

CONSULTATION PAPER

General Scheme of the Water Environment (Abstractions) Bill 2018

The Government recently approved the General Scheme of a Water Environment (Abstractions) Bill 2018 which will repeal the Water Supplies Act 1942 and part of the Local Government (Sanitary Services) Act 1964 and replace them with a new stand-alone piece of primary legislation governing the abstraction of water.

The proposed Bill will provide for the introduction of a regime for the control of the abstraction of water on a risk-based approach, as signalled in the River Basin Management Plan for Ireland 2018 - 2021 published in April 2018, in order to comply with Ireland's obligations under the Water Framework Directive. It will also update the regime for the abstraction of water for public water supply by Irish Water.

The draft legislation provides for general binding rules to govern all abstractions, largely relating to water conservation and public health issues. Abstractions of 25 cubic metres or more per day will require to be registered. The recently-signed European Union (Water Policy) (Abstractions Registration) Regulations (S.I. No. 261 of 2018) govern the registration of all abstractions of 25 cubic metres per day or more and these regulations will be re-made under the proposed Bill in due course. The regulations provide for all relevant abstractions to be registered with the Environmental Protection Agency (EPA) via an online portal <http://www.epa.ie/licensing/watwaste/watabs/>. Registration is free of charge.

All abstractions of 2,000 cubic metres or more per day will require licensing by the EPA under the proposed legislation. Abstractions of 250 cubic metres or more per day may require licensing if they are deemed by the EPA to represent a significant abstraction pressure to an "at risk" water body. The EPA has estimated that 6% of water bodies are potentially at environmental risk due to abstraction pressures.

The licensing model is being established in alignment with other required licences in order to minimise the administrative burden. The general principles of the licensing process are set out in the General Scheme, but it is intended that the detail of the process shall be formulated in regulations to be made by the Minister at a later date.

While there will be no charge for the abstraction of water, it is envisaged that an administration fee will apply to a licence, as is the case at present for Integrated Pollution Prevention and Control (IPPC) and waste licences issued by the EPA. The management and licensing system is intended to be self-sufficient in terms of funding.

Other provisions in the proposed legislation deal with the principle of compensation, the protection of navigable rivers and canals, the judicial review of decisions, ensuring that other statutes are not impacted, offences and penalties, transitional arrangements and a Ministerial power to issue guidance and direction.

The Minister now invites submissions, observations and comments on the General Scheme of the Water Environment (Abstractions) Bill 2018 as set out in the Appendix.

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Head 1 – Citation and Commencement

To provide that:

- (1) This Act may be cited as the Water Environment (Abstractions) Act 2018.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular Part or purpose, and different days may be so appointed for different Parts and purposes.

Explanatory Note:

This is a standard provision.

Head 2 – Interpretation

To provide that:

In this Act –

“abstraction” means the doing of anything whereby water is removed or diverted by mechanical means, pipe, or any engineering structure or works from any part of the water environment, including anything whereby the water is so removed or diverted for the purpose of being transferred to another part of the water environment, whether temporary or permanent;

“Act of 1992” means the Environmental Protection Agency Act 1992 (as amended);

“Agency” means the Environmental Protection Agency;

“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;

“licence”, unless otherwise specified, means a licence to abstract water;

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

“navigable authority” means, in relation to any navigable water, any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal, or other inland navigation, navigable river, estuary, harbour or dock;

“navigable water” means any river or canal on which any person is, by virtue of any enactment, entitled to navigate or in respect of the navigation on which any person is, by virtue of any enactment, entitled to receive tolls or dues;

“register” means the register of abstractions established under Head 6(1);

“River Basin Management Plan” means a plan prepared by the Minister for the purpose of complying with the requirements of Article 13 of the Water Framework Directive;

“significant abstraction” means an abstraction which, in the opinion of the Agency, either on its own or in combination with other abstractions, alters or could alter (without mitigating measures) the hydrological regime of a surface water body such as it fails or is likely to fail good ecological status or good ecological potential, as appropriate or alters the level of a groundwater body such as it fails or is likely to fail good quantitative status or where the level of abstraction causes a European site to fail to achieve or likely to fail to achieve compliance with a standard or objective for which the European site has been established;

;

“surface water” means inland waters (except groundwater), transitional waters and coastal waters;

“Water Resource Management Plan” means a plan relating to management of water resources, including estimates of demand and environmentally sustainable supply, prepared by Irish Water as part of the development of, or the implementation of, a Water Services Strategic Plan required under section 33 of the Water Services (No. 2) Act 2013.

Explanatory Note:

This is a standard provision defining terms used.

Head 3 – Regulations

To provide that:

- (1) The Minister may make regulations prescribing any matter or thing which is referred to in this Bill as prescribed or to be prescribed or in relation to any matter referred to in this Bill as the subject of regulations or for the purpose of giving full effect to this Bill.
- (2) Regulations made under this Bill may make different provisions in relation to different areas, different circumstances or different classes of cases.
- (3) Without prejudice to any other provision of this Bill, a regulation or order under this Bill may provide for such incidental, consequential, supplementary or transitional provisions (including provisions for the purpose of securing the continuity of any provision of this Act with any provision of any other Act or instrument repealed, revoked, amended or otherwise affected by this Bill or by any regulation or order made under it) as may appear to the Minister to be appropriate for the purposes of this Bill or any regulations or order made under it.
- (4) Every regulation made under this Bill shall be laid before each House of the Oireachtas as soon as may be practicable after it is made and if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation has been laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note:

This is a standard regulation-making provision.

Head 4 – Repeals

To provide that:

- (1) Each Act specified in the first and second columns of Schedule 1 is repealed to the extent specified in the third column of that part opposite the references in the first and second column.

Explanatory Note:

This Head provides for the repeal of the legislative provisions listed at Schedule 1, namely: (a) the Water Supplies Act 1942, which provides for abstraction by water services authorities for the supply of public drinking water, which is now being repealed in entirety and replaced by this Bill; section 4 of the Local Government (Sanitary Services) Act 1964, which deals with the abstraction of water from reservoirs owned by the ESB; and part of section 9 of the Local Government (Water Pollution) Act 1977, which provides for the registration of certain abstractions and will now be superseded by registration provisions under this Bill.

Head 5: General binding rules

To provide that:

- (1) Without prejudice to subhead (2), every abstraction of water must comply with the following general binding rules –
 - (a) water leakage must be kept to a minimum by ensuring all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a state of good repair;
 - (b) there must be a means of measuring the rate of the abstraction;
 - (c) subject to paragraphs (d) and (e), the construction or extension of any well, borehole or other works by which water is being abstracted must be such as to avoid the entry of pollutants or water of a different chemical composition into the body of groundwater;
 - (d) drilling fluids may be introduced into the well or borehole if necessary to facilitate the drilling of the well or borehole provided that this does not result in pollution of the water environment;
 - (e) potable water may be introduced into the well or borehole to test the hydraulic properties of the aquifer;
 - (f) when the well or borehole is not being used for abstraction, it must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer; and
 - (g) an abstraction of 25 or more cubic metres in any 24 hour period must be registered in accordance with Head 6.
- (2) The Minister shall make regulations setting out general binding rules specifically applicable to –
 - (a) the temporary abstraction of groundwater at a construction site for roads, railways, buildings, pipelines, communication links or other built development by means of pumping the groundwater from any excavation or pumping the groundwater from any wells or boreholes on the site in order to help dewater an excavation; and
 - (b) the abstraction and temporary return of groundwater for the purpose of extracting geothermal energy from the abstracted water.

Explanatory Note:

While the Water Framework Directive requires controls over the abstraction of surface water and groundwater, including a register of abstractions, a Member State can exempt from those controls abstractions which have no significant impact on water status. Accordingly, it is proposed to exempt from registration or licensing abstractions of less than 25 cubic metres per day. This approach mirrors that taken in Scotland and Wales, where abstractions of a relatively small quantity of water (10 cubic metres in those jurisdictions) are exempted from the requirement to either be registered or licensed. The proposed daily limit of 25 cubic metres here is chosen for consistency as regulations made under section 9 of the Local Government (Water Pollution) Act 1977 set 25 cubic metres as the threshold below which an abstraction would be exempt from registration by a local authority.

This Head sets out general binding rules which will apply to all abstractions. Abstractions of over 25 cubic metres per day will also require registration under Head 6. Larger-scale abstractions may in addition require licensing based on a review of the environmental impact of existing abstractions on water status carried out by the Agency under the provisions of Head 8.

The general binding rules set out in this Head provide that leakages must be minimised; that there must be a way to demonstrate the volume of water being abstracted; that pollutants must not be allowed to enter the water but that drilling fluids may be used if necessary as long as they do not cause pollution; that potable water may be used to test hydraulic flow, and if the abstraction point is not in use, it must be sealed to prevent loss of water. These general binding rules are similar to those pertaining in other jurisdictions.

Temporary abstraction for construction works and abstractions for geothermal purposes require specific detailed general binding rules more appropriate to secondary legislation and these will be set out by the Minister in due course under regulations made under subhead (2) following appropriate consultation with the sectors affected. In many instances work of this nature, especially temporary works associated with dewatering for construction works can be better and more efficiently dealt with by general binding rules than a licensing regime which may be overly cumbersome.

Head 6 – Register of abstractions

To provide that:

- (1) The Agency shall establish and maintain a register of abstractions where 25 or more cubic metres of groundwater or surface water is being abstracted in any 24 hour period, excluding abstractions to which Head 5(2) apply.
- (2) In addition to complying with the general binding rules laid out in Head 5, a person abstracting 25 or more cubic metres of groundwater or surface water from an abstraction point or points in any 24 hour period shall arrange to have that abstraction entered onto the register of abstractions maintained by the Agency, and a separate entry shall be made in respect of each abstraction.
- (3) The Minister shall make regulations in relation to the registration of abstractions.
- (4) Without prejudice to the generality of subhead (3), regulations under this Head may make provision for all or any of the following:
 - (a) the form and method of registration;
 - (b) the details to be included in a registration;
 - (c) the sharing of information on the register;
 - (d) the amendment of the register;
 - (d) offences and penalties.
- (5) Other than in respect of abstractions to which Head 5(2) apply, it shall be an offence for a person abstracting 25 or more cubic metres of water in any 24 hour period to fail to notify the Agency of that abstraction, or to knowingly provide false information to the Agency in respect of any abstraction of 25 or more cubic metres in any 24 hour period.
- (6) Where required by the Agency, a person who is abstracting less than 25 cubic metres in any 24 hour period must provide proof that the abstraction is below the level required for registration.

Explanatory Note:

The Government noted in May 2018 that the Minister intended to establish a register of abstractions in advance of this Bill and the European Union (Water Policy) (Abstractions Registration) Regulations 2018 providing for the establishment of a register will come into effect on 16 July 2018. The establishment of such a register is obligatory under the Water Framework Directive and is being done in advance of this Bill to allow the Agency to build up a nationwide picture of the extent and size of current abstractions in order to better manage abstractions in areas of high risk in future.

The regulations make it compulsory to register an abstraction of 25 cubic metres per day or more and qualifying abstractions will require to be registered by 16 October 2018. Registration is via an online portal and the regulations set out the detail of what is included in an entry onto the register and provide, *inter alia*, for information on registrations to be amended; for certain information to be shared with relevant parties; for procedures where an abstraction transfers to another person or ceases; and for penalties in the case of non-compliance.

It is intended to re-make those regulations under the provisions of this Bill when enacted, with the guiding principles set out in this Head.

Head 7: Requirement for a licence to abstract

To provide that:

- (1) Every abstraction registered under the provisions of Head 6, which is –
 - (a) an existing abstraction of over 2,000 cubic metres in any 24 hour period; or
 - (b) an existing abstraction of between 250 and 2,000 cubic metres in any 24 hour period and which has been deemed to be a significant abstraction by the Agency in accordance with Head 8;shall require a licence under Head 9, unless the activity is subject to a licence to which Head 11 refers.

- (2) Every abstraction proposed to commence after the date prescribed in regulations made under this Bill, which is –
 - (a) a proposed abstraction of over 2,000 cubic metres in any 24 hour period; or
 - (b) a proposed abstraction of between 250 and 2,000 cubic metres in any 24 hour period and which has been deemed to be a significant abstraction by the Agency in accordance with Head 8;shall require a licence under Head 10 unless the activity is subject to a licence to which Head 11 refers.

Explanatory Note:

This Head provides that a licence is required for all abstractions of over 2,000 cubic metres per day, regardless of whether they are in existence on commencement of this legislation or are proposed to commence after the prescribed date.

Abstractions of between 250 and 2,000 cubic metres per day will require licensing only where the abstraction has been deemed to be significant by the Agency, or likely to be significant in the case of a proposed abstraction. Where the activity is covered by an Integrated Pollution Control or Industrial Emissions Directive Licence (Head 11), then the abstraction control will be managed under that licensing regime on the same principles as apply in this Bill.

Head 8: Impact of abstractions on the status of surface water and groundwater

To provide that:

- (1) As part of the characterisation of river basin districts undertaken for the purpose of Article 5 of the Water Framework Directive, the Agency shall undertake a review of the environmental impact of existing abstractions on water status using the register of abstractions established under Head 6, and shall identify all significant abstractions in a catchment.
- (2) The Agency shall publish this review in the form of a draft list of significant abstractions as soon as practicable after completion for consultation of not less than [three] months' duration.
- (3) Following consultation, the Agency shall finalise the list which thereafter will provide the basis for the estimation of abstraction pressures on the quantitative status of waters and the development of programmes of measures to be included in river basin management plans.
- (4) Where the Agency receives a notification of a proposed abstraction after the prescribed date, the Agency will consider the potential environmental impact of the abstraction to determine whether it is potentially a significant abstraction.
- (5) The Agency shall periodically review and update the requirements at sub-heads (1), (2) and (3) in keeping with the timeframes required for the review and update of River Basin Management Plans, and taking account of any abstractions which have been considered under section (4) in the period since the last review.

Explanatory Note:

It is intended to adopt a different approach in terms of licensing abstractions than has been undertaken traditionally in licensing other activities. Rather than adopting a threshold over which an application for a licence must be made, the Agency shall undertake a review of the environmental impact of existing abstractions on water status using the register of abstractions established under Head 6. Currently only 6% of water bodies are deemed to be at risk from high abstraction pressures. A licence shall only be required for very large abstractions (over 2,000 cubic metres) or for medium abstractions (250 cubic metres or over) deemed to be significant.

This Head provides for the Agency to make an assessment of catchments to determine those which are subject to significant abstraction pressures, and allows for a public consultation phase prior to finalisation of that process.

Head 9 – Licensing of existing abstractions

To provide that:

- (1) A person undertaking a registered abstraction deemed under the provisions of Head 7(1) to require a licence shall submit an application for a licence within a timeframe notified by the Agency not being a period of less than 6 months from the time of notification.
- (2) An application for a licence shall be in such form and shall include such reports and technical assessments as may be determined by the Agency, which may include electronic submission.
- (3) The Minister shall make regulations for the purpose of licensing under this Head.
- (4) Without prejudice to the generality of subhead (2), regulations under this Head may make provision for all or any of the following:
 - (a) the licensing process, including the application process and the process for surrender or transfer of a licence;
 - (b) the rationale for the requested level of abstraction;
 - (c) the level of fee, if any, for a licence;
 - (d) engagement with the abstractor or proposed abstractor;
 - (e) the review of a licence;
 - (f) the setting of a limit on the amount of water which may be abstracted or the termination of an abstraction;
 - (g) a time frame within which an abstraction must be undertaken;
 - (h) conditions to be set with regard to objectives laid out in the River Basin Management Plan prepared by the Minister;
 - (i) with regard to a public water supply, conditions to be set with regard to objectives laid out in a current Water Resource Management Plan prepared by Irish Water;
 - (j) reporting and monitoring;
 - (k) the need to prevent deterioration in water status and to provide for the efficient use of water resources, and
 - (l) the scale and timescale of improvements proposed having regard to technical feasibility, expense and the environmental and socioeconomic needs served by the abstraction.
- (5) An application for a licence as specified under this Head shall not be required if the activity also requires an Integrated Pollution Control or Industrial Emissions Directive licence application to be made to the Agency.
- (6) It shall be an offence to undertake an abstraction deemed by the Agency to require a licence unless a licence in respect of that abstraction has been applied for and duly granted by the Agency or to continue an abstraction contrary to the provisions of a licence granted under this Head.

Explanatory Note:

This Head sets out the process for licensing of existing abstractions deemed to require a licence under the provisions of Head 7(1). The Head provides for the detail of the licensing process to

be set out in regulations. A licence is not required if the activity also requires an Integrated Pollution Control or Industrial Emissions Directive licence application to be made to the Agency and in such cases abstraction will be dealt with as part of the application for that licence.

Head 10: Licensing of abstractions commencing after the prescribed date

To provide that:

- (1) Where a person wishes to commence an abstraction of between 250 and 2,000 cubic metres in any 24 hour period after the prescribed date, that person or an agent acting for that person shall notify the Agency of that intention in such form as may be determined by the Agency and shall provide the Agency with such information as the Agency requests in relation to the proposed abstraction.
- (2) On receipt of a notification under subhead (1), the Agency shall assess the information received and determine whether or not the abstraction is likely to be significant
- (3) Should the Agency consider that the proposed abstraction in respect of which it received notification under subhead (1) is a significant abstraction, it shall inform the person wishing to commence the abstraction, or the agent acting for that person, that a licence is required in respect of the proposed abstraction.
- (4) Should the Agency consider that the proposed abstraction in respect of which it received notification under subhead (1) is not likely to be a significant abstraction, it shall inform the person wishing to commence the abstraction, or the agent acting for that person, that a licence is not required in respect of the proposed abstraction.
- (5) When a licence is required, a person wishing to commence an abstraction of between 250 and 2,000 cubic metres in any 24 hour period shall submit an application for a licence to the Agency within a timeframe notified by the Agency not being a period of less than 6 months from the time of the Agency's informing the person under the provision of subhead (4) that an application for a licence is necessary.
- (6) A person wishing to commence an abstraction of over 2,000 cubic metres in any 24 hour period shall apply directly to the Agency for a licence without notification under subhead (1).
- (7) An application for a licence shall be in such form and shall include such reports and technical assessments as may be determined by the Agency, which may include electronic submission.
- (8) The Minister shall make regulations for the purpose of licensing under this Head.
- (9) Without prejudice to the generality of subhead (8), regulations under this Head may make provision for all or any of the following:
 - (a) the licensing process, including the application process, the process for surrender or transfer of a licence and the phasing of commencement of licensing;
 - (b) the form and content of the notification specified under subhead (1);
 - (c) the rationale for the requested level of abstraction;
 - (d) the level of fee, if any, for a licence;
 - (e) engagement with the abstractor or proposed abstractor;

- (f) the review of a licence;
- (g) the setting of a limit on the amount of water which may be abstracted or the termination of an abstraction;
- (h) a time frame within which an abstraction must be undertaken;
- (i) conditions to be set with regard to objectives laid out in the River Basin Management Plan prepared by the Minister;
- (j) with regard to a public water supply, conditions to be set with regard to objectives laid out in a current Water Resource Management Plan prepared by Irish Water;
- (k) reporting and monitoring;
- (l) the need to prevent deterioration in water status and to provide for the efficient use of water resources.

(10) An application for a licence as specified under this Head shall not be required if the activity also requires an Integrated Pollution Control or Industrial Emissions Directive licence application to be made to the Agency.

(11) It shall be an offence to commence an abstraction deemed by the Agency to require a licence unless a licence in respect of that abstraction has been issued by the Agency.

(12) A person commencing an abstraction of 25 or more cubic metres of groundwater or surface water from an abstraction point or points in any 24 hour after the prescribed date shall ensure that that that abstraction is entered onto the register of abstractions maintained by the Agency within six months of the commencement of the abstraction, and a separate entry shall be made in respect of each abstraction.

Explanatory Note:

This Head sets out the licensing process for proposed abstractions due to commence after the prescribed date. In such cases, a person who wishes to commence an abstraction must notify the Agency of that intention. The Agency shall consider whether or not the abstraction is likely to be significant, and if it deems the abstraction to be potentially significant, the Agency shall inform the proposed abstractor that a licence application is required. Any proposed abstraction of over 2,000 cubic metres in any 24-hour period shall automatically require a licence without any notification process. A licence is not required if the activity also requires an Integrated Pollution Control or Industrial Emissions Directive licence application to be made to the Agency and in such cases abstraction will be dealt with as part of the application for that licence.

Head 11: Amendments to Act of 1992 on Integrated Pollution Control and Industrial Emissions Directive Licences

To provide that:

The Act of 1992 is amended as appropriate to ensure that the application process in respect of Integrated Pollution Control and Industrial Emissions Directive licences takes account of the provisions of this Bill for -

- (a) an existing abstraction, which is
 - i. of over 2,000 cubic metres in any 24 hour period; or
 - ii. an existing abstraction of between 250 and 2,000 cubic metres in any 24 hour period and which has been deemed to be a significant abstraction by the Agency;
- (b) an abstraction proposed to commence after the date prescribed in regulations made under this Bill, which is proposed to be -
 - i. of over 2,000 cubic metres in any 24 hour period; or
 - ii. of between 250 and 2,000 cubic metres in any 24 hour period and which has been deemed to be a significant abstraction by the Agency in accordance with Head 8.

Explanatory Note:

In order to lessen the administrative burden and to avoid duplication of effort, it is intended that any activity requiring an Integrated Pollution Control or Industrial Emissions Directive licence would not also require a separate licence for abstraction under the provisions of this Bill. It is therefore intended to amend the legislative provisions relating to those licensing processes in order to ensure that abstraction is taken into account in the examination of those licence applications.

Head 12: Amendment of Planning and Development Acts 2000 to 2017

To provide that:

The Planning and Development Acts 2000 to 2017 are amended as follows:

- (a) in section 2 by inserting the following definition before the definition of “acquisition of land”:
 - “‘abstraction licence’ means a licence under the Water Environment (Abstractions) Act 2018;”;
- (b) in section 34(2) by the insertion of the following subsection after paragraph (c):
 - “(d) 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 the abstraction of water is a function of the Environmental Protection Agency.”;
- (c) in section 37F(5) by inserting the words “, an abstraction licence” after “integrated pollution control licence”;
- (d) in section 37G(4) -
 - (i) by inserting the words “, an abstraction licence” after “integrated pollution control licence”; and
 - (ii) by substituting the following for (a) and (b):
 - “in the case of an integrated pollution control licence or a waste licence,
 - (a) controlling emissions from the operation of the activity ,including the prevention, limitation, elimination, abatement or reduction of those emissions,
 - (b) controlling emissions related to or following the cessation of the operation or the activity, or
 - (c) controlling abstractions of water related to the activity, to ensure that that the environmental objectives of the River Basin Management Plan established under the European Communities (Water Policy) Regulations 2003 are met, and
 - in the case of an abstraction licence
 - (d) ensuring that the environmental objectives of the River Basin Management Plan established under the European Communities (Water Policy) Regulations 2003 are met.”;
- (e) in section 37G(5) by inserting the words “, an abstraction licence” after “integrated pollution control licence”;
- (f) in the Fourth Schedule, by the insertion of the following paragraph after paragraph 6:
 - “7. The proposed development would be contrary to the objectives of the Water Framework Directive.”
- (g) in the Seventh Schedule, under *Environmental Infrastructure (Part 3)*, by the insertion of “,surface water abstraction” after “A groundwater abstraction” in line 18.

Explanatory Note:

This Head provides that the same provisions as apply to other EPA licensing processes with regard to planning requirements also apply to abstraction licensing. The Head provides for intersection and consultation between the planning and licensing processes by ensuring that existing procedures established in the Planning Acts also apply to abstraction. This Head also amends the Seventh Schedule to the Planning and Development Acts 2000 to 2017 to ensure that a surface water abstraction of over 2 million cubic metres per annum is deemed strategic infrastructure. Under current provisions only groundwater abstractions of over that volume are considered to be strategic infrastructure.

Head 13: Power for Irish Water to take a supply of water

To provide that:

- (1) Irish Water may abstract water from a new source or increase or extend an existing abstraction for the purposes of supplying water in accordance with its functions as defined in subhead (2) and execute on any land acquired by Irish Water or on any other land with the consent of the owner any works which are necessary for the purpose of increasing, extending or providing a supply of water, provided that –
 - (a) notice of the intention to abstract water from a new source, or extend or increase an existing abstraction, is given in accordance with the procedures set out in Head 14;
 - (b) the abstraction is registered or licensed by the Agency in accordance with this General Scheme; and
 - (c) where required, planning permission in accordance with Section 34 or 37A of the Planning and Development Acts, 2000 to 2007 has been obtained.

- (2) The water supply functions of Irish Water for the purpose of this Head are as set out in the -
 - (a) Water Services Acts 2007 to 2017;
 - (b) Public Health Acts, 1878 to 1931 and
 - (c) Local Government (Sanitary Services) Acts 1878 to 2001.

Explanatory Note:

Irish Water has riparian rights associated with lands it owns or acquires, but abstraction for public water supply would generally be at a level beyond the uses normally anticipated by such rights. Therefore purpose of this provision is to vest in Irish Water the right to abstract water in accordance with a registration or licence. The combination of the licencing/planning process and compensation process set out in Head 15 ensures that (a) the abstraction is in accordance with sustainable, balanced and equitable water use in accordance with the provisions of the Water Framework Directive and (b) provision continues to be made for the seeking of compensation from Irish Water by persons who are adversely impacted by the power of Irish Water to take a supply of water in the interest of the common good.

Head 14: Requirement for Irish Water to give notice of intention to abstract or increase the abstraction of water

To provide that:

- (1) Irish Water shall be required to provide public notice, in accordance with the provision of this Head of an intention to abstract water from a new source or increase or extend an existing abstraction in accordance with its water services functions under the -
 - (a) Water Services Acts 2007 to 2017
 - (b) Public Health Acts, 1878 to 1931 or
 - (c) Local Government (Sanitary Services) Acts 1878 to 2001.
- (2) The requirement under section (1) shall apply to all abstractions by Irish Water whether subject to registration under Head 6 or not.
- (3) Where a proposal to abstract water by Irish Water is subject to approval of An Bord Pleanála under 34 or 37A of the Planning and Development Act 200 to 2017, shall be accompanied by a notice of intention to abstract water in the format prescribed by the Minister under subhead (7).
- (4) Where a proposal to abstract water by Irish Water is not subject to approval of An Bord Pleanála under 34 or 37A of the Planning and Development Act 200 to 2017, Irish Water will prepare a notice in the format prescribed by the Minister under subhead (7) which shall be
 - (a) submitted to the Agency;
 - (b) published on its website for a period of 3 months; and
 - (c) published in a newspaper circulating in the catchment area of the existing or proposed abstraction.
- (5) Any objection to the proposed abstraction under section (3) should be made to the relevant planning authority as part of the planning application process.
- (6) Any objection to the proposed abstraction or increased abstraction shall be made to the Agency within 28 days of the notice, where the objector considers that the proposed level of abstraction will impact on the sustainable, balanced and equitable water use in accordance with the provisions of the Water Framework Directive, and the Agency shall consider such objections in assessing the requirement for a licence or the nature of a licence under Head 10.
- (7) The Minister may prescribe the format of a notice for the purpose of this section which shall include information in relation to the proposed abstraction or extension or increased abstraction, as to -
 - (a) the source of water;
 - (b) the place or places of abstraction;
 - (c) the level of proposed abstraction, including any seasonal variability;
 - (d) particulars of any ancillary operations.

Explanatory Note:

The existing provisions of the Water Supplies Act 1942 generally provide a mechanism whereby the intention of the water services authority to abstract water or increase abstraction for water supply purposes is made known generally and in particular to those who may be affected, thereby giving an opportunity to object and, in certain cases, to seek compensation.

The revised process takes account of the more general requirements of abstraction control being introduced in this General Scheme in compliance with the Water Framework Directive and seeks to ensure that the water services authority (Irish Water) continues to give public notice of the intention, but integrates this process with the planning or licensing regime as appropriate.

By Irish Water giving notice of its intention to abstract, interested parties are enabled to engage with the planning process where objections will be heard, or where no planning permission arises, to bring their views to the attention of the Agency where they feel there are potential environmental impacts which can be considered as part of the Agency's risk based approach to licensing.

This is separate to the issue of compensation which might arise.

Head 15: Compensation by Irish Water

To provide that:

- (1) Where a person is of the view that he or she has suffered an unjust loss arising from a power of Irish Water to take a supply of water under the provisions of Head 13, compensation may be payable on proof of loss.
- (2) Any person who considers that he or she has suffered an unjust loss as specified in subhead (1) shall make an application to Irish Water in writing as to the nature of such damages and any claim for compensation shall be made within 10 years of the authorised abstraction commencing.
- (3) Compensation may take the form wholly or partly of a supply of water service or other tangible benefit mutually agreed with Irish Water.
- (4) In default of agreement, compensation shall be determined by arbitration or by the courts.

Explanatory Note:

This section provides for the continuation of a process under the Water Supplies Act 1942 which enables a riparian owner downstream of the abstraction to seek compensation where they suffer a demonstrable loss from the abstraction of a volume of water for drinking water purposes.

Head 16: Protection of navigable rivers and canals

To provide that:

- (1) Nothing in this Bill shall be construed as entitling a person to abstract water in such manner, or from such source of water, or of such amount as to make the navigation of any navigable water impossible or unreasonably difficult.
- (2) Where the Agency proposes a determination to grant a licence to abstract water, it may at any time give to the navigation authority of any affected navigable water written notice of such proposal.
- (3) Where the navigation authority of any navigable water is given notice under subhead (2), it may before the expiration of twenty-one days from the giving of such notice, give written notice (in this Head referred to as an interference notice) to the Agency that the navigation authority in question is of the opinion that the abstraction of water in accordance with the proposed determination makes or will make the navigation of such navigable water impossible or unreasonably difficult and shall include in the interference notice a statement of its reasons for being of that opinion.
- (4) Where a navigation authority has given an interference notice to the Agency in relation to a proposed determination, the Agency may alter its proposed determination by reducing the amount of water to be abstracted thereunder and anything done in relation to the proposed determination in compliance with this Bill shall be deemed to have been done so in respect of such proposed determination so altered.
- (5) The Agency shall consider the objections of a navigation authority to a proposed determination as laid out in an interference notice and shall negotiate with such navigation authority for the withdrawal of the interference notice.
- (6) Where a navigation authority gives an interference notice, such navigation authority may at any time withdraw such notice by giving written notice to that effect to the Agency.
- (7) The Agency may apply to the High Court for the annulment of an interference notice, and, if the High Court on such application is of the opinion that the abstraction of water in accordance with the proposed determination does not make or will not make the navigation of the relevant navigable water impossible or unreasonably difficult, the High Court shall annul such notice.
- (8) Where notice of a proposal has been given under subhead (2) to a navigation authority and either such navigation authority has not within twenty-one days after the giving of such notice given an interference notice in relation to the proposed determination or any such notice so made has been annulled by the High Court or withdrawn, it shall not be open to such navigation authority to contend in any court that the abstraction of water in accordance with the proposed determination makes or will make the navigation of the relevant navigable water impossible or unreasonably difficult.

Explanatory Note:

This Head is drawn from s21 of the 1942 Act and provides that water may not be taken from a water source to such an extent that it renders navigation of any navigable water impossible or unreasonably difficult. The Head provides for notice to be given to a navigation authority in respect of a proposal to take water, for the navigation authority to respond and for negotiation to take place with the water services authority (Irish Water).

While these provisions are dated, the principle remains sound. It is intended in the context of both drafting and public consultation on these Heads to modernise and improve the provisions and consultation with Waterways Ireland in that regard will take place in due course.

Head 17: Judicial review of decision by Agency

To provide that:

- (1) Subject to subhead (2), a person shall not, by application for judicial review or in any other legal proceedings whatsoever, question the validity of a decision of the Agency to grant or refuse a licence or revised licence (including a decision to grant or not to grant such a licence on foot of a review conducted by it of its own volition) unless the proceedings are instituted within a period of eight weeks beginning on the date on which the licence or revised licence is granted or the date on which the decision to refuse or not to grant the licence or revised licence is made.
- (2) Where, on application to the High Court, the Court considers that in the particular circumstances there is good and sufficient reason for so doing, the Court may extend the period referred to in subhead (1).

Explanatory Note:

This provision is based on that included in the Environmental Protection Agency Act (s87(10)) as inserted by the Protection of the Environment Act 2003 and provides that any judicial review or legal proceedings taken in respect of a licensing decision by the Agency must be commenced within a period of eight weeks from the granting of the licence, unless that period is extended by the High Court.

Head 18: Power to abstract in specified statutes unaffected

To provide that:

- (1) The power to abstract water specified in the statutes listed at Schedule 2 is unaffected by any provision of this Bill and an application for a licence to abstract shall not be required in respect of any power to abstract water granted in those statutes.
- (2) Notwithstanding subhead (1), the provisions of Head 6 apply to any abstraction undertaken under the specified statutes.

Explanatory Note:

The ESB has statutory powers in legislation going back to 1925 to abstract water. Given these well-established statutory rights, it is not proposed that anything in this legislation would affect the ESB's power to abstract water for the provision of electricity. The ESB will therefore not be required to apply for a licence in respect of any abstraction undertaken on foot of the statutory powers in the legislation listed at Schedule 2, but will be required to register abstractions undertaken.

Head 19: Offences and penalties

To provide that:

- (1) Any person who contravenes any provision of this Bill or of any regulation made under this Bill or of any order made under this Bill or of any notice served under this Bill shall be guilty of an offence.
- (2) Where an offence under this Bill is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other officer of such body, such person shall also be guilty of an offence.
- (3) In this Head, a reference to the contravention of a provision includes, where appropriate, a reference to a refusal, or a failure, to comply with that provision.
- (4) A person guilty of an offence under this Bill shall be liable –
 - (a) on summary conviction to a Class A fine or to imprisonment for any term not exceeding twelve months, or, at the discretion of the court, to both such fine and such imprisonment, or
 - (b) on conviction on indictment, to a fine not exceeding €15,000,000 or to imprisonment for a term not exceeding ten years or, at the discretion of the court, to both such fine and such imprisonment.
- (5) In imposing a penalty under subhead (4), the court shall, in particular, have regard to the risk or extent of damage to the environment and any remediation required, arising from the act or omission constituting the offence.
- (6) Where a person, after conviction of an offence under this Act, continues to contravene the provision, he or she shall be guilty of an offence on every day on which the contravention continues and for each such offence he or she shall be liable to a fine, on summary conviction, not exceeding €1,000 or, on conviction on indictment, not exceeding €130,000.

Explanatory Note:

This Head provides that any person who contravenes a provision of this Bill is guilty of an offence. A Class A fine and/or 12 months' imprisonment shall apply to such a person on summary conviction and a fine not exceeding €15,000,000 and/or imprisonment of up to ten years on conviction on indictment. The provisions are similar to those included at sections 8 and 9 of the Environmental Protection Agency Act 1992 (as amended).

Head 20: Transitional arrangements

To provide that:

- (1) Where immediately before the passing of this Act, Irish Water was taking water from a source of water for the purposes of a water supply, it may, after the passing of this Act, continue to take water from such source of water at that place, provided that the abstraction has been included on a register established by the Agency prior to the commencement of this Act.
- (2) Irish Water may continue to take water in accordance with subhead (1), by the method and in the quantity at, by and which they were so taking water immediately before the passing of this Act, until the coming into force of a licence under this Act.

Explanatory Note:

This provides that any abstraction for drinking water purposes by Irish Water continues to be lawful, provided that that abstraction was registered under regulation made before the coming into force of this new legislative regime. While the method of abstraction and quantity of water taken will remain as prior to the commencement of the new regime, this can be varied by any future licence issued by the Agency.

Head 21: Minister to issue guidance and directions

To provide that:

- (1) The Minister may, at any time, issue guidelines or policy directives to the Agency regarding its functions under this Act and the Agency shall have regard to those guidelines or policy directives in the performance of its functions.
- (2) The Minister may revoke or amend any guidelines or policy directives issued under this section.

Explanatory Note:

This Head provides for the Minister to issue guidance or policy to the Agency with regard to functions under this Act.

Schedule 1

Acts Repealed

Session and Chapter or Number and Year	Short Title	Extent of Repeal
No. 1 of 1942	Water Supplies Act, 1942	The whole Act
No. 29 of 1964	Local Government (Sanitary Services) Act, 1964	Section 4
No. 1 of 1977	Local Government (Water Pollution) Act 1977	Section 9(2) and 9(8)

Schedule 2

Power to abstract unaffected

Schedule 2

Power to abstract unaffected

Number and Year	Short Title
No. 26 of 1925	Shannon Electricity Act 1925
No. 32 of 1925	Fisheries Act 1925
No. 27 of 1927	Electricity (Supply) Act 1927
No. 32 of 1931	Electricity (Supply) (Amendment) Act 1931
No. 6 of 1934	Electricity (Supply) (Amendment) Act 1934
No. 4 of 1935	Shannon Fisheries Act 1935
No. 54 of 1936	Liffey Reservoir Act 1936
No. 12 of 1945	Electricity (Supply) (Amendment) Act 1945
S.I. No. 86 of 1945	River Erne Hydro-Electric Scheme Approval Order 1945
S.I. No. 154 of 1945	River Liffey (Leixlip) Hydro-Electric Scheme Approval Order 1945
S.I. No. 321 of 1949	River Lee Hydro-Electric Scheme Approval Order 1949
S.I. No. 183 of 1950	River Liffey (Leixlip) Hydro-Electric Scheme Approval Order, 1945 (Amendment) Order 1950
S.I. No. 236 of 1950	River Erne Hydro-Electric Scheme Approval Order 1945 (Amendment) Order 1950
S.I. No. 245 of 1952	River Erne Hydro-Electric Scheme Approval Order 1945 (Amendment) Order 1952
S.I. No. 168 of 1953	River Lee Hydro-Electric Scheme Approval Order, 1949 (Amendment) Order. 1953
S.I. No. 320 of 1953	River Clady Hydro-Electric Scheme Approval Order 1953
S.I. No. 44 of 1955	River Lee Hydro-Electric Scheme Approval Order 1949 (Amendment) Order 1955
S.I. No. 71 of 1957	River Lee Hydro-Electric Scheme Approval Order 1949 (Amendment) Order 1957
S.I. No 35 of 1958	River Lee Hydro Electric Scheme (Non-Application of Section 33(1) of Electricity (Supply) (Amendment) Act 1945) Order 1958