

Changes to Legislation: as of 14 June 2024, there are changes to this Act which have not been implemented by the Revised Acts editorial team, see highlighted entries [here](#). Note that some amendments may not be in force until commenced by a commencement order or other provision.



Number 7 of 1992

ENVIRONMENTAL PROTECTION AGENCY ACT 1992

REVISED

Updated to 18 April 2023

This Revised Act is an administrative consolidation of the *Environmental Protection Agency Act 1992*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 (10/2023)*, enacted 2 May 2023, and all statutory instruments up to and including the *Environmental Protection Agency (Designated Development) (Industrial Emissions) (Licensing) Regulations 2023 (S.I. No. 186 of 2023)*, made 18 April 2023, were considered in the preparation of this Revised Act.

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ENVIRONMENTAL PROTECTION AGENCY ACT 1992

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European Communities (Environmental Impact Assessment) (Motorways) Regulations, 1988	S.I. No. 221 of 1988
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ENVIRONMENTAL PROTECTION AGENCY ACT 1992

REVISED

Updated to 18 April 2023

AN ACT TO MAKE FURTHER AND BETTER PROVISION FOR THE PROTECTION OF THE ENVIRONMENT AND THE CONTROL OF POLLUTION, TO ESTABLISH AN ENVIRONMENTAL PROTECTION AGENCY, FOR THESE AND OTHER PURPOSES TO INCREASE CERTAIN EXISTING MONETARY PENALTIES AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID. [23rd April, 1992]

BE IT ENACTED BY THE OIREACTHAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

- Short title. **1.**—This Act may be cited as the Environmental Protection Agency Act, 1992.
- Commencement. **2.**—(1) *Part I* (other than *section 18 (1)*), *Part II* (other than *section 43*), *Part III*, *Part IV* (other than *section 93*) and *Part VI* will come into operation on the passing of this Act.
- (2) The remaining provisions of this Act shall come into operation on such day or days as may be fixed therefor by any order or orders of the Minister, either generally or with reference to any particular purpose or provision or with reference to a particular area or areas, and different days may be so fixed for different purposes and different provisions of this Act and for different areas.
- Interpretation. **F1[3.**—(1) In this Act, except where the context otherwise requires—
- "activity" means any process, development or operation specified in the First Schedule and carried out in an installation;
- "the Act of 1996" means the *Waste Management Act 1996*;
- "the Act of 2000" means the *Planning and Development Act 2000*;
- F2["the Act of 2022" means the *Development (Emergency Electricity Generation) Act 2022*;]**
- "the Agency" shall be construed in accordance with *section 19(1)*;
- "atmosphere" means the gaseous envelope surrounding the earth, and includes air;

"authorised person" means a person who is appointed in writing by the Minister, a local authority, the Agency or such other person as may be prescribed to be an authorised person for the purposes of this Act or any Part or section thereof;

F3["BAT conclusions" means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures;

"BAT reference document" in relation to an industrial emissions directive activity, means a document drawn up by the Commission of the European Union in accordance with Article 13 of the Industrial Emissions Directive, resulting from the exchange of information in accordance with that Article of that Directive and describing, in particular, applied techniques, present emissions and consumption levels, techniques considered for the determination of best available techniques as well as BAT conclusions and any emerging techniques, particular consideration having been given to the same matters as are specified in *subparagraphs (i) to (xii) of section 5(3)(b)*;

F2["designated application" means an application made to the Agency for a licence under *Part IV* in relation to designated development, after an application has been made under section 4 of the Act of 2022 to the Minister for the Environment, Climate and Communications for approval under section 7 of that Act to carry out the designated development, and does not include an application made to the Agency—

(a) for a revised licence under *Part IV*, or

(b) by the licensee under *section 90(1)(b)* for a review of a licence or a revised licence;]

F2["designated development" has the same meaning as it has in the Act of 2022;]

"development" has the meaning assigned to it by section 3 of the Act of 2000;

"the Directive" shall be construed in accordance with *section 3A(1)*;

"disposal", in relation to waste, has the meaning assigned to it by the Act of 1996;

F4["EIA Directive" means Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011³ on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014⁴;

F3["emerging technique" means a novel technique for an industrial emissions directive activity that, if commercially developed, could provide either a higher general level of protection of the environment or at least the same level of protection of the environment and higher cost savings than existing best available techniques;]

"emission" means, in relation to an activity referred to in F5[Part IV, IVA, IVB or IVC], any direct or indirect release of substances, heat or noise from individual or diffuse sources in the activity into the atmosphere, water or land, and includes—

(a) an emission into the atmosphere of a pollutant within the meaning of *the Air Pollution Act 1987*,

(b) the release of a greenhouse gas or a precursor of a greenhouse gas into the atmosphere,

(c) a discharge of polluting matter, sewage effluent or trade effluent within the meaning of *the Local Government (Water Pollution) Act 1977*, to waters or sewers within the meaning of that Act, or

³ OJ No. L 26, 28.1.2012, p. 1

⁴ OJ No. L 124, 25.4.2014, p. 1

(d) waste,

but does not include a radioactive substance within the meaning of Council Directive 96/29/Euratom¹, a genetically modified micro-organism within the meaning of Council Directive 90/219/EEC² or a genetically modified organism within the meaning of Directive 2001/18/EC of the European Parliament and of the Council³;

F3["emission levels associated with the best available techniques" means the range of emission levels obtained under normal operating conditions using a best available technique or a combination of best available techniques, as described in BAT conclusions, expressed as an average over a given period of time, under specified reference conditions;]

"emission limit value" means the mass, expressed in terms of a specific parameter, concentration or level of an emission, or both a specific concentration and level of an emission, which may not be exceeded during one or more periods of time;

"employee of the Agency" does not include the Director General or other Director of the Agency;

"enactment" includes any instrument made under an enactment;

F6["environmental impact assessment" shall be construed in accordance with *section 83(2A)*];]

F4["environmental impact assessment report" shall be construed in accordance with *section 83(2A)(dd)*];]

F7[...]

F8["environmental impact statement" means a statement of the direct and indirect effects that a proposed activity will have or is likely to have on the environment and shall include the information specified in Annex IV to Directive No. 2011/92/EU of the European Parliament and of the Council of 13 December 2011¹ on the assessment of the effects of certain public and private projects on the environment;]

"environmental protection", "environmental pollution", "environmental medium" and "environmental quality standard" have the meanings respectively assigned to them by *section 4*;

"established activity" means—

(a) an activity which on 29 October 1999, or such other date as may be prescribed in relation to the activity, was being carried on and did not involve or have an association with unauthorised development within the meaning of the Act of 2000, or

(b) an activity—

(i) in respect of which permission under section 34 of the Act of 2000 had been granted, or an application for such permission had been made, before 30 October 1999, or such other date as may be prescribed in relation to the activity, and

(ii) which on 29 October 2000, or such other date as may be prescribed in relation to the activity—

(I) was being carried on, and

(II) did not involve or have an association with unauthorised development within the meaning of the Act of 2000;

¹ O.J. No. L159, 29.06.1996, p.1.

² O.J. No. L117, 08.05.1990, p.1.

³ O.J. No. L106, 17.04.2001, p.1.

¹ OJ No. L 26, 28.1.2012 p.1

"functions" includes powers and duties;

"greenhouse gas" means—

(a) carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, any hydrofluorocarbon or any perfluorocarbon, and

(b) such other gases as may be prescribed,

in so far as the emission of any such gas contributes to global climate change;

F3["groundwater" has the meaning assigned to it by Regulation 3 of the European Communities Environmental Objectives (Groundwater) Regulations 2010 (S.I. No. 9 of 2010);

"hazardous substances" means substances or mixtures as defined in Article 3 of Regulation (EC) No. 1272/20081 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures;

"hazardous waste" means waste that displays one or more of the properties which render it hazardous specified in the Second Schedule (amended by Regulation 24 of the European Communities (Waste Directive) Regulations 2011 (S.I. No. 126 of 2011)) to the Act of 1996;

"industrial emissions directive activity" means a process, development or operation specified in paragraph 1.1.1, 2.1, 3.1.1, 3.2.1, 3.3.1, 3.4.1, 3.6.1, 4.2.1, 4.3, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 6.1, 6.2, 7.2.1, 7.4.1, 7.7.1, 7.8, 8.1, 8.2, 8.3, 8.5.1, 8.6.1, 8.7, 9.3.1, 9.4.1, 9.4.2, 9.4.3, 10.2, 10.3, 10.4, 11.1 (in so far as the process, development or operation specified in paragraph 11.1 is carried on in an installation connected or associated with another activity that is an industrial emissions directive activity), 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 12.2.1, 12.3, 13.4.1, 13.5 or 13.6 of the First Schedule (amended by Regulation 23 of the European Union (Industrial Emissions) Regulations) and carried out in an installation and an activity shall not be taken to be an industrial emissions directive activity if it is carried out at an installation solely used for research, development or testing of new products and processes;

"Industrial Emissions Directive" means Directive 2010/75/EU2 of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast);]

"installation" means a stationary technical unit or plant where the activity concerned referred to in the First Schedule is or will be carried on, and shall be deemed to include any directly associated activity, whether licensable under this Part or not, which has a technical connection with the first-mentioned activity and is carried out on the site of that activity;

F3["integrated pollution control activity" means a process, development or operation specified in paragraph 1.1.2, 1.2, 1.3, 1.4, 3.1.2, 3.2.2, 3.3.2, 3.4.2, 3.5, 3.6.2, 3.7, 3.8, 3.9, 4.1, 4.2.2, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 7.1, 7.2.2, 7.3.1, 7.3.2, 7.3.3, 7.4.2, 7.5, 7.6, 7.7.2, 8.4, 8.5.2, 8.6.2, F9[8.8,] 9.1, 9.2, 9.3.2, 9.4.4, 10.1, 11.1 (in so far as the process, development or operation specified in paragraph 11.1 is carried on in an installation connected or associated with another activity that is an integrated pollution control activity), 12.1, 12.2.2, 13.1, 13.2, 13.3 or 13.4.2 of the First Schedule (amended by Regulation 23 of the European Union (Industrial Emissions) Regulations) and carried out in an installation;]

F10["ionising radiation" has the same meaning as it has in the Radiological Protection Act 1991;]

"land" includes soil;

"local authority" means—

(a) in the case of a city, the city council, and

(b) in the case of a county, the county council,

and references to the functional area of a local authority shall be construed accordingly;

"the Minister" means the Minister for the Environment, Heritage and Local Government;

"monitoring" includes the inspection, measurement, sampling or analysis for the purposes of this Act of any emission, or of any environmental medium in any locality, whether periodically or continuously;

"noise" includes vibration;

"occupier", in relation to any installation or premises, includes the owner, a lessee, any person entitled to occupy the installation or premises and any other person having, for the time being, control of the installation or premises;

"person in charge" includes an occupier of an installation or premises or a manager, supervisor or operator of an activity;

"planning authority" has the meaning assigned to it by the Act of 2000;

"plant" includes any equipment, appliance, apparatus, machinery, works, building or other structure or any land or any part of any land which is used for the purposes of, or incidental to, any activity specified in the *First Schedule*;

"premises" includes any messuage, building, vessel, structure or land (whether or not there are structures on the land or whether or not the land is covered with water) or any hereditament of any tenure, together with any out-buildings and curtilage;

"prescribed" means prescribed by regulations by the Minister under this Act;

"previous Part IV" shall be construed in accordance with *section 82(1)*;

"public authority" means—

- (a) a Minister of the Government,
- (b) the Commissioners of Public Works in Ireland,
- (c) a local authority for the purposes of [the Local Government Act 2001](#),
- (d) a harbour authority within the meaning of [the Harbours Act 1946](#),
- (e) a health board,
 - (ii) the Eastern Regional Health Authority, or
 - (iii) an Area Health Board established under [the Health \(Eastern Regional Health Authority\) Act 1999](#),
- (f) a board or other body (but not including a company under [the Companies Act 1963](#) to 2001) established by or under statute,
- (g) a company under the Companies Acts 1963 to 2001, in which all the shares are held—
 - (i) by or on behalf of a Minister of the Government,
 - (ii) by directors appointed by a Minister of the Government, or
 - (iii) by a board or other body referred to in paragraph (f) or by a company to which subparagraph (i) or (ii) applies,

(h) such other body as may be prescribed for the purposes of any provisions of this Act;

"public place" includes any place to which the public have access, whether by right or by permission, or whether subject to, or free of charge;

F11["radioactive substance" has the same meaning as it has in the Radiological Protection Act 1991;]

F10["radiological protection" means the prevention, limitation, elimination, abatement or reduction of the harmful effects of ionising radiation;]

"recovery", in relation to waste, has the meaning assigned to it by the Act of 1996;

"sanitary authority" means a sanitary authority for the purposes of the Local Government (Sanitary Services) Acts 1878 to 2001;

"soil" means the top layer of the land surface of the earth that is composed of disintegrated rock particles, humus, water and air;

"statutory undertaker" has the meaning assigned to it by the Act of 2000;

"vessel" means a waterborne craft of any type, whether self propelled or not, and includes an air cushion craft and any structure in or on water;

F12["waste" means any substance or object which the holder discards or intends or is required to discard;]

"waste management plan" means a waste management plan or a hazardous waste management plan within the meaning of the Act of 1996 that is for the time being in force;

"waters" has the meaning assigned to it by the Local Government (Water Pollution) Act 1977;

"works", in relation to sections 106 and 107, has the meaning assigned to it by the Act of 2000.

(2) In this Act a reference to—

(a) the date on which a licence or revised licence is granted is a reference to the date on which the licence or revised licence is sealed with the seal of the Agency, and

(b) the date on which a decision by the Agency to refuse a licence or a revised licence is made is a reference to the date on which that decision, as reduced to writing, is so sealed.

F13[(2A) Subject to this Act, a word or expression that is used in this Act and that is also used in F14[EIA Directive] has, unless the context otherwise requires, the same meaning in this Act as it has in that Directive.]

F15[(2B) Subject to this Act, a word or expression that is used in this Act in so far as it relates to an industrial emissions directive activity and that is also used in the Industrial Emissions Directive has, unless the context otherwise requires, the same meaning in this Act as it has in that Directive.]

(3) In this Act a reference to a section, Part or Schedule, is a reference to a section or Part of, or a Schedule to, this Act, unless it is indicated that reference to some other enactment is intended.

(4) In this Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(5) In this Act a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by or under this or any subsequent enactment.

(6) The activities to which this Act applies include activities operated by or in the charge of the State.]

F16[Community act given effect to by certain amendments of this Act.

3A.—(1) The purposes for which the amendments of this Act by the Protection of the Environment Act 2003 are made include the purpose of giving effect to F17[Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008] concerning integrated pollution prevention and control¹ (in this Act referred to as "the Directive").

(2) F18[...]

(3) F18[...]

F19[Power to amend *First Schedule* in certain circumstances.

3B.—The Minister may by regulations amend the *First Schedule* if either or both of the following conditions is or are satisfied—

(a) as a result of an act adopted by an institution of the European Communities, the continued operation of that Schedule and *section 82* would, unless such amendment were to be made, not be in conformity with that act,

(b) the amendment proposed to be made does not, in the opinion of the Minister, involve any deviation from the principles or policies of that Schedule and *section 82*.]

F20[Industrial Emissions Directive.

3C. (1) The amendments of this Act effected by the European Union (Industrial Emissions) Regulations 2013 are made for the purpose of giving effect to the Industrial Emissions Directive.

(2) The Agency shall be the competent authority for the purposes of the Industrial Emissions Directive.

(3) As competent authority for the purposes of the Industrial Emissions Directive, the Agency shall, amongst other things—

(a) keep itself informed of developments in best available techniques and of the publication of any new or updated BAT conclusions and shall make that information publicly available,

(b) maintain such data and information, provide for the supply of data to the Commission of the European Union and undertake such reporting as may be necessary for the proper implementation of relevant Union acts (including compliance with the requirements of Article 72(1) of the Industrial Emissions Directive), and

(c) when requested to do so by the Minister, participate in the Committee to assist the Commission of the European Union on the basis provided for in Article 75 of the Industrial Emissions Directive.]

F21[Environmental protection, environmental pollution and environmental medium and environmental quality standard.

4.—(1) In this Act "environmental protection" includes—

(a) the prevention, limitation, elimination, abatement or reduction of environmental pollution, and

(b) the preservation of the quality of the environment as a whole.

(2) In this Act "environmental pollution" means the direct or indirect introduction to an environmental medium, as a result of human activity, of substances, heat or

¹ O.J. No. L257, 10.10.1996, p.26.

noise which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment, and includes—

- (a) "air pollution" for the purposes of the Air Pollution Act 1987,
- (b) the condition of waters after the entry of polluting matter within the meaning of the Local Government (Water Pollution) Act 1977,
- (c) in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would, to a significant extent, endanger human health or harm the environment and, in particular—
 - (i) create a risk to the atmosphere, waters, land, plants or animals,
 - (ii) create a nuisance through noise, odours or litter, or
 - (iii) adversely affect the countryside or places of special interest,
- (d) noise which is a nuisance, or would endanger human health or damage property or harm the environment.

(3) In this Act "environmental medium" includes the atmosphere, waters and land.

(4) In this Act "environmental quality standard" means the set of requirements which must be fulfilled at a given time by a given environment or environmental medium or any part thereof, as specified in any enactment or enactments, or in any act or acts adopted by an institution of the European Communities.]

F22[Best available techniques.

5.—(1) A reference in this Act to best available techniques shall be construed as a reference to the most effective and advanced stage in the development of an activity and its methods of operation, which indicate the practical suitability of particular techniques for providing, in principle, F23[the basis for emission limit values, and in the case of an industrial emissions directive activity other additional licence conditions, designed to prevent] or eliminate or, where that is not practicable, generally to reduce an emission and its impact on the environment as a whole.

(2) In subsection (1)—

- (a) "best", in relation to techniques, means the most effective in achieving a high general level of protection of the environment as a whole;
- (b) "available techniques" means those techniques developed on a scale which allows implementation in the relevant class of activity specified in the First Schedule, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced within the State, as long as they are reasonably accessible to the person carrying on the activity;
- (c) "techniques" includes both the technology used and the way in which the installation is designed, built, managed, maintained, operated and decommissioned.

(3) (a) For the purposes of subsection (1), the Agency—

- (i) may from time to time as occasion requires, and
- (ii) shall in accordance with any regulations made by the Minister,

specify best available techniques to provide, in principle, F24[the basis for emission limit values, and in the case of an industrial emissions directive activity other additional licence conditions, for an activity] or activities of a particular class or description, and regard shall be had in the administration of this Act to any such specifications. The Agency, in preparing any such

specification, may, by publication of a notice in such manner as it thinks appropriate, invite submissions or observations to be made to it in relation to the terms of the proposed specification.

(b) In specifying best available techniques in accordance with *paragraph (a)* or otherwise determining best available techniques for the purposes of this Act, the Agency shall, having regard to the likely costs and advantages of measures and to the principles of precaution and prevention, consider in particular—

- (i) the use of low-waste technology,
- (ii) the use of less hazardous substances,
- (iii) the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate,
- (iv) comparable processes, facilities or methods of operation, which have been tried with success on an industrial scale,
- (v) technological advances and changes in scientific knowledge and understanding,
- (vi) the nature, effects and volume of the emissions concerned,
- (vii) the commissioning dates for new or existing activities,
- (viii) the length of time needed to introduce the best available techniques,
- (ix) the consumption and nature of raw materials (including water) used in the process and their energy efficiency,
- (x) the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it,
- (xi) the need to prevent accidents and to minimise the consequences for the environment, and
- (xii) the information published by the Commission of the European Communities pursuant to any exchange of information between Member States and the industries concerned on best available techniques, associated monitoring, and developments in them, or by international organisations,

and such other matters as may be prescribed.

(4) Whenever the Agency prepares a specification under *subsection (3)*, it shall, as soon as may be, cause—

- (a) a copy of such specification to be sent to the Minister, each local authority, An Bord Pleanála and such other bodies, if any, as may be prescribed,
- (b) notice of the preparation of the specification to be published in *Iris Oifigiúil*,
- (c) notice of the preparation of the specification to be given to every person who made to the Agency submissions or observations concerning the specification in response to an invitation of the Agency made under *subsection (3)(a)*, and
- (d) a copy of the specification to be made available to every person who makes application for such a copy on payment of such fee (if any) as the Agency shall fix not exceeding the reasonable cost of making such a copy.]

Regulations.

6.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or in relation to any matter

referred to in this Act as the subject of regulations or for the purpose of giving full effect to this Act.

(2) Regulations made under this Act may make different provisions in relation to different areas, different circumstances and different classes of cases.

(3) Every regulation made under this Act F25[(other than regulations made under section 99)] shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

F26[(4) Where it is proposed to make regulations under section 99, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.]

Orders.

7.—(1) The Minister may, by order, revoke or amend any order made by him under this Act, other than an order under section 2, 19 (2) or 32 (1).

(2) F27[In addition to and not in substitution for the power conferred by section 3B, the Minister may], by order, after consultation with the Agency, revoke or amend the First Schedule or the Second Schedule.

(3) Where it is proposed to make an order under subsection (2) or under section 21 (6) (a), 100, 101 or 102 a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(4) Every order made under this Act, other than an order made under subsection (2) or (3), shall be laid before each House of the Oireachtas as soon as may be after it is made.

Offences.

8.—(1) Any person who contravenes any provision of this Act or of any regulation made under this Act or of any order made under this Act or of any notice served under this Act shall be guilty of an offence.

(2) Where an offence under this Act 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 any other officer of such body, such person shall also be guilty of an offence.

(3) In this section, a reference to the contravention of a provision includes, where appropriate, a reference to a refusal, or a failure, to comply with that provision.

Penalties.

9.—(1) A person guilty of an offence under this Act shall be liable—

(a) on summary conviction, to a fine not exceeding F28[€3,000], 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 F29[€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.

(2) In imposing any penalty under subsection (1) the court shall, in particular, have regard to the risk or extent of damage to the environment F30[, and any remediation required,] arising from the act or omission constituting the offence.

(3) Where a person, after conviction of an offence under this Act, continues to contravene the provision, he shall be guilty of an offence on every day on which the contravention continues and for each such offence he shall be liable to a fine, on summary conviction, not exceeding F31[€1,000] or, on conviction on indictment, not exceeding F31[€130,000].

Payment of certain fines to Agency.

10.—Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under this Act, prosecuted by the Agency, it shall, on the application of the Agency (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Agency and such payment may be enforced by the Agency, as if it were due to it on foot of a decree or order made by the court in civil proceedings.

Prosecution of offences.

11.—(1) An offence under this Act may be prosecuted summarily by the Agency.

(2) Notwithstanding *subsection (1)*, the Minister may, by regulations, provide that an offence under this Act, specified in the regulations, may be prosecuted summarily by such person (including the Minister) as may be so specified.

(3) Notwithstanding the provisions of section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced—

(a) at any time within twelve months from the date on which the offence was committed, or

(b) at any time within six months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings, comes to such person's knowledge,

whichever is the later: provided that no such proceedings shall be initiated later than five years from the date on which the offence concerned was committed.

(4) For the purposes of this section, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence relating to the offence came to his knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purposes of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

Cost of prosecutions.

12.—Where a person is convicted of an offence under this Act committed after the commencement of this section, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Agency the costs and expenses, measured by the court, incurred by the Agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of directors, employees, consultants and advisers.

Powers of authorised person.

13.—(1) An authorised person shall, for any purpose connected with this Act, be entitled, at all reasonable times, to enter any premises and to bring therein such other persons (including members of the Garda Síochána) or equipment as he may consider necessary for the purpose.

(2) Subject to *subsection (6)*, an authorised person shall not, other than with the consent of the occupier, enter into a private dwelling unless he has given to the occupier of the dwelling not less than 24 hours notice in writing of his intended entry.

(3) Every authorised person shall be furnished with a certificate of his appointment and, when exercising any power conferred on him by or under this Act, the authorised

person shall, if requested by any person affected, produce the certificate to that person.

(4) Whenever an authorised person enters any premises pursuant to this section, he may therein—

- (a) make such plans, take such photographs F32[, record such information on data loggers, make such tape, electrical, video or other recordings] and carry out such inspections,
- (b) make such tests F33[, make such copies of documents and records (including records held in electronic form) found therein and take such samples],
- (c) require from the occupier of the premises or any person employed on the premises or from any other person on the premises F34[such information,]
- (d) inspect such plant, vehicles, records F35[(including records held in electronic form) and documents, or]
- F36[(e) remove and retain such documents and records (including records held in electronic form) for such period as may be reasonable for further examination,]

as he, having regard to all the circumstances, considers necessary for the purposes of, and exercising any power conferred on him by or under, this Act.

(5) Any person who—

- (a) refuses to allow an authorised person to enter any premises or to take any person or equipment with him in the exercise of his powers under this section,
- (b) obstructs or impedes an authorised person in the exercise of any of the powers conferred on him by this section,
- (c) gives, either to an authorised person or to the Agency, information which is false or misleading in a material respect, or
- (d) fails or refuses to comply with any requirement of this section,

shall be guilty of an offence.

(6) Where an authorised person in the exercise of his powers under this section is prevented from entering any premises, or where he has reason to believe that evidence related to a suspected offence under this Act may be removed or destroyed, the authorised person or the person by whom he was appointed may apply to the District Court for a warrant authorising such entry.

(7) The Minister may make regulations for the purposes of this section.

(8) Without prejudice to the generality of *subsection (7)*, regulations under this section may provide for all or any of the following matters—

- (a) the taking of samples and the carrying out of tests, examinations and analyses,
- (b) the specification of the classes of persons to be responsible for taking such samples and for the carrying out of such tests, examinations and analyses, or
- (c) the specification of the certificate or other evidence to be given of the result of any such test, examination or analysis and the class or classes of person by whom such certificate or evidence is to be given.

(9) Any certificate or other evidence given or to be given in respect of any prescribed test, examination or analysis of any sample shall in relation to that sample be evidence,

without further proof, of the result of the test, examination or analysis unless the contrary is shown.

Service of notices.

14.—(1) Any notice required to be served or given by or under this Act shall be addressed to the person concerned and served or given in one of the following ways—

(a) by addressing it to him by name and delivering it to him,

(b) by leaving it at the address at which he ordinarily resides,

(c) by sending it by post in a prepaid registered letter addressed to him at the address at which he ordinarily resides,

(d) if an address for the service of notices has been furnished by him, by leaving it at, or sending it by prepaid registered post addressed to him to, that address, F37[...]

(e) where the address at which he ordinarily resides cannot be ascertained by reasonable inquiry and notice is required to be served on, or given to, him in respect of any premises, process, works or development, by delivering it to a person over the age of 16 years employed thereon or resident in the premises, or by affixing it in a conspicuous position on or near the premises, process, works or F38[development, or]

F39[(f) by such other means as may be prescribed.]

(2) Where the name of the person concerned cannot be ascertained by reasonable inquiry, a notice under this Act may be addressed to “the occupier”, “the owner” or “the person in charge”, as the case may be.

(3) For the purposes of this section, a company registered under the Companies Acts, 1963 to 1990, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A person shall not at any time during the period of three months after a notice is affixed under *subsection (1) (e)* remove, damage or deface the notice without lawful authority.

Immunity of Agency.

15.—No action or other proceedings shall lie or be maintainable against the Agency or any body referred to in *section 44* or *45* for the recovery of damages in respect of any injury to persons, damage to property or other loss alleged to have been caused or contributed to by a failure to perform or to comply with any of the functions conferred on the said Agency or body.

Indemnification of Director General, directors and other persons.

16.—Where the Agency is satisfied that the Director General or other director or F40[authorised person or inspector] F41[of the Agency], or any other employee of the Agency has discharged his duties in relation to the enforcement of the relevant statutory provisions in a *bona fide* manner, it shall indemnify the Director General or other director or F40[authorised person or inspector] of the Agency or any other employee of the Agency, against all actions or claims howsoever arising in respect of the discharge by him of his duties.

Expenses of Minister.

17.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Amendment of
Act of 1963 and
Air Pollution Act,
1987.

18.—(1) Section 51 of the Act of 1963 is hereby repealed.

(2) The *Air Pollution Act, 1987*, is hereby amended as provided for in the *Third Schedule*.

PART II

ENVIRONMENTAL PROTECTION AGENCY

Establishment of
Environmental
Protection
Agency.

19.—(1) There shall be a body to be known as An Ghníomhaireacht um Chaomhnú Comhshaoil or, in the English language, the Environmental Protection Agency (in this Act referred to as the Agency) to perform the functions assigned to it by or under this Act.

(2) The Agency shall stand established on such day as the Minister by order appoints.

F42[(3) *The Agency shall consist of a Director General and five other Directors.*]

Incorporation of
Agency.

20.—(1) The Agency shall be a body corporate with perpetual succession and a seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land.

(2) The Agency shall provide itself with a seal.

(3) The seal of the Agency shall be authenticated by the signature of the Director General or of some other director or of a person, being an employee of the Agency or a person whose services are availed of by, or supplied to, the Agency under *section 44*, authorised by the Agency to act in that behalf.

(4) Judicial notice shall be taken of the seal of the Agency and every document purporting to be an instrument made by the Agency and to be sealed with the seal (purporting to be authenticated in accordance with *subsection (3)*) of the Agency shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

Director General.

21.—(1) The Director General shall be appointed by the Government.

(2) A committee shall be established consisting of—

(a) the Secretary to the Government,

(b) the Secretary of the Department of the Environment,

(c) the Chairperson of the Council of An Taisce—the National Trust for Ireland,

(d) the Managing Director of the Industrial Development Authority,

(e) the General Secretary of the Irish Congress of Trade Unions, and

(f) the Chief Executive of the Council for the Status of Women.

F43[(g) *such person having relevant experience in relation to radiological protection as the Minister shall appoint.*]

(3) Where the Minister makes a request under *subsection (7), (9) or (10) or section 24* and—

(a) any of the persons aforesaid signifies at any time his unwillingness or inability to act for any period as a member of the committee, or

(b) any of the persons aforesaid is through ill-health or otherwise unable so to act for any period,

the Minister may appoint in the case of—

- (i) the Secretary of the Government, some other officer of the Taoiseach who is an established civil servant for the purposes of the [Civil Service Regulation Act, 1956](#),
- (ii) the Secretary of the Department of the Environment, some other officer of the Minister for the Environment, who is an established civil servant for the purposes of the [Civil Service Regulation Act, 1956](#),
- (iii) in any other case, some other person from the organisation or body referred to in *subsection (2)* to which the person referred to at *paragraph (a)* or *(b)* belongs,

to be a member of the committee in his place and such person shall remain a member of the committee until such time as the selection by the committee pursuant to the request is made.

(4) Where the Minister makes a request under *subsection (7)*, *(9)* or *(10)* or [section 24](#) and at the time of making the request any of the offices specified in *subsection (2)* is vacant, the Minister may appoint a person to be a member of the committee and such person shall remain a member of the committee until such time as the selection by the committee pursuant to the request is made.

(5) Where pursuant to *subsection (3)* or *(4)*, the Minister appoints a person to be a member of the committee, he shall, as soon as may be, cause a notice of the appointment to be published in *Iris Oifigiúil*.

(6) F44[...]

(7) (a) The committee shall, whenever so requested by the Minister, select three candidates, or if in the opinion of the committee there is not a sufficient number of suitable applicants, such lesser number of candidates as the committee shall determine, for appointment to be the Director General and shall inform the Minister of the names of the candidates, or, as may be appropriate, the name of the candidate, selected.

(b) In selecting candidates the committee shall have regard to the special knowledge and experience and other qualifications, including any qualifications which the Minister may by order specify, or personal qualities which the committee consider appropriate to enable a person effectively to perform the functions of the Director General.

(8) Except in the case of a reappointment under *subsection (13)*, the Government shall not appoint a person to be the Director General unless the person was among those or, as may be appropriate, was the candidate selected by the committee, pursuant to a request under *subsection (7)* in relation to that appointment.

(9) Notwithstanding *subsection (7)* or *(8)*, if the Government decide not to appoint to be the Director General any of the candidates or, as the case may be, the candidate selected by the committee pursuant to a particular request—

(a) the Government shall appoint a person to be the Director General who was among those or, as the case may be, was the candidate, selected by the committee pursuant to a previous request (if any) in relation to that appointment, or

(b) the Minister shall make a further such request to the committee and the Government shall appoint to be the Director General a person who was among the candidates or, as the case may be, was the candidate selected by the

committee pursuant to that request or pursuant to another such request made in relation to that appointment.

(10) Notwithstanding *subsection (7) or (8)*, if the committee is unable to select any suitable candidate pursuant to a particular request—

- (a) the Government shall appoint a person to be the Director General who was among those or, as the case may be, was the candidate, selected by the committee pursuant to a previous request (if any) in relation to that appointment, or
- (b) the Minister shall make a further such request to the committee and the Government shall appoint to be the Director General a person who was among the candidates or, as the case may be, was the candidate selected by the committee pursuant to that request or pursuant to another such request made in relation to that appointment.

(11) The Minister may make regulations as regards—

- (a) the publication of notice that a request has been received by the committee under *subsection (7), (9) or (10)*,
- (b) applications for selection,
- (c) any other matter which the Minister considers expedient for the purposes of this section.

(12) The Director General shall be appointed in a wholetime capacity and shall not at any time during his term of office hold any other office or employment in respect of which emoluments are payable.

(13) Subject to the provisions of this section—

- (a) the term of office of the Director General shall be seven years,
- (b) the Director General may be reappointed by the Government for a second or subsequent term of office of seven years or less if, at the time of his reappointment, he is the outgoing Director General.

(14) (a) The Director General may resign his office by letter addressed to the Minister.

F45[(b) The Director General shall vacate Public Service Superannuation (Miscellaneous Provisions) Act 2004 for the purposes of that Act, that age but, where the person is a new entrant (within the meaning of that Act) appointed on or after 1 April 2004, the requirement to vacate office on grounds of age shall not apply.]

(15) (a) The Director General shall be paid, out of moneys at the disposal of the Agency, such remuneration as the Minister, with the consent of the Minister for Finance, may determine.

(b) Subject to the provisions of this section, the Director General shall hold office on such terms and conditions (including terms relating to allowances for expenses) as the Minister, with the consent of the Minister for Finance, may determine.

(16) The Director General may be removed from office by the Government if, in their opinion, he has become incapable through ill-health of effectively performing his duties, or for stated misbehaviour, or if his removal appears to the Government to be necessary or desirable for the effective performance by the Agency of its functions and, in case the Director General is removed from office under this subsection, the Government shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for the removal.

Deputy Director
General.

22.—(1) The Agency shall appoint from among the directors a person to be Deputy Director General of the Agency and such appointment shall be for such period, not exceeding the current term of his office of director, as shall be specified in the appointment.

(2) If at any time the Deputy Director General ceases to be a director, he shall also cease to be Deputy Director General.

(3) The Deputy Director General may, in addition to his remuneration as a director, be paid such additional remuneration (if any) as the Minister, with the consent of the Minister for Finance, may determine.

(4) The Deputy Director General may resign his office by letter addressed to the Agency.

General functions
of Director
General and
Deputy Director
General.

23.—It shall be the function of the Director General or, where he is not available or where the office of Director General is vacant, of the Deputy Director General—

(a) to ensure the efficient discharge of the business of the Agency, and

(b) to arrange the distribution of the business of the Agency among its directors.

Directors.

24.—(1) The directors of the Agency shall be appointed by the Government.

(2) The Minister may, after consultation with the Director General (where a Director General is in office) or the Deputy Director General (where a Deputy Director General is in office) if there is no Director General in office, by order specify qualifications for all posts, or any particular post, of director.

(3) (a) Where a director is to be appointed pursuant to *subsection (1)*, the committee provided for in *section 21* shall, whenever so requested by the Minister, select three candidates, or if in the opinion of the committee there is not a sufficient number of suitable applicants, such lesser number of candidates as the committee shall determine, for appointment to be the director and shall inform the Minister of the names of the candidates, or, as may be appropriate, the name of the candidate, selected.

(b) In selecting candidates the committee shall have regard to the special knowledge and experience, including relevant experience in environmental matters F46[or radiological protection matters], and other qualifications, including any qualifications which the Minister may by order specify, or personal qualities which the committee consider appropriate to enable a person effectively to perform the functions of the director.

(4) Except in the case of a reappointment under *subsection (9)*, the Government shall not appoint a person to be a director unless the person was among those or, as may be appropriate, was the candidate selected by the committee, pursuant to a request under *subsection (3)* in relation to that appointment.

(5) Notwithstanding *subsection (3)* or *(4)*, if the Government decide not to appoint to be a director any of the candidates or, as the case may be, the candidate selected by the committee pursuant to a particular request—

(a) the Government shall appoint a person to be a director who was among those, or as the case may be, was the candidate, selected by the committee pursuant to a previous request (if any) in relation to that appointment, or

(b) the Minister shall make a further such request to the committee and the Government shall appoint to be a director a person who was among the candidates or, as the case may be, was the candidate selected by the committee pursuant to that request or pursuant to another such request made in relation to that appointment.

(6) Notwithstanding *subsection (3) or (4)*, if the Committee is unable to select any suitable candidate pursuant to a particular request—

- (a) the Government shall appoint a person to be a director who was among those, or as the case may be, was the candidate, selected by the committee pursuant to a previous request (if any) in relation to that appointment, or
- (b) the Minister shall make a further such request to the committee and the Government shall appoint to be a director a person who was among the candidates or, as the case may be, was the candidate selected by the committee pursuant to that request or pursuant to another such request made in relation to that appointment.

(7) The Minister may make regulations as regards—

- (a) the publication of notice that a request has been received by the committee under *subsection (3) or (5)*,
- (b) applications for selection,
- (c) any other matter which the Minister considers expedient for the purposes of this section.

(8) Each director shall be appointed in a wholetime capacity and shall not at any time during his term of office hold any other office or employment in respect of which emoluments are payable.

(9) Subject to the provisions of this section—

- (a) a director shall hold office for such term (not exceeding five years) as shall be specified by the Government when appointing him,
- (b) a director may be reappointed by the Government for a second or subsequent term of office for five years or less if at the time of his reappointment he is an outgoing director.

(10) (a) A director may resign his office by letter addressed to the Minister.

F47[(b) A director shall vacate his office of director on attaining the age of 70 years or, where a higher age is prescribed by order under section 3A(2) of the Public Service Superannuation (Miscellaneous Provisions) Act 2004 for the purposes of that Act, that age but, where the person is a new entrant (within the meaning of that Act) appointed on or after 1 April 2004, the requirement to vacate office on grounds of age shall not apply.]

(11) (a) A director shall be paid, out of moneys at the disposal of the Agency, such remuneration as the Minister, with the consent of the Minister for Finance, may determine.

(b) Subject to the provisions of this section, each director shall hold office on such terms and conditions (including terms relating to allowances for expenses) as the Minister, with the consent of the Minister for Finance, may determine.

(12) A director may be removed from office by the Government if, in their opinion, he has become incapable through ill-health of effectively performing his duties, or for stated misbehaviour, or if his removal appears to the Government to be necessary or desirable for the effective performance by the Agency of its functions, and in case a director is removed from office under this subsection, the Government shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for the removal.

(2) The Director General and each director shall have one vote at a meeting of the Agency.

(3) At a meeting of the Agency—

(a) the Director General shall, if present, chair the meeting,

(b) if and for so long as the Director General is not present, or if the office of Director General is vacant, the Deputy Director General shall, if present, chair the meeting,

(c) in any other case, the directors who are present shall choose one of their number to chair the meeting.

(4) Every question at a meeting of the Agency shall be determined by a majority of votes of the directors present and, in the event that voting is equally divided and there are more than two directors present, the person chairing the meeting shall have a casting vote.

(5) Subject to the requirements of this Act and any regulations made thereunder the Agency shall regulate its own procedure and business.

(6) (a) Subject to *paragraph (b)*, the Agency may perform or exercise any of its functions through or by any director of the Agency or other person or body who, in either case, has been duly authorised by the Agency in that behalf.

(b) *Paragraph (a)* shall not be construed as enabling the Agency to authorise a person who is not a director of the Agency finally to determine a decision on the granting, whether with or without conditions, or a refusal, of a licence or revised licence F48[(other than a licence or revised licence under section 30 of the Radiological Protection Act 1991 or under regulations relating to radiological protection made under section 3 of the European Communities Act 1972)] or on any prescribed matter.

Agency's quorum,
vacancies, etc.

26.—(1) The quorum for a meeting of the Agency shall be not less than two.

(2) Subject to *subsection (1)*, the Agency may act notwithstanding a vacancy or vacancies in the office of Director General or among the directors.

(3) Where a vacancy occurs in the office of Director General, or among the directors, the Minister shall, as soon as may be, take steps to fill the vacancy.

(4) (a) Where, owing to the illness of the Director General or of a director, or for any other reason, a sufficient number of directors of the Agency is not available to enable the Agency effectively to perform its functions, the Minister may, as an interim measure, appoint from among the officers of the Minister who are established civil servants for the purposes of the *Civil Service Regulation Act, 1956*, one or more persons to be a director and, where necessary, one to be Deputy Director General.

(b) A person shall not be appointed to be a director or Deputy Director General under this subsection for a term in excess of six months and may not be reappointed on more than three occasions.

Advisory
Committee.

27.—(1) There shall be a committee (hereinafter called the Advisory Committee) to perform the functions assigned to it by or under this Act.

(2) The number of members of the Advisory Committee shall, subject to *subsection (1)*, be twelve.

(3) (a) The Director General, or the Deputy Director General if and for so long as the Director General is not present or if the office of the Director General is

- vacant, shall, *ex officio*, be a member and shall chair the meetings of the Advisory Committee.
- (b) In the event of the offices of Director General and Deputy Director General being vacant the Minister shall designate one of the other directors of the Agency to be a member of the Advisory Committee and to chair its meetings until either the Director General or the Deputy Director General is appointed.
- (4) The directors other than the Director General shall be entitled to attend and be heard at meetings of the Advisory Committee but shall not be eligible to vote.
- (5) The Minister may prescribe for the purposes of *subsection (6)*—
- (a) organisations which in his opinion are representative of persons whose professions or occupations relate to environmental protection F49[or radiological protection],
 - (b) organisations which in his opinion are concerned with environmental protection F50[or radiological protection],
 - (c) organisations which in his opinion are concerned with the promotion of economic or other development,
 - (d) organisations which in his opinion are concerned with the promotion in relation to the community of social, economic or general interests,
 - (e) organisations which in his opinion are representative of persons concerned with F51[education or research relating to environmental matters or radiological protection].
- (6) The members of the Advisory Committee shall be appointed by the Minister as follows—
- (a) not less than one shall be so appointed from among persons selected by the organisations which for the time being stand prescribed under a particular paragraph of *subsection (5)*, subject to seven persons being appointed in all,
 - (b) four other members shall be appointed by the Minister.
- (7) The organisations prescribed under a particular paragraph of *subsection (5)* shall, whenever so requested by the Minister, select such number (not being less than four) of candidates as the Minister may specify for appointment and shall inform the Minister of the names of the candidates selected.
- (8) Except in the case of an appointment pursuant to *subsection (6) (b)* and subject to *subsection (10)*, the Minister shall not appoint a person to be a member of the Advisory Committee unless the person was among those selected pursuant to a request under *subsection (7)* in relation to that appointment.
- (9) Notwithstanding *subsection (7)* or *(8)*—
- (a) if the appropriate organisations prescribed under a particular paragraph of *subsection (5)* refuse or fail to select any candidate pursuant to a particular request under *subsection (7)*, or
 - (b) if the Minister decides not to appoint as a member any of the candidates selected by such organisations pursuant to the request,
- then either—
- (i) the Minister shall appoint as a member a person who was among those selected by such organisations pursuant to a previous request (if any) under that subsection in relation to that appointment, or

(ii) the Minister shall make a further such request and he shall appoint as a member a person who was among those selected pursuant to that request or pursuant to another such request made in relation to that appointment.

(10) Where a request is made pursuant to *subsection (7)*, failure or refusal by any or all of the organisations of whom the request is made to select the number of candidates specified in the request shall not preclude the appointment as a member of a person who was selected in relation to that appointment either by any of the aforesaid organisations or by any other organisation.

(11) The Advisory Committee may act notwithstanding vacancies in its membership.

(12) A member of the Advisory Committee shall be appointed for such term (not exceeding three years) as shall be specified by the Minister when appointing him (on such terms and conditions as the Minister, with the consent of the Minister for Finance, determines) and a member whose term of office expires by the effluxion of time shall be eligible for reappointment.

(13) A member of the Advisory Committee shall be paid, out of moneys at the disposal of the Agency, such allowances for expenses as the Minister, with the consent of the Minister for Finance, determines.

(14) The Advisory Committee may regulate, by standing orders or otherwise, its procedure or business.

(15) The Minister may fix the date, time and place of the first meeting of the Advisory Committee.

(16) The Minister may make regulations as regards—

- (a) the period within which the Minister is to be informed in accordance with *subsection (7)*,
- (b) any other matter which the Minister considers expedient for the purposes of this section.

(17) (a) A member of the Advisory Committee may resign from office by letter addressed to the Minister.

- (b) The Minister may remove from office a member of the Advisory Committee if in the opinion of the Minister he has become incapable through ill-health of effectively performing his duties or for stated misbehaviour or his removal appears to the Minister to be necessary or desirable for the effective performance by the Advisory Committee of its functions.

Functions of
Advisory
Committee.

28.—(1) (a) It shall be the duty of the Advisory Committee to make recommendations to the Agency or to the Minister relating to the functions of the Agency.

- (b) The Agency or the Minister, as may be appropriate, shall have regard to any recommendations made by the Advisory Committee.

(2) Without prejudice to the generality of *subsection (1)*, the Advisory Committee may make recommendations—

(a) to the Agency in relation to—

- (i) general staff requirements of the Agency but excluding decisions in relation to particular posts, individual employees, pay, grading and conditions,
- (ii) the provision of services, including laboratory facilities, required by the Agency,
- (iii) the provision of services, including laboratory facilities, by the Agency,

- (iv) standards, guidelines and codes of practice in relation to environmental protection F52[or radiological protection],
- (v) the research programme of the Agency, its financing and priorities,
- (vi) the annual work programme of the Agency and priorities for different elements of the work programme,
- (vii) the organisation and promotion of training conferences and related matters for the purposes of environmental protection F53[or radiological protection],
- (viii) any other matters related to the functions of the Agency,

(b) to the Minister in relation to—

- (i) the assignment of specific functions to the Agency,
- (ii) the financing of the Agency,
- (iii) the activities or classes of activities for which the Agency should have licensing functions under *Part IV*,
- (iv) the assignment to the Agency of responsibility for specific environmental matters F54[or matters relating to radiological protection],
- (v) any other matter which, in the opinion of the Advisory Committee, is relevant to the effective performance by the Agency of its functions.

(3) The Minister may consult the Advisory Committee on any matter arising in relation to his functions with respect to environmental protection F55[or radiological protection].

(4) The Advisory Committee shall be entitled to be informed at its meetings by the Director General, or a person appointed by him for the purpose, about the work of the Agency but (subject to *section 110*) not in relation to the detail of particular cases, and provided always that disclosure of such information shall not be in breach of *section 39*.

(5) Subject to *section 110*, the Advisory Committee shall not as of right be entitled—

- (a) to receive specific information in relation to the processing of an application for, or the review of, an individual licence or revised licence under *Part IV*, or
- (b) to have any recommendations regarding such a licence taken into account.

Staff of the Agency.

29.—(1) The Agency may appoint such persons to be employees of the Agency as it may determine subject to the consent of the Minister and the Minister for Finance as to numbers and grading.

- (2) (a) An employee of the Agency shall be paid, out of moneys at the disposal of the Agency, such remuneration and allowances for expenses as the Agency, with the consent of the Minister and the Minister for Finance, may determine.
- (b) An employee of the Agency referred to in *paragraph (a)* shall hold his employment on such other terms (including terms specifying the duration of such employment) and conditions as the Agency, with the consent of the Minister and the Minister for Finance, may determine.

Transfer of staff of public authorities.

30.—(1) The Minister may, from time to time, following consultation with the Agency and any other Minister of the Government who in the opinion of the Minister is concerned, request a public authority to designate for employment by the Agency

employees of that authority whose principal duties relate to a function assigned or transferred to the Agency under this Act, or to be so assigned or transferred to the Agency, and the authority shall comply with such request.

(2) A public authority may, with the consent of the Minister who shall consult with the Agency on the matter, designate for employment by the Agency any person employed by the public authority.

(3) A public authority shall not designate an employee under *subsection (1) or (2)*, without having notified in writing the employee and any recognised trade unions or staff associations concerned, of its intention to do so and considered any representations made by him, or by them or by any of them, in relation to the matter within such time as may be specified in the notification.

(4) The Agency shall, with the consent of the Minister who shall consult with the Agency on the matter, accept into its employment a person designated under *subsection (1) or (2)* for employment by the Agency.

(5) Acceptance into the employment of the Agency of a person designated under this section shall have effect on such day as may be specified by the Minister after consultation with the Agency and any other Minister of the Government who in the opinion of the Minister is concerned.

Conditions
related to
transfer of staff.

31.—(1) The terms and conditions relating to tenure which are granted by the Agency in relation to a person accepted into its employment under *section 30 or 32* shall not, while the person is in the employment of the Agency, be less favourable to him than those prevailing immediately before his acceptance into such employment save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned; and if a dispute arises between the Agency and any such person as to terms and conditions prevailing immediately before his acceptance into the employment of the Agency, the matter shall be determined by the Minister for Finance, after consultation with the Minister.

(2) Save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned, a person referred to in *subsection (1)* shall not, while in the employment of the Agency, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (other than those relating to tenure) than the scale of pay to which he was entitled and the terms and conditions of service (other than those relating to tenure) to which he was subject immediately before the day on which he was so accepted.

(3) Until such time as the scale of pay and the terms and conditions of service (other than those relating to tenure) of a person referred to in *subsection (1)* are varied by the Agency, following consultation with any recognised trade unions and staff associations concerned, the scales of pay to which such a person was entitled and the terms and conditions of service (other than those relating to tenure), restrictions, requirements and obligations to which the person was subject immediately before such acceptance shall continue to apply and may be applied or imposed by the Agency, while the person is in the employment of the Agency; no such variation shall operate to worsen the scale of pay or the terms or conditions of service aforesaid applicable to an employee immediately before he was accepted into the employment of the Agency, save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned.

(4) Previous service of any person in a public authority from which he was accepted into the employment of the Agency under *section 30 or 32* shall be reckonable for the purposes of, but subject to any other exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 1991, the Holidays (Employees) Acts, 1973 and 1991, the Minimum Notice and Terms of Employment Acts, 1973 to 1991, and the Unfair Dismissals Acts, 1977 and 1991.

Dissolution of An Foras Forbartha Teoranta.

32.—(1) The National Institute for Physical Planning and Construction Research Limited (An Foras Forbartha Teoranta) shall, on such date as may be specified by order of the Minister, made with the consent of the Minister for Finance, be dissolved by virtue of this section.

(2) An order under *subsection (1)* may provide for any consequential or ancillary matter or any other matter which the Minister considers necessary or expedient including, in particular—

- (a) the transfer of staff of An Foras Forbartha Teoranta to the Agency,
- (b) the transfer or distribution of property, rights and liabilities to the Agency, the Environmental Research Unit established under the Environmental Research Unit (Establishment) Order, 1988, the Minister, or any other public authority specified in the order,
- (c) the preservation of continuing contracts related to environmental protection made by An Foras Forbartha Teoranta,
- (d) the continuance of pending legal proceedings,
- (e) the superannuation of former staff of An Foras Forbartha Teoranta.

(3) The Minister shall not make an order under *subsection (2) (a)* without having notified in writing any recognised trade unions or staff associations concerned of his intention to do so and considered any representations made by them or by any of them in relation to the matter within such time as may be specified in the notification.

(4) The Agency shall accept into its employment in accordance with the terms of this Act a person who is transferred under *subsection (2) (a)*.

Superannuation of Director General and directors.

33.—(1) The Minister may, with the consent of the Minister for Finance, make a scheme or schemes for the granting of pensions, gratuities or other allowances to or in respect of the Director General and other directors ceasing to hold office.

(2) A scheme under this section may provide that the termination of the appointment of the Director General or of a director during that person's term of office shall not preclude the award to him under the scheme of a pension, gratuity or other allowance.

(3) The Minister may, with the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section, including a scheme under this subsection.

(4) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity, or allowance payable in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.

(5) A scheme under this section shall be carried out by the Agency in accordance with its terms.

(6) No pension, gratuity or other allowance shall be granted by the Agency to or in respect of any person referred to in *subsection (1)* ceasing to hold office otherwise than in accordance with a scheme under this section.

(7) Every scheme made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next twenty-one days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Superannuation
of staff of
Agency.

34.—(1) The Agency may, with the consent of the Minister and the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of such persons appointed under *section 29* to, or accepted under *section 30* or *32* into, wholetime employment of the Agency.

(2) A scheme under *subsection (1)* shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) The Agency may, with the consent of the Minister and the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.

(4) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister, who shall refer it to the Minister for Finance, whose decision shall be final.

(5) No superannuation benefit shall be granted by the Agency on the resignation, retirement or death of an employee of the Agency otherwise than in accordance with a scheme under this section.

(6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next twenty-one days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) A scheme or schemes under *subsection (1)* shall, as respects a person accepted into wholetime employment of the Agency under *section 30* or *32*, provide for the granting to or in respect of him of superannuation benefits upon and subject to terms and conditions that are not less favourable to him than the terms and conditions applied to him immediately before the day on which he was so accepted into the employment of the Agency in relation to the grant of such benefits.

(8) Where, during the period between the establishment day and the coming into operation of a scheme under this section, superannuation benefits would have been granted to or in respect of a person accepted into wholetime employment of the Agency under *section 30* or *32*, in respect of his employment with the public authority concerned, the superannuation benefits shall be granted and paid to or in respect of the person by the Agency and, for that purpose, his pensionable service with the Agency shall be aggregated with his previous pensionable service.

(9) In this section and in *sections 35* and *36* “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

Membership of
House of
Oireachtas or
European
Parliament.

35.—(1) Where the Director General or other director of the Agency—

(a) accepts nomination as a member of Seanad Éireann,

(b) is nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or

(c) is regarded pursuant to *section 15* (inserted by the *European Assembly Elections Act, 1984*) of the *European Assembly Elections Act, 1977*, as having been elected to such Parliament to fill a vacancy,

he shall thereupon cease to be the Director General or a director of the Agency, as the case may be.

(2) Where a person who is an employee of the Agency—

- (a) accepts nomination as a member of Seanad Éireann,
- (b) is nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or
- (c) is regarded pursuant to [section 15](#) (inserted by the [European Assembly Elections Act, 1984](#)) of the [European Assembly Elections Act, 1977](#), as having been elected to such Parliament to fill a vacancy,

he shall thereupon stand seconded from employment by the Agency and shall not be paid by, or be entitled to receive from, the Agency any remuneration or allowances in respect of the period commencing on such acceptance, nomination or election, as the case may be, and ending when he fails to be elected to, withdraws his candidature for, or ceases to be a member of, either such House or such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or is a member of the European Parliament shall, while he is so entitled or is such a member, be disqualified from becoming the Director General or a director of the Agency or an employee of the Agency.

(4) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Agency for the purposes of any superannuation benefits.

Membership of a local authority.

36.—(1) Where the Director General or other director of the Agency becomes a member of a local authority he shall thereupon cease to be the Director General or a director of the Agency, as the case may be.

(2) Subject to *subsection (4)*, where a person who is an employee of the Agency becomes a member of a local authority, he shall be released on special leave and shall not be paid by, or be entitled to receive from, the Agency any remuneration or allowances in respect of the period of his membership of the local authority.

(3) A person who is for the time being a member of a local authority shall be disqualified from becoming the Director General or a director of the Agency or an employee of the Agency.

(4) The Minister may by order designate a class, description or grade of employment to which the provisions of *subsection (2)* or *(3)* shall not apply while such order is in force.

(5) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, *inter alia*, the reckoning of a period mentioned in that subsection as service with the Agency for the purposes of any superannuation benefits.

(6) In this section “local authority” has the meaning assigned to it by the [Local Government Act, 1941](#).

Declaration of interests.

37.—(1) It shall be the duty of a person to whom this section applies to give to the Agency a declaration in the prescribed form, signed by him and containing particulars of every interest of his which is an interest to which this section applies and for so long as he continues to be a person to whom this section applies it shall be his duty where there is a change regarding any such interest or where he acquires any other interest to which this section applies, to give to the Agency a new declaration in the prescribed form.

(2) (a) This section applies to—

- (i) the Director General or other director, and

(ii) an employee of the Agency or any other person whose services are availed of by the Agency and who is of a class, description or grade prescribed for the purposes of this section.

(b) This section applies to the following interests—

(i) any estate or interest which a person to whom this section applies has in any land or in any activity,

(ii) any business of dealing in or developing land, or any activity, in which such a person is engaged or employed and any such business carried on by a company or other body of which he, or any nominee of his, is a member,

(iii) any profession, business or occupation in which such a person is engaged, whether on his own behalf or otherwise, and which relates to dealing in or developing land or to an activity.

(3) A person to whom this section applies and who has an interest to which this section applies shall be regarded as complying with the requirements of *subsection (1)* if, and only if, he gives to the Agency a declaration mentioned in that subsection within the period of twenty-eight days beginning—

(a) in case the person is such a person on the commencement of this section, on such commencement,

(b) in case the person becomes such a person after the commencement of this section, on the day on which he becomes such a person,

(c) in case there is a change regarding an interest particulars of which are contained in a declaration already given by the person or where the person acquires any other interest to which this section applies, on the day on which the change occurs or the other such interest is acquired.

(4) For the purposes of this section, a person shall be regarded as having an estate or interest in land or an activity if he, or any nominee of his, is a member of a company or other body which has an estate or interest in the land or the activity.

(5) For the purposes of this section, a person shall not be regarded as having an interest to which this section applies if the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering or discussing, or in voting on, any question with respect to any matter arising or coming before the Agency or in performing any function in relation to any such matter.

(6) Where a person to whom this section applies has an interest to which this section applies by reason only of the beneficial ownership of shares in a company or other body by him or by his nominee and the total nominal value of those shares does not exceed the lesser of—

(a) one thousand pounds, or

(b) one-hundredth part of the total nominal value of either the issued share capital of the company or body, or where that capital is issued in shares of more than one class, the issued share capital of the class or classes of shares in which he has an interest,

subsection (1) of this section shall not have effect in relation to that interest.

(7) The Agency shall for the purposes of this section keep a register (which register is in this section referred to as the register of interests) and shall enter therein the particulars contained in declarations given to the Agency pursuant to this section.

(8) The register of interests shall be available for inspection by any person at the Agency's headquarters during office hours and a copy of the register or any entry in

the register may be obtained by any person on the payment to the Agency of such fee (if any) as the Agency shall fix not exceeding the reasonable cost of making the copy.

(9) Where a person ceases to be a person to whom this section applies, any particulars entered in the register of interests as a result of a declaration being given by the person to the Agency pursuant to this section shall be removed, as soon as may be after the expiration of the period of five years beginning on the day on which the person ceases to be such a person, from the said register by the Agency.

(10) Subject to *subsection (11)*, a person who fails to comply with *subsection (1)* or who, when purporting to comply with the requirements of the said *subsection (1)*, gives particulars which are false or which to his knowledge are misleading in a material respect, shall be guilty of an offence.

(11) In any proceedings for an offence under this section it shall be a defence for the defendant to prove that at the relevant time he believed, in good faith and upon reasonable grounds, that—

- (a) the relevant particulars were true,
- (b) there was no matter as regards which he was then required to make a declaration under *subsection (1)*, or
- (c) that the matter in relation to which the offence is alleged was not one as regards which he was so required to make such declaration.

(12) In this section “land” includes land covered by water.

Disclosure of
interests.

38.—(1) Where the Director General, other director, an employee of the Agency, a member of the Advisory Committee or of a committee or consultative group established by the Agency, a consultant, adviser or other person engaged by the Agency or a person whose services are availed of by, or supplied to, the Agency under *section 44* or who exercises or performs any function on behalf of the Agency under an agreement under *section 45*, has a pecuniary or other beneficial interest in, or material to, any matter which falls to be considered by the Agency, committee or consultative group or the person concerned, he shall comply with the following requirements—

- (a) he shall disclose to the Agency, committee or consultative group, as the case may be, the nature of his interest in advance of any consideration of the matter,
- (b) he shall neither influence nor seek to influence a decision in relation to the matter,
- (c) he shall take no part in any consideration of the matter,
- (d) if he is a director of the Agency, or a member of a committee or consultative group he shall withdraw from the meeting for so long as the matter is being discussed or considered by the Agency, committee or consultative group and shall not vote or otherwise act as such director or member in relation to the matter.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or any member of his household, or any nominee of his or of any member of his household, is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,

(b) he or any member of his household is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,

(c) he or any member of his household is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates,

(d) any member of his household has a beneficial interest in, or material to, such a matter.

(3) For the purposes of this section a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only of an interest of his or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him to comply with the requirements of *subsection (1)*, the question shall be determined by the Agency and particulars of the determination shall be recorded in the minutes of the meeting concerned.

(5) Where a disclosure is made to the Agency, a committee or consultative group pursuant to *subsection (1)*, particulars of the disclosure shall be recorded in the minutes of the meeting concerned.

Disclosure of
confidential
information.

39.—(1) A person shall not disclose confidential information obtained by him in his capacity as Director General, other director, an employee of the Agency, a member of the Advisory Committee or of a committee or consultative group established by the Agency, a consultant, adviser or other person engaged by the Agency, or a person whose services are availed of by, or supplied to, the Agency under *section 44* or who exercises or performs any function on behalf of the Agency under an agreement under *section 45*, unless he is duly authorised to do so.

(2) In this section—

“confidential information”, without prejudice to the provisions of *section 110*, includes information that is expressed by the Agency to be confidential either as regards particular information or as regards information of a particular class or description;

“duly authorised” means authorised by the Agency or by some person authorised in that behalf by the Agency for the purposes of this section.

Prohibition of
certain
communications.

40.—(1) A person shall not communicate with the Director General, other director, an employee of the Agency, a member of the Advisory Committee or of a committee or consultative group established by the Agency, a consultant, adviser or other person engaged by the Agency, or a person whose services are availed of by, or supplied to, the Agency under *section 44* or who exercises or performs any function on behalf of the Agency under an agreement under *section 45*, for the purpose of influencing improperly his consideration of any matter which falls to be considered or decided by the Agency, committee or consultative group.

(2) If any person referred to in *subsection (1)* to whom a communication is made becomes of opinion that the communication is in contravention of that subsection, it shall be his duty not to entertain the communication further and he shall inform forthwith the Agency in writing of the substance of such communication and the Agency shall acknowledge in writing the receipt of such information.

Committees and
consultative
groups.

41.—(1) The Agency may from time to time appoint such and so many committees and consultative groups for such period and subject to such terms of reference as it thinks proper.

(2) The Agency may, subject to *section 25 (6)*, delegate to a committee appointed under this section any of its functions which, in its opinion, can be better or more conveniently performed by a committee.

(3) The Agency shall appoint a person to chair the meetings of a committee or consultative group under this section and a person to act in the absence of the person so appointed.

(4) The Agency may at any time dissolve a committee or consultative group appointed under this section or remove a member of a committee or consultative group from such membership.

(5) Each member of a committee or consultative group appointed under this section shall be paid, out of moneys at the disposal of the Agency, such allowances for expenses as the Minister, with the consent of the Minister for Finance, determines.

(6) A committee or consultative group appointed under this section may regulate, by standing orders or otherwise, its procedure or business.

Consultants and advisers.

42.—(1) The Agency may from time to time engage such consultants or advisers as it may consider necessary for the discharge of its functions and any fees due to a consultant or adviser engaged pursuant to this section shall be paid by the Agency out of moneys at its disposal.

(2) Any person may notify the Agency in writing of his willingness to be engaged by the Agency as a consultant or adviser pursuant to this section and such person when so notifying the Agency shall give to the Agency particulars of his qualifications and experience.

(3) The Agency shall maintain a list of the persons who duly give to the Agency a notification pursuant to *subsection (2)*.

(4) The Agency shall, in engaging a consultant or adviser under this section, have regard to the list maintained under *subsection (3)*, but nothing in this subsection shall be construed as precluding the Agency from engaging as a consultant or adviser a person whose name is not on the said list.

(5) The Agency shall include in its annual report a statement of the names of the persons (if any) engaged pursuant to this section during the year to which the report relates.

Establishment of regional environmental units.

43.—(1) The Agency shall establish such number of units (in this Act referred to as regional environmental units) as may be approved of by the Minister and shall, as far as is practicable, arrange for the performance of its functions, or particular functions, through such units.

(2) Each regional environmental unit shall comprise such number and types of employees and such facilities for the performance of its functions as the Agency considers necessary.

Provision of services to Agency.

44.—(1) For the purposes of enabling the Agency to perform its functions on and from the appropriate day, the Minister may, as an interim measure, supply to the Agency any services, including services of staff, required by the Agency and the Agency may avail of such services for which arrangements are made under this section.

(2) A local authority or any other public authority may supply to the Agency any services required by the Agency, including services of staff, for the performance of any of its functions under this Act on such terms and conditions as may be agreed.

Agreements
between Agency
and other public
authorities.

45.—(1) Subject to *section 25 (6)*, where—

(a) the Agency is of the opinion that any function or any service F56[relating to environmental protection] which may be exercised or performed by it should be exercised or performed on its behalf, whether generally or in a particular case, by a public authority, and

(b) the public authority is able and willing so to exercise or perform the function or service,

the Agency and the public authority may enter into an agreement that the function or service shall be so exercised or performed on behalf of the Agency by the public authority, and it shall thereupon become so exercisable or performable by the public authority.

(2) Where—

(a) consequent upon an agreement under *subsection (1)* a function or service becomes exercisable or performable by a public authority, and

(b) the Agency would, if it exercised or performed the function or service, be authorised by law to do any act or thing in relation to such exercise or performance,

the public authority shall be authorised to do that act or thing in relation to the exercise or performance by it of the function or service as if it were the Agency.

(3) The Agency shall furnish the Minister with a copy of an agreement to which this section applies.

(4) Any agreement under this section may contain such terms and conditions (including terms as to payment or otherwise) as may be decided between the parties to the agreement.

(5) Entry into an agreement under this section by a local authority shall be a reserved function.

(6) In this section—

“local authority” has the meaning assigned to it by the *Local Government Act, 1941*;

“reserved function” means—

(a) with respect to the council of a county (or an elective body for the purposes of the County Management Acts, 1940 to 1991) a reserved function for the purposes of the County Management Acts, 1940 to 1991,

(b) with respect to the corporation of a county borough, a reserved function for the purposes of the Acts relating to the management of the county borough.

Grants to Agency.

46.—The Minister may in each financial year, after consultation with the Agency in relation to its proposed work programme and expenditure for that year, make grants of such amounts as may be sanctioned by the Minister for Finance out of moneys provided by the Oireachtas towards the expenditure incurred by the Agency in the performance of its functions.

Borrowing by
Agency.

47.—The Agency may, for the purposes of the performance of its functions, borrow money, but shall not do so without the consent of the Minister and the Minister for Finance.

Acceptance of
gifts by Agency.

48.—(1) The Agency may accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor.

(2) The Agency shall not accept a gift if the trusts or conditions attached to it would be inconsistent with, or prejudice, the effective performance of its functions.

(3) The Agency shall publish in its annual report details of all gifts accepted by it during the period of the report.

Charges for services.

49.—(1) The Agency may determine charges or scales of charges in relation to the provision by it of services.

(2) The Agency may make such charges as it considers appropriate in accordance with the scales of charges provided for under *subsection (1)* in consideration of the provision by it of services.

(3) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to it under *subsection (2)*.

Accounts and audits.

50.—(1) The Agency shall keep, in such form as may be approved of by the Minister with the consent of the Minister for Finance, all proper and usual accounts of all moneys received or expended by it.

(2) Accounts kept in pursuance of this section shall be submitted annually to the Comptroller and Auditor General for audit at such times as the Minister, with the consent of the Minister for Finance, directs and those accounts when so audited, shall (together with the report of the Comptroller and Auditor General thereon), be presented to the Minister, who shall cause copies of the audited accounts and the report to be laid before each House of the Oireachtas.

Annual report and information to Minister.

51.—(1) As soon as may be after the end of each financial year, but not later than six months thereafter, the Agency shall cause a report on the performance of its functions during that year to be laid before each House of the Oireachtas.

(2) The Agency shall supply the Minister with such information relating to the performance of its functions as he shall from time to time request.

PART III

FUNCTIONS OF THE AGENCY

Functions generally.

52.—(1) The functions of the Agency shall, subject to the provisions of this Act, include—

- (a) the licensing, regulation and control of activities for the purposes of environmental protection,
- (b) the monitoring of the quality of the environment, including the establishment and maintenance of data bases of information related to the environment and making arrangements for the dissemination of such information and for public access thereto,
- (c) the provision of support and advisory services for the purposes of environmental protection to local authorities and other public authorities in relation to the performance of any function of those authorities,
- (d) the promotion and co-ordination of environmental research, the provision of assistance and advice in relation to such research and the carrying out, causing to be carried out, or arranging for, such research,

(e) liaison with the European Environment Agency provided for under Council Regulation 1210/90/EEC¹,

(f) such other functions in relation to environmental protection as may be assigned or transferred to it by the Minister under *section 53* or *54* including functions arising from any obligations under any treaty governing the European Communities or an act adopted by the institutions of those Communities or other international convention or agreement to which the State is, or becomes, a party.

(2) In carrying out its functions, the Agency shall—

(a) keep itself informed of the policies and objectives of public authorities whose functions have, or may have, a bearing on matters with which the Agency is concerned,

(b) have regard to the need for a high standard of environmental protection and the need to promote sustainable and environmentally sound development, processes or operations,

(c) have regard to the need for precaution in relation to the potentially harmful effect of emissions, where there are, in the opinion of the Agency, reasonable grounds for believing that such emissions could cause significant environmental pollution,

(d) have regard to the need to give effect, insofar as it is feasible, to the “polluter pays” principle, as set out in Council Recommendation 75/436/EURATOM, ECSC, EEC of 3 March, 1975¹, regarding cost allocation and action by public authorities on environmental matters,

(e) ensure, in so far as is practicable, that a proper balance is achieved between the need to protect the environment (and the cost of such protection) and the need for infrastructural, economic and social progress and development.

F57[(3) The Agency may have custody of, produce, process, handle, hold, store, use, manufacture, import, distribute, transport, export or otherwise dispose of radioactive substances for any purpose in connection with its functions under *paragraph (b)* of *subsection (1)*.

(4) The Agency shall not F58[be required to be a registered person or licensee within the meaning of *section 2* of the *Radiological Protection Act 1991*] to have custody of, produce, process, handle, hold, store, use, manufacture, import, distribute, transport, export or otherwise dispose of radioactive substances for any purpose in connection with its functions under *paragraph (b)* of *subsection (1)*.

(5) Any custody, production, processing, handling, holding, storing, using, manufacture, import, distribution, transport, export or disposal by the Agency, prior to the commencement of *section 47* of the *Radiological Protection (Miscellaneous Provisions) Act 2014*, of radioactive substances for any purpose in connection with its functions under *paragraph (b)* of *subsection (1)* that would, but for this subsection, be invalid by reason only of a contravention of an order made under *section 30* of the *Radiological Protection Act 1991* shall be, and shall be deemed always to have been, valid and effectual for all purposes.

(6) If *subsection (5)* would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.]

¹ O.J. No. L120/1 of 11 May, 1990.

¹ O.J. No. L194/1 of 25 July, 1975.

Assignment of additional functions.

53.—(1) The Minister may, following consultation with the Agency and any other Minister of the Government who in the opinion of the Minister is concerned, by regulations assign to the Agency such additional functions F59[in relation to environmental protection] and, consequentially, modify any existing function in relation to environmental protection as from time to time he considers appropriate.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may assign to the Agency any function which relates to environmental protection and which arises from, or is necessary for, the implementation of any provision of the treaties governing the European Communities or any act adopted by the institutions of those Communities or other international convention or agreement to which the State is, or becomes, a party.

(3) Any regulations made pursuant to this section may provide for the assignment to the Agency of such ancillary, incidental and supplementary functions F60[in relation to environmental protection] as, in the opinion of the Minister, are necessary for, or in connection with, the implementation of any provision of the treaties governing the European Communities or any act adopted by the institutions of those Communities or other international convention or agreement to which the State is, or becomes, a party.

(4) (a) A charge may be made by the Agency, subject to regulations under this section, in connection with, incidental to, or for the purposes of, the effective performance of any function assigned to it under this section.

(b) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from any such person any amount due and owing to it under *paragraph (a)*.

Transfer of functions.

54.—(1) The Minister may, following consultation with the Agency, make regulations providing that any function relating to environmental protection conferred on a public authority under any enactment specified in the *Second Schedule* shall, where the Minister is satisfied that the function could be more effectively performed by the Agency, in addition to or in lieu of being performed by that authority, be performed by the Agency with effect from a date specified in the regulations.

(2) Regulations under *subsection (1)* shall not be made save with the agreement of any other Minister of the Government directly responsible for the function concerned or under whose aegis the public authority responsible for the function operates.

(3) Whenever regulations under this section are in force in relation to a particular function, a reference in any enactment to the public authority concerned shall be construed as including a reference to the Agency and the function to which the regulations relate shall be a function of the Agency.

(4) Regulations under this section may contain such incidental, supplementary, consequential and transitional provisions (including provisions modifying any provision of this Act or of any other enactment) as appear to the Minister to be necessary for the purposes or in consequence of, or to give full effect to, the regulations.

Advisory functions in relation to Ministers of the Government.

55.—(1) The Agency may, of its own volition, and shall when requested by a Minister of the Government, give information or advice or make recommendations for the purposes of environmental protection F61[or radiological protection] to any such Minister on any matter relating to his functions or responsibilities and that Minister shall have regard to any such information or advice given or recommendations made.

(2) Without prejudice to the generality of *subsection (1)*, the Agency—

(a) may, and shall when requested by a Minister of the Government—

(i) prepare and submit to the Minister concerned an assessment of any proposal for, or any proposal for the amendment or the implementation

of, any treaty governing the European Communities or any act of the institutions of those Communities or other international convention or agreement to which the State is, or may become, a party having a bearing on environmental protection F62[or radiological protection],

- (ii) advise the Minister concerned in relation to any proposals for legislative change, or on any other policy matters, concerning environmental protection F63[or radiological protection] and related matters,
- (iii) submit to the Minister concerned any proposals it may consider appropriate for amendment of any enactment, or for new enactments, concerning environmental protection F64[or radiological protection],
- (iv) prepare and submit information to, or advise, the Minister concerned in relation to guidelines, standards and other matters including management of coastal areas in relation to environmental protection F65[or radiological protection],
- (v) report on and make recommendations to the Minister concerned on particular F66[issues or problems relating to environmental matters or radiological protection],

(b) may, and shall when requested by the Minister, make recommendations to the Minister in relation to any modification or extension of the functions of the Agency which it considers appropriate.

(3) The Minister may, by order made after consultation with any other Minister of the Government concerned, provide that a function performable by the Agency under *subsection (1)* or *subsection (2) (a)* shall be performable also in relation to any other public authority for which that other Minister is responsible.

(4) The Agency may, for any Minister of the Government or any public authority designated by order under *subsection (3)* or for any other person or body, organise and promote, or assist in organising and promoting, conferences, seminars, lectures, demonstrations, training courses or publications for persons involved in environmental protection F67[or radiological protection].

Advisory
functions in
relation to local
authorities.

56.—(1) The Agency may, and shall when requested by the Minister, give information or advice or make recommendations for the purposes of environmental protection, to a local authority or to local authorities generally in relation to the performance of any of its or their functions and the authority or authorities shall have regard to any such information or advice given or recommendations made.

(2) Without prejudice to the generality of *subsection (1)*, information, advice or recommendations under this section may relate to—

- (a) the provision of laboratory facilities and equipment, and related services,
- (b) the preparation of legal proceedings in respect of any contravention of an enactment relating to environmental protection,
- (c) the standards, conditions or criteria to be applied, or the guidelines, codes of practice or procedures to be followed, for the purposes of environmental protection in relation to any development, process or practice either generally or of a particular class,
- (d) the management of coastal areas for the purposes of environmental protection,
- (e) the monitoring of emissions and environmental quality,
- (f) methods of sampling, measuring and analysis, and the equipment to be used for such sampling, measurement and analysis.

(3) The Agency may organise and promote, or assist in organising and promoting, conferences, seminars, lectures, demonstrations, training courses or publications for staff of local authorities involved in environmental protection or for members of local authorities.

(4) In this section "local authority" has the meaning assigned to it by the [Local Government Act, 1941](#).

Assistance to local authorities.

57.—(1) The Agency shall provide such general support and assistance for the purposes of environmental protection to local authorities in relation to the performance of any of their functions as it considers necessary and feasible.

(2) The Agency may, for the purposes of *subsection (1)*, make arrangements with a local authority, on such terms and conditions as may be agreed, for the provision of services, including services relating to staffing and equipment, to that local authority.

(3) In this section "local authority" has the meaning assigned to it by the [Local Government Act, 1941](#).

Drinking water.

F68[58.— (1) The Agency may request a water services authority to submit to it in such manner and at such times as it may direct, such information as the Agency may specify in relation to the management and treatment, and the monitoring of compliance with prescribed quality standards and other parametric values, of water intended for human consumption.

(2) The Agency shall arrange for, carry out or cause to be carried out, such inspection, auditing or monitoring as it considers necessary to verify information (including monitoring results) transmitted to it under *subsection (1)*.

(3) The Agency shall, in relation to each year, prepare and submit to the Minister a report on—

(a) the monitoring, together with an assessment of the results, referred to in *subsection (1) or (2)*, and

(b) the implementation by the Agency of *section 58A*,

and the report shall include such recommendations as seem to it to be appropriate.

(4) Each report under *subsection (3)* shall be laid by the Minister before each House of the Oireachtas and shall be published by the Agency.

(5) In this section and *section 58A* "parametric values" and "water services authority" have the meanings assigned to them, respectively, in [section 2](#) of the Water Services Act 2007.]

F69[Performance by water services authorities of statutory functions in relation to drinking water.

58A.— (1) Notwithstanding [section 30](#) of the Water Services Act 2007, the Agency shall—

(a) monitor compliance with prescribed water quality standards and other parametric values of water supplied by or on behalf of a water services authority for human consumption, and

(b) be responsible for enforcement of compliance with such standards.

...]

Sewage or other effluents.

59.—(1) The Minister may, for the purposes of environmental protection and, in particular, for the purpose of giving full effect to Council Directive 91/271/EEC¹, make

¹ O.J. No. L135/40 of 30 May, 1991.

regulations for the collection, treatment, discharge or disposal of sewage or other effluents to waters from—

- (a) any plant or drainage pipe vested in or controlled or used by a sanitary authority for the treatment of drinking water, or
- (b) any plant, sewer or drainage pipe vested in or controlled or used by a sanitary authority for the treatment and disposal of sewage or other effluents.

(2) Without prejudice to the generality of *subsection (1)*, regulations may provide for all or any of the following—

- (a) the time within which specified systems or classes of systems for the collection and treatment of sewage effluents shall be provided,
- (b) the design, construction and maintenance of collection and treatment systems,
- (c) standards or other requirements for effluents specified in *subsection (1)*,
- (d) criteria for the designation of areas or classes of areas or waters or classes of waters by such person as may be specified and the times within which such designations shall be made or reviewed for the purposes of *subsection (3)*,
- (e) monitoring of sewage or other effluents and of waters to which sewage or other effluents are discharged,
- (f) re-use and disposal of effluents.

(3) Standards or other requirements prescribed under *subsection (2)* may relate to—

- (a) all, or specified classes of, or specified volumes of, effluents,
- (b) effluents in designated areas or classes of areas or specified plant, sewers or drainage pipes, or specified classes of plant, sewers or drainage pipes, or
- (c) effluents discharged to designated waters or classes of waters,

and different standards or other requirements may be prescribed in relation to different effluents or classes of effluents, different areas or classes of areas, different waters or classes of waters or different plant, sewers or drainage pipes or classes of plant, sewers or drainage pipes.

(4) In prescribing standards or other requirements under *subsection (2)* the Minister shall have regard to any criteria specified and published by the Agency under [section 60](#).

(5) The Minister may make regulations providing for the grant of an authorisation to a sanitary authority by the Agency in respect of the discharge of:

- (a) all, or specified classes of, or specified volumes of, effluents,
- (b) effluents in designated areas or classes of areas or specified plant, sewers or drainage pipes, or specified classes of plant, sewers or drainage pipes, or
- (c) effluents discharged to designated waters or classes of waters,

requiring compliance by such sanitary authority with such standards or other requirements as have been specified under *subsection (2) (c)*.

(6) Where a standard or other requirement is prescribed under *subsection (2)*, the sanitary authority shall, where necessary, take steps as soon as is practicable, or within such period as may be prescribed for compliance with such standard or other requirement, to ensure that the said effluent complies with the standard or other requirement.

(7) It shall be a good defence to a prosecution for an offence under any enactment other than this Act that the act constituting the alleged offence was in compliance with a standard or other requirement specified under *subsection (2) (c)* or an authorisation granted under this section.

(8) **Section 26** of the **Local Government (Water Pollution) Act, 1977**, is hereby amended by the insertion of the following subsection after subsection (1):

“(1 A) Regulations under this section shall not relate to sewage or other effluents from any works, apparatus, treatment plant, sewer or drainage pipe vested in, or controlled or used by, a sanitary authority for the disposal of sewage or other effluents to any waters.”.

F71[(9) In this section a reference to a sanitary authority shall be construed, subject to the discretion of the Minister in relation to regulations under *subsection (5)*, as including a reference to any person acting on behalf of or jointly with a sanitary authority.]

Agency functions in relation to water or sewage treatment.

60.—(1) The Agency may, and shall if so directed by the Minister, specify and publish criteria and procedures, which in the opinion of the Agency are reasonable and desirable for the purposes of environmental protection, in relation to the management, maintenance, supervision, operation or use of all or specified classes of plant, sewers or drainage pipes vested in or controlled or used by a sanitary authority for the treatment of drinking water or for the treatment or disposal of any sewage or other effluent to any waters and a sanitary authority shall, in the performance of its functions, have regard to such criteria and procedures.

(2) Without prejudice to *subsection (1)*, specified criteria and procedures may relate to—

- (a) site selection,
- (b) the location of effluent discharges, the periods during which discharges may be made or may not be made and the design and construction of outlets for discharges,
- (c) the provision and maintenance of meters, gauges, other apparatus, manholes and inspection chambers.

F72[(3) In this section, a reference to a sanitary authority shall be construed as including a reference to any person acting on behalf of or jointly with a sanitary authority.]

Monitoring in relation to sanitary authorities' effluents.

61.—(1) (a) A sanitary authority in which is vested or which has control over, or the use of, any plant, sewer or drainage pipe from which effluent is discharged to waters and in respect of which standards or other requirements have been prescribed or an authorisation issued under *section 59*, or criteria and procedures have been specified under *section 60*, shall carry out, cause to be carried out, or arrange for, such monitoring of the effluent or of the waters concerned or in connection with the management or operation of the plant, sewer or drainage pipe—

- (i) as may be necessary or prescribed under *section 59 (2) (e)* to assess compliance with standards or other requirements prescribed, or authorisation issued, under *section 59*, or
- (ii) as the Agency shall direct in relation to criteria and procedures specified under *section 60*, and shall transmit the results of such monitoring to the Agency in such manner and at such times as the Agency shall direct.

(b) The Agency shall carry out, cause to be carried out, or arrange for, such monitoring as it considers necessary to verify results transmitted to it under *paragraph (a)*.

(2) Where the Agency—

(a) is of the opinion that the monitoring being carried out in accordance with the provisions of *subsection (1) (a) (i)* is inadequate for the purposes of assessing compliance with standards or other requirements prescribed, or authorisation issued, under *section 59*, or

(b) is not satisfied with the response of a sanitary authority to a direction under *subsection (1) (a) (ii)*,

it shall consult with the sanitary authority concerned, and, if the Agency is still dissatisfied with the response following such consultation, the Agency shall carry out, cause to be carried out, or arrange for, the monitoring concerned and the costs of the monitoring may be recovered by the Agency from the sanitary authority as a simple contract debt in any court of competent jurisdiction.

(3) The Agency shall, from time to time, or at such intervals not exceeding two years and in such manner as may be prescribed for the purposes of monitoring compliance with specified standards or other requirements prescribed or authorisations issued under *section 59*, prepare and publish reports on the quality of effluents being discharged from plant, sewers or drainage pipes vested in, or controlled or used by, sanitary authorities and shall include in such reports such recommendations as it considers appropriate.

F73[(4) In this section, a reference to a sanitary authority shall be construed as including a reference to any person acting on behalf of or jointly with a sanitary authority.]

Landfill sites for waste disposal.

62.—(1) The Agency shall, as soon as is practicable, for the purposes of environmental protection, specify and publish criteria and procedures for the selection, management, operation and termination of use of landfill sites for the disposal of domestic and other wastes.

(2) Without prejudice to the generality of *subsection (1)*, specified criteria and procedures may relate to—

- (a) site selection,
- (b) design and bringing into operation of sites,
- (c) impacts on the environment,
- (d) leachate management, treatment and control,
- (e) control and recovery of landfill gas,
- (f) operational guidelines, including classification of wastes and establishment of acceptance criteria for landfill,
- (g) acceptance of different classes of wastes at different classes of sites,
- (h) fire, pest and litter control,
- (i) appropriate recovery, reuse and recycling facilities,
- (j) co-disposal of industrial and other wastes,
- (k) monitoring of leachate, other effluents and emissions,
- (l) termination of use and subsequent monitoring.

(3) (a) A local authority which manages or operates a landfill site to which specified criteria and procedures apply shall carry out, cause to be carried out, or arrange for, such monitoring in connection with the management or operation of the landfill site as the Agency shall direct, and shall transmit the results of such monitoring and such information on the management or operation of the site to the Agency in such manner and at such times as the Agency shall direct.

(b) The Agency shall carry out, cause to be carried out, or arrange for, such monitoring as it considers necessary to verify results transmitted to it under paragraph (a).

(4) Where the Agency is not satisfied with the response of a local authority to a direction under subsection (3) (a), it shall consult with the local authority concerned, and, if the Agency is still dissatisfied with the response following such consultation, the Agency shall carry out, cause to be carried out, or arrange for, the monitoring concerned and the costs of the monitoring may be recovered by the Agency from the local authority as a simple contract debt in any court of competent jurisdiction.

(5) Where criteria and procedures specified under this section relate to a landfill site managed or operated by a local authority, the authority shall, where necessary, take steps as soon as is practicable to ensure that the management or operation of such landfill site complies with the specified criteria and procedures.

(6) The Agency shall, from time to time, prepare and publish reports on the management and operation of local authority landfill sites and shall include in such reports such recommendations as it considers appropriate.

(7) In this section "local authority" means a public waste collector for the purposes of the European Communities (Waste) Regulations, 1979.

F74 [Performance of statutory functions by local authorities.

63.—(1) The Agency may request a local authority to furnish, within a specified period, to it information in relation to the performance by the authority, either generally or in a specific case, of a statutory function of that authority in relation to environmental protection and the authority shall comply with such a request.

(2) The Agency may, having notified the local authority of its intention to do so, carry out an assessment of the performance by a local authority, either generally or in a specific case, of a statutory function of that authority in relation to environmental protection; for that purpose the authority shall comply with any request for the furnishing to the Agency of information, records or reports or the results of any monitoring by the authority, or, in connection with the foregoing, the affording to the Agency of access to any premises occupied by the authority, made by the Agency during the course of such assessment.

(3) Having exercised its powers under subsection (1) or (2), and having considered any information furnished to, or otherwise coming into the possession of, it in consequence of that exercise, the Agency may, with a view to ensuring the satisfactory performance by the local authority concerned of the function in question, do all or any of the following—

(a) issue such advice and recommendations to the authority as it considers necessary,

(b) provide, on such terms and conditions as may be agreed, such assistance, support or guidance as the Agency considers, in consultation with the authority, would be helpful,

(c) without prejudice to any of its powers under this Act or any other enactment, issue to the authority the terms of a direction ("the proposed direction") it proposes to issue, under subsection (5), to the authority requiring it to carry out, cause to be carried out, or arrange for, within a specified period, such

action related to the function in question as the Agency considers necessary for the purposes of environmental protection.

(4) The proposed direction shall specify a period within which the local authority may make observations to the Agency in relation to the proposal to make the direction (and the authority may make such observations within that period accordingly).

(5) After the expiration of the period referred to in *subsection (4)* and consideration of any observations made by the local authority under that subsection, the Agency may confirm, with or without modification, or decide not to confirm its proposal to make the direction concerned, and, in a case where the proposal is confirmed, the Agency shall issue to the authority the direction concerned accordingly and the authority shall comply with the direction within the period specified therein.

(6) Notwithstanding anything in this section, where the Agency is of the opinion that the failure of a local authority to perform in a satisfactory manner a statutory function of the authority in relation to environmental protection is resulting in significant environmental pollution, or in a real and imminent risk of such pollution, the Agency may direct the authority to carry out, cause to be carried out, or arrange for, within a specified period, such action related to the function in question as the Agency considers necessary for the purposes of preventing, limiting, eliminating, abating or reducing such pollution, and the authority shall comply with such a direction.

(7) Where a local authority fails to comply with a direction issued under *subsection (5)* or *(6)*, the Agency may carry out, cause to be carried out, or arrange for, such action related to the function in question as it considers necessary to ensure compliance with the direction and the costs of such action may be recovered by the Agency from the authority as a simple contract debt in any court of competent jurisdiction.

(8) A local authority shall be guilty of an offence if it—

(a) fails to comply with a request under *subsection (1)* or *(2)*, or

(b) fails to comply with a direction under *subsection (5)* or *(6)*.

(9) The Minister may, with the consent of such other (if any) Minister of the Government as the Minister considers appropriate having regard to the functions of that other Minister, make regulations enabling the Agency to exercise, in relation to a public authority (other than a local authority within the meaning of this section) that, in the opinion of the Minister, performs a statutory function in relation to environmental protection, the powers conferred on the Agency by this section in relation to a local authority.

(10) Nothing in this section shall be construed as enabling the Agency to exercise any power or control under this section in relation to the making of a decision on an application for a permission under section 34 of the Act of 2000.

(11) In this section, "local authority" has the meaning assigned to it by [the Local Government Act 2001](#).]

Hydrometric
programme.

64.—(1) The Agency shall, after consultation with such persons or bodies (if any) as may be prescribed, prepare a national programme for the collection, analysis and publication of information on the levels, volumes and flows of water in rivers, lakes and groundwaters in the State (in this Act referred to as "hydrometric data"), and a copy of such programme shall, as soon as may be, be sent by the Agency to the Minister.

(2) A programme under this section may, after consultation with the persons or bodies (if any) referred to in *subsection (1)*, be revised from time to time by the Agency and shall be reviewed at least every five years.

(3) It shall be the duty of the Agency to take appropriate steps to ensure that a programme under this section is implemented and for that purpose the Agency may—

- (a) direct a local authority to provide, operate and maintain such gauges and other equipment as it may specify and to furnish specified information to the Agency in such manner and at such times as it may specify,
- (b) make arrangements with any public authority, or other person or body to provide, operate and maintain such gauges and other equipment as it may specify and to furnish specified information to the Agency in such manner and at such times as it may specify,
- (c) provide, operate and maintain gauges and other equipment for recording hydrometric data.

(4) Where the Agency is not satisfied with the response of a local authority to a direction under *subsection (3) (a)*, it shall consult with the local authority concerned, and, if the Agency is still dissatisfied with the response following such consultation, the Agency shall carry out, cause to be carried out, or arrange for, the monitoring concerned and the costs of the monitoring may be recovered by the Agency from the local authority as a simple contract debt in any court of competent jurisdiction.

Environmental
monitoring
programme.

65.—(1) The Agency shall, after consultation with such persons or bodies (if any) as may be prescribed, prepare programmes for monitoring the quality of the environment and a copy of each such programme shall, as soon as may be, be sent by the Agency to the Minister and shall be published by the Agency.

(2) A programme under this section shall specify—

- (a) the nature and extent of the monitoring to which the programme relates and the reasons why, in the opinion of the Agency, the monitoring should be carried out,
- (b) the persons or bodies (including the Agency) by which the intended monitoring is to be carried out,
- (c) the resources, including equipment, other facilities and staff, required to carry out the monitoring and the cost thereof,
- (d) the arrangements which the Agency considers appropriate for access to, dissemination of, and publication of the results of the monitoring.

(3) It shall be the duty of the Agency to take appropriate steps to ensure that a programme under this section is implemented and for that purpose the Agency may—

- (a) give such directions as it considers appropriate to any local authority in relation to the carrying out of monitoring by that authority,
- (b) make arrangements with any public authority, or other person or body, for the carrying out of specified monitoring,
- (c) carry out, cause to be carried out, or arrange for, such monitoring as it may consider necessary for the purposes of the programme,
- (d) assist any person or body in the carrying out of any part of the approved monitoring programme.

(4) The Minister may make regulations specifying the monitoring, or classes of monitoring in relation to which the Agency shall consult with him and obtain his agreement prior to giving any directions under *subsection (3) (a)*.

(5) Where the Agency is not satisfied with the response of a local authority to a direction under *subsection (3) (a)*, it shall consult with the local authority concerned, and, if the Agency is still dissatisfied with the response following such consultation,

the Agency shall carry out, cause to be carried out, or arrange for, the monitoring concerned and the costs of the monitoring may be recovered by the Agency from the local authority as a simple contract debt in any court of competent jurisdiction.

(6) The Agency may, after consultation with the persons or bodies (if any) referred to in *subsection (1)*, amend or revoke a programme.

Establishment of an accreditation scheme.

66.—(1) (a) The Agency may, for the purposes of assessing analytical performance and ensuring the validity and comparability of environmental F75[or radiological] data, establish, or arrange for the establishment of, an analytical quality control programme involving its own laboratories, laboratories provided and operated by local authorities, and such other laboratories as it deems appropriate from which data are submitted to the Agency in connection with the performance of any of its functions.

(b) The Agency may require any such laboratory to furnish it with such data as it may request for the purposes of any such programme.

(c) Without prejudice to the generality of *paragraph (a)*, the Agency may establish different analytical quality control programmes for different laboratories or for different tests.

(2) The Agency may require any laboratory which supplies environmental F76[or radiological] data to the Agency or in connection with any function F77[of the Agency] to be accredited in accordance with Irish Standard I.S./EN 45001: 1989—General Criteria for the Operation of Testing Laboratories—or equivalent and with such other or further standards as may be set, from time to time, by the National Standards Authority of Ireland or equivalent standards.

(3) The Agency may provide for the imposition of charges and the payment of fees in connection with the provision of services or any procedural matters under this section.

(4) The Agency shall maintain a register of laboratories which comply with the requirements of *subsection (1)* or which are required to be accredited under *subsection (2)*.

(5) The register shall include a list of tests to which such compliance or accreditation relates and shall be available for inspection by any person free of charge at the Agency's headquarters during office hours.

Access to monitoring results.

67.—The Agency shall keep and maintain, or cause to be kept and maintained, such records, including such summary records, of the results of any monitoring carried out, caused to be carried out, or arranged by it under this Act as it considers necessary for the purposes of any of its functions and shall, subject to *section 39*, make such records available, or cause such records to be made available, for inspection by the public at all reasonable times, and, as the Agency considers appropriate, publish, or cause to be published, such records.

Monitoring activities of public authorities.

68.—(1) The Agency shall exercise general supervision over the monitoring carried out by local authorities (and such other public authorities as may be prescribed) for the purposes of any enactment relating to environmental protection.

(2) The Agency shall keep itself informed of the nature and extent of the monitoring carried out by each local authority and by each public authority prescribed under *subsection (1)*.

(3) For the purposes of *subsection (2)*, the Agency may require a local authority or other public authority prescribed under *subsection (1)* to provide information within a specified period on—

- (a) the number and location of places within an area at which monitoring is being carried out and the frequency of such monitoring,
- (b) the manner in which samples and measurements are taken and analyses are carried out,
- (c) the equipment being used for the purposes of taking such samples and measurements or of carrying out such analyses,
- (d) the results of such monitoring,

and the authority shall not unreasonably withhold the information sought.

(4) The Agency may, for the purposes of *subsection (1)*, of its own volition, or at the request of a local authority or other public authority prescribed under *subsection (1)*, advise the authority in relation to—

- (a) the number and location of places within an area at which monitoring should be carried out and the frequency of such monitoring,
- (b) the manner in which samples and measurements are to be taken and analyses are to be carried out,
- (c) the equipment to be used for the purposes of taking such samples and measurements or of carrying out such analyses,
- (d) the manner in which the results of such monitoring should be published or otherwise made available.

(5) The Agency may provide such services including general support, back-up, advice and assistance, as it considers necessary for the discharge by a local authority or other public authority prescribed under *subsection (1)* of its monitoring operations.

(6) The Agency may make arrangements with a local authority or other public authority prescribed under *subsection (1)* on such terms and conditions as may be agreed, for the provision of services under *subsection (5)*.

(7) The Agency shall, at intervals not exceeding three years, prepare and publish a report on the monitoring operations of local authorities and other public authorities prescribed under *subsection (1)* and may, at more frequent intervals, report on monitoring operations related to particular environmental issues, or to particular areas, or to particular local authorities or to particular public authorities prescribed under *subsection (1)*.

(8) A report under *subsection (7)* shall be laid by the Minister before each House of the Oireachtas.

Environmental
quality data
storage system.

69.—(1) The Agency shall, after consultation with such persons or bodies (if any) as may be prescribed, establish and maintain, or arrange to have established and maintained, a data base related to environmental quality.

(2) Without prejudice to the generality of *subsection (1)*, the data base shall include information on—

- (a) ambient air quality,
- (b) the quality of inland waters, estuarial and coastal waters, and groundwaters,
- (c) soil quality,
- (d) noise levels,
- (e) inventories of emissions to the environment, and

(f) such other matters as may be prescribed.

(3) For the purposes of this section, the Agency may require any public authority to make available to it, in such manner and at such times as it may specify, any information related to environmental quality in the control or possession of that authority and the authority shall not unreasonably withhold such information.

(4) (a) The Agency may make arrangements for information related to environmental quality held by any person or body to be supplied to it in such manner and on such terms and conditions as may be agreed and for such information to be included in the data base.

(b) The Agency may compile and maintain a register of sources of data related to environmental quality and the register shall be available for inspection by any person free of charge at the Agency's headquarters during office hours.

(5) The Agency shall, subject to *subsection (4)* and *section 39* and on such terms and conditions as it thinks fit, make arrangements for public access to information contained in a data base prepared under this section.

State of the environment reports.

70.—The Agency shall—

(a) within a period of five years after it is established and in every F78[*fourth*] year thereafter, or

(b) within such other periods as may be prescribed,

prepare and publish a report on the quality and condition of the environment in the State.

Environmental research.

71.—(1) The functions of the Agency in relation to environmental research shall include the matters specified in this section.

(2) (a) The Agency shall advise the Minister on the need for environmental research and shall, at such intervals as the Minister may specify (or, where for the time being no intervals are specified by the Minister, at such intervals as it thinks fit) prepare programmes of such research.

(b) Programmes under this section shall specify—

(i) the subjects in relation to which research is necessary and the objectives of such research,

(ii) the manner in which and the persons or bodies by which such research could be carried out,

(iii) the estimated cost of particular research projects or operations.

(c) Programmes under this section shall be prepared after consultation with such persons or bodies as may be prescribed.

(3) (a) The Agency shall, from time to time, prepare and publish registers of environmental research projects and operations being carried out, or proposed to be carried out, in the State and which shall be available for inspection by any person free of charge at the Agency's headquarters during office hours.

(b) The Agency shall, insofar as is practicable, co-ordinate environmental research in the State and, for that purpose, may advise any public authority or any other person or body at the request of such person or body in relation to the allocation of financial support or other facilities for such research.

(4) The Agency may assist by money or in kind, or by the provision of services and facilities (including the services of staff), any person or body carrying out, or proposing to carry out, environmental research.

(5) The Agency may carry out, cause to be carried out, or arrange for, environmental research in accordance with a programme prepared under *subsection (2)*.

(6) The Agency shall, in consultation with the Minister, establish and maintain liaison with the Commission of the European Communities and any other international organisation in relation to programmes of environmental research carried out, promoted, or assisted by the Commission or such other organisation, and shall promote and facilitate, as far as possible, participation in such programmes by persons and bodies in the State.

Environmental
impact
assessment.

72.—(1) (a) Subject to Article 25 of the European Communities (Environmental Impact Assessment) Regulations, 1989, and subsections (3) and (3A) of *section 4* of the *Local Government (Roads and Motorways) Act, 1974*, or to any provision amending or replacing that Article or those subsections, the Agency may, and shall at the request of the Minister, or of any other Minister of the Government in relation to those matters for which that Minister is the competent authority, prepare guidelines on the information to be contained in F79[*environmental impact assessment reports*] in respect of development to which this section applies.

(b) The Agency shall, in preparing such guidelines, consult with the Minister and with any other Minister who in the opinion of the Agency is concerned.

(2) Guidelines under *subsection (1)* may relate to all development, or to any particular class of development, to which this section applies.

(3) (a) Regard shall be had, in the preparation of an F79[*environmental impact assessment report*] in respect of development to which this section applies, to any guidelines under *subsection (1)* which relate to the development concerned.

(b) A competent authority to which an F79[*environmental impact assessment report*] is submitted in respect of development to which this section applies shall, in considering the said statement, have regard to any guidelines under *subsection (1)* which relate to the development concerned.

(4) (a) A copy of an F79[*environmental impact assessment report*] prepared in respect of any development or class of development to which this section applies other than an activity for which a licence or revised licence under *Part IV* is required, shall be sent to the Agency by the person or body on whose behalf the F79[*environmental impact assessment report*] is prepared, at such time as may be prescribed.

(b) (i) The Agency may, having considered an F79[*environmental impact assessment report*] received pursuant to *paragraph (a)*, make to the competent authority concerned such submissions or observations as it considers appropriate within such period as may be prescribed.

(ii) Where an F79[*environmental impact assessment report*] received by the Agency pursuant to *paragraph (a)* relates to development other than development by a State authority within the meaning of Article 23 of the European Communities (Environmental Impact Assessment) Regulations, 1989, a copy of any submissions or observations submitted to the competent authority under *subparagraph (i)* shall be sent by the Agency to the person or body by whom the F79[*environmental impact assessment report*] was sent pursuant to *paragraph (a)*.

(c) A competent authority which receives submissions or observations from the Agency under *paragraph (b) (i)* shall, notwithstanding the provisions of any

other enactment as to the matters to which that authority is to have regard in dealing with a case involving an F79[environmental impact assessment report], have regard to such submissions or observations.

(5) The Agency shall be consulted and regard shall be had to its views, in the case of any development to which this section applies, before—

(a) a decision is made on an application for an exemption from a requirement of any enactment to prepare an F79[environmental impact assessment report], or

(b) a State authority within the meaning of Article 23 of the European Communities (Environmental Impact Assessment) Regulations, 1989, decides that Article 23 (1) (a) shall not apply in relation to the proposed development.

(6) Any submissions or observations made by the Agency under *subsection (4) (b) (i)* or *subsection (5)* shall be available for inspection by any person free of charge at the Agency's headquarters during office hours.

(7) This section shall apply to—

(a) development which is of a class for the time being specified under Article 24 of the European Communities (Environmental Impact Assessment) Regulations, 1989, or under any enactment amending or replacing that Article, and

(b) a motorway which has the meaning assigned to it by the Local Government (Roads and Motorways) Act, 1974.

(8) In this section, unless the context otherwise requires—

“competent authority” means—

(a) a Minister of the Government or other public authority or body to which an F79[environmental impact assessment report] in respect of development to which this section applies is required by or under any enactment to be submitted, or

(b) a State authority within the meaning of Article 23 of the European Communities (Environmental Impact Assessment) Regulations, 1989, by which an F79[environmental impact assessment report] in respect of development to which this section applies is required to be prepared;

F79[“environmental impact assessment report”] includes an “environmental impact study” for the purposes of the European Communities (Environmental Impact Assessment) (Motorways) Regulations, 1988.

Environmental approval.

73.—(1) The Minister shall, with the consent of the Minister for the Marine, make regulations providing, in relation to all or any leases, licences, permits, or other authorisations which the Minister for the Marine F80[or the Aquaculture Licences Appeals Board] is empowered under law to grant, or to the renewal of any such leases, licences, permits or other authorisations, that such leases, licences, permits or other authorisations, or specified classes thereof, shall, for the purposes of environmental protection, be subject to the approval of the Agency and such approval may be given either without conditions or subject to such conditions related to the purposes of environmental protection as the Agency shall specify.

(2) Any conditions attached to an approval of the Agency under *subsection (1)* shall be attached by the Minister for the Marine to the grant by him of the relevant authorisation.

(3) The Minister for the Marine shall, following consultation with the Minister, by regulations specify the procedures under which the approval of the Agency under this section shall be obtained, including the period within which the Agency shall give

a decision with regard to an approval, and different procedures or different periods may be prescribed in relation to different leases, licences, permits, or other authorisations or to different classes thereof.

(4) The Minister for the Marine may, where he is of opinion that it is in the public interest to do so and with the consent of the Minister, by order provide that any class of case not provided for by regulations under *subsection (1)*, should, for the purposes of environmental protection, be subject to the approval of the Agency and the requirements of *subsection (1)* shall apply to such class of case so long as the relevant order remains in force.

(5) An order under *subsection (4)* may, following the agreement of the Minister, include such matters as may be prescribed under *subsection (3)* in relation to the class of case concerned.

(6) The Minister for the Marine may, by order, with the consent of the Minister, amend or revoke an order under *subsection (4)*.

Environmental
audit.

74.—(1) In this section, “environmental audit” means in relation to any process, development or operation, a systematic, documented and objective periodic assessment of the organisational structure, management systems, processes and equipment pertaining to, or incidental to, that process, development or operation, for the purposes of environmental protection and, in particular for the purposes of—

- (a) facilitating management control of practices which may have an impact on environmental protection,
- (b) assessing compliance with enactments related to environmental protection and with such environmental conditions as may be attached to any licence or permit granted or issued in connection with the aforesaid process, development or operation, and
- (c) minimising the impact of the process, development or operation on the environment.

(2) (a) The Agency may promote the carrying out of environmental audits.

(b) The Agency may, and shall at the request of the Minister, prepare and publish guidelines on the carrying out of environmental audits, and such guidelines may relate to all processes, developments or operations or to any particular class of process, development or operation or to processes, developments or operations in particular areas or classes of areas.

(3) Without prejudice to the generality of *subsection (2)*, guidelines may relate to—

- (a) the aims of an environmental audit,
- (b) the expertise to be included in an environmental audit team,
- (c) the criteria to be considered and procedures to be followed in carrying out an environmental audit.

(4) For the purposes of promoting the carrying out of environmental audits, the Agency may, in relation to any process, development or operation or classes of processes, developments or operations—

- (a) provide such assistance and support, on such terms and conditions as may be agreed with any person or body, for the purposes of developing and carrying out environmental audits or pilot or demonstration projects, and
- (b) organise and promote, or assist in organising and promoting, conferences, seminars, lectures, demonstrations, training courses or publications.

Environmental
quality
objectives.

75.—(1) The Agency shall, in relation to any environmental medium and without prejudice to its functions under *section 103*, specify and publish quality objectives which the Agency considers reasonable and desirable for the purposes of environmental protection.

(2) Without prejudice to *subsection (1)*, the Agency may—

- (a) prepare guidelines or recommendations on the manner and the period within which quality objectives could be achieved,
- (b) identify the public authorities or other bodies which may contribute to the achievement of such objectives,
- (c) assess the resources, including staff and funding, which would be required to achieve such objectives, or
- (d) arrange for the dissemination of information on any of the matters provided for by this subsection or any other relevant matter to the Minister or any other Minister of the Government or other public authority or other body which in the opinion of the Agency may contribute to the achievement of such objectives.

(3) Without prejudice to the operation or effect of any standard, limit value, order or other matter specified or prescribed or otherwise in force by or under any enactment, the Minister and any other Minister of the Government and any other public authority shall take into account any quality objective drawn up and published by the Agency in the formulation of policy, in the setting of standards or in the exercise of any of their other functions concerning environmental protection.

Codes of practice. **76.**—(1) The Agency may—

- (a) prepare and publish codes of practice, or
- (b) approve of a code of practice or any part of a code of practice drawn up by any other body,

for the purpose of providing practical guidance with respect to compliance with any enactment or otherwise for the purposes of environmental protection F81[or radiological protection, in particular matters referred to in *section 8(f)* of the Radiological Protection Act 1991].

(2) The Agency shall, before publishing or approving of a code of practice or approving of any part of a code of practice, consult and have regard to any views of the Minister and any other Minister of the Government or other person or body that appears to the Agency to be appropriate, or that may be prescribed.

(3) Where the Agency publishes or approves of a code of practice or approves of any part of a code of practice it shall publish a notice to that effect in *Iris Oifigiúil*, specifying the enactment or matter in relation to which the code is published or approved of and the date from which the code shall have effect.

(4) The Agency may, following consultation with the Minister and any other Minister of the Government or any other person or body that appears to the Agency to be appropriate, or that may be prescribed—

- (a) revoke or revise the whole or part of any code of practice prepared and published by it, or
- (b) withdraw its approval of any code of practice or any part of a code of practice.

(5) Where the Agency revokes or revises, or withdraws its approval of, a code of practice or any part of a code of practice it shall publish a notice to that effect in *Iris Oifigiúil*.

Evidence of code of practice.

77.—A document under the seal of the Agency purporting to be a code, or part of a code, of practice published or approved of by the Agency under *section 76*, shall be received in evidence without further proof.

Labelling of products and services.

78.—(1) The Agency shall, if it considers it necessary or desirable to do so, having regard to any act of an institution of the European Communities relating to a Community labelling scheme, establish or arrange for the establishment of a scheme or schemes for the use of a special symbol or symbols on the labels of specified products or in connection with specified services which meet specified criteria and standards as to their impact on the environment.

(2) Without prejudice to the generality of *subsection (1)*, the Agency may—

- (a) set the criteria and standards under which a special symbol can be used on the labels of products or in connection with services,
- (b) provide for procedures and other matters in relation to the use, or an application or an appeal against a refusal for the use, or for the withdrawal, of a special symbol including fees relating to such use or to accompany such applications,
- (c) carry out, cause to be carried out, or arrange for, the testing and analysis of products or services related to their use of a special symbol to ensure compliance with the said criteria and standards,
- (d) provide for charges for the carrying out of tests or analyses,
- (e) carry out, cause to be carried out, or arrange for, monitoring of the use of a special symbol,
- (f) determine the product categories or services to which such a scheme would apply,
- (g) prepare and publish periodic reports on the scheme,
- (h) publicise details of the scheme.

(3) The Agency shall consult with such public authorities and such other persons and bodies, as may be prescribed, in the preparation, amendment or revocation of a scheme under this section.

(4) It shall be an offence—

- (a) to use a symbol provided for in a scheme under this section, or under a Community environmental labelling scheme in force in the State, or a similar symbol, on the labelling of a product or in connection with a service which has not been approved under the scheme or for which the approval has been withdrawn or, if approved, no longer meets the standards and criteria of the scheme, or
- (b) for a person to make a statement or claim in writing or otherwise in connection with the use, or an application or an appeal against a refusal for the use, or for the withdrawal, of a special symbol which to his knowledge is false or misleading in a material respect.

(5) The Agency may amend or revoke a scheme under *subsection (1)*.

General policy directives.

79.—(1) The Minister may, whenever he thinks proper, give such general directives in writing to the Agency as to policy in relation to environmental protection F82[or radiological protection].

(2) In performing its functions the Agency shall have regard to any directives given by the Minister under this section.

F83[(3) Subject to *subsection (3A)*, nothing in this section shall be construed as enabling the Minister to exercise any power or control in relation to the performance in particular circumstances by the Agency of a function assigned to it by or under this Act.]

F84[(3A) *Subsection (3)* shall not affect the performance by the Minister of functions transferred (whether before or after the passing of the Minister for the Environment and Local Government (Performance of Certain Functions) Act, 2002) to him from the Minister for Community, Rural and Gaeltacht Affairs by an order under section 6(1) of the *Ministers and Secretaries (Amendment) Act, 1939*.]

(4) Where the Minister gives a directive under this section he shall—

(a) as soon as may be cause a copy of the directive to be laid before each House of the Oireachtas,

(b) cause a notice of the issue of the directive to be published in *Iris Oifigiúil* and in at least one daily newspaper circulating in the State, and

(c) cause a copy of the directive to be transmitted to the Agency and to each planning authority.

(5) A notice under *subsection (4) (b)* shall specify where a copy of the directive to which it relates may be obtained and the fee (if any) payable in respect of such copy which shall not exceed the reasonable cost of making the copy.

Consultation by
the Agency.

80.—The Agency shall consult with such public authorities, persons or bodies as it considers necessary or as may be prescribed in relation to the performance of its functions under this Act or such of those functions as may be prescribed and shall have regard to any views given or recommendations made by such public authority, person or body.

Consultation with
the Agency.

81.—The Agency shall be consulted by such public authorities prior to the discharge of such functions related to the environment as the Minister, following consultation with any other Minister of the Government who in the opinion of the Minister is concerned, may, by regulations, specify and such public authorities shall have regard to the views of the Agency prior to carrying out the functions specified.

F85[Regulations
in relation to
environmental
inspections.

81A.—(1) The Minister may, for the purposes of environmental protection, make regulations providing for the carrying out by the Agency or a local authority of environmental inspections in connection with the performance of a statutory function of the Agency or a local authority in relation to environmental protection.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for all or any of the following—

(a) the organisation and carrying out of environmental inspections,

(b) the preparation of plans for environmental inspections, the procedures to be followed in the preparation of such plans, the scope and contents of such plans, arrangements for their review, and the period in respect of which they are to apply,

(c) the frequency of site visits and the matters to be examined in the course of such visits,

(d) the preparation of reports following site visits and the making of the reports publicly available, and the time within which each of those things is to be done,

(e) the investigation of incidents giving rise, or likely to give rise, to environmental pollution.

(3) In this section—

"environmental inspections" shall be construed in accordance with European Parliament and Council Recommendation of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States⁽¹⁾;

"local authority" has the meaning assigned to it by the Local Government Act 2001;

"site visit" means a visit to a site at which there is being, or has been, carried on any activity (whether an activity within the meaning of this Act or not), being a visit which the Agency or the local authority, as the case may be, may make in exercise of the powers conferred on it by any enactment (other than this section).]

PART IV

F86[INTEGRATED POLLUTION PREVENTION AND CONTROL]

Licences.

F87[82.—(1) In this section "previous Part IV" means this Part as it had effect before the amendment of it by section 15 of the Protection of the Environment Act 2003.

(2) A person shall not carry on an activity, other than an established activity or an activity to which subsection (3) applies, unless a licence or revised licence under this Part is in force in relation to the activity.

(3) (a) A person shall not continue to carry on an activity (other than an established activity) the carrying on of which—

(i) commenced on or after 30 October 1999 but before the commencement of section 15 of the Protection of the Environment Act 2003, and

(ii) was not licensable under the previous Part IV but is licensable under this Part,

unless, within the period of 6 months from the commencement of that section, a licence under this Part is in force in relation to it.

(b) Paragraph (a) is without prejudice to paragraph (c).

(c) The carrying on of an activity to which paragraph (a) relates shall, in the period before a licence in relation to the activity is granted or refused, be deemed not to have contravened the provisions of this Part provided that, within the period of 6 months referred to in paragraph (a), an application has been made for a licence in respect of that activity and the requirements of regulations made under section 89 in relation to the application for the licence have been complied with by the applicant therefor.

(4) (a) The Minister may, by order, provide that an established activity of any class specified in the order shall not be carried on, on or after such date as may be specified in the order, unless a licence or revised licence under this Part is in force in relation to the activity.

(b) Paragraph (a) is in addition to the circumstances specified in section 98 in which a licence is required under that section in respect of an established activity.

(5) In the period (following the specification of a date by an order under subsection (4)) before a licence in relation to the established activity concerned is granted or refused, the requirements of any other legislation relevant to the activity shall continue to apply.

⁽¹⁾ O.J. No. L118, 27.04.2001, p.41.

(6) Notwithstanding the specification of a date by an order under *subsection (4)*, the carrying on of an established activity to which the order relates shall, in the period before a licence in relation to the activity is granted or refused, be deemed not to have contravened the provisions of this Part provided that, before that specified date, an application has been made for a licence in respect of that activity and the requirements of regulations made under *section 89* in relation to the application for the licence have been complied with by the applicant therefor.

(7) Every licence and revised licence granted under the previous *Part IV* and in force immediately before the commencement of *section 15* of the Protection of the Environment Act 2003 shall, without prejudice to *subsections (10)* and *(11)*, *section 92* and the other provisions of this Act, continue in force; for the avoidance of doubt, the provisions of this Part, and not of the previous *Part IV*, shall apply to such a licence.

(8) Every application made under the previous *Part IV* for a licence, or the review of a licence or a revised licence, and every review of a licence or a revised licence commenced by the Agency of its own volition under the said *Part IV*, and not finally dealt with and determined or completed before the commencement of *section 15* of the Protection of the Environment Act 2003, shall continue to be dealt with by the Agency, and be determined or completed by it, as if the application were an application for a licence, or the review of a licence or a revised licence under this Part or, as the case may be, the review were a review commenced by the Agency of its own volition under this Part.

(9) Every order made under *subsection (2)* (being *subsection (2)* of this section as it had effect in the previous *Part IV*) and in force immediately before the commencement of *section 15* of the Protection of the Environment Act 2003, shall continue in force as if it were an order made under *subsection (4)*.

(10) The Agency shall, not later than 30 September 2007, have done the following (which, by virtue of this subsection, it has power to do)—

(a) examined the terms of every licence and revised licence to which *subsection (7)* applies and for the time being in force and determined whether, having regard to the provisions of the Directive and *subsection (11)*, the licence or revised licence requires to be reviewed under this Part or be the subject of the exercise of the powers conferred by *subsection (11)*, and

(b) if—

(i) it has determined that the licence or revised licence requires to be so reviewed, commenced such a review and exercised the powers conferred on it by this Part consequent on such a review, or

(ii) it has determined that the licence or revised licence does not require to be so reviewed and *subsection (11)* does not apply and, accordingly, that no further action is required, declared in writing that it is of that opinion.

(11) If the bringing into conformity with the Directive of a licence or revised licence to which *subsection (7)* applies can, in the opinion of the Agency, be achieved by amending one or more of the conditions of the licence (and the making of those amendments will not significantly alter the character of the licence) then, unless the Agency considers it ought nevertheless, in the public interest or because of other special considerations, carry out the review and exercise the powers referred to in *subsection (10)(b)(i)* in relation to the licence, the Agency shall have made, not later than 30 September 2007, those amendments of the conditions of the licence or revised licence (which, by virtue of this subsection, it has power to do).]

F88[Transitional matters for activities licensed under this Act consequent upon Industrial Emissions Directive.

82A. (1) In this section “earlier *Part IV*” means this Part as it had effect before the amendment of it by the European Union (Industrial Emissions) Regulations 2013.

(2) On or after 7 January 2014 a person shall not carry on an activity to which *subsection (3)* applies unless—

(a) on the coming into operation of this section a licence or revised licence under the earlier *Part IV* is in force in relation to the activity, or

(b) in respect of the activity—

(i) on the coming into operation of this section an application has been made to the Agency under the earlier *Part IV* for a licence or revised licence and the requirements of regulations under *section 89* in relation to the application for the licence or revised licence have been complied with by the applicant, and

(ii) on or before 7 January 2014—

(I) a licence or revised licence on foot of the application referred to in *subparagraph (i)*, subject to *subsection (6)*, is granted if required, under the earlier *Part IV* or this Part, as the case may be, and

(II) the licensee concerned commences carrying on the activity.

(3) *Subsection (2)* applies to any of the following activities:

(a) an activity specified in *paragraph 2.1* of the *First Schedule* which has a total rated thermal input exceeding 50 MW;

(b) an activity specified in *paragraph 9.3.1, 9.4.1, 9.4.2(a), 3.1.1, 3.2.1, 3.3.1, 3.4.1, 3.6.1, 12.3, 1.1.1, 10.2, 10.3, 10.4, 4.3, 4.2.1* or *13.4.1* of the *First Schedule*;

(c) an activity specified in *paragraph 5.12, 5.13, 5.14, 5.15, 5.16* or *5.17* of the *First Schedule* provided that the activity concerns production by chemical processing;

(d) an activity specified in *paragraph 8.1, 8.2, 8.5.1, 8.6.1, or 7.4.1* of the *First Schedule*;

(e) an activity specified in *paragraph 7.8* of the *First Schedule* provided that Directive 2008/1/EC¹ of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (in this section referred to as “Directive 2008/1/EC”) applies to the activity;

(f) an activity specified in *paragraph 7.2.1, 7.7.1, 6.1, 6.2, 12.2.1, 9.4.3* or *13.5* of the *First Schedule*.

(4) On or after 7 July 2015 a person shall not continue to carry on an activity to which *subsection (5)* applies unless—

(a) on the coming into operation of this section a licence or revised licence granted under the earlier *Part IV* is in force in relation to that activity, or

(b) in respect of the activity—

(i) on the coming into operation of this section an application has been made to the Agency under the earlier *Part IV* for a licence or revised licence and the requirements of regulations under *section 89* in relation to the application for the licence or revised licence have been complied with by the applicant, and

(ii) on or before 7 July 2015—

¹ O.J. No. L24, 29.1.2008, p. 8.

- (I) a licence or revised licence on foot of the application referred to in *subparagraph (i)*, subject to *subsection (7)*, is granted if required, under the earlier *Part IV* or this Part, as the case may be, and
 - (II) the licensee concerned commences carrying on the activity.
- (5) *Subsection (4)* applies to any of the following activities:
- (a) an activity specified in *paragraph 2.1* of the *First Schedule* which has a total rated thermal input of 50 MW;
 - (b) an activity specified in *paragraph 9.4.2(b)* of the *First Schedule*;
 - (c) an activity specified in *paragraph 5.12, 5.13, 5.14, 5.15, 5.16 or 5.17* of the *First Schedule* provided that the activity concerns production by biological processing;
 - (d) an activity specified in *paragraph 7.8* of the *First Schedule* provided that Directive 2008/1/EC does not apply to the activity;
 - F89[(e) an activity specified in *paragraph 8.3, 8.7 or 13.6* of the *First Schedule*.]
- (6)(a) Where an application to which *subsection (2)(b)* refers is determined or completed by the Agency before 30 September 2013 it shall be dealt with by the Agency, and be determined or completed by it under the earlier *Part IV*.
- (b) Where an application to which *subsection (2)(b)* refers is determined or completed by the Agency on or after 30 September 2013, it shall, subject to this section, be dealt with by the Agency, and be determined or completed by it, under this Part.
- (7)(a) Where an application to which *subsection (4)(b)* refers is determined or completed by the Agency before 28 February 2014 it shall be dealt with by the Agency, and be determined or completed by it under the earlier *Part IV*.
- (b) Where an application to which *subsection (4)(b)* refers is determined or completed by the Agency on or after 28 February 2014, it shall, subject to this section, be dealt with by the Agency, and be determined or completed by it, under this Part.
- (8) A licence or revised licence referred to in *subsection (2)(a)* in force on the coming into operation of this section or *(2)(b)* and granted, in accordance with *subsection (6)(a)* under the earlier *Part IV*, shall continue in force as if this section had not come into operation until the Agency, not later than 7 January 2014, shall have—
- (a) examined the terms of every licence and revised licence referred to in *subsection (2)(a) or (2)(b)* which was granted, in accordance with *subsection (6)(a)* under the earlier *Part IV*, and for the time being in force and determined whether, having regard to the provisions of the Industrial Emissions Directive, the licence or revised licence is to be amended to bring it into conformity with that Directive, and
 - (b) if—
 - (i) it has determined that the licence or revised licence requires to be so amended, completed the amendment in accordance with *subsection (11)*, or
 - (ii) it has determined that the licence or revised licence does not require to be so amended and accordingly, that no further action is required, declared in writing that it is of that opinion.
- (9) A licence or revised licence referred to in *subsection (4)(a)* in force on the coming into operation of this section or *(4)(b)* and granted, in accordance with *subsection*

(7)(a) under the earlier *Part IV*, shall continue in force as if this section had not come into operation until the Agency, not later than 7 July 2015, shall have—

(a) examined the terms of every licence and revised licence referred to in *subsection (4)(a)* or *(4)(b)* which was granted under the earlier *Part IV* and for the time being in force and determined whether, having regard to the provisions of the Industrial Emissions Directive, the licence or revised licence is to be amended to bring it into conformity with that Directive, and

(b) if—

(i) it has determined that the licence or revised licence requires to be so amended, completed the amendment in accordance with *subsection (11)*, or

(ii) it has determined that the licence or revised licence does not require be so amended and accordingly, that no further action is required, declared in writing that it is of that opinion.

(10)(a) None of the requirements of *section 90* shall apply to the performance of functions conferred on the Agency under *subsection (8)* or *(9)* but the Agency shall, where appropriate, consult with the licensee before performing that function.

(b) Where the Agency considers that it is necessary for the purpose of the performance of the functions conferred on the Agency under *subsection (8)* or *(9)*, it may give notice to the licensee to furnish to the Agency, within the period specified in the notice, information, documents or other particulars specified in the notice.

(c) The Agency shall, as soon as may be after the performance of functions conferred on it under *subsection (8)* or *(9)*, notify particulars of the amendment effected by that performance to each person who made an objection to the Agency under *section 87(5)* in relation to any performance by the Agency of powers conferred on it under *section 83* or *90* as respects the licence or revised licence concerned.

(11) If the bringing into conformity with the Industrial Emissions Directive of a licence or revised licence under *subsection (8)* or *(9)* can, in the opinion of the Agency, be achieved by amending one or more of the conditions of or schedules to the licence or revised licence (and the making of the amendment will not significantly alter the character of the licence or revised licence) then, the Agency shall make those amendments of the conditions of or schedules to the licence or revised licence (which, by virtue of this subsection, it has power to do).]

F90[Provision supplemental to section 82.

82B. ...]

F91[Exemption under section 5(1) of Act of 2022

82C. The exemption in section 5(1) of the Act of 2022 applies in relation to an application for a licence pursuant to this Part in respect of designated development.]

F92[Section 15 of Climate Action and Low Carbon Development Act 2015

82D. Taking into account the exceptional circumstances and the urgent and compelling necessity for securing the supply of electricity in the State set out in the Act of 2022, the Agency, in considering designated applications, shall do so in a manner consistent with the plans, strategy, framework and objectives referred to in section 15 (1) of the Climate Action and Low Carbon Development Act 2015 to the extent that it considers practicable, taking particular account of the said exceptional circumstances and urgent and compelling necessity.]

F93[Determination of applications for licences.

83.—(1) Where an application is made to the Agency in the prescribed manner for a licence under this Part it may, subject to *section 99A* and to compliance with any regulations under *section 89*, grant the licence subject to such conditions as it considers appropriate or refuse the application.

(2) Unless it considers that it is unnecessary to do so, the Agency shall carry out or cause to be carried out such investigations as it thinks appropriate or as may be prescribed—

- (a) prior to, and for the purposes of determining, any application made to it under this Part,
- (b) as part of the review of a licence or revised licence commenced by the Agency under *section 90*, or
- (c) for the purposes of *section 82(10)* or *(11)*,

and may require the applicant or the licensee, as the case may be, to defray or contribute towards the cost of any such investigation.

F94[(2A)(a) In this subsection:

F95[“alternative assessment” has the meaning given to it by *section 89(2A)*];

“application for a licence” means an application made to the Agency—

- (i) for a licence under this Part, or
- (ii) by the licensee under *section 90(1)(b)* for a review of a licence or revised licence;

F96[“environmental impact assessment” means a process –

- (i) consisting of—
 - (I) the preparation of an environmental impact assessment report by the applicant in accordance with this Act,
 - (II) the carrying out of consultation required by or under this Act,
 - (III) the examination by the Agency of—
 - (A) the information presented in the environmental impact assessment report,
 - (B) any additional information provided by the applicant under this Act, and
 - (C) any relevant information received under this Act,
 - (IV) the reaching of a reasoned conclusion by the Agency in accordance with *section 87(9a)* on the significant effects of the proposed activity on the environment, taking into account the results of the examination referred to in *subparagraph (III)* and, where appropriate, its own supplementary examination, and
 - (V) the integration of the Agency’s reasoned conclusion into its decision to grant a licence, or to refuse an application, under *section 83(1)* or a decision to amend a licence or revised licence, to grant a revised licence, or to refuse to grant a revised licence, under *section 90(2)*,

and

- (ii) including an examination, analysis and evaluation by the Agency in accordance with this section in order to identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and

indirect significant effects of the proposed activity, including significant effects derived from the vulnerability of the activity to risks of major accidents and disasters relevant to it, on—

- (I) population and human health,
- (II) biodiversity, with particular attention to species and habitats protected under Council Directive 92/43/EEC of 21 May 1992⁵ and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁶,
- (III) land, soil, water, air and climate,
- (IV) material assets, cultural heritage and the landscape, and
- (V) the interaction between the factors mentioned in *subparagraphs (I) to (IV)*;

F95[“environmental report” means a report prepared in accordance with Regulation 7 of the Development (Emergency Electricity Generation) Regulations 2022 (S.I. No. 719 of 2022);]

(b) The Agency as part of its consideration of an application for a licence F95[, other than a designated application,] shall ensure before a licence or a revised licence is granted, and where the activity to which such licence or revised licence relates is likely to have significant effects on the environment by virtue, *inter alia*, of its nature, size or location, that, in accordance with this subsection and *section 87(1A) to F97[(1I)]*, the application is made subject to an environmental impact assessment as respects the matters that come within the functions of the Agency including the functions conferred on the Agency by or under this Act.

F98[(ba) Where the Agency receives an application for a licence F95[, other than a designated application,] in respect of an activity relating to development or proposed development referred to in *paragraph (c)(ii)* the Agency shall require the applicant for a licence to provide it with information on the characteristics of the activity and its likely significant effects on the environment.

(bb) Where an applicant is subject to a requirement by the Agency under *paragraph (ba)* it shall—

- (i) provide the information specified in Annex IIA to the EIA Directive, and
- (ii) where relevant, take into account the available results of other relevant assessments of the effects on the environment carried out pursuant to any Act or under European Union legislation (other than the EIA Directive).

(bc) Where an applicant is subject to a requirement by the Agency under *paragraph (ba)* it may also provide a description of any features of the activity or measures envisaged to avoid or prevent significant adverse effects on the environment.

(bd) Where the Agency receives information from an applicant under *paragraph (bb)* it shall make a determination as to whether the activity to which the licence or revised licence applied for relates should be subject to environmental impact assessment on the basis of such information, taking into account the relevant selection criteria specified in Annex III to the EIA Directive and, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to any Act or under European Union legislation (other than the EIA Directive).

⁵ OJ No. L 206, 22.7.1992, p. 7

⁶ OJ No. L 20, 26.1.2010, p. 7

(be) A determination under *paragraph (bd)* shall—

(i) where the Agency determines that the activity should be subject to environmental impact assessment, specify with reference to the relevant criteria listed in Annex III to the EIA Directive, the main reasons for that determination, and

(ii) where the Agency determines that the activity should not be subject to environmental impact assessment, specify—

(I) with reference to the relevant criteria listed in Annex III to the EIA Directive, the main reasons for that determination, and

(II) any features of the activity and measures proposed by the applicant, to avoid or prevent significant adverse effects on the environment relied upon by it in making the determination.

(bf) Where the Agency specifies a measure under *paragraph (be)(ii)(II)* as a measure relied upon by it in making the determination pursuant to *section 83(2A)(bd)*, that an environmental impact assessment is not required in relation to an application for a licence, the Agency shall make carrying out the measure concerned a condition of any licence granted on that application.

(bg) Subject to *paragraph (bh)*, the Agency shall make its determination under *paragraph (bd)* as soon as possible and within 90 days from the date on which the applicant has submitted all the information required by the Agency under *paragraph (ba)*.

(bh) The Agency may, in exceptional cases, including where it is justified by the nature, complexity, location or size of the proposed activity, extend the 90 day period referred to in *paragraph (bf)* in order to make its determination and in such cases it shall inform the applicant in writing of the reasons justifying the extension and of the date when its determination is expected.

(bi) The Agency shall make an electronic version of any determination under *paragraph (bd)* available to the public on its website.]

(c) Subject to *paragraph (b)* and *section 87(1A)* to F97[(1)], an environmental impact assessment shall be carried out by the Agency in respect of an application for a licence F95[, other than a designated application,] relating to an activity, where development comprising or for the purpose of the activity is:

F99[(i) development of a class specified in Part 1 of Schedule 5 to the Planning and Development Regulations 2001, or]

F100[(ii) development of a class specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001 that the Agency determines would be likely to have significant effects on the environment.]

F95[(ca) An alternative assessment shall be carried out by the Agency in respect of a designated application.

(cb) A person making a designated application shall submit an environmental report to the Agency with the application.]

(d) Subject to *section 87(1A)* to F97[(1)] an applicant for a licence F95[, other than a person making a designated application,] shall submit an F101[environmental impact assessment report] with the application for the licence made to the Agency—

(i) where the application for a licence concerned is in respect of an activity relating to development or proposed development referred to in *paragraph (c)(i)*, or

- (ii) where the Agency determines that the application for a licence concerned is in respect of an activity relating to development or proposed development referred to in *paragraph (c)(ii)* that would be likely to have significant effects on the environment,
- F102[(*dd*) The applicant for a licence shall ensure that an environmental impact assessment report referred to in *paragraph (d)*—
- (i) is prepared by competent experts,
 - (ii) contains, subject to *paragraph (df)*—
 - (I) a description of the proposed activity comprising information on the site (including information on the installation where the activity is to be carried out), design, size and other relevant features of the activity,
 - (II) a description of the likely significant effects of the proposed activity on the environment,
 - (III) a description of any features of the proposed activity and of any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment,
 - (IV) a description of the reasonable alternatives studied by the applicant which are relevant to the proposed activity and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the proposed activity on the environment,
 - (V) a non-technical summary of the information referred to in *clauses (I) to (IV)*,
 - (VI) any additional information specified in Annex IV of the EIA Directive that is relevant to the specific characteristics of the particular activity, or type of activity, proposed and to the environmental features likely to be affected,
- and
- (iii) takes into account the available results of other relevant assessments under European Union or national legislation with a view to avoiding duplication of assessments.
- (*de*) The Agency shall, on the request of a person who has made, or intends to make, an application for a licence, where the request is made before the person has submitted an environmental impact assessment report—
- (i) consult the bodies prescribed by the Minister in regulations under *section 89*, and
 - (ii) taking into account the information provided by the applicant or intending applicant, in particular on the specific characteristics of the activity, including its location and technical capacity, and its likely impact on the environment, issue an opinion on the scope, and level of detail, of the information to be included by the applicant or intending applicant in the environmental impact assessment report in accordance with *subsection (dd)*,
- (*df*) Where the Agency issues an opinion under *paragraph (de)* the applicant shall—
- (i) prepare the environmental impact assessment report referred to in *subsection (dd)* based on that opinion, and
 - (ii) include in the report the information that may reasonably be required for reaching a reasoned conclusion in accordance with *section 87(9a)* on

the significant effects of the proposed activity on the environment, taking into account current knowledge and methods of assessment.

(dg) The Agency shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report.

(dh) In carrying out an environmental impact assessment in respect of an application for a licence or a revised licence, the Agency shall, where appropriate, co-ordinate the assessment with any assessment under Council Directive 92/43/EEC of 21 May 1992⁷ or Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009⁸.]

(e) The Agency shall request the production by the applicant of any additional or supplemental information that it considers necessary to enable it to carry out an environmental impact assessment as required under this section.

(f) In relation to an application for a licence to which paragraph (d) refers—

(i) the Agency shall consider the content of the F101[environmental impact assessment report] and any other material including maps or plans submitted as part of the application for a licence and determine whether that content adequately identifies, describes, and assesses the direct and indirect effects of the proposed development, and

(ii) if the Agency determines that the F101[environmental impact assessment report] and other material does not so adequately identify, describe or assess, the Agency shall give notice in writing to the applicant for the licence requesting further information, which notice shall—

(I) identify the manner in which the content of the F101[environmental impact assessment report] and other material is inadequate, and

(II) require the applicant for the licence to furnish to the Agency additional information required to correct the inadequacy so identified.

(g) In carrying out its consideration of an application for a licence and in carrying out an environmental impact assessment F95[or, as the case may be, an alternative assessment] the Agency may have regard to, and adopt in whole or in part, any reports prepared by its officials or by consultants, experts or other advisors.]

(3) In considering an application for a licence or a revised licence, or the review of a licence or a revised licence under this Part, the Agency shall have regard to—

(a) any relevant air quality management plan under section 46 of the Air Pollution Act 1987, or water quality management plan under section 15 of the Local Government (Water Pollution) Act 1977, or waste management plan,

(b) any relevant noise regulations under section 106,

(c) any special control area order under section 39 of the Air Pollution Act 1987, in operation in relation to the area concerned,

(d) the policies and objectives of the Minister or the Government in relation to the prevention, elimination, limitation, abatement or reduction of emissions for the time being extant,

(e) F103[(i) the particulars submitted with the application including the F101[environmental impact assessment report] (if any) F104[or the environmental report (if any)] and any other material including maps or plans,]

⁷ OJ No. L 206, 22.7.1992, p. 7

⁸ OJ No. L 20, 26.1.2010, p. 7

- (ii) any submissions or observations made to the Agency in relation to the F101[environmental impact assessment report], F104[or the environmental report]
- (iii) any further information or particulars submitted in relation to the F101[environmental impact assessment report] F104[or the environmental report] in compliance with a notice given under regulations under F105[*section 89*,]
- (iv) where appropriate, the comments of other Member States of the European Communities in relation to the effects on the environment of the proposed F105[activity, and]
- F106[(v) where appropriate, in the case of an industrial emissions directive activity, in accordance with Article 26 of the Industrial Emissions Directive, any submissions or observations made to the Agency resulting from bilateral consultations with another Member State of the European Union,]
- insofar as F107[the report], submissions, comments, observations, information or particulars relate to the effects on the environment of emissions from the F108[activity,]
- (f) such other matters related to the prevention, elimination, limitation, abatement or reduction of emissions as it considers F109[necessary, and]
- F110[(g) in a case where the application relates to an industrial emissions directive activity, any emerging techniques in so far as those techniques are relevant to the activity and in particular those emerging techniques identified in the BAT reference documents relevant to the activity concerned.]
- (4) (a) In granting a licence or revised licence, the Agency shall, subject to *section 86(3)* F111[and in the case of an industrial emissions directive activity, subject to *section 86A(3)(b)* or (4)], specify in the licence or the revised licence emission limit values for environmental pollutants likely to be emitted from the activity in significant quantities, having regard to their nature and their potential to transfer from one environmental medium to another.
- F112[(aa) Where the Agency decides, in relation to an application for a licence to which *subsection (2A)(c)* refers, to grant a licence or a revised licence the Agency may attach such conditions to the licence or revised licence as it considers necessary to avoid, reduce and, if possible, offset the major adverse effects of the development or proposed development (if any) comprising or for the purposes of the activity to which the application for a licence relates.]
- (b) The Minister may make regulations for the purposes of this subsection.
- (c) Without prejudice to the generality of *paragraph (b)*, regulations under this subsection may specify the principal polluting substances to which the Agency is to have regard in fulfilling its duty under *paragraph (a)*.
- (5) The Agency shall not grant a licence or revised licence for an activity—
- (a) unless it is satisfied that—
- (i) any emissions from the activity will not result in the contravention of any relevant air quality standard specified under *section 50 of the Air Pollution Act 1987*, and will comply with any relevant emission limit value specified under *section 51 of the Air Pollution Act 1987*,
- (ii) any emissions from the activity will comply with, or will not result in the contravention of, any relevant quality standard for waters, trade effluents and sewage effluents and standards in relation to treatment of such

effluents prescribed under [section 26 of the Local Government \(Water Pollution\) Act 1977](#),

- (iii) any emissions from the activity or any premises, plant, methods, processes, operating procedures or other factors which affect such emissions will comply with, or will not result in the contravention of, any relevant standard including any standard for an environmental medium prescribed under regulations made under [the European Communities Act 1972](#), or under any other enactment,
 - (iv) any noise from the activity will comply with, or will not result in the contravention of, any regulations under [section 106](#),
 - (v) any emissions from the activity will not cause significant environmental pollution,
 - (vi) the best available techniques will be used to prevent or eliminate or, where that is not practicable, generally to reduce an emission from the activity,
 - (vii) having regard to Part III of the Act of 1996, production of waste in the carrying on of the activity will be prevented or minimised or, where waste is produced, it will be recovered or, where that is not technically or economically possible, disposed of in a manner which will prevent or minimise any impact on the environment,
- F113[(viii) without prejudice to [subparagraph \(vii\)](#), waste generated in the carrying on of an industrial emissions directive activity, in order of priority in accordance with [section 21A \(inserted by Regulation 7 of the European Communities \(Waste Directive\) Regulations 2011\)](#) of the Act of 1996, will be prepared for re-use, recycled, recovered or, where that is not technically or economically possible, disposed of in a manner which will prevent or minimise any impact on the environment,]
- (viii) energy will be used efficiently in the carrying on of the activity,
- F114[(viii) in the case of an industrial emissions directive activity at an installation to which [paragraph \(11\) of Regulation 23 of the European Union \(Energy Efficiency\) Regulations 2014 \(S.I No. 426 of 2014\)](#) applies, and which is not the subject of an exemption under [paragraph \(19\) or \(20\) of Regulation 23 of those Regulations](#), and where—
- (I) the Sustainable Energy Authority of Ireland has notified the applicant or licensee that its assessment of the cost-benefit analysis undertaken in accordance with those Regulations confirms the findings of the cost-benefit analysis, and
 - (II) the cost-benefit analysis concludes that the benefit of an energy efficient option exceeds its costs and this is confirmed by that Authority,
- that the necessary measures will be taken by the applicant or licensee to implement that option,]
- (ix) necessary measures will be taken to prevent accidents in the carrying on of the activity and, where an accident occurs, to limit its consequences for the environment and, in so far as it does have such consequences, to remedy those consequences,
 - (x) necessary measures will be taken upon the permanent cessation of the activity (including such a cessation resulting from the abandonment of the activity) to avoid any risk of environmental pollution and return the site of the activity to a satisfactory state, and

F115[(xa) in the case of an industrial emissions directive activity, necessary measures referred to in *subparagraph (x)* including measures of appropriate duration shall be taken in accordance with *section 86B,*]

(xi) the applicant or licensee or transferee, as the case may be, is a fit and proper person to hold a licence,

and, where appropriate, the Agency shall attach conditions relating to the matters specified in the foregoing subparagraphs to the licence or revised licence,

and

(b) where an environmental quality standard requires stricter conditions to be attached to the licence or revised licence than would otherwise be determined by reference to best available techniques either—

(i) without attaching to the licence or revised licence conditions of an appropriate kind for the purpose of that standard, or

(ii) where—

(I) the proposed licensee or the licensee proposes, for the purpose of that standard, to take steps that are different from those that would be required by the imposition of conditions under *subparagraph (i)*, and

(II) the Agency is satisfied that those steps, or those steps with such modifications of them as it considers appropriate, are appropriate for the purpose of that standard,

without attaching conditions to the licence or revised licence requiring those steps, or those steps as so modified, to be taken.

(6) The Agency may, before it does any of the following things, namely—

(a) decides whether to—

(i) grant a licence or a revised licence, or

(ii) effect a transfer of a licence or a revised licence,

or

(b) completes a review of a licence or a revised licence,

require the applicant for the licence, the licensee in the case of a review (whether commenced by the Agency of its own volition or not), or the proposed transferee, as the case may be, to—

(i) furnish to it such particulars in respect of such matters affecting his ability to meet the financial commitments or liabilities that the Agency reasonably considers will be entered into or incurred by him in carrying on the activity to which the licence or revised licence relates or will relate, as the case may be, in accordance with the terms of the licence or in consequence of ceasing to carry on that activity as it may specify, and

(ii) make, and furnish evidence of having so made, such financial provision as it may specify (which may include the entering into a bond or other form of security) as will, in the opinion of the Agency, be adequate to discharge the said financial commitments or liabilities.

(7) A person who, pursuant to a requirement made of him under *subsection (6)*, furnishes to the Agency any particulars or evidence which he knows to be false or misleading in a material respect shall be guilty of an offence.

(8) The Minister may make regulations for the purpose of *subsection (6)*.

(9) Without prejudice to the generality of *subsection (8)*, regulations under that subsection may specify by reference to the type of activity to which the licence or revised licence concerned relates or will relate—

- (a) the nature of the financial provision that the Agency may require a person to make under *subsection (6)(ii)*,
- (b) the matters to be had regard to by the Agency in determining the amount of financial provision that it may require a person to make under *subsection (6)(ii)*.

(10) A person shall not be entitled solely by reason of a licence or revised licence under this Part to make, cause or permit an emission to any environmental medium.]

F116[Provisions supplemental to, and consequential on, section 83.

84.—(1) Where a licence or revised licence is required under this Part in respect of an activity, a licence under—

- (a) Part III of the Air Pollution Act 1987,
- (b) section 4 or 16 of the Local Government (Water Pollution) Act 1977, F117[...]
- (c) section 171 of F118[the Fisheries (Consolidation) Act 1959, or]
- F119[(d) section 63 or 81 of the Water Services Act 2007,]

shall not be granted in relation to such activity.

(2) Where a licence or revised licence has been granted under this Part in respect of an activity, a licence under—

- (a) Part III of the Air Pollution Act 1987,
- (b) section 4 or 16 of the Local Government (Water Pollution) Act 1977, F120[...]
- (c) section 171 of F121[the Fisheries (Consolidation) Act 1959, or]
- F122[(d) section 63 or 81 of the Water Services Act 2007,]

shall cease to have effect in relation to such activity.

(3) It shall be a good defence—

- (a) to a prosecution for an offence under any enactment other than this Part, or
- (b) to proceedings under—
 - (i) section 10 or 11 of the Local Government (Water Pollution) Act 1977,
 - (ii) section 20 of the Local Government (Water Pollution) (Amendment) Act 1990,
 - (iii) section 28, 28A or 28B of the Air Pollution Act 1987,
 - (iv) section 57 or 58 of the Act of 1996, or
 - (v) section 99H,

to prove that the act complained of is authorised by a licence or revised licence granted under this Part.

(4) For the purpose of this Part, a person shall be regarded as a fit and proper person if—

- (a) neither that person nor any other relevant person has been convicted of an offence under this Act, the Act of 1996, the Local Government (Water Pollution) Acts 1977 and 1990 or the Air Pollution Act 1987 prescribed for the purposes of this subsection,
- (b) in the opinion of the Agency, that person or, as appropriate, any person or persons employed by him to direct or control the carrying on of the activity to which the licence or revised licence relates or will relate has or have the requisite technical knowledge or qualifications to carry on that activity in accordance with the licence or revised licence and the other requirements of this Act, and
- (c) in the opinion of the Agency, that person is likely to be in a position to meet any financial commitments or liabilities that the Agency reasonably considers have been, or will be entered into or incurred by him in carrying on the activity to which the licence or revised licence relates or will relate, as the case may be, in accordance with the terms thereof or in consequence of ceasing to carry on that activity.

(5) The Agency may, if it considers it proper to do so in any particular case, regard a person as a fit and proper person for the purposes of this Part notwithstanding that that person or any other relevant person is not a person to whom *subsection (4)(a)* applies.

(6) The references in *subsections (4) and (5)* to a relevant person are references to a person whom the Agency determines to be relevant for the purposes of considering the application or review concerned having had regard to any criteria that the Minister by regulations provides it is to have regard to in determining such a matter.]

F123 [Transboundary 85.—(1) Where—
environmental
impacts.

- (a) an activity in respect of which an application for a licence or the review of a licence or a revised licence has been made to the Agency, or
- (b) an activity the subject of a licence or revised licence a review of which under section 90 the Agency proposes to conduct,

is likely to have a significant adverse effect on the environment in another Member State of the European Communities, the Minister shall inform that other state of the application or the review.

(2) Where another Member State of the European Communities requests the State to provide to it information in relation to an activity licensable under this Part which, in the opinion of the first-mentioned state, is likely to have a significant adverse effect on that state's environment, the Minister shall request the Agency to provide that state with information in relation to the activity.

(3) Where it comes to the notice of the Agency that an activity or a proposed activity in another Member State of the European Communities is likely to have a significant adverse effect on the environment in the State, the Agency shall inform the Minister of the matter and, when requested to do so by him, assess the matter and advise the Minister of the effect on the environment in the State of that activity.

(4) The Minister may by regulations—

- (a) provide for specified procedures to be followed, additional to those specified by or under any other provision of this Act, with respect to—
 - (i) the determination of an application for a licence or for the review of a licence or a revised licence, and
 - (ii) the review by the Agency, of its own volition, of a licence or a revised licence,

where such licence relates to an activity emissions from which are likely to have a significant adverse effect on the environment in another Member State of the European Communities,

- (b) provide for specified procedures to be followed by persons in the State in circumstances where it comes to the notice of such persons that emissions from an activity in another Member State of the European Communities, being an activity the operation of which requires a permit under the F124[Industrial Emissions Directive], are likely to have a significant adverse effect on the environment in the State.

(5) Without prejudice to the generality of subsection (4), regulations under that subsection may make provision for the following—

(a) in respect of an activity to which subsection (1) or (2) applies—

- (i) requiring the Agency to notify the Minister that the activity is being carried on or is proposed to be carried on;
- (ii) requiring the Agency to submit information to the Minister regarding the activity;
- (iii) requiring the Agency to provide information to the other state concerned, its competent authority for the purposes of the F125[Industrial Emissions Directive] (in this paragraph referred to as the "competent authority of that state") or other persons in that state;
- (iv) requiring the Agency to consult with the competent authority of that state;
- (v) requiring the Agency to take into consideration any comments from the state concerned, the competent authority of that state or any person in that state;
- (vi) enabling the attachment of conditions to a licence or revised licence in order to reduce or eliminate the possible adverse effects on the environment of another Member State of the European Communities;
- (vii) extending the period in which a decision is to be made under this Act or any other step is to be taken;
- (viii) requiring the Agency to inform the other state concerned of the decision under this Act and to provide to it information in relation to the decision;

(b) in respect of an activity to which *subsection (3)* applies—

- (i) requiring the Agency to request the competent authority, for the purposes of the F126[Industrial Emissions Directive], of the other state concerned (in this paragraph referred to as the "competent authority of the other state concerned") to provide to it information regarding the activity or proposed activity;
- (ii) requiring the Agency to consult with the competent authority of the other state concerned;
- (iii) requiring the Agency to publish notices in relation to information provided to it pursuant to a request referred to in *subparagraph (i)*;
- (iv) requiring the Agency to invite comments in relation to information as aforesaid and to forward such comments to the competent authority of the other state concerned in relation to the activity or proposed activity;
- (v) enabling the Agency to make submissions or observations to the competent authority of the other state concerned in relation to the activity or proposed activity.

(6) The Minister may by regulations provide that this section shall apply to a Member State of the EEA as it applies to a Member State of the European Communities.

(7) In *subsection (6)* "Member State of the EEA" means a state that is a contracting party to the Agreement on the European Economic Area signed at Oporto on the 2nd day of May, 1992, as amended for the time being.]

F127[Conditions attached to a licence.

86.—(1) Without prejudice to the generality of *section 83(1)*, conditions attached to a licence or revised licence granted under this Part—

(a) shall—

(i) in accordance with *section 83(4)* and subject to *subsection (3)* F128[and in the case of an industrial emissions directive activity, subject to *section 86A(3)(b)* or (4)], include emission limit values for environmental pollutants likely to be emitted from an activity in significant quantities,

(ii) specify requirements for the purpose of minimising pollution, including minimising the occurrence of pollution over long distances or in the territory of other states, and to ensure a high level of protection for the environment as a whole,

(iii) F129[if necessary, and in all cases where the licence or revised licence relates to an industrial emissions directive activity, specify] requirements concerning protection of the soil and groundwater, and the management of waste generated by an activity,

F130[(iiia) in the case of an industrial emissions directive activity, specify monitoring periods for soil (within the meaning of *section 86A(11)* (inserted by Regulation 12 of the European Union (Industrial Emissions) Regulations 2013)) and groundwater, other than where the Agency bases monitoring on a systematic appraisal of the risk of contamination, which shall be periods of not more than 5 years for groundwater and not more than 10 years for soil,]

(iv) specify appropriate requirements for the purpose of monitoring emissions, including the taking and analysis of samples, the making of measurements in accordance with specified methodologies and frequencies, the evaluation of the results of such monitoring in accordance with specified procedures and the keeping of records and the furnishing of information to the Agency or to any other specified person in relation to such monitoring and evaluation (and such requirements may include a requirement that the licensee confirm whether or not he has complied with the conditions attached to the licence or revised licence and, if he has not complied with any such condition, a requirement that he indicate in what respect he has not complied with the condition),

F131[(iva) specify, in the case of an industrial emissions directive activity, that the results of monitoring of emissions levels (requirements for the purpose of which, where applicable, shall be based on any conclusions on monitoring as described in the BAT conclusions), shall be provided to the Agency regularly and at least once a year, in a form that enables the Agency to verify compliance with the conditions attached to the licence,]

(v) specify the measures to be taken other than in the circumstances that prevail during normal operating circumstances and, in particular, measures to be taken if there is a breakdown of any plant or other equipment or procedures which may affect emissions from the activity, including measures to be taken in relation to start-up, shutdown, leaks, malfunctions or momentary stoppages,

(vi) specify that the Agency is to be informed without delay of any incident or accident significantly affecting the F132[environment,]

- (vii) specify the measures to be taken, including as appropriate the duration of such measures, on and following the permanent cessation of an activity (including such a cessation resulting from the abandonment of F133[the activity]), and]
- F134[(viii) without prejudice to the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003), the European Communities (Environmental Liability) Regulations 2008 (S.I. No. 547 of 2008) and the European Communities Environmental Objectives (Groundwater) Regulations 2010, specify for the purposes of section 86B, in the case of an industrial emissions directive activity to which that section applies, requirements for the purpose of removal, control, containment or reduction of hazardous substances upon the permanent cessation of the activity,
- (ix) without prejudice to the European Communities (Environmental Liability) Regulations 2008 specify, in the case of an industrial emissions directive activity, that where an incident or accident significantly affecting the environment occurs, the licensee shall without delay—
 - (I) inform the Agency, and
 - (II) take measures to limit the environmental consequences of the incident or accident and to prevent a further incident or accident, and
- (x) specify, in the case of an industrial emissions directive activity, that where a breach of one or more of the conditions attached to the licence occurs, the licensee shall without delay—
 - (I) inform the Agency, and
 - (II) take measures to restore compliance with conditions attached to the licence in the shortest possible time.]
- (b) may (to the extent that the matter is not provided for by a condition under paragraph (a))—
 - (i) specify as appropriate the nature, composition, temperature, volume, level, rate, method of treatment and location of an emission,
 - (ii) specify the periods during which an emission may, or may not, be made,
 - (iii) specify limits to the effects of an emission,
 - (iv) specify the concentration of an environmental pollutant in an environmental medium or a deposition or discharge rate which shall not be exceeded,
 - (v) specify any matters relating to the design, construction or dimensions of pipes, chimneys, flues, stacks or other outlets through which an emission is to be made,
 - (vi) specify the means (including the provision, operation, maintenance and supervision of plant and other facilities and the use of specified procedures or codes of practice) to be used for controlling an emission,
 - (vii) specify requirements or limits in relation to the amount or composition of any substance produced by or utilised in the activity in any period,
 - (viii) require the provision, operation and maintenance of meters, gauges, manholes, inspection chambers and other apparatus and other means for monitoring the nature, extent and effects of emissions,
 - (ix) specify the type of fuel to be, or not to be, used, as the case may be,

- (x) specify measures to be taken after an emission, which is not in accordance with other conditions attached to the licence or revised licence, has taken place,
 - (xi) specify requirements in relation to the recovery or disposal of waste arising from the activity on land other than land on which the installation is situate and whether in the ownership or occupation of the licensee or not (including requirements with respect to the furnishing of information to the Agency in relation to the land for the time being used, or land proposed to be used, for the purpose of such recovery or disposal),
 - (xii) require the making of payments to the Agency in relation to costs incurred in relation to determining whether there has been compliance with the conditions attached to the licence or revised licence or not and in relation to steps taken for the purpose of the monitoring of, or otherwise in relation to, emissions,
 - (xiii) require the payment to the Agency of a charge or charges prescribed under or calculated in accordance with *section 99*,
 - (xiv) require the payment to the sanitary authority concerned of a charge in relation to a discharge to a sewer as provided for under *section 99E*,
 - (xv) specify such other conditions or requirements, including requirements in relation to environmental management systems, which the Agency considers necessary for the purposes of F135[the Industrial Emissions Directive],
 - (xvi) specify the latest date by which a condition attached to the licence or revised licence is to be complied with,
 - (xvii) provide for derogations of a temporary nature from the requirements of *subsections (1)(a)(ii)* and *(3)(c)* if a rehabilitation plan, submitted to and approved by the Agency, is implemented in order to ensure that the said requirements will be complied with within 6 months from the date of its first being implemented and the plan will lead to a reduction of emissions,
 - (xviii) specify, in cases where there are likely to be significant emissions to the environment, appropriate requirements for the purpose of monitoring the ambient environment, including the taking and analysis of samples, the making of measurements in accordance with specified methodologies and frequencies, the evaluation of the results of such monitoring in accordance with specified procedures and the keeping of records and the furnishing of information to the Agency or to any other specified person in relation to such monitoring and evaluation.
- (2) In determining the conditions to be attached to a licence or a revised licence in respect of an activity to which paragraph 6.1 or 6.2 of the First Schedule applies, the Agency shall—
- (a) for the purposes of *subsection (1)(a)(i)*, take account of practical considerations appropriate to that activity,
 - (b) for the purposes of *subsection (1)(a)(iv)*, take account of costs and benefits.
- (3) (a) Emission limit values for substances shall, save where the Agency directs otherwise, apply at the point where the emissions leave the installation where the activity is being carried on, any dilution being disregarded in making any determination of them.
- (b) Emission limit values may, where appropriate, be supplemented or replaced by equivalent parameters or technical measures.

(c) Without prejudice to *section 83(5)(b)*, emission limit values, and equivalent parameters and technical measures shall be based on the best available techniques, without specifying the use of any technique or specific technology, but taking into account the technical characteristics of the activity concerned, its geographical location and the local environmental conditions.

(4) Without prejudice to *section 83(5)(b)*, the Minister may by regulations, after consultation with any other Minister of the Government who, in the opinion of the Minister, is concerned and the Agency—

(a) require either—

(i) the Agency, in the exercise of its powers under this Part, to attach, or

(ii) the Agency, in the exercise of those powers, to consider the attachment of,

the conditions referred to in *subparagraph (i)* or *(ii)*, as appropriate, of *paragraph (b)* to a licence or a revised licence F136[granted by it in respect of a specified class or classes of industrial emissions directive activity] (and, accordingly, such conditions shall or may, as appropriate, be attached in place of the conditions that could otherwise be attached in accordance with the preceding provisions of this section),

(b) specify the conditions that are to be the subject of—

(i) the requirement under *paragraph (a)(i)*, and

(ii) the requirement under *paragraph (a)(ii)*,

and, in each case, those conditions F137[shall comply with Article 17 of the Industrial Emissions Directive],

(c) provide for any matters consequential on, or incidental to, the foregoing,

(d) in addition to conditions that may be, or are required to be, attached to a licence or revised licence by reason of the foregoing or any other provision of this Part, enable the Agency to attach to a licence or revised licence in respect of a specified class or classes of activity such conditions as the Agency considers appropriate in the circumstances.

(5) Nothing in *subsection (4)* shall be construed as enabling the Minister to exercise any power or control in relation to the performance by the Agency, with respect to a particular licence, of its functions under this Part.

(6) A person who fails to comply with any condition attached to a licence or revised licence shall be guilty of an offence.

(7) The Agency, or the sanitary authority, as the case may be, may recover the amount of any payment due to it arising from a condition attached to a licence or revised licence as a simple contract debt in any court of competent jurisdiction.

(8) Where a permission under section 34 of the Act of 2000 has been granted or an application has been made for such permission in relation to development comprising or for the purposes of an activity, the Agency—

(a) may consult with the planning authority in whose functional area the activity is or will be situate in relation to any development which is necessary to give effect to any conditions to be attached to a licence or revised licence and which the Agency considers is not the subject of a permission or an application for a permission under section 34 of the Act of 2000, and

(b) may attach to the licence or revised licence such conditions related to the above-mentioned development as may be specified by the planning authority for the purposes of the proper planning and sustainable development of the

area or stricter conditions as the Agency may consider necessary for the prevention, limitation, elimination, abatement or reduction of emissions.

(9) Where a planning authority is consulted in accordance with *subsection (8)(a)*, the Agency may specify a period (which period shall not in any case be less than 3 weeks from the date of the request) within which observations must be made.

(10) The Agency may, at any time after expiration of the period specified by it under *subsection (9)* for making observations, make its decision on the application or review.

(11) Notwithstanding the requirements of Part III of the Act of 2000, works consisting of, or incidental to, the carrying out of development referred to in *paragraph (a)* of *subsection (8)* in respect of which conditions have been attached under *paragraph (b)* of that subsection to the licence or revised licence concerned shall be exempted development within the meaning, and for the purposes, of the Act of 2000.]

F138[Best available techniques, emission limit values, equivalent parameters and conditions attached to a licence.

86A. (1) This section applies to a licence or revised licence under this Part in relation to an industrial emissions directive activity.

(2) Without prejudice to the generality of *section 83(1)*, the Agency shall not grant a licence or revised licence, unless it is satisfied that the best available techniques will be utilised to prevent or eliminate or, where that is not practicable, to minimise emissions and the impact on the environment as a whole.

(3)(a) Without prejudice to the generality of *section 86(1)*, the Agency shall, in accordance with this section, apply BAT conclusions as a reference for attaching one or more conditions to a licence or a revised licence granted under this Part.

(b) The Agency may supplement or replace emissions limit values referred to in *section 83(4)(a)* or *86(1)(a)(i)*, by attaching one or more conditions to a licence or revised licence which specify equivalent parameters or technical measures, where the Agency is satisfied that to do so would secure an equivalent level of environmental protection.

(c)(i) Where the Agency attaches one or more conditions to a licence or revised licence which specify requirements necessary to give effect to a best available technique not described in any of the relevant BAT conclusions, the Agency shall determine that technique under *section 5(3)(b)*, *83(5)(a)(v)* and *86(3) and subsection (4)*.

(ii) Where any of the relevant BAT conclusions referred to in *subparagraph (i)* describe a best available technique, but do not contain emission levels associated with the technique, the Agency, under *subparagraph (i)*, shall determine a best available technique which provides a level of environmental protection equivalent to the best available techniques described in the BAT conclusions and shall attach one or more conditions to a licence or revised licence which specify requirements necessary to give effect to that best available technique.

(iii) Where any of the BAT conclusions do not apply to an industrial emissions directive activity or type of production process carried out within an installation or address all of the potential environmental effects of the industrial emissions directive activity or process, the Agency shall, after prior consultation with the applicant or licensee concerned, determine under *section 5(3)(b)* a best available technique for the industrial emissions directive activity or process concerned, and shall attach one or more conditions to a licence or revised licence in relation to the activity or process which specify requirements necessary to give effect to that best available technique.

(4)(a) For the purposes of this section, the Agency shall attach one or more conditions under *section 83(4)(a)* or *86(1)(a)(i)* to a licence or revised licence

which specify emission limit values, so that under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5) of the Industrial Emissions Directive.

(b) Emission limit values specified by the Agency under *paragraph (a)*—

(i) subject to *subsection (5)(a)*, shall not exceed the emission levels associated with best available techniques, or

(ii) subject to *subsection (5)(b)*, shall differ from those referred to in *subparagraph (i)* in terms of values, periods of time and reference conditions.

(5)(a) Where emission limit values are specified under *subsection (4)(b)(i)* such emission limit values shall be expressed for the same or shorter periods of time and under the same reference conditions as those emission levels associated with the best available techniques.

(b) Where emission limit values are specified under *subsection (4)(b)(ii)*, the Agency shall—

(i) in addition to any condition under *section 86(1)(a)(iva)*, attach a condition to the licence or revised licence specifying that—

(I) results of monitoring emissions are available for the same periods of time and reference conditions as for the emissions levels associated with the best available techniques, and

(II) a summary of results of monitoring emissions shall be furnished to the Agency at least annually, in a form which enables the Agency to compare emission levels with emission level values associated with best available techniques,

and

(ii) assess, not less than annually, the results of monitoring emissions to establish if emissions, under normal operating conditions, have not exceeded the emission levels associated with best available techniques.

(6)(a) The Agency, where it is satisfied on an examination by it of an application for a licence or the review of a licence or revised licence that attaching one or more conditions to the licence or revised licence under *subsection (4)* for the purposes of the achievement of emission levels associated with the best available techniques as described in BAT conclusions, would lead to disproportionately higher costs compared to the environmental benefits due to—

(i) the geographical location or the local environmental conditions of the installation concerned, or

(ii) the technical characteristics of the installation concerned,

may, in granting the licence or revised licence, attach one or more conditions which specify less strict emission limit values than would otherwise be required under *subsection (4)*.

(b) The Agency shall document in a schedule to the licence or revised licence, the reasons for the attachment of one or more conditions specifying less strict emission limit values under *paragraph (a)*, including the result of the examination by the Agency and the justification for the conditions imposed.

(c) The Agency shall re-examine the attachment of conditions to a licence or revised licence which specify less strict emission limit values under *paragraph (a)*, on any subsequent review of the licence or revised licence concerned.

(7) The Agency, in considering an application for a licence or a revised licence, may attach one or more conditions which specify less strict emission limit values than would otherwise be required under *subsection (4)* and *section 86(3)(c)* for the testing and use of emerging techniques for a total period, specified in the conditions, not exceeding 9 months provided that the Agency is satisfied that after the period so specified, either the technique will have ceased or the activity will have achieved not less than the emission levels associated with the best available techniques.

(8) The Agency, in considering an application for a licence or a revised licence, may, where appropriate, take into account the effect of a waste water treatment plant when determining the emission limit values to apply in relation to indirect releases of polluting substances into water from an installation, but the Agency shall not grant a licence or revised licence on that basis unless it is satisfied that—

(a) the licence or revised licence, or any conditions attached thereto, shall secure that an equivalent level of protection of the environment as a whole is guaranteed, and

(b) so granting will not lead to higher levels of pollution in the environment.

(9) Information to be provided by the applicant or licensee for the purpose of a review of a licence or a revised licence under *section 90* and prescribed in regulations under *section 89* or, as the case may be, requested and considered necessary by the Agency under *section 90(7)* shall, for the purposes of this section, include in particular—

(a) results of emissions monitoring, and

(b) other data that enables the Agency to make a comparison of the operation of the installation concerned with the best available techniques described in the applicable BAT conclusions and with the emission levels associated with the best available techniques.

(10) Other than where *subsection (4)* or *(6)* applies, the Agency shall apply conclusions on best available techniques from BAT reference documents adopted by the Commission prior to 6 January 2011 as BAT conclusions pending the adoption of decisions on BAT conclusions under Article 13(5) of the Industrial Emissions Directive.

(11) In this section "soil" means the top layer of the Earth's crust situated between the bedrock and the surface and the soil is composed of mineral particles, organic matter, water, air and living organisms.]

F139[Baseline report and permanent cessation of activity.

86B. (1) Where an industrial emissions directive activity involves the use, production or release of relevant hazardous substances, and having regard to the possibility of soil and groundwater contamination at the site of an installation concerned, the Agency shall require an applicant under this Part for a licence or review of a licence or revised licence relating to the activity, including such a review by the Agency of its own volition, to furnish to the Agency a baseline report in accordance with regulations under *section 89*.

(2) In relation to an installation, a baseline report shall contain the information necessary to determine the state of contamination of soil and groundwater at the time that the report is drawn up in order that a quantified comparison may be made to the state of the site upon the permanent cessation (including cessation by abandonment) of the industrial emissions directive activity concerned and the applicant in preparing the baseline report shall include any information prescribed in regulations under *section 89*.

(3) Notwithstanding the generality of *subsection (2)*, a baseline report shall include at least the following information—

- (a) the current use and, where available, the past use of the site,
- (b) any available information—
 - (i) on soil or groundwater measurements that reflect the state of the site at the time that the baseline report is drawn up, or
 - (ii) on new soil and groundwater measurements, having regard to the possibility of soil and groundwater contamination by the hazardous substances proposed to be used, produced or released by the installation concerned.

(4) Any information furnished to the Agency or to any other body under any enactment or rule of law or a law of the European Union, which complies with the requirements of *subsection (2)* or *(3)*, may be furnished to the Agency in or with the baseline report.

(5) For the purposes of determining the information to be contained in a baseline report under this section the Agency shall have regard to, and shall for the purposes of *subsection (2)*, make publicly available any guidance documents published by the Commission of the European Union in accordance with Article 22(2) of the Industrial Emissions Directive.

(6) Upon the permanent cessation (including cessation by abandonment) of an industrial emissions directive activity the licensee concerned shall assess the level of contamination of soil and groundwater by the relevant hazardous substances used, produced or released by the installation concerned, and where the installation has caused significant pollution of soil or groundwater by relevant hazardous substances compared to any levels of contamination of soil and groundwater established in the baseline report that licensee shall take the necessary measures, taking into account the technical feasibility of such measures, to address that pollution so as to return the site to the state established in the baseline report.

(7) Without prejudice to *subsection (6)* where, upon permanent cessation (including cessation by abandonment) of an industrial emissions directive activity the level of contamination of soil or groundwater at the site of the installation concerned—

- (a) poses a significant risk to human health or the environment, and
- (b) occurred as a result of any industrial emissions directive activity, to which Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 applied and in respect of which a licence is or was in being under this Part or Part V of the Act of 1996, prior to review of the licence or revised licence under section 90, for the first time after the coming into operation of the European Union (Industrial Emissions) Regulations 2013,

and taking account of the condition of the site of the installation established in information already furnished to the Agency, the licensee shall take all necessary actions aimed at removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current use or future use in relation to which necessary approval or consent has been granted, ceases to pose a significant risk.

(8) On permanent cessation (including cessation by abandonment) of an industrial emissions directive activity in relation to which, under this section, no baseline report is required, the licensee shall take all necessary actions aimed at removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current use or future use in relation to which a necessary licence, approval or consent under any enactment has been granted, ceases to pose any significant risk to human health or the environment due to contamination of soil and groundwater as a result of the licensed activities concerned and taking account of

the condition of the site established in information, including information furnished with an application for a licence or revised licence, already furnished to the Agency.

(9) In *subsections (7) and (8)* information already furnished to the Agency is information furnished in relation to—

- (a) a licence under this Part, in accordance with Regulations under *section 89*, or
- (b) a licence under Part V of the Act of 1996 in accordance with Regulations under *section 45* of that Act.

(10) The Agency shall make relevant information publicly available on the measures taken under *subsection (6)* or the necessary actions taken under *subsection (7) or (8)* upon the permanent cessation of an industrial emissions directive activity.

(11) In this section—

"baseline report" means information on the state of soil and groundwater contamination by relevant hazardous substances;

"soil" has the meaning given by *section 86A(11)*.]

F140[Processing of applications for licences or reviews of licences.

87.—(1) Without prejudice to the requirements of any regulations under *section 85 or 89*—

- (a) where an application F141[, other than a designated application,] is to be made to the Agency for a licence under *section 83*, or the review of a licence or a revised licence under *section 90*, the applicant shall notify in writing the planning authority in whose functional area the activity is or will be situate and such other person (if any) as may be prescribed, and shall publish or give such notices as may be prescribed under *section 89*, and
- (b) where the Agency proposes to review a licence or revised licence under *section 90* of its own volition, it shall publish or give such notice as may be prescribed under *section 89*, and shall notify in writing the licensee and the planning authority in whose functional area the activity is situate and such other person (if any) as may be prescribed, of its intention to review the licence or revised licence.

F142[(1A) In *subsections (1B) to F143[(1)]*—

"application for a licence" means an application F141[other than a designated application] made to the Agency—

- (a) for a licence or a revised licence under this Part, or
- (b) by the licensee under *section 90(1)(b)* for a review of a licence or a revised licence.

"application for permission" means—

- (a) an application for permission for development under Part III of the Act of 2000,
- (b) an application for approval for development under *section 175, 177AE, F144[181(2A),] 181A, 182A, 182C or 226* of the Act of 2000, or
- (c) an application for substitute consent under *section 177E* of the Act of 2000;

"grant of permission" means—

- (a) a grant of permission for development under Part III of the Act of 2000,
- (b) an approval for development under *section 175, 177AE, 181B, 182B, 182D or 226* of the Act of 2000, or

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

(1B) Where an application for a licence is made to the Agency in respect of an activity that involves development or proposed development for which a grant of permission is required F144[or that involves development that is carried out or is proposed to be carried out F145[...]] pursuant to an order made, or proposed to be made, under section 181(2)(a) of the Act of 2000 (in this section referred to as a "section 181(2)(a) order"),] the applicant shall furnish to the Agency—

(a) confirmation in writing from a planning authority or An Bord Pleanála, as the case may be, that an application for permission comprising or for the purposes of the activity to which the application for a licence relates, is currently under consideration by the planning authority concerned or An Bord Pleanála, and in that case shall also furnish to the Agency either—

(i) a copy of the F146[environmental impact assessment report] where one is required by or under the Act of 2000 relating to that application for permission, or

(ii) confirmation in writing from the planning authority or An Bord Pleanála that an environmental impact assessment is not required by or under the Act of 2000 F144[or was exempted, in accordance with that Act, from being so required,]

or

(b) a copy of a grant of permission comprising or for the purposes of the activity to which the application for the licence relates that was issued by the planning authority concerned or An Bord Pleanála F144[or where a section 181(2)(a) order has been made, a copy of that order,] and in that case shall also furnish to the Agency either—

(i) where the planning authority or An Bord Pleanála, accepted or required the submission of an F146[environmental impact assessment report] in relation to the application for permission, a copy of the F146[environmental impact assessment report], or

(ii) confirmation in writing from the planning authority or An Bord Pleanála that an environmental impact assessment was not required by or under the Act of 2000 F144[or was exempted, in accordance with that Act, from being so required].

F147[(1C) Where an application for a licence is made to the Agency in respect of an activity referred to in *subsection (1B)* but the applicant does not comply with that subsection, the Agency shall refuse to consider that application and shall inform the applicant accordingly.]

(1D) The Agency, on receipt of an application for a licence where an F146[environmental impact assessment report] is required under *subsection (1B)(a)(i)* shall—

(a) within 2 weeks of the date of receipt of such application notify the planning authority in whose functional area the activity is or will be situate or An Bord Pleanála, as the case may be, that it has received an application to which *subsection (1B)(a)(i)* applies and request the planning authority or An Bord Pleanála to respond to the Agency within 4 weeks of receipt of the notice and furnish any observations that the planning authority or An Bord Pleanála has in relation to the application for a licence,

(b) consider any observations furnished to the Agency by the planning authority or An Bord Pleanála following a request under *paragraph (a)* before notifying under *section 87(2)*, indicating its proposed determination in relation to the application for a licence,

- (c) enter into consultations, as the Agency considers appropriate, with the planning authority or An Bord Pleanála in relation to any environmental impacts of the proposed development comprising or for the purposes of the activity to which the application for a licence relates,

F147[(d) ensure that—

- (i) a grant of permission has been made or a decision has been made to refuse a grant of permission for development comprising or for the purposes of the activity to which the application for the licence relates and the period for any appeal under section 37 of the Act of 2000 has expired without an appeal being made before notifying under *section 87(2)*, indicating its proposed determination in relation to the application for a licence, or
- (ii) a section 181(2)(a) order has been made for development comprising or for the purposes of the activity to which the application for the licence relates or An Bord Pleanála has refused to grant approval under section 181(2L) of the Act of 2000 in respect of the development before notifying under *section 87(2)*, indicating its proposed determination in relation to the application for a licence.]

(1E) The Agency, on receipt of an application for a licence where an F146[environmental impact assessment report] is required under *subsection (1B)(b)(i)* shall—

- (a) within 2 weeks of the date of receipt of such application notify the planning authority in whose functional area the activity is or will be situated or An Bord Pleanála, as the case may be, that it has received an application to which *subsection (1B)(b)(i)* applies and request the planning authority or An Bord Pleanála to respond to the Agency within 4 weeks of receipt of the notice—
- (i) stating whether the activity to which the application for a licence relates is permitted by the grant of permission referred to in *subsection (1B)(b)* F144[or by an approval granted under section 181(2L) of the Act of 2000, as the case may be,] and
- (ii) furnishing all documents relating to the environmental impact assessment carried out by the planning authority or An Bord Pleanála in respect of the development or proposed development to which the grant of permission referred to in *subsection (1B)(b)* F144[or an approval granted under section 181(2L) of the Act of 2000, as the case may be,] refers and any observations that the planning authority or An Bord Pleanála has in relation to the application for a licence,
- (b) consider any observations furnished to the Agency by the planning authority or An Bord Pleanála following a request under *paragraph (a)* before notifying under *section 87(2)* indicating its proposed determination in relation to the application for a licence,
- (c) enter into consultations, as the Agency considers appropriate, with the planning authority or An Bord Pleanála in relation to any environmental impacts of the proposed development or development in being, as the case may be, comprising or for the purposes of the activity to which the application for a licence relates.

(1F) Where—

- (a) a planning authority concerned or An Bord Pleanála gives notice to the Agency of an application for permission comprising or for the purposes of an activity requiring a licence under *section 83* or a review on the application of the licensee, under *section 90(1)(b)*, of a licence or a revised licence, and
- (b) the application for permission is accompanied by an F146[environmental impact assessment report] or in relation to which an F146[environmental

impact assessment report] was sought by the planning authority or An Bord Pleanála,

the Agency shall—

- (i) satisfy itself that the development or proposed development the subject of the application for permission is development comprising or for the purposes of an activity requiring a licence or a revised licence under section 83 or a review, on the application of the licensee under *section 90(1)(b)* of a licence or a revised licence,
- (ii) forward to the planning authority or An Bord Pleanála, as the case may be, such observations as it has on the application for permission, including the F146[environmental impact assessment report], and
- (iii) enter into such consultations with the planning authority or An Bord Pleanála in relation to the environmental impacts of the proposed development as the Agency, or planning authority or An Bord Pleanála, as the case may be, considers necessary to enable completion of the assessment.

(1G)(a) The environmental impact assessment required to be carried out by the Agency under *section 83(2A)*, where an application for a licence is in respect of an activity that involves development or proposed development that is the subject of an environmental impact assessment by the planning authority concerned or An Bord Pleanála under the Act of 2000, may be carried out by the Agency in part or in whole by way of consultation with, or the submission of observations to, that planning authority or An Bord Pleanála.

(b) Where an application for permission relates to development or proposed development comprising or for the purposes of an activity in respect of which a licence under this Part is required—

(i) in relation to which a grant of permission is required, which development is of a class prescribed by regulations made under section 176 of the Act of 2000 but does not exceed a quantity, area or limit prescribed under those regulations, and

(ii) in respect of which, the planning authority concerned or An Bord Pleanála is obliged under the Act of 2000 to make a determination whether an environmental impact assessment is required,

the Agency shall, when requested by the planning authority concerned or An Bord Pleanála, consult with or provide observations to the planning authority or An Bord Pleanála to assist the planning authority or An Bord Pleanála in its deliberations in relation to the determination referred to in paragraph (ii) and shall accept the determination of the planning authority or An Bord Pleanála so made.

(1H)(a) Where the Agency receives an application for a licence in respect of an activity that involves development or proposed development for which a grant of permission is not required and the Agency, under *section 83(2A)* decides that an environmental impact assessment is required in relation to the activity concerned, the Agency shall request the applicant to submit an F146[environmental impact assessment report] and where the applicant fails to submit F148[such report] within the period specified in the request, or any additional period as may be specified by the Agency, the application for a licence shall be deemed to be withdrawn.

(b) Where an F146[environmental impact assessment report] is submitted to the Agency in accordance with a request under *paragraph (a)*, the application for a licence shall be deemed to be made on the date of receipt by the Agency of the F146[environmental impact assessment report].

- (c) Where an F146[environmental impact assessment report] is submitted to the Agency in accordance with a request under *paragraph (a)*, the Agency shall do the following—
- (i) within 2 weeks of the date of receipt of F148[such report] notify the planning authority in whose functional area the activity is or will be situate that it has received an application to which this subsection applies and request the planning authority concerned to respond to the Agency within 4 weeks of the date of the notice and furnish any observations that the planning authority has in relation to the application for a licence including the F146[environmental impact assessment report],
 - (ii) consider any observations furnished to the Agency following a request under *subparagraph (i)* by the planning authority before notifying under *section 87(2)* indicating its proposed determination in relation to the application for a licence, and
 - (iii) enter into consultations, as the Agency considers appropriate, with the planning authority in relation to any environmental impacts of the proposed activity to which the application for a licence relates.]

F149[(1)(a) This subsection applies—

- (i) notwithstanding *subsections (1B) to (1H)*,
 - (ii) to an application for a licence made to the Agency before 30 September 2012.
- (b) Where the Agency is considering an application for a licence to which this subsection applies and the Agency under *section 83(2A)* decides that an environmental impact assessment is required in relation to the activity concerned, the Agency shall, if an F146[environmental impact assessment report] was not submitted with the application for a licence, request the applicant to submit an F146[environmental impact assessment report] and where the applicant fails to submit such statement within the period specified in the request, or any additional period as may be specified by the Agency, the application for a licence shall be deemed to be withdrawn.
- (c) Where an F146[environmental impact assessment report] is submitted to the Agency with the application for a licence or in accordance with a request under *paragraph (b)*—
- (i) the Agency shall consider the content of the F146[environmental impact assessment report] and any other material including maps or plans submitted as part of the application for a licence and determine whether that content adequately identifies, describes, and assesses the direct and indirect effects of the proposed activity on the environment, and
 - (ii) if the Agency determines that the F146[environmental impact assessment report] and other material does not so adequately identify, describe or assess, the Agency shall give notice in writing to the applicant for the licence requesting further information, which notice shall—
 - (I) identify the manner in which the content of the F146[environmental impact assessment report] and other material is inadequate, and
 - (II) require the applicant for the licence to furnish, within the period specified in the notice, to the Agency additional information required to correct the inadequacy so identified.
- (d) Where the applicant concerned fails to comply with a requirement under *paragraph (c)*, the Agency may, as it considers it appropriate having regard to the extent of the failure, inform the applicant, by notice in writing of such

failure and that the application for a licence cannot be considered by the Agency.

(e) Where an F146[environmental impact assessment report] is submitted to the Agency in accordance with a request under *paragraph (b)*, the application for a licence shall be deemed to be made on the date of receipt by the Agency of the F146[environmental impact assessment report] and this subsection shall continue to apply to the application for a licence notwithstanding that the date of receipt shall be on or after 30 September 2012.

(f) Where an F146[environmental impact assessment report] is submitted to the Agency in accordance with a request under *paragraph (b)*, the Agency shall do the following—

(i) within 2 weeks of the date of receipt of such statement notify the planning authority in whose functional area the activity is or will be situate that it has received an application to which this subsection applies and request the planning authority concerned to respond to the Agency within 4 weeks of the receipt of the notice and furnish any observations that the planning authority has in relation to the application for a licence including the F146[environmental impact assessment report],

(ii) consider any observations furnished to the Agency following a request under *subparagraph (i)* by the planning authority before making its decision under *section 83(1)* or *section 90(2)* in relation to the application for a licence, and

(iii) enter into consultations, as the Agency considers appropriate, with the planning authority or any person or body that it considers appropriate in relation to any environmental impacts of the proposed activity to which the application for a licence relates.

(g) Where an F146[environmental impact assessment report] was submitted with the application for a licence, the Agency shall do the following—

(i) notify the planning authority in whose functional area the activity is or will be situate that it has received an application to which this subsection applies and request the planning authority to respond to the Agency within 4 weeks of receipt of the notice and furnish any observations that the planning authority has in relation to the application for a licence including the F146[environmental impact assessment report],

(ii) consider any observations furnished to the Agency following a request under *subparagraph (i)* by the planning authority before making its decision under *section 83(1)* or *section 90(2)* in relation to the application for a licence, and

(iii) enter into consultations, as the Agency considers appropriate, with the planning authority or any person or body that it considers appropriate in relation to any environmental impacts of the proposed activity to which the application for a licence relates.]

(2) Before making its decision under *section 83* on an application for a licence F141[other than a designated application], or under *section 90* on the review of a licence or revised licence (including such a review conducted by it of its own volition) F150[including an application for a licence, within the meaning of *subsection (1A)*, to which *section 83(2A)* applies], the Agency shall notify—

(a) the planning authority in whose functional area the activity is or will be situate,

F151[(aa) where An Bord Pleanála is considering or has considered an application for permission for development comprising or for the purposes of the activity in relation to which the application for a licence to which *section 83(2A)* applies is required, An Bord Pleanála,]

F144[(ab) where a section 181(2)(a) order has been made for development comprising or for the purposes of the activity to which the application for a licence relates, the Minister who made the order,]

(b) the applicant or the licensee, as the case may be,

(c) any person who made a written submission in relation to the application or the review, and

(d) such other persons as may be prescribed,

and that notification shall indicate the manner in which the Agency proposes to determine the application or the review and, where it is proposed to grant a licence or revised licence, specify where a copy of the proposed licence or proposed revised licence may be obtained.

(3) A notification provided for under *subsection (2)* shall, without prejudice to the requirements of any regulations under *section 85*, be given within the period of 8 weeks beginning on the date of receipt by the Agency of the application for a licence under *section 83* or for the review of a licence or revised licence under *section 90* or, in the case of a review of a licence by the Agency under *section 90* of its own volition—

(a) unless *paragraph (b)* applies, on the date of publication of the notice under *subsection (1)(b)*, in relation to the review,

(b) if the Agency has required under *section 90(7)* documents, particulars or other information to be furnished, on the date on which that requirement is complied with or, if that requirement is not complied with within the period specified in the requirement in that behalf, on the date immediately following the expiry of that period.

F152[(3A)(a) Notwithstanding *subsection (3)*, in relation to an application for a licence within the meaning of *subsection (1A)*, to which *subsection F153[(1B) or (1I)]* applies, the Agency may extend the period of 8 weeks referred to in *subsection (3)* by such period as the Agency, in consultation with the planning authority concerned or An Bord Pleanála, as the case may be, considers necessary for completion of consultations referred to in *subsection (1D)*, (1E), F153[(1F), (1H) or (1I)] with the planning authority or An Bord Pleanála or to enable the Agency to comply with *subsection (1D)(d)*.

(b) The Agency shall give notice in writing of the extension of the period under *paragraph (a)* to a person referred to in *paragraph (a), (aa), (b), (c) or (d)* of *subsection (2)*.]

F154[(3B)(a) Notwithstanding *subsection (3)*, in relation to an application for a licence within the meaning of *subsection (1A)*, to which *subsection (1I)* applies, the Agency may extend the period of 8 weeks referred to in *subsection (3)* by such period as the Agency considers necessary to enable the Agency to comply with *subsection (1I)*.

(b) The Agency shall give notice in writing of the extension of the period under *paragraph (a)* to a person referred to in *paragraph (a), (aa), (b), (c) or (d)* of *subsection (2)*.]

(4) The Agency shall, in relation to an application for a licence F141[other than a designated application], or the review of a licence or revised licence—

(a) in case no objection is taken against the proposed determination as indicated under *subsection (2)*, or

(b) in case an objection or objections is or are taken against the proposed determination as indicated under *subsection (2)* and the objection or objections is or are withdrawn,

make its decision in accordance with the proposed determination as indicated under *subsection (2)* and, where it is proposed to grant a licence or revised licence, grant the licence or revised licence as soon as may be after the expiration of the appropriate period.

(5) Any person may, subject to compliance with the requirements of any regulations under *sections 89* and *99A* at any time before the expiration of the appropriate period, object to the proposed determination as indicated under *subsection (2)*, and shall include with the objection the grounds for the objection.

(6) (a) A person making an objection under *subsection (5)* may request an oral hearing of the objection.

(b) (i) A request for an oral hearing of an objection shall be made in writing to the Agency and shall be accompanied by such fee (if any) as may be payable in respect of such request in accordance with regulations under *section 99A*.

(ii) A request for an oral hearing of an objection which is not accompanied by such fee (if any) as may be payable in respect of such request shall not be considered by the Agency.

(c) A request for an oral hearing of an objection shall be made before the expiration of the appropriate period, and any request received by the Agency after the expiration of that period shall not be considered by it.

(7) An objection, or a request for an oral hearing under *subsection (6)*, shall be made—

(a) by sending the objection or request by prepaid post to the headquarters of the Agency, or

(b) by leaving the objection or request with an employee of the Agency, at the headquarters of the Agency, during office hours, or

(c) by such other means as may be prescribed.

(8) (a) Where a request for an oral hearing of an objection is made in accordance with *subsection (7)*, or otherwise where an objection has been made, the Agency shall have an absolute discretion to hold an oral hearing in relation to the objection and the related matters and, if it decides to hold such a hearing, it shall give notice in writing of that decision to—

(i) the applicant, or in the case of a review, the licensee,

(ii) the local authority in whose functional area the activity the subject matter of a licence application or review will be or is situated,

F155[(iia) where a planning authority concerned or An Bord Pleanála is considering or has considered an application for permission for development comprising or for the purposes of the activity in relation to which the application for a licence to which *section 83(2A)* applies is required, the planning authority or F147[An Bord Pleanála,]]

F144[(iib) where a section 181(2)(a) order has been made for development comprising or for the purposes of the activity to which the application for a licence relates, the Minister who made the order,]

(iii) any person who requested an oral hearing, and

(iv) such other person as may be prescribed.

(b) Where the Agency decides not to hold an oral hearing under this subsection, it shall give notice in writing of its decision and of the reasons for the decision to the person who requested the oral hearing.

(9) It shall be a duty of the Agency to ensure that a decision by it to hold an oral hearing, and a decision by it on the application for a licence or on the review referred to in *subsection (2)* of a licence or revised licence whether or not an oral hearing has been held, shall be given as expeditiously as may be and for that purpose the Agency shall take all such steps as are open to it to ensure that, in so far as is practicable, there are no avoidable delays at any stage in the consideration of objections.

F156[(9a) Before making a decision referred to in *section 83(1)* or *90(2)* in relation to an application for a licence in respect of which an environmental impact assessment is required under *section 83(2A)*, the Agency shall—

(a) duly take into account—

(i) the environmental impact assessment report submitted under *section 83(2A)(d)*,

(ii) any additional information furnished under *section 83(2A)(e)* and *(f)(ii)(II)*,

(iii) any submissions made in relation to the likely significant effects on the environment of the activity to which the application relates, and

(iv) in the case of an application to which *section 85* applies the results of consultations with the other Member States concerned,

(b) consider any other evidence that it has obtained under this Part in relation to the likely significant effects on the environment of the activity to which the application relates, and

(c) taking into account the results of the examination referred to in *paragraphs (a)* and *(b)*, reach a reasoned conclusion on the significant effects on the environment of the activity to which the application relates.

(9b) The Agency shall be satisfied that the reasoned conclusion referred to in *subsection (9a)* is still up to date when it makes a decision referred to in *section 83(1)* or *90(2)* in relation to an application for a licence in respect of which an environmental impact assessment is required under *section 83(2A)* and shall incorporate into the decision—

(a) the reasoned conclusion, and

(b) any environmental conditions attached to the decision, a description of any features of the project or measures envisaged to avoid, prevent or reduce and, where possible, offset significant adverse effects on the environment and any appropriate monitoring measures.

(9c) The Agency shall make any feature of the project or measure envisaged to avoid, prevent, reduce or offset significant adverse effects on the environment, and any monitoring measure incorporated into a decision under *subsection (9b)* a condition of any licence granted on foot of the decision.]

F157[(9A) When—

(a) in relation to an application for a licence F141[, other than a designated application,] under this Part a decision to grant or refuse the licence has been taken, or

(b) a decision is made on the review of a licence or a revised licence under *section 90(1)(b)* on the application of a licensee,

the Agency, in accordance with regulations under *section 89*, shall inform the persons referred to in or prescribed under *subsection (2)*, including the public, of its decision and shall make available the following information:

(i) the content of the decision and any conditions attached thereto;

- (ii) an evaluation, subject to *section 83(2A)*, of the direct and indirect effects of the activity or proposed activity on the factors referred to in F158[*subparagraphs (I) to (IV) of paragraph (ii)*] of the definition of environmental impact assessment in *section 83(2A)(a)* and the interaction between those factors;
- (iii) having examined any submission or observation made to the Agency—
- F159[(I) the main reasons and considerations on which the decision (including, in the case of an application in respect of which an environmental impact assessment is required under *section 83(2A)*, a decision to refuse an application) is based, and]
- (II) the main reasons and considerations for the attachment of any conditions,
- including reasons and considerations arising from or related to submissions or observations made by a member of the public F160[and, in the case of an application in respect of which an environmental impact assessment is required under *section 83(2A)*, a summary of the results of the consultations and the information gathered pursuant to *section 83(2A)* and *section 85* together with a description of how these results have been incorporated into the decision or otherwise;]
- (iv) a description, where necessary, of the main measures to be taken to avoid, reduce and, if possible, offset the major adverse effects of the activity or proposed activity;
- (v) any reports referred to in *section 83(2A)(g)*;
- (vi) information on the procedures available to the persons referred to in or prescribed under *subsection (2)*, including the public, to review the substantive and procedural legality of the decision.]
- F161[(10) (a) Subject to *paragraph (b)*, 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 of it 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 the period of 8 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.
- (b) Where, on application to the High Court, the Court considers that in the particular circumstances there is good and sufficient reason for doing so, the Court may extend the period referred to in *paragraph (a)*.]
- F162[(c) The High Court shall not grant leave for judicial review under this section unless it is satisfied that:
- (i) the applicant has a sufficient interest in the matter which is the subject of the application, or
- (ii) the applicant—
- (I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection, and
- (II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.
- (d) A sufficient interest for the purposes of *subparagraph (i) of paragraph (c)* is not limited to an interest in land or other financial interest.

(e) The Court, in determining either an application for leave for judicial review under this section, or an application for judicial review on foot of such leave, shall act as expeditiously as possible consistent with the administration of justice.

(f) In *paragraph (c)* "State authority, a public authority or governmental body or agency" means—

(i) a Minister of the Government;

(ii) the Commissioners of Public Works in Ireland;

(iii) a harbour authority within the meaning of the *Harbours Act 1946*;

(iv) a local authority within the meaning of the *Local Government Act 2001*;

(v) the Health Service Executive;

(vi) a person established—

(I) by or under any enactment (other than the Companies Acts),

(II) by any scheme administered by the Government, or

(III) under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;

(vii) a company (within the meaning of the Companies Acts), a majority of the shares in which are held by or on behalf of a Minister of the Government.]

(11) The provisions of this section shall not, to such extent as may be prescribed, apply to an application for a licence, or to the review (including a review by the Agency of its own volition) of a licence or revised licence, to discharge to a sewer.

(12) In this section, "the appropriate period" means the period of 28 days beginning on the day on which notification is sent under *subsection (2)* in respect of the matter concerned.

(13) When calculating the appropriate period or any other time limit under this Act or in any regulations made under this Act, the period between the 24th day of December and the 1st day of January, both days inclusive, shall be disregarded.]

F163[Agency may not grant licence in respect of designated development unless Minister has approved designated development

87A. The Agency shall not grant a licence under *section 83* in respect of designated development unless the Minister has approved the designated development, whether or not subject to conditions, in accordance with *section 7* of the Act of 2022.]

F164[Oral hearing and written report.

88.—(1) (a) An oral hearing provided for in *section 87* shall be conducted by a person or persons appointed for that purpose by the Agency.

(b) Subject to any regulations under *subsection (5)*, the manner in which a hearing aforesaid is conducted shall be at the discretion of the person or persons appointed under this subsection but it shall be the duty of that person or those persons, as the case may be, to ensure that the hearing is conducted without undue formality.

(2) The person or persons appointed under *subsection (1)* may take evidence on oath or affirmation at the oral hearing and for that purpose may administer oaths or affirmations, and a person giving evidence at such a hearing shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(3) The person or persons appointed under *subsection (1)* shall make a written report on the objection or the objections made under *section 87(5)* and the hearing to the Agency and shall include in the report a recommendation relating to the grant or refusal of a licence or a revised licence and, where appropriate, the conditions to be attached to the licence or revised licence.

(4) The Agency shall consider a report made under *subsection (3)* before making a decision on the application for a licence, or on the review of a licence or revised licence.

(5) The Minister may make regulations in relation to the conduct of an oral hearing and the procedures at such a hearing.]

F165 [Agency to take alternative assessment into account

88A. (1) Before making a decision under *section 83(1)* in relation to a designated application the Agency shall take into account the alternative assessment in such manner as the Minister may prescribe for the purpose of ensuring that the objectives of the EIA Directive are met.

(2) The Agency may make any feature of the project or measure envisaged to avoid, prevent, reduce or offset significant adverse effects on the environment, and any monitoring measure incorporated into the decision a condition of any licence granted on foot of the decision.

(3) The Agency shall incorporate into a decision in relation to a designated application such documents relating to the alternative assessment as the Minister may prescribe for the purposes of ensuring that the objectives of the EIA Directive are met, including a description of any features of the project or measures envisaged to avoid, prevent or reduce and, where possible, offset the significant adverse effects on the environment and any appropriate monitoring measures that relate to conditions to be attached to the licence to be granted on foot of the decision.]

F166 [Notice of decision in relation to designated application

88B. When a decision is taken under *section 83(1)*, in relation to a designated application, to grant or refuse a licence, the Agency shall inform the public, and such persons as may be prescribed in accordance with regulations under *section 89*, of its decision and shall make available to the public the following information:

- (a) the content of the decision and any conditions attached thereto;
- (b) the main reasons and considerations on which the decision is based;
- (c) any reports referred to in *section 83(2A)(g)*;
- (d) information on the procedures to review the substantive and procedural legality of the decision;
- (e) such other information as the Minister may prescribe.]

F167 [Regulations regarding licences.

89.—(1) The Minister may make regulations in relation to—

- (a) applications for the grant of licences, or for the review of licences or revised licences,
- (b) the review of licences or revised licences by the Agency of its own volition, and
- (c) the granting of licences or revised licences.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for all or any of the following—

- (a) the form and content of application and of licence,
- (b) the time within which an application for a licence shall be made relative to publication of a notice under *section 87(1)* and relative to an application for a permission under Part III of the Act of 2000,
- (c) the publication by applicants, licensees or the Agency of such notices as may be specified,
- (d) specifying the submissions, plans, documents and other information and particulars, including F168[environmental impact assessment reports], to be forwarded to the Agency or other specified person by applicants, licensees, objectors, or other persons within such periods as may be specified,

F169[(dd) specifying information to be contained in a baseline report for the purposes of *section 86B*,]

- (e) requiring applicants, licensees, objectors or other persons to furnish to the Agency or any other specified person, within such period as may be specified, such additional information or particulars relating to applications, including environmental impact statements, or reviews as the Agency may request,

F170[(ea) requiring applicants, licensees or other persons to furnish to the Agency or any other specified person, within such period as may be specified, any additional or supplemental information to enable the Agency to carry out an environmental impact assessment,

- (eb) requiring applicants, licensees or other persons to furnish information to the Agency, within such period as may be specified, in response to a request for additional or supplemental information under and for the purposes of *section 83(2A)(e)*.]

(f) without prejudice to the requirements of any regulations under *section 85*, extending the period within which a notification to which *section 87(3)* refers shall be published—

- (i) to 8 weeks beginning on the date on which a request for additional information, particulars or evidence under *paragraph (e) or (g)* is complied with,

(ii) to any period with the consent of the applicant or licensee,

- (iii) to 8 weeks beginning on the day on which any exemption under *section 172(3)(a)* of the Act of 2000 in relation to development to which the application relates has been granted by An Bord Pleanála,

(g) requiring the production, within such period as may be specified, of such evidence as the Agency may request for the purposes of verifying any information and particulars given by an applicant, licensee, objector or other person,

(h) procedures to be followed by the Agency in the processing of applications or reviews, including procedures for consultation in relation to an F168[environmental impact assessment report] whether or not an oral hearing is held, and the times within which such procedures shall be carried out,

(i) the publishing of decisions on applications or reviews and the reasons therefor and of any specified documents or other information in relation thereto, or

(j) requiring an applicant or licensee to defray or contribute towards the cost of any investigation carried out, caused to be carried out, or arranged for, by the Agency in relation to an application or review.

F171[(2A) Without prejudice to the generality of *subsection (1)*, regulations under this section shall make provision for an assessment (in this Part referred to as an "alternative assessment") to be carried out by the Agency in relation to a designated application, in such form and manner as may be prescribed, for the purposes of ensuring that the objectives of the EIA Directive are met.

(2B) The Minister may prescribe such requirements and such matters of procedure and administration as appear to the Minister to be necessary or expedient in respect of an alternative assessment.

(2C) Regulations for the purposes of *subsection (2A)* may in particular provide for all or any of the following:

- (a) the time periods within which the Agency is to carry out an alternative assessment;
- (b) the information, including supplementary or additional information where required, relating to the alternative assessment to be provided to the Agency by a person making a designated application;
- (c) the manner in which (which may include by electronic means) and the time periods within which, the information referred to in *paragraph (b)* is to be provided to the Agency;
- (d) requirements and procedures for consultation and public participation in relation to the alternative assessment and the provision of information obtained under the alternative assessment to the public;
- (e) the giving of notice, and publication of such notices as may be specified, in respect of the carrying out of the alternative assessment;
- (f) requirements and procedures for co-ordination of assessments in accordance with *subsection (2D)*;
- (g) a requirement that, as part of the alternative assessment, the Agency assess the impacts (if any) of the designated development on the species listed in Annex IV of the Council Directive 92/43/EEC of 21 May 1992⁴ on the conservation of natural habitats and of wild fauna and flora, amended by Council Directive 97/62/EC of 27 October 1997⁵, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003⁶, Council Directive 2006/105/EC of 20 November 2006⁷ and Council Directive 2013/17/EU of 13 May 2013⁸ and their breeding sites and resting places and consider whether there is a need for a derogation for the purpose of Article 16 of that Directive in respect of the designated development.

(2D) An alternative assessment shall be co-ordinated with any appropriate assessment of the designated development that is carried out under Part 5 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).]

(3) (a) A person who in relation to an application for a licence, or to a review of a licence or revised licence, under this Part, makes a statement in writing which to his knowledge is false or misleading in a material respect, shall be guilty of an offence.

⁴ O.J. No. L206, 22.7.1992, p.7.

⁵ O.J. No. L305, 8.11.1997, p.42.

⁶ O.J. No. L284, 31.10.2003, p.1.

⁷ O.J. No. L363, 20.12.2006, p.368.

⁸ O.J. No. L158, 10.6.2013, p.193.

(b) Where a person is convicted of an offence under this subsection, any licence or revised licence granted to that person, or to some other person on whose behalf the convicted person was authorised to act, consequent on the application or review in relation to which the information was furnished, shall stand revoked from the date of the conviction.

(4) Regulations under this section may contain—

(a) such incidental, supplementary, consequential and transitional provisions as appear to the Minister to be necessary for the purposes or in consequence of, or to give full effect to, the regulations,

(b) such provisions as appear to the Minister to be necessary for the purposes or in consequence of the requirements of Council Directive 85/337/EC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment¹.

(5) A defrayment or contribution the payment of which is required under regulations made under this section shall be payable on demand and, in default of being so paid, shall be recoverable as a simple contract debt in any court of competent jurisdiction.]

F172[Review of licences.

90.—(1) The Agency—

(a) shall, subject to *subsections (4) and (5) and section 99I(7)*, either periodically or after such period as may be prescribed (but not before the expiry of 3 years from the date on which the licence or revised licence was granted), review a licence or revised F173[licence,]

F174[(aa) in addition to its functions under *paragraph (a)*, in the case of an industrial emissions directive activity, and subject to *subsections (4) and (5) and section 99I(7)*, shall review a licence or revised licence relating to the main activity of an installation, within 4 years of the publication of a decision on BAT conclusions by the Commission of the European Union in accordance with Article 13(5) of the Industrial Emissions Directive as respects that main activity and in doing so the Agency shall—

(i) re-examine, and if necessary review the licence for the installation concerned for the purpose of assessing its compliance with the Industrial Emissions Directive and where applicable, *section 86A(4) or (6)*, and

(ii) in conducting such examination or review, take account of the new or updated BAT conclusions applicable to the installation and adopted by the Commission of the European Union in accordance with Article 13(5) of the Industrial Emissions Directive since the licence concerned was granted or, as the case may be, last reviewed under this Part.]

(b) may review a licence or revised licence at any time with the consent or on the application of the licensee.

(2) As soon as may be after it has completed a review under this section, the Agency may—

(a) in the case of a licence or revised licence—

(i) refuse to grant a revised licence, or

(ii) amend the licence by altering any or all of the conditions thereto (and a licence that is so amended is referred to in this Act as a "revised licence"),
or

(b) in the case of—

¹ O.J. No. L175, 05.07.1985, p.40.

- (i) a licence, grant to the licensee a licence (in this Act also referred to as a "revised licence") the conditions of which are, in such respects as the Agency thinks appropriate, different from those of the first-mentioned licence and the revised licence shall have effect in lieu of the first-mentioned licence,
 - (ii) a revised licence, exercise, in relation to it, a like power to that which it may exercise under *subparagraph (i)* in relation to a licence and a licence granted under this subparagraph is in this Act also referred to as a "revised licence" and such a licence shall have effect in lieu of the first-mentioned revised licence.
- (3) The reference where it first occurs in *subparagraph (ii)* of *subsection (2)(b)* to a revised licence includes—
- (a) a reference to a licence or revised licence in relation to which the powers under *subsection (2)(a)(ii)* have been exercised, and
 - (b) a reference to a revised licence previously granted or, as the case may be, last previously granted under *subparagraph (ii)* of *subsection (2)(b)*.
- (4) Notwithstanding anything in *subsection (1)*, a licence or revised licence—
- (a) shall be reviewed by the Agency if the Agency considers—
 - (i) that emissions from the activity to which the licence or revised licence relates are, or are likely to be, of such significance that the existing emission limit values, or equivalent parameters or technical measures specified in the licence or revised licence need to be reviewed or new such values, parameters or measures, as the case may be, need to be specified in the licence or revised licence,
 - (ii) that substantial changes in best available techniques make it possible to reduce emissions significantly from the said activity without imposing excessive costs,
 - F175[(iia) in the case of an industrial emissions directive activity to which no BAT conclusions apply, that developments in best available techniques make it possible to significantly reduce emissions from the activity,
 - (iib) in the case of an industrial emissions directive activity, that a new or revised environmental quality standard requires new or revised conditions to be attached to the licence or revised licence under section 83(5)(b),]
 - (iii) that the operational safety of the said activity requires techniques, other than those currently being used in respect of it, to be used, or
 - (iv) that such a review is required by virtue of any act adopted by an institution of the European Communities or any agreement entered into by the State, or any enactment passed or made after the licence or revised licence was granted or last reviewed under this section,
 - (b) may be reviewed by the Agency if—
 - (i) there is a proposal to make a substantial change to the nature or extent of an emission,
 - (ii) there has been a substantial change, which could not have reasonably been foreseen when the licence or revised licence was granted, in the condition of the environment or an environmental medium in the area in which the activity to which the licence or revised licence relates is situate,
 - (iii) evidence, which was not available when the licence or revised licence was granted, has become available, or a new standard is prescribed relating

to the contents or nature of the emission concerned or the effects of the emission on the environment.

(5) If—

- (a) a special control area order under [section 39 of the Air Pollution Act 1987](#), affecting any emission from the activity to which the licence relates comes into operation in relation to the area in which the activity is situate,
- (b) an air quality standard is specified in regulations made under [section 50 of the Air Pollution Act 1987](#), in relation to any emission from the activity to which the licence relates,
- (c) a relevant emission limit value is specified in regulations under [section 51 of the Air Pollution Act 1987](#), in relation to any emission from the activity to which the licence relates,
- (d) regulations under [section 26 of the Local Government \(Water Pollution\) Act 1977](#), relate to an effluent the discharge of which is authorised by such a licence or to the waters to which such effluent is discharged,
- (e) a relevant standard is prescribed under regulations made under [the European Communities Act 1972](#), or any other enactment, or
- (f) relevant regulations under [section 106](#) are made in relation to any noise emissions from the activity to which the licence relates,

the Agency shall, where necessary and notwithstanding anything in *subsection (1)*, as soon as may be after the regulations are made or the order comes into operation, as the case may be, review the licence or revised licence.

(6) In the review of a licence or revised licence under this section, the Agency shall have regard to—

- (a) any change in environmental quality in the area in which the activity to which the licence or revised licence relates is [F176](#)[situate,]
- [F177](#)[(aa) in the case of an industrial emissions directive activity, any emerging techniques in so far as such techniques are applicable to such activity and in particular those emerging techniques identified in the BAT reference documents relevant to the activity concerned, and]
- (b) the development of technical knowledge in relation to environmental pollution and the effects of such pollution,

since the licence or revised licence was granted or last reviewed.

(7) For the purposes of a review under this section, the Agency may, by notice served on the licensee, require the licensee to furnish to it, within such period as it specifies in the requirement, such documents, particulars or other information as it so specifies.]

[F178](#)[(8) For the purposes of a review of a licence or revised licence relating to an industrial emissions directive activity under this section, documents, particulars or other information requested and considered necessary by the Agency under *subsection (7)* provided by the licensee shall include, in particular—

- (i) results of emissions monitoring, and
- (ii) other data that enables a comparison of the operation of the installation with the best available techniques described in the applicable BAT conclusions and with the emission levels associated with the best available techniques.

(9) For the purposes of a review under this section of an industrial emissions directive activity, the Agency shall use any information resulting from monitoring under this Part or inspections carried out under *Part IVB*.]

F179[Register of licences.

91.—(1) The Agency shall maintain a register (in this Act referred to as the "register of licences") for the purposes of this Part and shall make therein all such entries and additions as may, from time to time, be prescribed.

(2) The register of licences shall be kept at the headquarters of the Agency and shall be made available for inspection by any person free of charge during office hours.

(3) When a request is made to the Agency for a copy of an entry in the register of licences, the copy shall be issued to the person requesting it on the payment by him to the Agency of such fee (if any) as the Agency shall fix not exceeding the reasonable cost of making the copy.

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

(5) Evidence of an entry in the register of licences may be given by production of a copy thereof certified pursuant to this section and it shall not be necessary to produce the register of licences itself.

(6) Every entry in the register of licences relating to an activity in the functional area of a planning authority shall be notified to that planning authority by the Agency as soon as may be and the planning authority shall maintain a copy of these notifications in a register which shall be made available for inspection by any person free of charge during office hours.]

F180[Limit on duration of licence.

92.—(1) Where, in the opinion of the Agency, the carrying on of the activity to which a licence or revised licence relates has not been substantially commenced within the period of 3 years beginning on the date on which the licence was granted or, as may be appropriate, the period referred to in *paragraph (a) or (b) of subsection (2)*, and the Agency notifies the licensee of that opinion, then that licence shall cease to have effect on the giving of that notice.

(2) The Agency may, having regard to the nature of the activity to which a licence or revised licence to be granted or granted by it will relate or relates, as the case may be, and any arrangements necessary to be made or made in connection with the carrying on of the activity and any other relevant consideration—

(a) specify for the purposes of *subsection (1)* a period of more than 3 years beginning on the date on which the licence or revised licence is to be granted,

(b) in the case of a licence or revised licence granted by it, on an application which complies with such requirements (if any) as may be prescribed being made by the licensee in that behalf, extend for the purposes of *subsection (1)* the period referred to in that subsection or specified by it under *paragraph (a)*, as may be appropriate.

(3) Where the activity to which a licence or revised licence relates ceases to be carried on then, unless the activity is resumed within the period of 3 years beginning on the date of that cessation, the licence shall cease to have effect on the expiry of the said period.

(4) The cesser of a licence's or a revised licence's effect under this section shall in no way affect or diminish such conditions, requirements or obligations applying to or falling on the licensee as are specified in or arise under the licence.]]

F181[Benefit of licences.

93.—Where a licence or revised licence is granted under this Part, the grant of the licence or revised licence shall, except as may be otherwise provided by the licence or revised licence and subject to section 94 and the other provisions of this Part,

enure for the benefit of the activity and of all persons for the time being interested therein.]

F182 [Transfer of licences.

94.—(1) A licence or revised licence under this Part may be transferred from the licensee to another person in accordance with this section.

(2) Where the licensee desires that his licence or revised licence be transferred to another person (hereafter in this section referred to as "the proposed transferee"), the licensee and the proposed transferee shall jointly make an application to the Agency requesting that such a transfer be effected by the Agency.

(3) An application under *subsection (2)* shall be made in such form and include such information as may be prescribed and shall be accompanied by such fee as may be prescribed under section 99A and by the licence or revised licence concerned.

(4) The Agency may require the provision of such further information by the licensee or the proposed transferee as it considers appropriate for the purposes of dealing with an application made by them under this section.

(5) If, on consideration of an application under *subsection (2)*, and any relevant information provided in respect thereof, the Agency is satisfied—

(a) that the proposed transferee would, if he were an applicant for the licence, be regarded by it as a fit and proper person to be granted under *section 83* a like licence to the licence or revised licence concerned,

(b) that the proposed transferee has complied with any requirements under *section 83(6)*, and

(c) regarding such other matters as may be prescribed,

it shall effect a transfer of the licence or revised licence to the proposed transferee in such manner as may be prescribed.

(6) A person to whom a licence or revised licence is transferred under this section shall be deemed to have assumed and accepted all liabilities, requirements and obligations provided for in or arising under the licence or revised licence, regardless of how and in respect of what period, including a period prior to the transfer of the licence or revised licence, they may arise.]

F183 [Surrender of licences.

95.—(1) A licence or a revised licence granted under this Part may be surrendered by the licensee, but only if the Agency accepts the surrender.

(2) A licensee who desires to surrender his licence or revised licence shall make an application for that purpose to the Agency, in such form, giving such information and accompanied by such evidence as may be prescribed and accompanied by such fee as may be prescribed under *section 99A*.

(3) Upon receiving an application for the surrender of a licence or revised licence, the Agency—

(a) shall inspect the installation at which the activity to which the licence or revised licence relates is carried on ("the relevant installation"), and

(b) may require the applicant to furnish to it such further information or evidence as it may specify.

(4) For the purpose of *subsection (3)*, the Agency may, by notice in writing served on the person, require a person who has made an application to it under *subsection (2)* to carry out, or arrange to have carried out, in such manner as may be specified in the notice, such monitoring, sampling and investigations, in addition to those which may be required under a condition attached to the licence or revised licence

concerned, as the Agency considers necessary, and so specifies, and any requirement so made shall be regarded as a condition attaching to that licence or revised licence.

(5) Where the Agency proposes to accept the surrender of a licence or a revised licence, it shall consult with such persons and in accordance with such procedures as may be prescribed.

(6) Having regard to such information or evidence as is furnished to it under *paragraph (b) of subsection (3)* and to the results of an inspection under *paragraph (a) of that subsection* and of any monitoring, sampling and investigation required to be carried out under *subsection (4)*, the Agency shall assess the condition of the relevant installation, so far as that condition is the result of the use of the installation for an activity, (whether the activity, the subject of the licence concerned or, if the installation, in contravention of the licence, was used for the carrying on of any other activity within the meaning of this Act, that activity) and the likely effect on the environment or any environmental medium of any emissions from the relevant installation that may occur.

(7) If the Agency is satisfied that the condition of the relevant installation is not causing or likely to cause environmental pollution and the site of the activity is in a satisfactory state, it shall accept the surrender of the licence or revised licence, but otherwise shall refuse to accept the surrender of the licence or revised licence.

(8) A decision of the Agency under *subsection (7)* shall be conveyed to—

- (a) the applicant concerned,
- (b) the local authority in whose functional area the activity, the subject matter of the licence or revised licence, has been carried on, and
- (c) any person concerned that it has consulted under *subsection (5)*,

by notice in writing, as soon as may be after the decision is made and where the decision is a decision to accept the surrender of a licence or revised licence, that licence or revised licence shall cease to have effect upon the service of the said notice.

(9) The making of an application for the surrender of a licence or revised licence under this section, or the cesser of the activity to which a licence relates, shall in no way affect or diminish such conditions, requirements or obligations applying to or falling on the licensee as are specified in or arise under the licence or revised licence.]

F184[Amendments of licence of clerical or technical nature.

96.—(1) The Agency may amend a licence or revised licence for the purposes of—

- (a) correcting any clerical error therein,
- (b) facilitating the doing of any thing pursuant to a condition attached to the licence where the doing of that thing may reasonably be regarded as having been contemplated by the terms of the condition or the terms of the licence taken as a whole but which was not expressly provided for in the condition, or
- (c) otherwise facilitating the operation of the licence and the making of the amendment does not result in the relevant requirements of *section 83(5)* ceasing to be satisfied.

(2) None of the requirements of *section 90* or of any other provision of this Part shall apply to the exercise of the power under *subsection (1)* but the Agency shall, where appropriate, consult with the licensee before exercising the power.

(3) The Agency shall, as soon as may be after the exercise of the power under *subsection (1)*, notify particulars of the amendment effected by that exercise to each person who made an objection to the Agency under *section 87(5)* in relation to any

exercise of the powers under *section 83* or *90* as respects the licence or revised licence concerned.]

F185[Mass balances of specified substances.

96A.—F186[...]]

F187[Revocation or suspension of licence in certain circumstances.

97.—(1) The Agency may revoke, or suspend the operation of, a licence or revised licence if it appears to the Agency that—

- (a) the licence no longer satisfies the requirements specified in *section 84(4)* for his being regarded as a fit and proper person, and
- (b) the circumstances occasioning his no longer satisfying those requirements are, in the opinion of the Agency, of such seriousness as to warrant the revocation of the licence or the suspension of its operation.

(2) References in this Act to the cessation of the activity to which a licence or revised licence relates shall be construed as including references to such a cessation in consequence of the revocation of the licence.

(3) None of the requirements of *section 90* or of any other provision of this Part shall apply to the exercise of the power under *subsection (1)* but where the Agency proposes to exercise the power it shall afford the licensee and any other person whom it considers ought to be afforded such an opportunity an opportunity to make representations to it in relation to the matter.

(4) The cesser of a licence's or a revised licence's effect under this section shall in no way affect or diminish such conditions, requirements or obligations (being conditions, requirements or obligations that apply to, or fall on, the licensee by virtue of the licence) as may be specified by the Agency in exercising the powers under this section.

(5) The licensee or the former licensee may appeal to the High Court against a revocation or suspension of a licence or revised licence under this section and, on the hearing of the appeal, the High Court may confirm or annul the revocation or suspension or, in the case of a suspension, vary the period for which the suspension shall operate.

(6) The Minister may by regulations make such incidental, consequential or supplementary provision as may appear to him to be necessary to give full effect to any of the provisions of this section.]

F188[Notice of incident or accident significantly affecting the environment.

97A. (1) Without prejudice to the European Communities (Environmental Liability) Regulations 2008, where, in relation to an industrial emissions directive activity, the Agency has been informed by the licensee under *section 86(1)(a)(ix)* or considers that an incident or accident significantly affecting the environment has occurred, the Agency shall give a notice to the licensee concerned.

(2) A notice under *subsection (1)* shall specify measures, that are complementary to those measures referred to in *section 86(1)(a)(ix)(II)*, that the Agency considers are required to be carried out by or on behalf of the licensee to—

- (a) limit the environmental consequences of the incident or accident, and
- (b) prevent a further possible incident or accident.]

F189[Notice of non-compliance with licence or revised licence relating to industrial emissions directive activity.]

97B. (1) In relation to an industrial emissions directive activity, where the Agency has been informed by the licensee under *section 86(1)(a)(x)* that, or the Agency considers that, a failure to comply with any condition attached to a licence or revised licence has occurred that poses an immediate threat to human health or threatens to cause an immediate adverse effect on the environment, the Agency shall give a notice to the licensee concerned.

(2) A notice under *subsection (1)* shall inform the licensee of the failure to comply with a specified condition of the licence, and of the nature of the failure and shall direct the licensee—

- (a) to suspend the operation of the installation or relevant part thereof from a date specified in the notice,
- (b) to without delay take the necessary measures to ensure that compliance is restored in the shortest possible time, and
- (c) to carry out any measures, in addition to those undertaken under *paragraph (b)*, that the Agency has determined are necessary to restore compliance.

(3) The licensee shall furnish confirmation in writing to the Agency that compliance with the licence has been restored, and the Agency shall give notice in writing to the licensee concerned where it is satisfied to accept that confirmation.

(4) From the date that the Agency gives notice under *subsection (1)* until the date that the Agency gives a notice under *subsection (3)*, the licence concerned shall be deemed to be suspended and *section 97* shall apply as appropriate in relation to that suspension.]

F190[Alterations of activity.]

98.—(1) The person in charge of—

- (a) F191[an integrated pollution control activity] in respect of which a licence or revised licence is in force or required under this Part, or
- (b) an established activity which for the time being is not required to be licensed under this Act,

shall give notice in writing to the Agency of any proposal to effect any alteration to, or reconstruction in respect of, the activity if such alteration or reconstruction would, or is likely to, change or increase emissions from the activity or cause new emissions therefrom.

(2) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration or reconstruction referred to in *subsection (1)* which would not, in the opinion of the Agency, substantially change or increase emissions from the activity or cause significant new emissions therefrom, the Agency, notwithstanding any other provision of this Act, may—

- (a) if there is a licence or revised licence in force in respect of the activity concerned, review that licence under *section 90* and exercise the powers under *paragraph (a) or (b) of subsection (2) of that section* in relation to it,
- (b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence, or
- (c) determine that no further action is necessary in relation to the matter,

and, save in a case falling within *paragraph (c)*, the person in charge shall not effect the alteration or reconstruction unless and until the powers under *paragraph (a) or (b) of that subsection (2)* have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows, the alteration or reconstruction to be effected.

(3) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration or reconstruction referred to in *subsection (1)* which would, in the opinion of the Agency, substantially change or increase emissions from the activity or cause significant new emissions therefrom, the Agency, notwithstanding any other provision of this Act, shall—

(a) if there is a licence or revised licence in force in respect of the activity concerned, either review that licence under *section 90* and exercise the powers under *paragraph (a) or (b) of subsection (2)* of that section in relation to it or direct the person in charge to apply for a new licence in substitution for that licence, or

(b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence,

and the person in charge shall not effect the alteration or reconstruction unless and until the powers under *paragraph (a) or (b) of that subsection (2)* have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows, the alteration or reconstruction to be effected.

(4) Where the Agency decides pursuant to *subsection (2) or (3)* to review a licence or revised licence, or to direct a person to apply for a new licence or, as the case may be, a licence, the Agency shall—

(a) within 1 month of the receipt by it of the notice under this section, or the date on which the Agency otherwise becomes aware of the matters referred to at *subsection (1)*, inform the person accordingly, and

(b) proceed to complete the review of the licence or revised licence and exercise the appropriate powers under *subsection (2) of section 90* in relation to it, or determine the application for a new licence or licence, as the case may be.

(5) Not later than the end of 3 months from the commencement of **section 15** of the Protection of the Environment Act 2003, a person in charge of an established activity shall, if—

(a) an alteration or reconstruction in respect of that activity was effected on or after 30 October 1999 but before the commencement of that **section 15**,

(b) that alteration or reconstruction was not required to be notified to the Agency under *section 92(1)* of the previous *Part IV*, and

(c) that alteration or reconstruction has changed or increased, or is likely to change or increase, emissions from that activity or is likely to cause new emissions therefrom,

give notice in writing of that alteration or reconstruction to the Agency and such a notice shall be dealt with by the Agency as if it were a notice received by it under *subsection (1)*.

(6) If a notice is given to the Agency under and in accordance with *subsection (5)* in relation to the activity concerned, the activity may continue to be carried on save where (if such be the case), in consequence of the exercise of any of the powers referred to in *subsection (2) or (3)*, it becomes unlawful or unlawful, otherwise than in specified circumstances, to carry on the activity.]

F192[Alterations of industrial emissions directive activity.

98A. (1) The person in charge of an industrial emissions directive activity shall give notice in writing to the Agency of any proposal to effect any alteration in the nature or functioning, or a reconstruction or extension of the installation if such alteration, reconstruction or extension would, or is likely to, change or increase emissions from the activity or cause new emissions therefrom in a manner which would have consequences for the environment.

(2) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration, reconstruction or extension referred to in *subsection (1)* which would not, in the opinion of the Agency, increase or change emissions from the industrial emissions directive activity, cause significant new emissions therefrom, or otherwise constitute a substantial change, the Agency, notwithstanding any other provision of this Act, may—

- (a) if there is a licence or revised licence in force in respect of the industrial emissions directive activity concerned, review that licence under *section 90* and exercise the powers under *paragraph (a) or (b) of subsection (2)* of that section in relation to it,
- (b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence, or
- (c) determine that no further action is necessary in relation to the matter,

and, save in a case falling within *paragraph (c)*, the person in charge shall not effect the alteration, reconstruction or extension unless and until the powers under *paragraph (a) or (b) of that subsection (2)* have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows the alteration, reconstruction or extension to be effected.

(3) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration, reconstruction or extension referred to in *subsection (1)* which would, in the opinion of the Agency, increase or change emissions from the industrial emissions directive activity or cause significant new emissions therefrom or otherwise constitute a substantial change, the Agency, notwithstanding any other provision of this Act, shall—

- (a) if there is a licence or revised licence in force in respect of the industrial emissions directive activity concerned, either review that licence under *section 90* and exercise the powers under *paragraph (a) or (b) of subsection (2)* of that section in relation to it or direct the person in charge to apply for a new licence in substitution for that licence, or
- (b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence,

and the person in charge shall not effect the alteration, reconstruction or extension unless and until the powers under *paragraph (a) or (b) of that subsection (2)* have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows, the alteration, reconstruction or extension to be effected.

(4) Where the Agency decides pursuant to *subsection (2) or (3)* to review a licence or revised licence, or to direct a person to apply for a new licence or, as the case may be, a licence, the Agency shall—

- (a) within 1 month of the receipt by it of the notice under this section, or the date on which the Agency otherwise becomes aware of the matters referred to at *subsection (1)*, inform the person accordingly, and
- (b) proceed to complete the review of the licence or revised licence and exercise the appropriate powers under *subsection (2) of section 90* in relation to it, or determine the application for a new licence or licence, as the case may be.

(5)(a) In this section “substantial change” means a change in the nature or functioning, or an extension, of an installation or combustion plant, waste incineration plant or waste co-incineration plant which may have significant adverse effects on human health or the environment.

- (b) In determining what is a substantial change for the purposes of *subsection (3)* the Agency shall deem any change in the nature or functioning or an extension of an installation concerned to be substantial if the change or extension in itself reaches the capacity thresholds specified in the First Schedule that relate to the industrial emissions directive activity carried out in that installation.]

F193 [Charges in relation to emissions.

99.—(1) The Agency may, in accordance with regulations made by the Minister, with the consent of the Minister for Finance and the Minister for Enterprise, Trade and Employment, under this section, make charges in relation to such emissions to the environment from such activities as may be specified in the regulations.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for all or any of the following purposes—

- (a) specifying the emissions in relation to which a charge under this section may be imposed,
- (b) specifying the manner in which such a charge is to be imposed,
- (c) specifying the method by which the amount of such charge is to be calculated,
- (d) enabling the Agency to make different charges under this section in respect of different emissions and in different circumstances,
- (e) specifying the manner in which representations may be made to the Agency regarding the imposition of a charge under this section and providing for the procedures to be followed in respect of such representations,
- (f) providing for the amendment, revocation or review of charges imposed under this section.

(3) The Agency may recover the amount of any charges made by it under this section from the person by whom they are payable as a simple contract debt in any court of competent jurisdiction.]

F194 [Fees.

99A.—(1) The Minister may make regulations providing for the payment to the Agency, or such other public authority or other body as may be specified, of fees in relation to—

- (a) applications for licences under *section 83*,
- F195 [(b) reviews of licences or revised licences carried out under *section 90(1)(b)*,]
- (c) reviews carried out pursuant to determinations under *section 82(10)(b)*,
- (d) examinations carried out under *section 82(10)(a)*,
- (e) an objection made to the Agency under *section 87(5)*,
- (f) a request for an oral hearing under *section 87*,
- (g) an application made to the Agency in relation to the extension for the purposes of *section 92* of a period mentioned in that section,
- (h) applications for the transfer of licences or revised licences under *section 94*,
- (i) applications for the surrender of licences or revised licences under *section 95*,
- (j) the operation of an accreditation scheme or an analytical quality control programme under *section 66*,
- (k) the operation of a labelling scheme under *section 78*,

(l) the operation of a system of control for the prevention or limitation of noise
F195[under section 106,]

(m) the operation of a system of control over genetically modified organisms
under section 111,

F196[(n) reviews of licences or revised licences carried out under section 90(1)(a),

(o) reviews of licences or revised licences carried out under section 90(1)(aa),

(p) reviews of licences or revised licences carried out under section 90(4),

(q) reviews of licences or revised licences carried out under section 90(5), or

(r) notwithstanding section 96(2), amendments of licences or revised licences
under section 96(1).]

and the regulations may provide for different fees or for exemption from the payment of fees or for the waiver, remission or refund (in whole or in part) of fees in different circumstances or classes of circumstances or for different cases or classes of cases and for the manner in which fees are to be disposed of.

(2) Where under regulations under this section a fee is payable in respect of any application or matter, the application or matter shall be invalid and shall not be decided or otherwise dealt with, as may be appropriate, by the Agency or such other public authority or other body as may be concerned unless the Agency or other public authority or other body, as the case may be, is in receipt of the fee.

F195[(3) Regulations under paragraph (a), (b), (c), (n), (o), (p), (q) or (r) of subsection (1) shall not be made otherwise than with the consent of the Minister for Public Expenditure and Reform and the Minister for Jobs, Enterprise and Innovation.]]

F196[(4) The Agency may recover any amount due and owing to it under this section from the person by whom it is payable as a simple contract debt in any court of competent jurisdiction.]

F197[Special cases.

99B.—(1) The Minister may, by order, as respects any process, development or operation that is not specified in the *First Schedule*, do both of the following, namely, provide that—

(a) any requirement under—

(i) Part III of the Air Pollution Act 1987,

(ii) section 4 or 16 of the Local Government (Water Pollution) Act 1977,
F198[...]

(iii) section 171 of F199[the Fisheries (Consolidation) Act 1959, or],

F200[(iv) section 63 or 81 of the Water Services Act 2007,]

as appropriate, that a licence under such an enactment be in force for the carrying on of the process, development or operation shall cease to apply to it,

and

(b) a licence under this Part shall be required for the carrying on of it,

and where such an order is made the provisions of this Act shall apply in relation to the process, development or operation concerned as if it were an activity for so long as the order remains in force.

(2) Without prejudice to the generality of *subsection (1)*, an order under this section may be made—

- (a) because of the location of the process, development or operation, or the quality of the environment in the area in which the process, development or operation will be carried out,
- (b) because, at the time of the enactment of this Act or the most recent amendment of the First Schedule, no such process, development or operation existed in the State, or
- (c) because evidence related to any impact on the environment of such process, development or operation which was not available has become available.]

F201 [Monitoring of environmental quality and emissions.

99C.—(1) The Agency shall, in relation to an activity, carry out, cause to be carried out, or arrange for, such monitoring of—

- (a) environmental quality, and
- (b) the nature, extent and effects of emissions to the environment,

as the Agency may consider necessary for the performance of its functions under this Part.

(2) The Agency may, as it considers necessary, by notice served on the person, require the person in charge of an activity from which there is an emission to the environment to carry out such monitoring of the nature, extent and effect of the emission and of the quality of any environmental medium likely to be affected by such emission, and to keep and to supply to the Agency such records of the monitoring, as the Agency considers necessary.

(3) The Agency shall carry out, cause to be carried out, or arrange for, such monitoring or other measures as it considers necessary to verify the monitoring or records of such monitoring provided for under *subsection (2)*.

(4) The Agency shall, if so directed by the Minister, supply to him or to any person specified by him, at such intervals and in such manner as the Minister may direct, records of any monitoring carried out under this section.]

F202 [Mass balances of specified substances.

99D.—(1) The Minister may, for the purposes of—

- (a) determining the extent of, and making available to members of the public information in relation to, the release of substances to environmental media resulting from the use or consumption of any specified class or classes of substance in any specified class or classes of process, development or operation (whether or not comprising an activity to which this Part applies),
- (b) determining, and making available information in relation to, the relationship ("the mass balance") between such a release of a substance and the use or consumption of a substance aforesaid in a process, development or operation aforesaid,

make regulations requiring a person who carries out a process, development or operation aforesaid to make such determination of, and provide to the Agency or specified public authorities, or publish, such information in relation to, the matters referred to in *paragraphs (a) and (b)* as may be specified in the regulations.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may provide for all or any of the following:

- (a) requiring the person concerned to make on specified dates or at specified intervals measurements, calculations, estimates or projections of the release of substances to environmental media,

- (b) prescribing the methods or procedures to be used in the making of such measurements, calculations, estimates or projections,
- (c) requiring records or registers in a specified form to be kept by the person concerned of, or in which there shall be entered by him, specified particulars as respects the release of substances to environmental media and the use or consumption of any substance in a process, development or operation that gives rise to such a release,
- (d) the intervals and the manner in which information as respects the matters aforesaid shall be provided by the person concerned to the Agency or other public authorities or be published,
- (e) matters consequential on, or incidental to, the foregoing.

(3) The Agency and any prescribed public authority shall each publish information that has been provided to it pursuant to regulations under this section in such manner and subject to such conditions as may be prescribed.]

F203[Discharges to sewers.

99E.—(1) Where the Agency proposes to grant a licence (including a revised licence) which involves a discharge of any trade effluent or other matter (other than domestic sewage or storm water) to a sewer, it shall obtain the consent of the sanitary authority in which the sewer is vested, or by which the sewer is controlled, to such a discharge being made.

(2) Where consent is sought in accordance with *subsection (1)*, the Agency may specify a period (which period shall not in any case be less than 4 weeks from the date on which the consent is sought) within which the consent may be granted subject to, or without, conditions or refused; any consent purporting to be granted (whether subject to or without conditions) after the expiry of that period, or any decision given purporting to refuse consent after that expiry, shall be invalid and in those circumstances the Agency may proceed to grant the licence concerned as if the requirements of *subsection (1)* had been satisfied.

(3) Subject to *subsection (4)*, a consent under *subsection (1)* may be granted subject to or without conditions and if it is granted subject to conditions the Agency shall include in the licence or revised licence concerned conditions corresponding to them or, as the Agency may think appropriate, conditions more strict than them.

(4) The conditions that may be attached to a consent by a sanitary authority under this section are the following and no other conditions, namely conditions—

- (a) relating to—
 - (i) the nature, composition, temperature, volume, level, rate, and location of the discharge concerned and the period during which the discharge may, or may not, be made,
 - (ii) the provision, operation, maintenance and supervision of meters, gauges, manholes, inspection chambers and other apparatus and other means for monitoring the nature, extent and effect of emissions,
 - (iii) the taking and analysis of samples, the keeping of records and furnishing of information to the sanitary authority,
- (b) providing for the payment by the licensee to the sanitary authority concerned of such amount or amounts as may be determined by the sanitary authority having regard to the expenditure incurred or to be incurred by it in monitoring, treating and disposing of discharges of trade effluent, sewage effluent and other matter to sewers in its functional area or a specified part of its functional area,

(c) specifying a date not later than which any conditions attached under this section shall be complied with,

(d) relating to, providing for or specifying such other matter as may be prescribed.

(5) A sanitary authority may request the Agency to review a licence or revised licence to which this section relates—

(a) at intervals of not less than 3 years from the date on which the licence or the revised licence is granted, or

(b) at any time with the consent, or on the application, of the person making, causing or permitting the discharge, or

(c) at any time if—

(i) the sanitary authority has reasonable grounds for believing that the discharge authorised by the licence or revised licence is, or is likely to be, injurious to public health or is likely to render the waters to which the sewer concerned discharges unfit for use for domestic, commercial, industrial, fishery (including fish-farming), agricultural or recreational uses or is, or is likely to be otherwise, a serious risk to the quality of the waters,

(ii) there has been a material change in the nature or volume of the discharge,

(iii) there has been a material change in relation to the waters to which the sewer concerned discharges, or

(iv) further information has become available since the date on which the licence or revised licence was granted relating to polluting matter present in the discharge concerned or relating to the effects of such matter,

and the Agency shall consider and may comply with such request and shall have regard to any submission on the matter received from the sanitary authority.]

F204[(6) In this section, a reference to a sanitary authority shall be construed as including a reference to any person acting on behalf of or jointly with a sanitary authority.]

F205[Application of other Acts.

99F.—(1) Notwithstanding section 34 of the Act of 2000, or any other provision of that Act, where a licence or revised licence under this Part has been granted or is or will be required in relation to an activity, a planning authority or An Bord Pleanála shall not, where it decides to grant a permission under section 34 F206[or substitute consent, within the meaning of section 177A,] of that Act in respect of any development comprising or for the purposes of the activity, subject the permission to conditions which are for the purposes of—

(a) controlling emissions from the operation of the activity, including the prevention, elimination, limitation, abatement, or reduction of those emissions, or

(b) controlling emissions related to or following the cessation of the operation of the activity.

(2) Where a licence or revised licence under this Part has been granted or is or will be required in relation to an activity, a planning authority or An Bord Pleanála may, in respect of any development comprising or for the purposes of the activity, decide to refuse a grant of permission under section 34 F206[or refuse a grant of substitute consent, as defined in section 177A] of the Act of 2000, where the authority or An Bord Pleanála considers that the development, notwithstanding the licensing of the activity under this Part, is unacceptable F207[on environmental grounds or on the grounds of adverse effects on the integrity of a European site (as defined in that Act).]

having regard to the proper planning and sustainable development of the area in which the development is or will be situated.

(3) F208[...]

(4) F208[...]

(5) The Minister may by regulations make such incidental, consequential or supplementary provision as may appear to him to be necessary or proper to give full effect to any of the provisions of this section.

(6) Without prejudice to the generality of *subsection (5)*, regulations under this section may provide for matters of procedure in relation to the request for or the making of observations from or by the Agency under this section and related matters.

(7) The making of observations by the Agency under this section shall not prejudice any other function of the Agency under this Act.

(8) Notwithstanding the provisions of the Minerals Development Acts 1940 to 1999, where a licence or revised licence under this Part has been granted or is or will be required in relation to an activity, a lease granted by the Minister for Communications, Marine and Natural Resources under the said Acts in respect of the same activity shall not contain conditions which are for the purpose of the prevention, elimination, limitation, abatement or reduction of emissions to the environment from the activity.

(9) Without prejudice to the preceding subsections, where a licence or revised licence under this Part is granted in relation to an activity and—

(a) a permission under section 34 of the Act of 2000, or

F206[(aa) a substitute consent, as defined in section 177T of the Act of 2000, or]

(b) a lease under the Minerals Development Acts 1940 to 1999,

has been granted in respect of the same activity or in relation to development for the purposes of it, any conditions attached to that permission or contained in that lease, as the case may be, shall, so far as they are for the purposes of the prevention, elimination, limitation, abatement or reduction of emissions to the environment, cease to have effect.

(10) The grant of a permission or lease under any of the Acts of the Oireachtas referred to in this section in relation to any activity shall not prejudice, affect or restrict in any way the application of any provision of this Act to such activity.]

F212[Transitional arrangements.

99G.—(1) Without prejudice to the requirements of F213[the Industrial Emissions Directive], where the Agency proposes to grant a licence or revised licence in respect of an established activity for which a licence has been granted under—

(a) Part III of the Air Pollution Act 1987,

(b) section 4 or 16 of the Local Government (Water Pollution) Act 1977, F214[...]

(c) section 171 of F215[the Fisheries (Consolidation) Act 1959, or]

F216[(d) section 63 or 81 of the Water Services Act 2007,]

the Agency shall, if the licence or revised licence under this Part is being granted during the period of 3 years from the grant of a licence referred to in *paragraph (a)*, *(b)* or *(c)*, have regard to the conditions (if any) attached to such licence and the costs in relation to the activity which would be incurred if different conditions were attached to the licence or revised licence to be granted by the Agency.

(2) On and after the commencement of section 15 of the Protection of the Environment Act 2003, the Agency shall ensure that an activity for which a licence is

required under this Part is carried on in accordance with the enactments mentioned in *subsection (1)* until a licence under this Part is granted in respect of the activity and any reference to a local authority, sanitary authority or the Minister for Communications, Marine and Natural Resources in any licence or any conditions attached to a licence granted under the above-mentioned enactments in relation to such activity shall be deemed to be a reference to the Agency.

(3) The Minister may, for the purposes of *subsection (2)*, make regulations providing that such functions conferred by the enactments mentioned in *subsection (1)* as are specified in the regulations shall, to such extent as may be so specified, be performable by the Agency in lieu of the local authority, sanitary authority or the Minister for Communications, Marine and Natural Resources in relation to the activities concerned.

(4) Where, immediately before the commencement of *section 15* of the Protection of the Environment Act 2003, there is an application for a licence or a review of a licence under an enactment mentioned in *paragraph (a), (b) or (c) of subsection (1)* in respect of an activity for which a licence under this Part is required, and the application or review has yet to be determined, the application or review shall be dealt with and decided under this Part by the Agency as if it were an application to the Agency for a licence under this Part and the local authority or sanitary authority or the Minister for Communications, Marine and Natural Resources, as the case may be, shall furnish the Agency, within a period of 1 month from the commencement of that section or 14 days from the date of a request from the Agency for any documents or information, whichever shall be the later, with all such documents and information in its or his possession as it may require for this purpose.

(5) The day or the last of the days, as may be appropriate, on which all the documents and information referred to in *subsection (4)* are furnished to the Agency in accordance with that subsection by the local authority, sanitary authority or the Minister for Communications, Marine and Natural Resources, as the case may be, shall, in relation to an application for a licence, be deemed to be the date of an application for a licence under this Part.

(6) Notwithstanding the provisions of this section, this Part shall not apply to an activity where an appeal to An Bord Pleanála under *section 34 of the Air Pollution Act 1987*, or *section 8 or 20 of the Local Government (Water Pollution) Act 1977*, as inserted by *the Local Government (Water Pollution) (Amendment) Act 1990*, has been or may still be made, until the time for making the appeal has expired or the appeal has been determined or withdrawn and the licence (if any) granted, as the case may be.]

F217[Powers of High Court or Circuit Court in relation to activities in contravention of this Act.

99H.—(1) Where, on application by any person to the High Court or the Circuit Court, that Court is satisfied that an activity is being carried on in contravention of the requirements of this Act, it may by order—

- (a) require the person in charge of the activity to do, refrain from or cease doing any specified act (including to refrain from or cease making any specified emission),
- (b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this section shall be by motion, and the High Court or the Circuit Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(3) (a) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the activity concerned is being carried on.

(b) The Circuit Court shall have jurisdiction to hear and determine an application under this section which it is satisfied it is appropriate for it to deal with as

a court of local and limited jurisdiction and, for the purpose of the court's satisfying itself of that matter, the matters to which it shall have regard include—

- (i) the nature and extent of the environmental pollution, if any, which it is alleged is being caused by the activity concerned, and
 - (ii) the estimated cost of complying with the order to which the application relates.
- (c) If, in relation to an application under this section to the Circuit Court, that court becomes of the opinion, during the hearing of the application, that it is not appropriate for the Circuit Court to deal with the application, it may, if it so thinks fit, transfer the application to the High Court.
- (d) *Paragraph (c)* is without prejudice to the jurisdiction of the Circuit Court to determine an application under this section which, at the time of the making of the application, it was satisfied it had jurisdiction to deal with.
- (e) Where an application is transferred under *paragraph (c)* to the High Court, the High Court shall be deemed to have made any order made under *subsection (2)* by the court from which it is so transferred in the proceedings in relation to the application.

(4) An application for an order under this section may be made whether or not there has been a prosecution for an offence under this Act in relation to the activity concerned and shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the activity concerned.

(5) Without prejudice to the powers of the High Court or the Circuit Court to enforce an order under this section, a person who fails to comply with an order under this section shall be guilty of an offence.]

F218[PART IVA

WATER POLLUTION]

F219[Groundwater Protection. 99I.—(1) In this Part, unless where the context otherwise requires—

"aquifer" means a stratum or combination of strata that stores or transmits groundwater;

"the Directive" means Council Directive 80/68/EEC of 17 December 1979 on the control of groundwater against pollution by certain dangerous substances¹;

"hazardous substance" means a substance specified in the Annex to the Directive.

(2) This Part applies to an activity which gives rise to, or could give rise to, an emission containing a hazardous substance which is discharged to an aquifer.

(3) In addition to the requirements imposed on it by *Part IV* to attach conditions, the Agency shall attach to any licence or revised licence that may be granted by it in relation to an activity to which this Part applies such conditions as are, in the opinion of the Agency, necessary to give effect to Articles 3, 4, 5, 6, 8, 9 and 10 of the Directive.

(4) Without prejudice to *section 83(2)*, the Agency shall, in considering an application for a licence or the review of a licence or a revised licence in relation to an activity to which this Part applies, have regard to the results of investigations carried out in accordance with *subsection (6)*.

¹ O.J. No. L20, 26.01.1980, pp 43-48.

(5) Without prejudice to *section 83(5)*, the Agency shall not grant a licence or revised licence in relation to an activity to which this Part applies unless it is satisfied that the activity will be carried on in a manner which complies with the requirements of the Directive.

(6) Before making its decision under *section 83(1)* on an application for a licence, or under *section 90* on the review of a licence, the Agency shall carry out or cause to be carried out (by the applicant or otherwise) such investigations as it considers necessary in order to comply with the requirements of Articles 4, 5 and 7 of the Directive.

(7) Notwithstanding *subsection (1)(a)* of *section 90*, a licence or revised licence granted by the Agency in relation to an activity to which this Part applies shall be reviewed by the Agency under that section at intervals which do not exceed 4 years.]

F220[Part IVB

ENVIRONMENTAL INSPECTION PLAN]

F221[Environmental Inspection Plan] 99J. (1) This section applies to an installation where an industrial emissions directive activity is or will be carried on.

(2) The Agency, as soon as may be after the commencement of this Part, shall make a national plan (in this Part called “the environmental inspection plan”) with regard to the inspection of installations.

(3) Every installation shall be referred to in the environmental inspection plan and the Agency, from time to time as it thinks appropriate, shall review the environmental inspection plan and make such revisions thereto as it thinks fit and references in this Part to the environmental inspection plan shall, unless the context otherwise requires, be construed as including references to the plan as so revised.

(4) The purpose of the environmental inspection plan shall be the examination by the Agency of relevant environmental effects from an installation referred to in the plan and the plan shall include the following:

- (a) a general assessment by the Agency of relevant significant environmental issues;
- (b) the geographical area to which the plan applies;
- (c) a register of installations to which the plan applies;
- (d) procedures for drawing up programmes for routine environmental inspections under *subsection (5)*;
- (e) procedures for non-routine environmental inspections under *subsection (7)*.

(5) The Agency, based on the environmental inspection plan, shall regularly draw up a programme for routine environmental inspections, including the frequency of site visits for different types of installations, provided that:

- (a) the period between two site visits at an installation shall be based on a systematic appraisal by the Agency, under *subsection (6)*, of the environmental risks of the installation concerned and shall not exceed 1 year for an installation posing the highest risks and 3 years for an installation posing the lowest risks, and
- (b) if an inspection of an installation has identified a lack of compliance of a significant nature with a licence or a condition attached to a licence under this Part, the Agency shall carry out an additional site visit at that installation within 6 months of that inspection.

(6) In relation to an installation, the Agency shall base the systematic appraisal of the environmental risks referred to in *subsection (5)(a)* on the following criteria:

- (a) the potential and actual impacts of the installation concerned on human health and the environment taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents,
- (b) the record of compliance with licence conditions at the installation concerned, and
- (c) the participation of the licensee concerned in the Union Eco-Management and Audit Scheme under Regulation (EC) No. 1221/2009¹, known as “EMAS”.

(7) The Agency shall, as soon as possible, undertake a non-routine environmental inspection to investigate serious environmental complaints, serious environmental accidents or incidents and contraventions of provisions of this Part, or of licences or revised licences or conditions attached to licences or revised licences and, where appropriate, may undertake such an inspection before the Agency makes a decision under *section 83* on an application for a licence, or under *section 90* on the review of a licence or revised licence (including such a review conducted by it of its own volition).

(8) After each site visit undertaken by it, the Agency shall—

- (a) prepare a report describing its findings regarding—
 - (i) if the installation concerned complies with the licence or any conditions attached to the licence, and
 - (ii) further action (if any) necessary to achieve that compliance,
- (b) furnish a copy of the report referred to in *paragraph (a)* to the person in charge of the installation within two months of the site visit taking place, and
- (c) within four months of the site visit taking place, make the report of the visit accessible to the public in accordance with the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007).

(9) Without prejudice to *section 97B*, where the Agency has concluded that action is required to restore compliance with the licence or a condition attached to the licence, the Agency shall in addition to furnishing the person in charge with a copy of the report of the site visit under *subsection (8)(b)*, notify the person in charge of—

- (a) the occurrences of non-compliance and the measures that the person in charge is required to take to restore compliance within a period specified by the Agency in the notification,
- (b) where relevant, the order in which such measures are to be taken, and
- (c) where relevant, the monitoring and inspection that the Agency proposes to undertake in relation to the remedial measures until the Agency is satisfied that compliance has been restored.

(10) In this section “environmental inspection” means, in relation to an installation, all actions, including site visits, monitoring of emissions and checks of internal reports and follow-up documents, verification of self-monitoring, checking of the techniques used and adequacy of the environment management undertaken by or on behalf of the Agency to check and promote compliance of installations with their licences under this Part and any conditions attaching thereto, and where necessary, to monitor the environmental impact of the installations concerned.]

¹ O.J. No. L342, 22.12.2009, p. 1.

TITANIUM DIOXIDE]

F223[Titanium Dioxide.

99K.(1) This Part applies in relation to an installation where an industrial emissions directive activity that produces titanium dioxide is carried on.

(2) In granting a licence or revised licence in relation to an industrial emissions directive activity that produces titanium dioxide, the Agency shall attach one or more conditions that, in the opinion of the Agency, are necessary to give effect to Chapter VI of the Industrial Emissions Directive.

(3) Without prejudice to the generality of *section 83(3)*, the Agency shall not grant a licence or revised licence in relation to an industrial emissions directive activity referred to in *subsection (1)* unless it is satisfied that the activity will be carried on in a manner which complies with the requirements of the Industrial Emissions Directive.]

PART V

GENERAL POLLUTION CONTROL

Extension to Agency of certain powers under Local Government (Water Pollution) Act, 1977.

100.—(1) The Minister may, by order, provide that any provision of the **Local Government (Water Pollution) Act, 1977**, specified in the order shall, to such extent as may be so specified, apply in relation to the Agency.

(2) An order under *subsection (1)* in relation to a particular provision may provide that—

(a) a function conferred on a local authority or sanitary authority by the provision may, in addition to or in lieu of that authority, be exercised by the Agency,

(b) anything required by the provision to be done in relation to a local authority or a sanitary authority may, in addition to or in lieu of that authority, be done in relation to the Agency,

(c) a reference in the provision to a local authority or to a sanitary authority may include or be substituted by a reference to the Agency.

(3) An order under this section may contain such incidental and consequential provisions as the Minister considers appropriate, including provision for the modification of any provision of the **Local Government (Water Pollution) Act, 1977**, as it applies in relation to the Agency.

Extension to Agency of certain powers under Air Pollution Act, 1987.

101.—(1) The Minister may, by order, provide that any provision of the **Air Pollution Act, 1987**, specified in the order shall, to such extent as may be so specified, apply in relation to the Agency.

(2) An order under *subsection (1)* in relation to a particular provision may provide that—

(a) a function conferred on a local authority by the provision may, in addition to or in lieu of that authority, be exercised by the Agency,

(b) anything required by the provision to be done in relation to a local authority may, in addition to or in lieu of that authority, be done in relation to the Agency,

(c) a reference in the provision to a local authority may include or be substituted by a reference to the Agency.

(3) An order under this section may contain such incidental and consequential provisions as the Minister considers appropriate, including provision for the

modification of any provision of the [Air Pollution Act, 1987](#), as it applies in relation to the Agency.

Management plans.

102.—(1) Without prejudice to the generality of [sections 100](#) and [101](#), the Minister may, by order, provide that the Agency may make an air quality management plan under [section 46](#) of the [Air Pollution Act, 1987](#) F224[or a waste management plan under [section 22](#) of the [Waste Management Act, 1996](#)], or a water quality management plan under [section 15](#) of the [Local Government \(Water Pollution\) Act, 1977](#).

(2) An order under this section may contain such incidental and consequential provisions as the Minister considers appropriate, including provision for the modification of [sections 46, 47](#) and [48](#) of the [Air Pollution Act, 1987](#), or [section 15](#) of the [Local Government \(Water Pollution\) Act, 1977](#) F225[or [sections 22, 23](#) and [25](#) of the [Waste Management Act, 1996](#),], as they apply in relation to the Agency and in particular—

- (i) the procedures to be followed by the Agency in making the plan,
- (ii) consultation by the Agency with any local authority concerned in regard to the making of a plan,
- (iii) provisions relating to the consent of a local authority before a plan is made,
- (iv) provisions for the determination of matters where the Agency considers that the consent of a local authority is unreasonably withheld,
- (v) provisions relating to the recovery of the costs of making a plan from the local authorities concerned.

Emission limit values and quality standards.

103.—(1) The Agency may, at any time, and shall when requested by the Minister to do so, make recommendations to the Minister in relation to—

- (a) the specifying of air quality standards under [section 50](#) of the [Air Pollution Act, 1987](#),
- (b) the specifying of emission limit values under [section 51](#) of the [Air Pollution Act, 1987](#),
- (c) the prescribing of quality standards for waters, trade effluents and sewage effluents and standards in relation to methods of treatment of such effluents, under [section 26](#) of the [Local Government \(Water Pollution\) Act, 1977](#).

(2) Before making regulations for any of the purposes referred to in *subsection (1)* the Minister shall have regard to any recommendations made by the Agency pursuant to that subsection.

(3) Recommendations under *subsection (1)*, other than recommendations made at the request of the Minister, shall be published by the Agency.

Special reports and investigations.

104.—(1) The Agency may, and shall when requested by the Minister to do so, investigate the causes and circumstances surrounding any incident of environmental pollution and make a special report on such matter.

(2) (a) The Agency may cause a special report, or part thereof, to be published in such manner as it thinks fit.

(b) Before publication of a special report or part of such report prepared at the request of the Minister, the Agency shall submit such report to the Minister.

(3) The Minister may make regulations on any matter of procedure in relation to the operation of this section.

Inquiries.

105.—(1) (a) The Agency may, where after consultation with the Minister it considers it necessary to do so, arrange for an inquiry to be held into any incident of environmental pollution or any other matter related to environmental protection.

(b) The Minister may direct the Agency to arrange for an inquiry to be held into any specified incident of environmental pollution or any other matter related to environmental protection and the Agency shall comply with any such direction.

(2) The inquiry shall be conducted by a person appointed in that behalf by the Agency in such manner as the person thinks appropriate.

(3) The person conducting the inquiry may, for the purposes of the inquiry—

(a) investigate the circumstances in which the incident of environmental pollution or any other matter related to environmental protection occurred,

(b) enter (on production of the confirmation of his appointment if so demanded by the occupier or person in charge of the premises) at any reasonable time any premises, entry to which appears requisite for the said purposes,

(c) carry out such inspection and examination and do such things and make such enquiries as appear to him to be reasonably necessary for the said purposes and, in particular—

(i) require, by summons, any person to attend as a witness to give evidence,

(ii) require any person to produce such books, papers, other documents and any articles (being in that person's custody or under his control) which the person conducting the inquiry may consider relevant and retain such books, papers, documents and articles for such time as he may reasonably require them,

(iii) administer or cause to be administered an oath and take evidence under oath.

(4) If a person—

(a) on being duly summoned as a witness before an inquiry without just cause or excuse disobeys the summons,

(b) being in attendance as a witness refuses to take an oath or to make an affirmation when legally required by the person conducting the inquiry to do so, or to produce any documents or articles in his custody or control legally required by the person conducting the inquiry to be produced by him, or to answer any question to which the person conducting the inquiry may legally require an answer,

(c) wilfully gives evidence which is material to the inquiry and which he knows to be false or does not believe to be true,

(d) by act or omission, obstructs or hinders the person conducting the inquiry in the performance of his functions,

(e) fails, neglects or refuses to comply with any requirement provided for under *subsection (3) (c) (ii)*, or

(f) does or omits to do any other thing and if such doing or omission would, if the inquiry had been the High Court, have been contempt of that Court,

the person shall be guilty of an offence.

(5) A statement or admission made by a person before a person conducting an inquiry under this section shall not be admissible in evidence against that person in

any criminal proceedings other than proceedings in relation to an offence under *subsection (4)*.

(6) Persons attending as witnesses at the inquiry shall be allowed such expenses to be paid out of moneys available to the Agency as would be allowed to witnesses attending before a court of record and, in case of dispute as to the amount to be allowed, the dispute shall be referred by the person conducting the inquiry to a taxing master of the High Court, who, on request signed by the person conducting the inquiry, shall ascertain and certify the proper amount of the expenses.

(7) The person conducting the inquiry shall make a report to the Agency stating the causes and circumstances of the subject of the inquiry and may add any observations which he thinks right to make.

(8) The Agency may cause the report of a person who conducted an inquiry under this section to be made public at such time and in such manner as it thinks fit.

(9) The Agency may require that all or part of the expenses incurred by the Agency in relation to an inquiry under this section shall be paid in whole or in part by any person who appears to the Agency to be, by reason of any act or default on the part of such person or on the part of any servant or agent of his, responsible in any degree for the subject of the inquiry.

(10) The Agency shall give notice of an inquiry under this section by a notice published in *Iris Oifigiúil* and in at least one daily newspaper circulating in the State setting out the terms of reference of the inquiry.

(11) The Minister may make regulations for the purposes of this section.

PART VI

MISCELLANEOUS

Regulations for control of noise.

106.—(1) The Minister may, following consultation with any Minister of the Government who in the opinion of the Minister is concerned and with the Agency, make regulations for the purpose of the prevention or limitation of any noise which may give rise to a nuisance or disamenity, constitute a danger to health, or damage property.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may provide for all or any of the following—

- (a) controlling sources of noise,
- (b) (i) specifying maximum limits for noise either generally or in specified areas or classes of areas,
 - (ii) specifying maximum limits for noise emissions, from or into premises or classes of premises, either generally or at specified periods, or
 - (iii) specifying maximum limits of noise levels in prescribed premises,
- (c) regulating the operation, including licensing, of trades, processes or works, including the timing and control of movements of vehicles and the operation of engines and plant which are, or may be, sources of noise,
- (d) limiting or prohibiting the use of loudspeakers in or adjoining public places, including different provisions for different places or classes of places and at different times, and subject to such exceptions as may be specified,
- (e) the measurement of noise and the investigation of noise effects, or

(f) the imposition of charges or the payment of fees for the purposes of the regulations or for services performed thereunder.

(3) The Act of 1963 is hereby amended by the addition at the end of Part IV of the Third Schedule of the entry: "14. Securing the reduction or prevention of noise."

Power of local authority or Agency to require measures to be taken to prevent or limit noise.

107.—(1) Where it appears to—

(a) a local authority in relation to any premises, processes or works, other than an activity for which a licence is required under *Part IV*, or

(b) the Agency in relation to an activity for which a licence is required under *Part IV* but has not been issued,

that it is necessary to do so for the prevention or limitation of noise, the local authority or the Agency, as the case may be, may serve a notice on the person in charge.

(2) A notice pursuant to this section shall indicate requirements for the prevention or limitation of the noise and may—

(a) specify the measures which appear to the local authority or the Agency, as the case may be, to be necessary in order to prevent or limit the noise,

(b) direct the person on whom the notice is served to take such measures as may be specified in the notice to prevent or limit the noise, and

(c) specify a period, which the local authority or the Agency, as the case may be, considers reasonable in all the circumstances of the case, within which such measures are to be taken.

(3) A person on whom a notice under this section has been served may, within such period as may be specified in the notice, make such representations in writing as he thinks fit to the local authority or the Agency, as the case may be, concerning the terms of the notice, and the local authority or the Agency, as the case may be, having considered any such representations, may amend a provision of the notice (including the provision relating to *subsection (2) (c)*) or may confirm or revoke the notice, and shall inform the person of such amendment, confirmation or revocation.

(4) A person on whom a notice under this section has been served shall, within the period specified, comply with the requirements of the notice, or, as the case may be, the notice as amended.

(5) If a person on whom a notice under this section has been served by a local authority or the Agency, as the case may be, does not, within the period specified in the notice or in the notice as amended, as the case may be, comply with the requirements of the notice or the notice as amended, the local authority or the Agency, as the case may be, may take such steps as it considers reasonable and necessary to secure compliance with the notice and may recover any costs and expenses thereby incurred from the person on whom the notice was served as a simple contract debt in any court of competent jurisdiction.

(6) It shall be a good defence, in a prosecution for a contravention of this section in the case of noise caused in the course of a trade or business, for the accused to prove that—

(a) he took all reasonable care to prevent or limit the noise to which the charge relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of operation, that, having regard to all the circumstances, were suitable for the purposes of such prevention or limitation, or

(b) the noise is in accordance with—

- (i) the terms of a licence under this Act, or
- (ii) regulations under *section 106*.

(7) A register of notices issued, amended or revoked by the local authority or the Agency shall be kept at the office of the local authority or the Agency, as the case may be, and be available for public inspection free of charge during office hours and copies of entries shall be provided on request to any person on payment by him to the local authority or the Agency, as the case may be, of such fee (if any) as the local authority or the Agency, as the case may be, shall fix not exceeding the reasonable cost of making the copy.

Noise as a nuisance.

108.—(1) Where any noise which is so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place, a local authority, the Agency or any such person may complain to the District Court and the Court may order the person or body making, causing or responsible for the noise to take the measures necessary to reduce the noise to a specified level or to take specified measures for the prevention or limitation of the noise and the person or body concerned shall comply with such order.

(2) It shall be a good defence, in the case of proceedings under *subsection (1)* or in a prosecution for a contravention of this section, in the case of noise caused in the course of a trade or business, for the accused to prove that—

- (a) he took all reasonable care to prevent or limit the noise to which the complaint relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of operation, that, having regard to all the circumstances, were suitable for the purposes of such prevention or limitation, or
- (b) the noise is in accordance with—
 - (i) the terms of a licence under this Act, or
 - (ii) regulations under *section 106*.

(3) Before a complaint is made to the District Court under *subsection (1)* the local authority or the person concerned, as the case may be, shall serve a notice in the prescribed form of the intention to make such a complaint, within such time as may be specified in the notice, on the person alleged to have made or have caused or have been responsible for the noise.

(4) This section shall not apply to noise caused by—

- (a) aircraft, or
- (b) such statutory undertaker or local authority, as may be prescribed, in the exercise of powers conferred on it by or under any enactment in such circumstances as may be prescribed.

Safety, Health and Welfare at Work Act, 1989.

109.—The provisions of *sections 106, 107 and 108* shall be without prejudice to the provisions of the *Safety, Health and Welfare at Work Act, 1989*.

Access to information on the environment.

110.—(1) The Minister shall, following consultation with any other Minister of the Government who in the opinion of the Minister is concerned, make regulations for the making available by such public authorities as may be specified of specified information relating to the environment to any person upon request and, in particular, for the purpose of giving full effect to Council Directive 90/313/EEC¹.

¹ O.J. No. L158/56 of 23 June, 1990.

(2) Without prejudice to the generality of *subsection (1)*, regulations may provide for all or any of the following—

- (a) the type, format or subject matter of specified information or specified classes of information to be made available,
- (b) the public authorities by whom information, or particular kinds of information, is to be made available,
- (c) procedures, conditions and restrictions relating to the provision of information generally or of specified information,
- (d) classes of circumstances in which requests for information, or specified kinds of information, may be refused,
- (e) procedures for the review of a decision to refuse to provide, whether in whole or in part, information requested and the giving of directions to public authorities following such reviews, or
- (f) the making of charges for the provision of information by public authorities.

(3) In this section, “information relating to the environment” means any available information in written, visual, aural or data base form on the state of water, atmosphere, soil, fauna, flora, land and natural sites, and on actions (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely to so affect, these and on actions or measures designed to protect these, including administrative measures and environmental management programmes.

Genetically modified organisms.

111.—F226[(1) The Minister, after consultation with the Minister for Enterprise, Trade and Employment and any other Minister of the Government who in the opinion of the Minister is concerned, may—

- (a) for the purposes of—
 - (i) environmental protection,
 - (ii) the prevention of danger to health or damage to property, or
 - (iii) the preservation of amenities,and
- (b) without prejudice to the generality of the foregoing, for the purposes of giving full effect to any act adopted by an institution of the European Communities that relates to any of the matters mentioned in this section,

make regulations for the control, management, regulation or prohibition of any process or action or class of processes or actions, involving a genetically modified organism.]

(2) Without prejudice to the generality of *subsection (1)*, regulations may provide for all or any of the following—

- (a) assignment of functions for the purposes of *subsection (1)*, to such person (including the Minister) as may be specified,
- (b) placing of duties, obligations or responsibilities on a person engaged in genetically modifying any organism or who is importing, acquiring, keeping, using or releasing to the environment any genetically modified organism or on any other person in relation to genetically modified organisms,
- (c) consultation with such person, whether in or outside the State, (if any) as may be specified,

- (d) licensing of a person engaged in genetically modifying any organism or who is importing, acquiring, keeping, using or releasing to the environment any genetically modified organism and prohibiting the engagement in any such actions of a person other than a licensed person,
- (e) regulating, including licensing, the establishment and operation of any process or action involving a genetically modified organism and prohibiting any such process or action unless a licence has been obtained,
- (f) the information including information on personnel, premises and waste management, to be furnished with an application for a licence and provision for seeking additional information as necessary to determine the application,
- (g) the conditions that may or shall be attached to a licence under *paragraph (d)* or *(e)* including—
 - (i) the period for which the licence shall be valid,
 - (ii) the organisms covered by the licence,
 - (iii) any limitations or prohibitions regarding any process or action involving any specified organisms,
 - (iv) the continuation of specified conditions after a licence expires, is cancelled or suspended, or after the process or action for which a person is licensed is completed,
 - (v) restrictions or limits on any releases to the environment or any emissions arising from any process or action involving a genetically modified organism or specifying the methods of treatment or disposal of any releases or emissions to any environmental medium, or
 - (vi) arrangements for monitoring and for making available to the Minister or such other person as may be specified the results of such monitoring,
- (h) specifying procedures for the grant, review, cancellation or suspension of a licence, for the making of representations relating to these matters and for the consideration of such representations,
- (i) the studies and assessments to be carried out on the nature of, or the process or action involving, a genetically modified organism, the possible risks to the environment from the organism or the process or action involving the organism and the potential effects of a release of such organism whether planned or accidental,
- (j) the precautions to be taken, including the setting up of bio-safety committees, the information to be provided to the public, emergency response arrangements (both on-site and off-site), the notification of emergency incidents to the proper authorities, the taking of urgent measures by those authorities for the purposes of environmental protection, for the prevention of danger to health or damage to property or for the preservation of amenities, and the recovery of the costs of such measures by those authorities, and the controls to be observed either generally or in relation to particular organisms or classes of organisms, processes or classes of processes or actions or classes of actions, involving a genetically modified organism,
- (k) providing for an application to the High Court by the Minister or such other person as may be prescribed under *subsection (1)* for an order prohibiting or restricting any process or action involving a genetically modified organism in such circumstances as may be specified,
- (l) prohibiting any specified process or action involving, or any importation, acquisition, keeping, using or releasing to the environment of, a specified

genetically modified organism, or any specified genetic modification of an organism,

(m) the grant of exemptions—

(i) to a specified class of persons,

(ii) for specified research or in specified circumstances, or

(iii) as regards specified organisms or classes of organisms, processes or classes of processes or actions or classes of actions involving specified organisms or classes of organisms,

from any of the requirements of the regulations in such circumstances as are specified in relation to specified processes or actions involving a genetically modified organism and subject to such conditions as may be specified,

(n) requiring the giving of notice, the information to be included in such notice, and the period within which such notice shall be given, to the Minister or such other person, whether in or outside the State, as may be specified, regarding the introduction or modification of such process or action involving a genetically modified organism as may be specified,

(o) the keeping of records and the provision of such information as may be specified to the Minister or such other person, whether in or outside the State, as may be specified,

(p) the maintenance of a register including the information related to licences and other matters to be contained in such register, and the provision of public access to such register and any restrictions as regards confidential information,

(q) the provision of advice and the preparation and publication, or approval of guidelines and codes of practice, or

(r) the imposition of charges or the payment of fees for the purposes of the regulations or the services provided thereunder.

(3) It shall be an offence not to comply with any condition attached to a licence issued pursuant to regulations made under this section.

(4) F227[...]

(5) Regulations under this section may contain such incidental, supplementary, consequential and transitional provisions (including provisions modifying any provision of this Act or of any other enactment) as appear to the Minister to be necessary for the purposes of, in consequence of, or to give full effect to, the regulations.

(6) For the purposes of this section an authorised person, in addition to the powers given under *section 13*, may require, in relation to any premises or part of a premises which he has power to enter or in relation to any process or action or part of a process or action on such premises, or in relation to anything in or on such premises, that it should be maintained without disturbance or in such a manner as he may specify for so long as is reasonable in order to carry out his investigations or tests.

(7) In this section—

“genetically modified organism” means—

(a) an organism derived from the formation of a combination of genetic material by artificial techniques, or

(b) an organism inheriting such combination of genetic material, or

(c) an organism that results from the replication of an organism described in paragraph (a), or

(d) such other matter as may be prescribed by the Minister;

“organism” means any multicellular, unicellular, subcellular or acellular entity capable of replication or of transferring genetic material whether by natural or artificial processes or such other matter as may be prescribed by the Minister;

“environment” includes atmosphere, land, soil, water and all living organisms;

“licence” includes a consent or any other form of authorisation and cognate words shall be construed accordingly.

Register kept in computer or other non-legible form and evidence of entries.

112.—(1) The Agency may keep a register under any provision of this Act otherwise than in legible form so that the register is capable of being used to make a legible copy or reproduction (a “copy record”) of any entry in the register.

(2) In any proceedings a certificate signed by an officer of the Agency, stating that a copy record of an entry in a register under a specified provision of this Act has been made in accordance with subsection (1) shall be evidence of the fact of the making of the entry and that the copy or reproduction of the entry attached to the certificate is a true copy record of the entry until the contrary is shown.

(3) A document purporting to be a certificate under subsection (2) shall be deemed to be such a certificate without proof of the signature of the person purporting to sign the certificate or that such person was a proper person to so sign, until the contrary is shown.

(4) In any proceedings any copy record may be given in evidence and shall be *prima facie* evidence of any fact therein stated:

Provided that the court is satisfied of the reliability of the system used to make the copy record and the original entry on which it was based.

Increase of certain penalties.

113.—(1) A person convicted of an offence for which a penalty, forfeiture or fine is provided in a section specified in column (2) of the Table to this section of an Act specified in column (3) of that Table at a particular reference number in column (1) of that Table shall, (subject to subsection (2)), in lieu of any monetary penalty, forfeiture or fine so provided, be liable to a fine not exceeding the maximum fine specified in column (4) of that Table at that reference number, and the sections and Acts specified in columns (2) and (3) of that Table shall be construed and have effect accordingly.

(2) (a) Where a penalty, forfeiture or fine is expressed in any section specified in column (2) of the Table as being for a day, each contravention to which it relates shall constitute a separate offence.

(b) Where an offence referred to in subsection (1) is described as a continuing or further offence the penalty for each day on which the contravention continues shall, in lieu of any other monetary penalty, forfeiture or fine provided in respect thereof, be a fine not exceeding £200.

(3) This section shall have effect in relation to offences committed after the commencement of this section.

TABLE

Ref No.	Section	Act	Maximum Fine
(1)	(2)	(3)	(4)
1.	55	Waterworks Clauses Act, 1847	£1,000
2.	58	Waterworks Clauses Act, 1847	£1,000
3.	60	Waterworks Clauses Act, 1847	£1,000
4.	50	The Dublin Corporation Waterworks Act, 1861	£1,000
5.	51	The Dublin Corporation Waterworks Act, 1861	£1,000
6.	17	Waterworks Clauses Act, 1863	£1,000
7.	18	Waterworks Clauses Act, 1863	£1,000
8.	19	Waterworks Clauses Act, 1863	£1,000
9.	20	Waterworks Clauses Act, 1863	£1,000
10.	70	Public Health (Ireland) Act, 1878	£1,000
11.	112	Public Health (Ireland) Act, 1878	£1,000
12.	114	Public Health (Ireland) Act, 1878	£200
13.	119	Public Health (Ireland) Act, 1878	£1,000
14.	171	Public Health (Ireland) Act, 1878	£1,000
15.	220	Public Health (Ireland) Act, 1878	£1,000
16.	272	Public Health (Ireland) Act, 1878	£1,000
17.	273	Public Health (Ireland) Act, 1878	£1,000
18.	31	Local Government (Sanitary Services) Act, 1948	£1,000
19.	33	Local Government (Sanitary Services) Act, 1948	£1,000
20.	34	Local Government (Sanitary Services) Act, 1948	£1,000
21.	37	Local Government (Sanitary Services) Act, 1948	£1,000
22.	42	Local Government (Sanitary Services) Act, 1948	£1,000
23.	44	Local Government (Sanitary Services) Act, 1948	£1,000
24.	46	Local Government (Sanitary Services) Act, 1948	£1,000
25.	47	Local Government (Sanitary Services) Act, 1948	£1,000
26.	4	Local Authorities (Works) Act, 1949	£1,000
27.	8	Local Government (Sanitary Services) Act, 1962	£1,000
28.	3	Local Government (Sanitary Services) Act, 1964	£1,000
29.	16	Local Government (Sanitary Services) Act, 1964	£1,000

F228[FIRST SCHEDULE

ACTIVITIES TO WHICH *PART IV* APPLIESF229[*Interpretation*

(1) If 2 or more activities falling within the same paragraph under a particular heading of this Schedule are carried on in the same installation by the same person, then, for the purpose of any threshold specified in that paragraph, the capacities of such activities shall be aggregated.

(2) For waste management activities, the calculation referred to in subparagraph (1) shall apply at the level of activities referred to in paragraphs 11.2, 11.4(a) and 11.4(b).

(3) A process, development or operation specified in paragraph 1.1.1, 2.1, 3.1.1, 3.2.1, 3.3.1, 3.4.1, 3.6.1, 4.2.1, 4.3, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 6.1, 6.2, 7.2.1, 7.4.1, 7.7.1, 7.8, 8.1, 8.2, 8.3, 8.5.1, 8.6.1, 8.7, 9.3.1, 9.4.1, 9.4.2, 9.4.3, 10.2, 10.3, 10.4, 11.1 (in so far as the process, development or operation specified in paragraph 11.1 is carried on in an installation connected or associated with another activity that is an industrial emissions directive activity), 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 12.2.1, 12.3, 13.4.1, 13.5 or 13.6 and carried out in an installation is an industrial emissions directive activity and an activity shall not be taken to be an industrial emissions directive activity if it is carried on at an installation solely used for research, development or testing of new products and processes.

(4) A process, development or operation specified in paragraph 1.1.2, 1.2, 1.3, 1.4, 3.1.2, 3.2.2, 3.3.2, 3.4.2, 3.5, 3.6.2, 3.7, 3.8, 3.9, 4.1, 4.2.2, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 7.1, 7.2.2, 7.3.1, 7.3.2, 7.3.3, 7.4.2, 7.5, 7.6, 7.7.2, 8.4, 8.5.2, 8.6.2, F230[8.8,] 9.1, 9.2, 9.3.2, 9.4.4, 10.1, 11.1 (in so far as the process, development or operation specified in paragraph 11.1 is carried on in an installation connected or associated with another activity that is an integrated pollution control activity), 12.1, 12.2.2, 13.1, 13.2, 13.3 or 13.4.2 and carried out in an installation is an integrated pollution control activity.

(5) In this Schedule—

"fuel" means any solid, liquid or gaseous combustible material;

"waste incineration plant" means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste, with or without recovery of the combustion heat generated, through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated;

"waste co-incineration plant" means any stationary or mobile technical unit whose main purpose is the generation of energy or production of material products and which uses waste as a regular or additional fuel or in which waste is thermally treated for the purpose of disposal through the incineration by oxidation of waste as well as other thermal treatment processes, such as pyrolysis, gasification or plasma process, if the substances resulting from the treatment are subsequently incinerated.]

1 Minerals and Other Materials

1.1.1 The production of asbestos F231[or the manufacture of asbestos-based products].

1.1.2 The extraction, production and processing of raw asbestos, not included in *paragraph 1.1.1*.

1.2 The extraction of aluminium oxide from an ore, not included in *paragraph 5.13*.

- 1.3 The extraction and processing (including size reduction, grading and heating) of minerals within the meaning of the Minerals Development Acts 1940 to 1999, where an activity involves—
- (a) a metalliferous operation, or
 - (b) any other operation where either the level of extracted or processed minerals is greater than 200,000 tonnes per annum or the total operational yield is greater than 1,000,000 tonnes,
- and storage of related mineral waste.
- 1.4 The extraction of peat in the course of business which involves an area exceeding 50 hectares.
- 2 Energy**
- 2.1 F229[Combustion of fuels in installations with a total rated thermal input of 50 MW or more.]
- 3 Metals**
- 3.1.1 The production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour.
- 3.1.2 The initial melting or production of iron or steel, not included in *paragraph 3.1.1*.
- 3.2.1 The processing of ferrous metals:
- (a) F231[operation of] hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour,
 - (b) F231[operation of] smitheries with hammers the energy of which exceeds 50 kilojoule per hammer, where the calorific power used exceeds 20 MW,
 - (c) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour.
- 3.2.2 The processing of iron and steel in forges, drawing plants and rolling mills where the production area exceeds 500 square metres, not included in *paragraph 3.2.1*.
- 3.3.1 The operation of ferrous metal foundries with a production capacity exceeding 20 tonnes per day.
- 3.3.2 The production, recovery, processing or use of ferrous metals in foundries having melting installations with a total capacity exceeding 5 tonnes, not included in *paragraph 3.3.1*.
- 3.4.1 The—
- (a) production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes,
- F229[(b) melting, including the alloyage, of non-ferrous metals, including recovered products and operation of non-ferrous metal foundries, with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals.]
- 3.4.2 The production, recovery or processing of non-ferrous metals, their compounds or other alloys including antimony, arsenic, beryllium, chromium, lead, magnesium, manganese, phosphorus, selenium, cadmium or mercury, by thermal, chemical or electrolytic means in installations with a batch capacity exceeding 0.5 tonnes, not included in *paragraph 3.4.1*.

- 3.5 The reaction of aluminium or its alloys with chlorine or its compounds, not included in *paragraph 5.13*.
- 3.6.1 The roasting or sintering of metal ore (including sulphide ore).
- 3.6.2 The calcining of metallic ores in plants with a capacity exceeding 1,000 tonnes per year.
- 3.7 Swaging by explosives where the production area exceeds 100 square metres.
- 3.8 The pressing, drawing and stamping of large castings where the production area exceeds 500 square metres.
- 3.9 Boilermaking and the manufacture of reservoirs, tanks and other sheet metal containers where the production area exceeds 500 square metres.
- 4 Mineral Fibres and Glass**
- 4.1 F229[Other than where carried on in conjunction with the activity specified in *paragraph 1.1.1*, the processing of asbestos and asbestos-based products.]
- 4.2.1 The melting of mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day.
- 4.2.2 The manufacture of glass fibre or mineral fibre, not included in *paragraph 4.2.1* or *4.3*.
- 4.3 The manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day F232[...].
- 4.4 The production of industrial diamonds.
- 5 Chemicals**
- Production, for the purposes of the activities mentioned in *paragraph 5.12* to *5.17*, F233[means the production on an industrial scale by chemical or biological processing] of substances or groups of substances mentioned in any of those paragraphs.
- 5.1 The manufacture of chemicals in an integrated chemical installation, not included in *paragraphs 5.12* to *5.17*.
- 5.2 The manufacture of olefins and their derivatives or of monomers and polymers including styrene and vinyl chloride, not included in *paragraphs 5.12* to *5.17*.
- 5.3 The manufacture, by way of chemical reaction processes, of organic or organo-metallic chemical products other than those specified in *paragraph 5.2* and not included in *paragraphs 5.12* to *5.17*.
- 5.4 The manufacture of inorganic chemicals, not included in *paragraphs 5.12* to *5.17*.
- 5.5 The manufacture of artificial fertilisers, not included in *paragraphs 5.12* to *5.17*.
- 5.6 The manufacture of pesticides, pharmaceutical or veterinary products and their intermediates, not included in *paragraphs 5.12* to *5.17*.
- 5.7 The manufacture of paints, varnishes, resins, inks, dyes, pigments or elastomers where the production capacity exceeds 1,000 litres per week, not included in *paragraphs 5.12* to *5.17*.
- 5.8 The formulation of pesticides, not included in *paragraphs 5.12* to *5.17*.
- 5.9 The chemical manufacture of glues, bonding agents and adhesives, not included in *paragraphs 5.12* to *5.17*.
- 5.10 The manufacture of vitamins involving the use of heavy metals, not included in *paragraphs 5.12* to *5.17*.

- 5.11 The storage, in quantities exceeding the values shown, of any one or more of the following chemicals (other than as part of any other activity) and not included in *paragraphs 5.12 to 5.17*—
- methyl acrylate (20 tonnes); acrylonitrile (20 tonnes); toluene diisocyanate (20 tonnes); anhydrous ammonia (100 tonnes); anhydrous hydrogen fluoride (1 tonne).
- 5.12 The F233[production of organic chemicals], such as:
- (a) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic),
 - (b) oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, F233[esters and mixtures of esters], acetates, ethers, peroxides, epoxy resins,
 - (c) sulphurous hydrocarbons,
 - (d) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates,
 - (e) phosphorus-containing hydrocarbons,
 - (f) halogenic hydrocarbons,
 - (g) organometallic compounds,
 - (h) F233[plastic materials] (polymers, synthetic fibres and cellulose-based fibres),
 - (i) synthetic rubbers,
 - (j) dyes and pigments,
 - (k) surface-active agents and surfactants.
- 5.13 The F233[production of inorganic chemicals], such as:
- (a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride,
 - (b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids,
 - (c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide,
 - (d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate,
 - (e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide.
- 5.14 The production of phosphorous-based, nitrogen-based or potassium-based fertilisers (simple or compound fertilisers).
- 5.15 The F233[production of plant health products] and of biocides.
- 5.16 F233[The production of pharmaceutical products including intermediates.]
- 5.17 The production of explosives.
- 6 Intensive Agriculture**

- 6.1 F234[(a) The rearing of poultry in installations where the capacity exceeds 40,000 places.
- (b) In clause (a) "poultry" shall be construed in accordance with Regulation 2(2) of the European Communities (Poultry and Hatching Eggs) Regulations 2010 (S.I. No. 564 of 2010).]
- 6.2 F234[The rearing of pigs in an installation where the capacity exceeds—
- (a) 750 places for sows, or
- (b) 2,000 places for production pigs which are each over 30kg.]
- 7 Food and Drink**
- 7.1 The manufacture of vegetable and animal oils and fats where the capacity for processing raw materials exceeds 40 tonnes per day, not included in *paragraph 7.8*.
- 7.2.1 The treatment and processing of milk, the quantity of milk received being greater than 200 tonnes per day (average value on a yearly basis).
- 7.2.2 The manufacture of dairy products where the processing capacity exceeds 50 million gallons of milk equivalent per year, not included in *paragraph 7.2.1*.
- 7.3.1 Brewing (including cider and perry production) in installations where the production capacity exceeds 25 million litres per year, not included in *paragraph 7.8*.
- 7.3.2 Distilling in installations where the production capacity exceeds the equivalent of 1,500 tonnes per year measured as pure alcohol, not included in *paragraph 7.8*.
- 7.3.3 Malting in installations where the production capacity exceeds 100,000 tonnes per year, not included in *paragraph 7.8*.
- 7.4.1 The operation of slaughterhouses with a carcass production capacity greater than 50 tonnes per day.
- 7.4.2 The slaughter of animals in installations where the daily capacity exceeds 1,500 units and where units have the following equivalents—
- 1 sheep = 1 unit,
- 1 pig = 2 units,
- 1 head of cattle = 5 units,
- and not included in *paragraph 7.4.1*.
- 7.5 The manufacture of fish-meal and fish-oil, not included in *paragraph 7.8*.
- 7.6 The manufacture of sugar, not included in *paragraph 7.8*.
- 7.7.1 The disposal or recycling of F234[animal carcasses or animal waste] with a treatment capacity exceeding 10 tonnes per day.
- 7.7.2 The processing (including rendering) of animal carcasses and by-products, not included in *paragraph 7.7.1*.
- 7.8 F234[(a) The treatment and processing, other than exclusively packaging, of the following raw materials, whether previously processed or unprocessed, intended for the production of food or feed from:
- (i) only animal raw materials (other than exclusively milk) with a finished product production capacity greater than 75 tonnes per day;

(ii) only vegetable raw materials with a finished product production capacity greater than 300 tonnes per day or 600 tonnes per day where the installation operates for a period of no more than 90 consecutive days in any year;

(iii) animal and vegetable raw materials, both in combined and separate products, with a finished product production capacity in tonnes per day greater than:

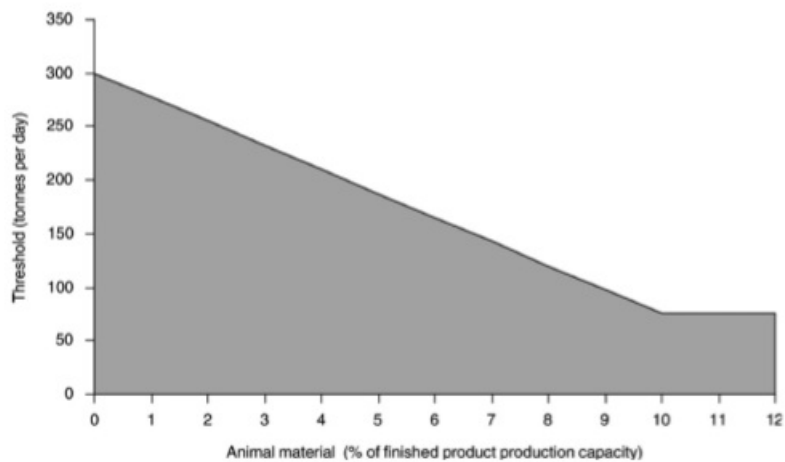
(I) 75 if A is equal to 10 or more; or

(II) $[300 - (22.5 \times A)]$ in any other case,

where "A" is the portion of animal material (in percent of weight) of the finished product production capacity.

(b) For the purposes of clause (a), packaging shall not be included in the final weight of the product.

(c) Clause (a) shall not apply where the raw material is milk only.



]

8 Wood, Paper, Textiles and Leather

8.1 F235 [The production of paper or cardboard with a production capacity exceeding 20 tonnes per day.]

8.2 The production of pulp from timber or other fibrous materials.

8.3 F234 [The preservation of wood and wood products with chemicals with a production capacity exceeding 75 m³ per day other than exclusively treating against sapstain.]

8.4 The manufacture of synthetic fibres, not included in paragraph 5.12.

8.5.1 The pre-treatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tonnes per day.

8.5.2 The dyeing, treatment or finishing (including moth-proofing and fireproofing) of fibres or textiles (including carpet) where the capacity exceeds 1 tonne per day of fibre, yarn or textile material, not included in paragraph 8.5.1.

8.6.1 The tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.

- 8.6.2 The fell-mongering of hides and tanning of leather in installations where the capacity exceeds 100 skins per day, not included in *paragraph 8.6.1*.
- 8.7 F236[The production of one or more of the following wood-based panels: oriented strand board, particleboard or fibreboard with a production capacity exceeding 600 m³ per day.]
- F230[8.8 Other than wood-based panels referred to in *paragraph 8.7*, the production of one or more of the following wood-based panels: oriented strand board, particleboard or fibreboard with a production capacity exceeding 20 tonnes per day.]
- 9 Fossil Fuels**
- 9.1 The extraction, other than offshore extraction, of petroleum, natural gas, coal or bituminous shale.
- 9.2 The handling or storage of crude petroleum, not included in *paragraph 9.3.1* or *9.3.2*.
- 9.3.1 The operation of mineral oil and gas refineries.
- 9.3.2 The refining of petroleum or gas, not included in *paragraph 9.3.1*.
- 9.4.1 F237[The production of coke.]
- 9.4.2 F237[The gasification or liquefaction of:
- (a) coal;
 - (b) other fuels in installations with a total rated thermal input of 20 MW or more.]
- 9.4.3 The production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitization.
- 9.4.4 The pyrolysis, carbonisation, gasification, liquefaction, dry distillation, partial oxidation or heat treatment of coal, lignite, oil or bituminous shale, other carbonaceous materials or mixtures of any of these in installations with a processing capacity exceeding 500 tonnes per day, not included in *paragraph 9.4.1*, *9.4.2* or *9.4.3*.
- 10 F237[Cement, Lime and Magnesium Oxide**
- 10.1 Other than the production of cement referred to in *paragraph 10.2*, the production of cement.]
- 10.2 F238[Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other kilns with a production capacity exceeding 50 tonnes per day.
- 10.3 Production of lime in kilns with a production capacity exceeding 50 tonnes per day.
- 10.4 Production of magnesium oxide in kilns with a production capacity exceeding 50 tonnes per day.]
- 11 Waste**
- 11.1 The recovery or disposal of waste in a facility, within the meaning of the Act of 1996, which facility is connected or associated with another activity specified in this Schedule in respect of which a licence or revised licence under *Part IV* is in force or in respect of which a licence under the said Part is or will be required.
- F238[11.2 Disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving one or more of the following activities:
- (a) biological treatment;

- (b) physico-chemical treatment;
 - (c) blending or mixing prior to submission to any of the other activities listed in paragraph 11.2 or 11.3;
 - (d) repackaging prior to submission to any of the other activities listed in *paragraph 11.2 or 11.3*;
 - (e) solvent reclamation or regeneration;
 - (f) recycling or reclamation of inorganic materials other than metals or metal compounds;
 - (g) regeneration of acids or bases;
 - (h) recovery of components used for pollution abatement;
 - (i) recovery of components from catalysts;
 - (j) oil re-defining or other reuses of oil;
 - (k) surface impoundment.
- 11.3 Disposal or recovery of waste in waste incineration plants or in waste co-incineration plants—
- (a) for non-hazardous waste with a capacity exceeding 3 tonnes per hour,
 - (b) for hazardous waste with a capacity exceeding 10 tonnes per day.
- 11.4 (a) Disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day involving one or more of the F235[following activities (other than activities to which the Urban Waste Water Treatment Regulations 2001 (S.I. No. 254 of 2001) apply)]:
- (i) biological treatment;
 - (ii) physico-chemical treatment;
 - (iii) pre-treatment of waste for incineration or co-incineration;
 - (iv) treatment of slags and ashes;
 - (v) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.
- (b) Recovery, or a mix of recovery and disposal, of non-hazardous waste with a capacity exceeding 75 tonnes per day involving one or more of the following activities, (other than activities to which the Urban Waste Water Treatment Regulations 2001 (S.I. No. 254 of 2001) apply):
- (i) biological treatment;
 - (ii) pre-treatment of waste for incineration or co-incineration;
 - (iii) treatment of slags and ashes;
 - (iv) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.

(c) Notwithstanding *clause (b)*, when the only waste treatment activity carried out is anaerobic digestion, the capacity threshold for that activity shall be 100 tonnes per day.

11.5 Landfills, within the meaning of section 5 (amended by Regulation 11(1) of the Waste Management (Certification of Historic Unlicensed Waste Disposal and Recovery Activity) Regulations 2008 (S.I. No. 524 of 2008)) of the Act of 1996, receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25,000 tonnes, other than landfills of inert waste.

11.6 Temporary storage of hazardous waste, (other than waste referred to in *paragraph 11.5*) pending any of the activities referred to in *paragraph 11.2, 11.3, 11.5 or 11.7* with a total capacity exceeding 50 tonnes, other than temporary storage, pending collection, on the site where the waste is generated.

11.7 Underground storage of hazardous waste with a total capacity exceeding 50 tonnes.]

12 Surface Coatings

12.1 Operations involving coating with organo-tin compounds, not included in *paragraph 12.2.1 or 12.2.2*.

12.2.1 The surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tonnes per year.

12.2.2 The manufacture or use of coating materials in processes with a capacity to make or use at least 10 tonnes per year of organic solvents, and powder coating manufacture with a capacity to produce at least 50 tonnes per year, not included in *paragraph 12.2.1*.

12.3 The surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m³.

13 Other Activities

13.1 The testing of engines, turbines or reactors where the floor area exceeds 500 square metres.

13.2 The manufacture of integrated circuits and printed circuit boards.

13.3 F239[Other than production of lime in a kiln referred to in *paragraph 10.3*, the production of lime.]

13.4.1 The manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, or with a kiln capacity exceeding 4 m³ and a setting density per kiln exceeding 300 kg/m³.

13.4.2 The manufacture of coarse ceramics including refractory bricks, stoneware pipes, facing and floor bricks and roof tiles, not included in *paragraph 13.4.1*.]

F240[13.5 The capture of CO₂ streams from installations to which Part IV applies for the purposes of geological storage pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009¹ on the geological storage of carbon dioxide.]

F238[13.6 Independently operated treatment of waste water (to which the Urban Waste Water Treatment Regulations 2001 do not apply) and discharged by an installation to which *Part IV* applies.]

Section 54.

SECOND SCHEDULE

ENACTMENTS IN RESPECT OF WHICH FUNCTIONS MAY BE TRANSFERRED TO THE AGENCY

Air Pollution Act, 1987 (Emission Limit Value for Use of Asbestos) Regulations, 1990.

Air Pollution Act, 1987 (Sulphur Content of Gas Oil) Regulations, 1989.

European Communities (Asbestos Waste) Regulations, 1990.

European Communities (Control of Water Pollution by Asbestos) Regulations, 1990.

European Communities (Lead Content of Petrol) Regulations, 1985 to 1988.

European Communities (Toxic and Dangerous Waste) Regulations, 1982.

European Communities (Transfrontier Shipment of Hazardous Waste) Regulations, 1988.

European Communities (Waste) Regulations, 1984.

Local Government (Water Pollution) Act, 1977 (Control of Cadmium Discharges) Regulations, 1985.

Local Government (Water Pollution) Act, 1977 (Control of Hexachlorocyclohexane and Mercury Discharges) Regulations, 1986.

Section 18.

THIRD SCHEDULE

AMENDMENT OF AIR POLLUTION ACT, 1987

1. The *Air Pollution Act, 1987* ("the Act") shall be amended in accordance with the following paragraphs.

2. Section 7 (1) of the Act shall be amended by the substitution of the following for the definition of "pollutant":

"'pollutant' means any substance specified in the First Schedule or any other substance (including a substance which gives rise to odour) or energy which, when emitted into the atmosphere either by itself or in combination with any other substance, may cause air pollution;"

3. Section 32 of the Act shall be amended by the substitution for subsection (3) of the following subsection:

"(3) A local authority shall not grant a licence in relation to industrial plant unless they are satisfied that—

- (a) the best practicable means will be used to prevent or limit any emissions from the plant,
- (b) any emissions from the plant will comply with any relevant emission limit value,
- (c) any emissions from the plant will not result in the contravention of any relevant air quality standard,

(d) any emissions from the plant will not cause significant air pollution, and, where appropriate, the local authority shall attach conditions relating to the matters specified in paragraphs (a), (b), (c) and (d) to the licence.”.

4. The Act shall be amended by the insertion of the following sections after section 28:

“Remedies for unauthorised emissions.

28A. (1) (a) Where there is an emission from any premises, other than an emission under and in compliance with a licence granted under this Act or an emission in compliance with an emission limit value specified under [section 51](#) of this Act or an emission which is in accordance with directions specifying best practicable means issued by the Minister under subsection (3) of [section 5](#) of this Act, any person may make application to the appropriate court which may make an order requiring the occupier of the premises concerned to do one or more of the following, that is to say:

- (i) to terminate the emission within such period as may be specified in the order, or
- (ii) to mitigate or remedy any effects of the emission concerned in such manner and within such period as may be specified in the order, or
- (iii) to pay to the applicant or such other person as may be specified in the order a specified amount to defray all or part of any costs incurred by the applicant or that other person in investigating, mitigating or remedying the effects of the emission concerned.

(b) In this subsection ‘appropriate court’, in relation to an application under paragraph (a) means—

- (i) in case the estimated cost of complying with the order to which the application relates does not exceed £5,000, the District Court,
- (ii) in case the estimated cost aforesaid does not exceed £30,000, the Circuit Court, and
- (iii) in any case, the High Court.

(c) (i) If, in relation to an application under this section to the District Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed £5,000, it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated cost aforesaid.

(ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed £30,000, it may, if it so thinks fit, by order transfer the application to the High Court.

(iii) This paragraph is without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an application under this section in relation to which it was, at the time of the making of the application, the appropriate court.

(2) (a) An application for an order under this section shall be brought in a summary manner and the court when considering the matter may make such interim or interlocutory order as it considers appropriate.

- (b) Where an application is transferred under paragraph (c) of subsection (1), the court to which it is transferred shall be deemed to have made any order made under this subsection by the court from which it is so transferred in the proceedings in relation to the application.
- (3) (a) An order shall not be made by a court under this section unless the person named in the order has been given an opportunity of being heard by the court in the proceedings relating to the application for the order.
- (b) The court concerned may make such order as to the costs of the parties to or persons heard by the court in proceedings relating to an application for an order under this section as it considers appropriate.
- (4) (a) Where a person does not comply with an order under subsection (1), a local authority may, in respect of their functional area, take any steps specified in the order to mitigate or remedy the effects of the emission concerned.
- (b) The amount of any expenditure incurred by a local authority in relation to steps taken by them under paragraph (a) shall be a simple contract debt owed to the authority and may be recovered by them from the person as a simple contract debt in any court of competent jurisdiction.
- (5) (a) An application under subsection (1) to the District Court shall be made to the Justice of the District Court for the District Court district in which the premises concerned are situated or in which the emission concerned takes place.
- (b) An application under subsection (1) to the Circuit Court shall be made to the Judge of the Circuit Court for the circuit in which the premises concerned are situated or in which the emission concerned takes place.
- (6) An application under subsection (1) may be made whether or not there has been a prosecution for an offence under this Act in relation to the emission concerned.

Civil liability for pollution.

28B. (1) Where an emission causes injury, loss or damage to a person or to the property of a person, the person may, without prejudice to any other cause of action that he may have in respect of the injury, loss or damage, recover damages in any court of competent jurisdiction in respect of such injury, loss or damage—

- (a) from the occupier of the premises from which the emission originated unless the emission was caused by an act of God or an act or omission of a third party over whose conduct such occupier had no control, being an act or omission that such occupier could not reasonably have foreseen and guarded against, or
- (b) if the emission was occasioned by an act or omission of any person that, in the opinion of the court, constitutes a contravention by the person of a provision of this Act, from that person.

(2) Subsection (1) does not apply to an emission under and in compliance with a licence granted under this Act or an emission in compliance with an emission limit value specified under [section 51](#) of this Act or an emission which is in accordance with directions specifying best practicable means issued by the Minister under subsection (3) of [section 5](#) of this Act.”



Number 7 of 1992

ENVIRONMENTAL PROTECTION AGENCY ACT 1992

REVISED

Updated to 18 April 2023

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Environmental Protection Agency Acts 1992 to 2011: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Environmental Protection Agency Act 1992 (First Schedule) (Amendment) Regulations 2011* (S.I. No. 308 of 2011), reg. 2). The Acts in this group are:

- *Environmental Protection Agency Act 1992* (7/1992)
- *Protection of the Environment Act 2003* (27/2003), Part 2 (ss. 5-18)
- *Water Services Act 2007* (30/2007), ss. 1(2), 107
- *Environmental Protection Agency Act 1992 (First Schedule) (Amendment) Regulations 2011* (S.I. No. 308 of 2011)

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.