functions. This includes inter alia; inspecting and taking copies of records; inspecting an abstraction, works and equipment; taking samples, taking any actions deemed necessary for conducting an environmental inspection; and, requiring a person to provide their name and address where the authorised person believes the person has committed an offence.

Section 96. Warrant required to enter certain premises

This section provides that an authorised person may not enter a dwelling without the consent of the occupier or a warrant. This section provides for how and under what circumstances an authorised person may apply for and be granted a warrant to enter certain premises. It also provides for the grant of warrant to enter accompanied by a member of An Garda Síochána, when access to the premises has been denied to an authorised person that has been granted a warrant to enter.

Section 97. Local authority may give compliance notice

This section empowers a local authority to issue compliance notices to persons carrying out an abstraction in its administrative area, in order to prevent or limit the failure of a water body to meet its environmental objectives. These notices may be issued in relation to unlicensed abstractions that fall under the regulations under sections 8 and 9.

Section 98. Agency may give compliance notice

This section empowers the Agency to issue compliance notices where necessary to prevent or limit the failure of a water body to meet its environmental objectives. These compliance notices relate to licensed abstractions not falling under the regulations under sections 8 and 9.

Section 99. Supplemental provisions relating to compliance notices

This section provides for the contents of a compliance notice issued by a local authority or the Agency, how a compliance notice may be given, the issuing of amended compliance notices, and the period within which a compliance notice shall remain in force. The compliance notice will include requirements on the person carrying out an abstraction to take specified measures to prevent or limit the failure of a water body to meet its environmental objectives. This can include a requirement to suspend or cease the abstraction and/or the requirement to mitigate or remedy the effects of the abstraction.

It is provided that a person who does not comply with a compliance notice shall be guilty of an offence, and that in the case of noncompliance the local authority or the Agency may take any measures considered necessary to protect or restore the water body or measures to mitigate or remedy environmental effects of the abstraction.

Section 100. Appeal against or application to suspend compliance notice

This section provides for the right of a person to appeal to the District Court against a compliance notice. This appeal must be made within 28 days and will not operate to suspend the compliance notice, unless ordered by the District Court on application by the appellant. The District Court may confirm the compliance notice with or without modification, or discharge it. The Agency is entitled to appear and produce evidence on the hearing of the appeal.

Section 101. Application to Court

This section provides that the Agency may, where a person fails to comply with a compliance notice, apply to the Circuit Court for an order requiring the person to comply with the compliance notice.

Section 102. False or misleading information

This section provides for an offence for the knowing or reckless provision of false or misleading information to the Agency or a local authority under this act.

Section 103. Obstruction

This section provides for an offence for obstructing or interfering with an authorised person or member of An Garda Síochána when exercising their powers under sections 95(1) and 96, or for failing or refusing to comply with a direction of same under section 95(1)(g).

Section 104. Offences and penalties

This section provides for the penalties to be applied for the offences throughout the bill.

Section 105. Offence by body corporate

This section provides that in certain circumstances individuals within a body corporate, as well as the body corporate itself, may be guilty of an offence committed by a body corporate and be proceeded against and punished for the offence.

Section 106. Continuing offence

This section provides for an offence for continuing to contravene a compliance order on each day the failure to comply continues, following conviction of an offence under section 99(7) of this Act. It provides for a penalty of a Class A fine on each day the noncompliance continues.

Section 107. Evidentiary presumptions

This section provides that a certificate signed by an authorised person in respect of tests, examinations or analyses carried out in accordance with section 95(1) shall count as evidence of the subject matter of the certificate in any proceedings.

Section 108. Prosecution by local authority

This section empowers a local authority to take a prosecution for an offence under sections 8(4) and 9(5), or an offence in relation to a compliance notices issued by the local authority, under section 99(6) and (7). It provides for the court to order the payment of costs and expenses to the local authority by a person convicted of an offence. It also provides for the court to order that the amount of any fines imposed by the court be paid to the local authority, on the application of the local authority.

Section 109. Prosecution by Agency

This section empowers the Agency to take a prosecution for an offence under sections 11(10), 12(4) or (5), 15(8) or 16(10) or (11), or an offence in relation to a compliance notice issued by the Agency, under section 99(6) or (7). It provides for the court to order the payment of costs and expenses to the Agency by a person convicted of an offence. It also provides for the court to order that the amount of any fines imposed by the court be paid to the Agency, on the application of the Agency.

Part 10 – Miscellaneous and Transitional Provisions**Section 110. Minister may give general policy directives to Agency**

This section grants the Minister the power to give the Agency general policy directives, having regard to certain listed matters, and may amend or revoke such directives. These directives will be laid before the Oireachtas and will not give the Minister control over the performance by the Agency of its functions under this Act.

Section 111. Transitional arrangements consequent upon repeal of Act of 1942

This section provides that Uisce Eireann/Irish Water may continue to abstract for the purposes of water supply under the terms of its proposal made under the 1942 Act, until the Agency has made a decision to grant or refuse a licence for the abstraction, or in the case of an appeal, until a court has made an order on foot of that appeal. Subsection 2 requires Uisce Eireann/Irish Water to apply for a licence under this Act for any abstractions operating under the 1942 Act, that would require a licence under section 15. The provisions relating to compensation under the 1942 Act shall apply to any compensation claims made but not yet determined at the commencement of this Act.

Section 112. Transitional provisions consequent upon repeal of Local Government (Sanitary Services) Act 1964

This section provides that a water agreement under the Act of 1964 shall be deemed to be a water abstraction agreement under section 83 of this Act (an abstraction agreement between Uisce Eireann/Irish Water and ESB), subject to any necessary modifications. Section 83 shall apply to these water agreements.

Section 113. Transitional arrangements consequent upon revocation of Regulations of 2018

This section provides that an abstraction registered under the Regulations of 2018 will be deemed to have complied with the requirements in relation to registration under part 4 of this Act, and be deemed to be entered into the register. Registration numbers from the Regulations of 2018 will be carried over to the register under this Act, and a notification made under the Regulations 2018 made prior to the revocation of those regulations will be treated as a submission of information under section 11 of this Act.

Part 11 – Amendment of Other Acts

Section 114. Amendment of Canals Act 1986

This section amends the Canals Act 1986 to include reference to this Act, and to subject the powers and rights of the Waterways Ireland in relation to the abstraction from navigable waters and the water environment generally, to the requirements of this act. This section also ensures that bye-laws made under the Canals Act are also subject to the requirements of this Act.

Section 115. Amendment of Act of 1990

This section inserts reference to this Act, into the Shannon Navigation Act. This section amends the Shannon Navigation Act to ensure that abstraction by Waterways Ireland from navigable water that does not form part of a canal as defined in this Act, is subject to the requirements of this Act. This section also provides that bye-laws relating to abstraction, made under the Shannon Navigation Act, are subject to this Act.

Section 116. Amendment of the Act of 2000

This section inserts definitions for “abstraction” and “abstraction licence” in accordance with this Act, into the Act of 2000, Paragraph (b) includes reference to an abstraction licence in section 7(2) such that a Planning Authority register of all lands in its functional area shall contain an entry where a development comprises or is for the purpose of an activity that requires an abstraction licence, Paragraph (c) inserts a new section 34(2) (ca) providing that where a development relates to an activity requiring an abstraction licence, the planning authority shall take into consideration that the control of abstractions is a function of the Agency. Paragraph (d) ensures that before a planning authority makes a decision on proposed development for the purposes of which an abstraction licence is required, that the Board may request observations from the Agency. Paragraph (e) ensures that the Board does not attach conditions for the purpose of the control of an abstraction to a grant of permission for development for the purposes of an activity for which an abstraction licence is required. Paragraph (f) inserts a new section 173D that provides for “Environmental impact assessment relating to abstractions”. This section provides for the coordination with the EPA in relation to EIAs as detailed in part 5. Paragraph (g) and (h) insert provisions that the Board shall not include conditions relating to the control and operation of an abstraction, where an application relates to an activity requiring an abstraction licence. Paragraph (i) inserts a new paragraph to the Fourth Schedule of the Act, providing that the Board may reject an application where proposed development would

be inconsistent with the objectives of a River Basin Management Plan. Paragraph (j) inserts reference to a surface water abstraction in paragraph 3 of the seventh schedule of the Act.

Schedule – Public authority

This schedule lists Public Authorities referred to in the Bill.

*An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta,
Meán Fómhair 2022.*