



Guidance on Financial Provision for Environmental Liabilities



ENVIRONMENTAL PROTECTION AGENCY

The Environmental Protection Agency (EPA) is responsible for protecting and improving the environment as a valuable asset for the people of Ireland. We are committed to protecting people and the environment from the harmful effects of radiation and pollution.

The work of the EPA can be divided into three main areas:

Regulation: *We implement effective regulation and environmental compliance systems to deliver good environmental outcomes and target those who don't comply.*

Knowledge: *We provide high quality, targeted and timely environmental data, information and assessment to inform decision making at all levels.*

Advocacy: *We work with others to advocate for a clean, productive and well protected environment and for sustainable environmental behaviour.*

Our Responsibilities

Licensing

We regulate the following activities so that they do not endanger human health or harm the environment:

- waste facilities (e.g. landfills, incinerators, waste transfer stations);
- large scale industrial activities (e.g. pharmaceutical, cement manufacturing, power plants);
- intensive agriculture (e.g. pigs, poultry);
- the contained use and controlled release of Genetically Modified Organisms (GMOs);
- sources of ionising radiation (e.g. x-ray and radiotherapy equipment, industrial sources);
- large petrol storage facilities;
- waste water discharges;
- dumping at sea activities.

National Environmental Enforcement

- Conducting an annual programme of audits and inspections of EPA licensed facilities.
- Overseeing local authorities' environmental protection responsibilities.
- Supervising the supply of drinking water by public water suppliers.
- Working with local authorities and other agencies to tackle environmental crime by co-ordinating a national enforcement network, targeting offenders and overseeing remediation.
- Enforcing Regulations such as Waste Electrical and Electronic Equipment (WEEE), Restriction of Hazardous Substances (RoHS) and substances that deplete the ozone layer.
- Prosecuting those who flout environmental law and damage the environment.

Water Management

- Monitoring and reporting on the quality of rivers, lakes, transitional and coastal waters of Ireland and groundwaters; measuring water levels and river flows.
- National coordination and oversight of the Water Framework Directive.
- Monitoring and reporting on Bathing Water Quality.

Monitoring, Analysing and Reporting on the Environment

- Monitoring air quality and implementing the EU Clean Air for Europe (CAFE) Directive.
- Independent reporting to inform decision making by national and local government (e.g. *periodic reporting on the State of Ireland's Environment and Indicator Reports*).

Regulating Ireland's Greenhouse Gas Emissions

- Preparing Ireland's greenhouse gas inventories and projections.
- Implementing the Emissions Trading Directive, for over 100 of the largest producers of carbon dioxide in Ireland.

Environmental Research and Development

- Funding environmental research to identify pressures, inform policy and provide solutions in the areas of climate, water and sustainability.

Strategic Environmental Assessment

- Assessing the impact of proposed plans and programmes on the Irish environment (e.g. *major development plans*).

Radiological Protection

- Monitoring radiation levels, assessing exposure of people in Ireland to ionising radiation.
- Assisting in developing national plans for emergencies arising from nuclear accidents.
- Monitoring developments abroad relating to nuclear installations and radiological safety.
- Providing, or overseeing the provision of, specialist radiation protection services.

Guidance, Accessible Information and Education

- Providing advice and guidance to industry and the public on environmental and radiological protection topics.
- Providing timely and easily accessible environmental information to encourage public participation in environmental decision-making (e.g. *My Local Environment, Radon Maps*).
- Advising Government on matters relating to radiological safety and emergency response.
- Developing a National Hazardous Waste Management Plan to prevent and manage hazardous waste.

Awareness Raising and Behavioural Change

- Generating greater environmental awareness and influencing positive behavioural change by supporting businesses, communities and householders to become more resource efficient.
- Promoting radon testing in homes and workplaces and encouraging remediation where necessary.

Management and structure of the EPA

The EPA is managed by a full time Board, consisting of a Director General and five Directors. The work is carried out across five Offices:

- Office of Climate, Licensing and Resource Use
- Office of Environmental Enforcement
- Office of Environmental Assessment
- Office of Radiological Protection
- Office of Communications and Corporate Services

The EPA is assisted by an Advisory Committee of twelve members who meet regularly to discuss issues of concern and provide advice to the Board.



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This document sets out broad guidance in relation to how the Environmental Protection Agency (EPA) anticipates it will approach financial provisions. The EPA has sought to make the guidance representative of its current general position. Nonetheless, it is provided by way of information only and is not necessarily exhaustive. The EPA has the right to depart from the guidance, or amend or revoke and replace the guidance, in any or all respects as it considers appropriate in any case. Furthermore, the EPA does not undertake or guarantee that the use of this guidance will lead to any particular outcome or result. The guidance accordingly does not give rise to any legitimate expectation or binding legal obligations at all.

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Table of Contents

Section 1: Introduction	1
Section 2: Principles	3
Section 3: Overview of the financial provision process	4
Section 4: Financial Provision Instruments	6
Section: 4.1: Introduction	6
Section: 4.2: Secured Fund	8
Section 4.3: On-demand Performance Bond	10
Section 4.4: Parent Company Guarantee	12
Section 4.5: Charge on Property	16
Section 4.6: Environmental Impairment Liability Insurance	18
Section 5: Contact Details for Financial Provisions.....	21

List of Figures

Figure 3. 1 – Overview of financial provision assessment process.....	5
Figure 4.1 – Process for putting a secured fund in place	9
Figure 4.2 – Process for putting an on-demand bond in place.....	11
Figure 4.3 – Process for putting a parent company guarantee in place.....	15
Figure 4.4 – Process for putting a charge on property	17
Figure 4.5 – Process for putting insurance in place	20

List of Tables

Table 4. 1: Summary of information required from the proposed guarantor and licensee.....	14
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The cover photograph was taken by Cormac MacGearailt.

Section 1: Introduction

The Environmental Protection Agency's ("EPA") mission is to protect and improve the environment as a valuable asset for the people of Ireland and to protect our people and the environment from the harmful effects of radiation and pollution.

This guidance applies to EPA licensees whose licences require financial provision to be put in place. The EPA has identified the prevention and remediation of environmental damage and pollution from incidents and closure of licensed facilities as one of its strategic priorities. Ensuring that there is adequate financial provision in place to manage these environmental risks is essential to ensure that the people of Ireland are protected from the consequences of environmental damage. Adequate financial provision for environmental liabilities is important to protect the environment and also to minimise the exposure of the State to the cost of remediating environmental damage and pollution when persons carrying out licenced activities fail to do so.

The European legal framework for environmental liabilities is set out in several European Union ("EU") directives including:

- Industrial Emissions Directive (2010/75/EU);
- Waste Framework Directive (2008/98/EC);
- Mining Waste Directive (2006/21/EC);
- Environmental Liability Directive (2004/35/EC); and
- Landfill Directive (1999/31/EC).

Under Irish environmental law, the EPA may require licensees under the various EPA authorisation regimes to make adequate financial provision to manage the potential environmental liabilities which may occur as a result of their licensed activities (collectively referred to "**licensed activity**").

Financial provision is putting in place a financial instrument or other approved financial provision (collectively referred to as "**financial provisions**") to cover:

- (a) the full cost of responding and remedial measures if an incident occurs on a licensed facility (collectively referred to as "**incidents**"); and/or
- (b) the costs of closure/decommissioning/restoration/aftercare/management at a licensed facility (collectively referred to as "**closure**").

This guidance applies to those operators undertaking activities falling under the various EPA authorisation regimes including the IED, IPC, waste and dumping at sea regimes where the operator's licence requires financial provision to be put in place. It sets out the EPA's general approach to financial provisions.

The guidance addresses:

- EPA principles in relation to financial provisions;
- Process for putting a financial provision in place; and
- Financial provision instruments.

This guidance replaces and revokes *Guidance on Environmental Liability Risk Assessment, Residuals Management Plans and Financial Provision* (EPA, 2006).

This guidance should be read in conjunction with the revised guidance on the assessment and costing of environmental liabilities i.e. of closure and incidents – [Guidance on assessing and costing environmental liabilities](#) (EPA, 2014).

Once the costing process is completed and the costings are approved by the EPA in respect of an individual licensed facility, the approved costings represent the required amount of financial provision in relation to that licensed facility.

Section 2: Principles

Financial provisions are, in broad terms, required to cover environmental liabilities that may occur during the operating life of a licensed facility or that may arise from or following the closure of a licensed facility.

The financial provision must be:

Secure

- The financial provision must be **secure** for the duration of the licensee's obligations (including in the event of an insolvency) under a licence so that funds are available to discharge the licensee's obligations.

Sufficient

- The financial provision must be **sufficient** to meet all of the licensee's obligations and must be adequate to cover the cost of closure and environmental liability risks.

Available when required

- The funds must be **available** to the EPA when required to discharge the licensee's obligations at the relevant time.

The EPA will consider financial provision proposals on a case by case basis but will embrace these core principles when making a decision.

Section 3: Overview of the financial provision process

The process of putting financial provision in place is shown in the flow-chart **Figure 3.1**.

Upon approval of the costing of environmental liabilities, the licensee must promptly indicate the form of financial provision being considered as financial provision. The licensee should have regard to this guidance and templates which are available on the EPA website.

A proposal for financial provision must be made through the EDEN portal. The necessary documentation for the type of financial provision proposed should be supplied, as outlined in the following sections of this guidance.

Where financial accounting information is supplied, it will be assessed and the licensee will be advised if the proposed provider of the financial provision is acceptable to the EPA. All financial provision information given to the EPA in confidence will be treated as confidential, subject to the EPA's legal obligations and the EPA's policies on confidential information.

It is important to note that providing false and misleading information to the EPA is an offence.

The EPA is available to discuss options with the licensee and to advise on the mechanisms that are acceptable to the EPA in order for the licensee to satisfy its obligations under the licence. In order to avoid any delay the licensee should discuss its proposal as early as possible.

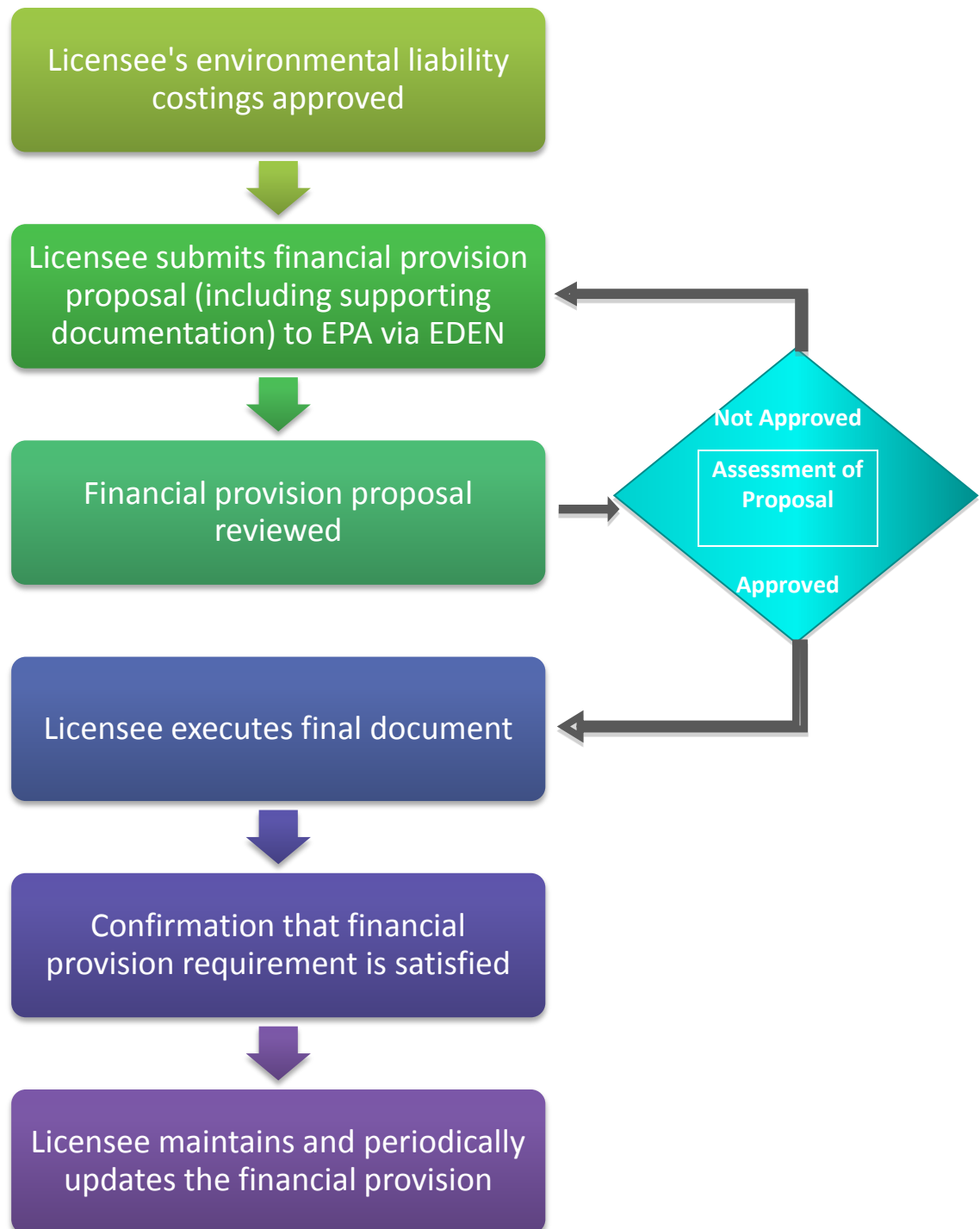
If the financial provision is suitable for the specific risk, there are no amendments proposed to EPA templates and the proposed provider of the financial provision is acceptable to the EPA, the financial provision will generally be approved promptly. The time taken to approve a financial provision can be affected by several factors including the jurisdiction of the provider of the financial provision and proposed amendments to EPA templates.

Once the licensee and provider of the financial provision confirm acceptance of the financial provision wording, the financial provision will be executed by the relevant parties. The licensee will receive confirmation that the financial provision requirement has been satisfied.

It is the responsibility of the licensee to maintain the approved financial provision. The EPA may incur costs associated with monitoring financial provisions. These costs vary depending on the financial instrument used. The EPA has incorporated these costs into its Licensing and Enforcement Charging policy.

The licensee is also required to review its environmental liability costings on a regular basis, usually every three years. The value of the costings represents the amount required as a financial provision for the facility. If the costings change, the value of the financial provision required will change accordingly. In such a case, the licensee is required to update the financial provision to ensure it is maintained at the required amount.

Figure 3.1 – Overview of financial provision assessment process



Section 4: Financial Provision Instruments

Section: 4.1: Introduction

The EPA's preference is for the use of established and low risk financial instruments, which are in line with the principles of being secure, sufficient and available when required (as set out in Section 2). The type of financial instrument(s) accepted by the EPA will depend on the nature of the risk being covered.

The following forms of financial instrument are, in principle, acceptable to the EPA:

Secured fund	<ul style="list-style-type: none"> • A secured fund with a first ranking fixed charge in favour of the EPA is suitable financial provision for all liabilities.
On demand performance bond	<ul style="list-style-type: none"> • Perpetual and on-demand performance bonds are suitable financial provision for all liabilities. This is provided that the failure, on expiry, to renew or replace the bond with alternative financial provision is a drawdown event.
Parent company guarantee	<ul style="list-style-type: none"> • A parent company guarantee is suitable financial provision for most liabilities. It is not suitable to cover inevitable closure costs.
Charge on property	<ul style="list-style-type: none"> • A first ranking fixed charge on property in favour of the EPA is suitable financial provision for all liabilities. However, only a certain percentage of the property's value may be used towards the satisfaction of the licensee's financial provision obligations.
Insurance	<ul style="list-style-type: none"> • Environmental impairment liability insurance is suitable financial provision for potential liability from incidents arising on sites. This is provided the policy wording is acceptable to the EPA.

Any of the above instruments individually, or in combination, can be used to achieve an acceptable financial provision.

The EPA may also consider other forms of financial provision from those set out above (such as Letters of Credit, industry-sponsored mutual guarantee funds, or other group funds), provided they meet the principles set out in Section 2.

The EPA has prepared templates of the above financial instruments. These templates are generally acceptable to the EPA and should assist the licensee in complying with its financial provision requirements.

The financial provision instrument will be entered into with the EPA. In some cases, another appropriate statutory authority may also be a party to the financial provision. For instance, the Minister for Communications, Energy and Natural Resources may also be a party where it has granted a State mining lease to the licensee.

The EPA reserves the right to satisfy itself that the proposed provider of a financial provision is of an adequate financial standing and is otherwise acceptable to the EPA.

If a financial provision is proposed by an entity from outside the jurisdiction of Ireland, the financial provision will itself be subject to Irish law and jurisdiction. In this case, a legal opinion, addressed to the EPA, will be required from a reputable law firm acceptable to the EPA in that jurisdiction. The legal opinion will need to address:

- Incorporation;
- Capacity/authority;
- Execution;
- Choice of law/jurisdiction; and
- Enforcement of judgments.

The legal opinion will also need to confirm that:

- There is no contravention of law; and
- There are no insolvency proceedings .

This applies in relation to all individual financial provisions discussed below.

Licensees are responsible for their own legal and associated costs, including the costs of legal opinions in respect of foreign sureties and the cost of procuring a valuation of any property. The EPA has incorporated its legal costs into its Licensing and Enforcement Charging policy.

Section: 4.2: Secured Fund

A secured fund is money deposited by the licensee in a bank account of a bank acceptable to the EPA. The fund must be accessible to the EPA. The purpose of the fund is to cover the cost of complying with the licensee's obligations. The licensee or, if the licensee fails to comply with obligations, the EPA (or other appropriate statutory authorities where they are a party to the financial provision) may use the fund for such purposes.

The account is a dedicated bank account set up specifically for the purpose of holding the fund. The bank account and the deposit money are then secured with a first ranking fixed charge in favour of the EPA (and other appropriate statutory authorities where they are a party to the financial provision). The funds are held on trust for the EPA (and other appropriate statutory authorities where they are a party to the financial provision) prior to activation of the charge. If the licensee fails to meet its obligations, the charge is activated, allowing the EPA (and other appropriate statutory authorities where they are a party to the financial provision) to access the fund.

The licensee, in principle, is permitted to withdraw funds from the account in order to carry out permitted works subject to the approval of the EPA. While in some limited circumstances, the account charge will itself be sufficient to regulate withdrawal of funds from the account by the licensee, in most cases a drawdown agreement will be put in place to regulate the withdrawal of funds. Whether a drawdown agreement is required or not will depend on the complexity of overall arrangements and the activity and is at the discretion of the EPA. This can be discussed at the outset with the EPA if this form of financial provision is proposed.

The EPA may, in certain circumstances, consider allowing a licensee to build up the fund over an agreed period of time. While the fund is building up, the shortfall must be covered by an appropriate alternative financial provision approved by the EPA – not all forms of financial provision are acceptable in this regard, particularly where there are inevitable closure costs. As the fund builds up towards the required amount, the amount of the complementary financial provision can be reduced. A secured fund is a suitable financial provision for all liabilities including inevitable closure costs.

A licensee who wishes to avail of this option should submit the following documents:

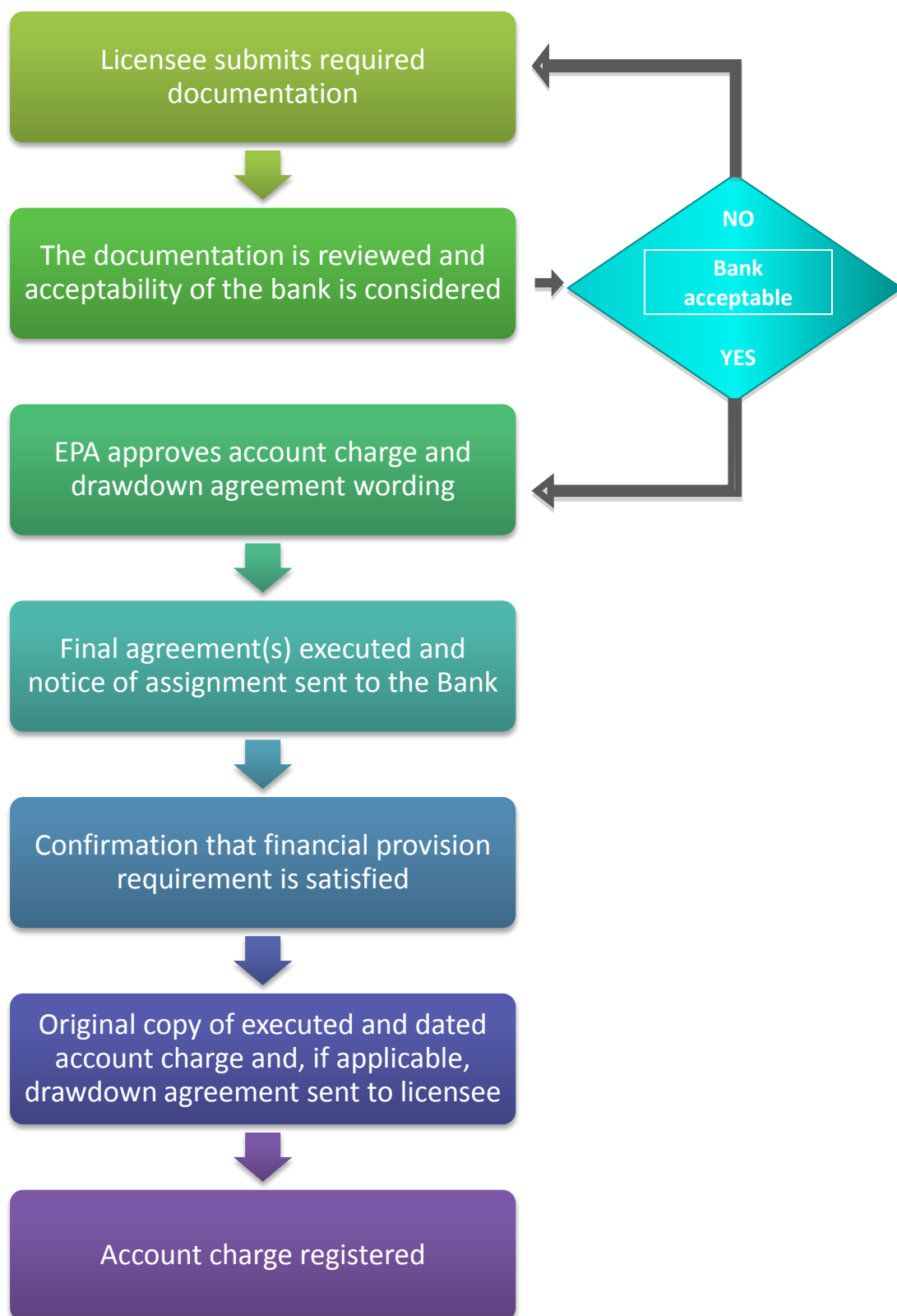
- Signed but undated drawdown agreement (if requested by the EPA - template available on the EPA website);
- Approved account charge (template available on the EPA website);
- Signed but undated and fully compiled corporate certificate. The corporate certificate sets out important information in relation to the licensee. The EPA will rely on the statement set out in the corporate certificate;
- Signed but undated notice of assignment to account bank;
- Bank account details to include: Bank Name, Account Name, Account Number, Sort Code, IBAN, and BIC numbers; and
- Details of the person in the financial institution to whom the notice of assignment should be directed.

Upon receipt of the above and provided it is acceptable to the EPA, the EPA will issue the following:

- A letter confirming that the financial provision requirement has been satisfied;
- Fully executed and dated account charge;
- Fully executed and dated drawdown agreement, where applicable;
- Copy of the dated corporate certificate (which shall be dated on the date of the account charge);

- Copy of the dated notice of assignment which has been sent to the financial institution (which shall be dated on the date of the account charge); and
- Confirmation that the account charge has been registered in the Companies Registration Office.

Figure 4.1 – Process for putting a secured fund in place



Section 4.3: On-demand Performance Bond

An on-demand performance bond is a financial instrument issued by a financial institution such as a bank or a specialist provider acceptable to the EPA (“**surety**”). It is essentially a promise on the part of the surety to immediately pay the EPA the cost of complying with the licensee’s obligations if the licensee fails to do so. The bond is issued by the surety and is a direct obligation of the surety in favour of the EPA. The surety’s promise to pay the EPA is activated if the licensee fails to meet its obligations.

Bonds are usually valid for a fixed period of time so they need to be renewed. Failure by a licensee to renew a bond, or agree an alternative financial provision with the EPA, in itself constitutes a failure of the licensee to meet its obligations. Prior to the expiry of a bond, if a licensee fails to agree an alternative financial provision with the EPA, the EPA is entitled to immediately call on the bond.

A perpetual bond or an on-demand bond that can be drawn down in full if not replaced by a particular date is suitable to cover all liabilities, including the costs of inevitable closure.

The EPA does not maintain a list of acceptable sureties and the acceptability of a surety will depend on individual circumstances such as the size of the bond and the credit rating of the proposed surety. It is generally the case that bonds from sureties who have investment grade insurer ratings from *Standard and Poors’* or *Moody’s* will, in principle, be acceptable to the EPA provided they are legally authorised to carry out business as a surety in Ireland.

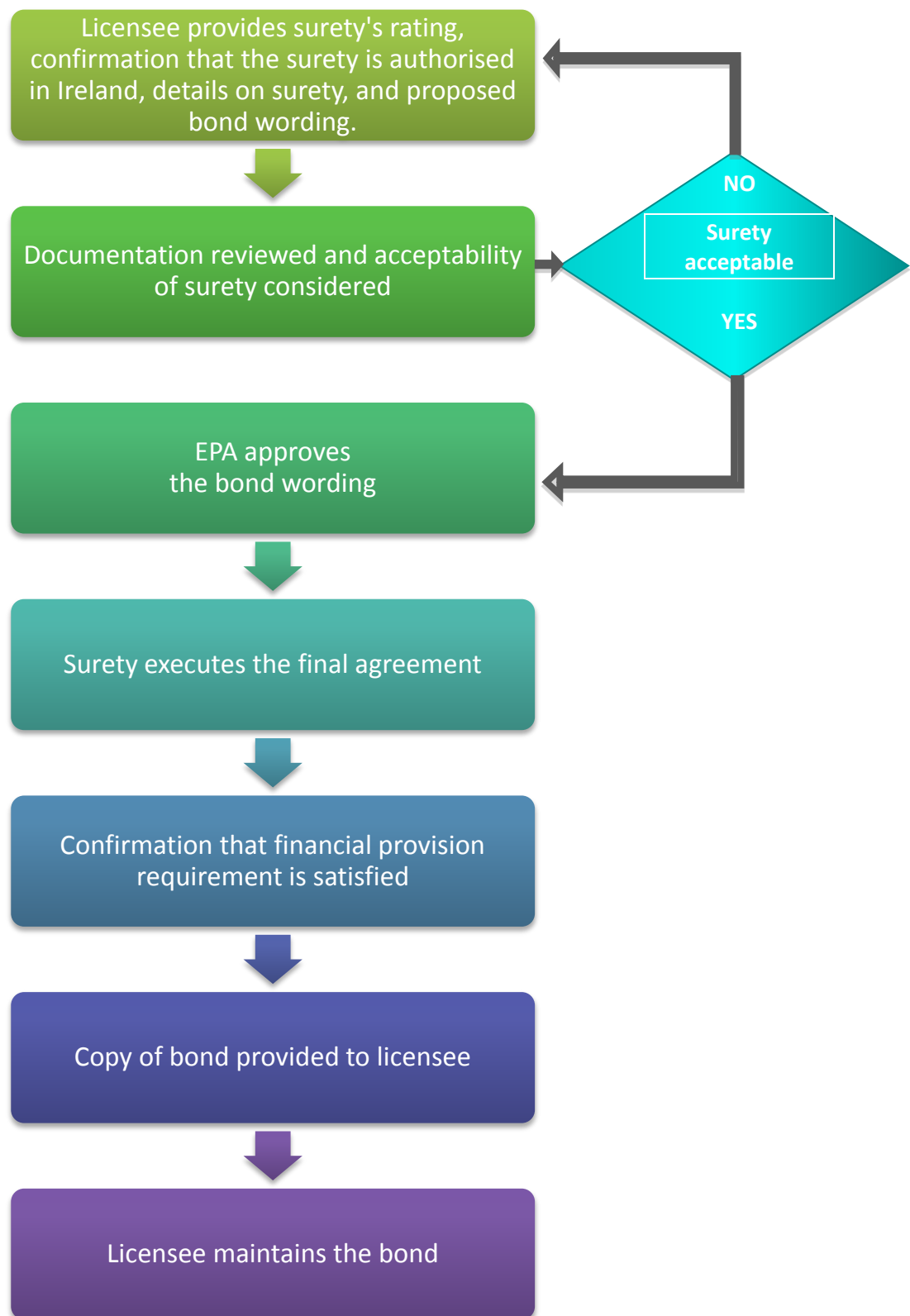
A licensee who wishes to avail of this option should submit the following:

- Details on the proposed surety, together with contact details;
- Confirmation that the proposed surety is authorised to provide bond instruments in Ireland;
- Proposed form of bond to be executed by the surety (template available on the EPA website) - the bond is not to be executed by the surety until the surety and form of bond have been approved by the EPA; and
- If the surety is outside the jurisdiction, a draft legal opinion from a law firm acceptable to the EPA addressing the matters identified towards the end of Section 4.1 above.

Upon receipt of the above and provided it is acceptable to the EPA (and the required documents are subsequently duly executed and furnished), the EPA will issue the following:

- A letter confirming that the financial provision requirement has been satisfied; and
- Fully executed and dated bond.

See **Figure 4.2** – flow-chart of process for putting an on-demand bond in place

Figure 4.2 – Process for putting an on-demand bond in place

Section 4.4: Parent Company Guarantee

A parent company guarantee is a legally binding commitment by a licensee's parent company. It is essentially a promise on the part of the parent company to fulfil the licensee's obligations if the licensee fails to do so. The parent company's commitment is activated if the licensee fails to meet its obligations.

A parent company guarantee is generally suitable as a financial provision for liabilities provided the parent company has been approved by the EPA as an acceptable entity to provide a financial provision in the amount required in respect of the licensed facility. It is not an acceptable financial provision to cover the costs of inevitable closure.

Not all parent companies are suitable to provide a parent company guarantee in relation to a licensee. A parent company guarantee will only be accepted by the EPA provided, in particular, that:

- it is satisfied that the parent company is of sufficient financial strength to back the potential exposure under the guarantee; and
- there is no undue risk in relation to the ability of the EPA to legally enforce the guarantee against the parent company where it and/or its assets are established.

A licensee who wishes to avail of this option must engage in a **four** stage process.

1. The proposed parent company guarantor must demonstrate that it can meet the guarantee.
2. The proposed parent company guarantor must demonstrate that there are no legal obstacles preventing it from entering into the guarantee or preventing the EPA from enforcing the guarantee.
3. Execution of the parent company guarantee.
4. Ongoing demonstration of financial strength of the guarantor.

The **first** stage of the process is the financial assessment of the proposed guarantor. The licensee must submit financial information for assessment by the EPA including:

- Corporate structure – confirmation from the auditors that there is a group structure in place between the guarantor and the licensee; and
- A set of audited financial accounts from the proposed guarantor containing, in particular, details of profit/loss achieved in the last three financial years.

The guarantor must have a net worth that is acceptable to the EPA. It must also be financially independent of the licensee and demonstrably not reliant on the financial performance of the licensee.

If the EPA is satisfied in principle that the guarantor can meet the guarantee, it will commence the **second** stage of the process. At that stage the licensee must submit the following:

- For Irish parent companies – corporate constitutional documents/approvals, including:
 - A certified copy of the Constitution for each company – to check that each has the power under its constitutional documents to enter into the financial security agreement;

- A board minute/extract from each company confirming that its board has authorised it to enter into the financial security agreement; and
- A corporate certificate to be completed by each company.

If the EPA is satisfied that the proposed guarantor is suitable, it will commence the **third** stage of the process. The licensee must submit the following:

- Parent company guarantee executed by the guarantor (template available on the EPA website); and
- If the surety is outside the jurisdiction, a legal opinion from a law firm acceptable to the EPA addressing the matters identified towards the end of Section 4.1 above.

Upon receipt of the above and provided that it is all acceptable to the EPA, the EPA will issue the following:

- A letter confirming that the financial provision requirement has been satisfied; and
- Fully executed and dated parent company performance and payment agreement.

The **fourth** phase of the process is ongoing demonstration of the financial strength of the guarantor. The licensee will be required to submit financial details at the request of the EPA, this may include, for example:

- Annual audited financial accounts in respect of the parent company to be provided to the EPA within 120 days of the parent company's financial year end; and
- A set of management accounts on a half yearly or quarterly basis.

The licensee must also immediately notify the EPA with details of any changes if the parent company is acquired, merged, restructured or otherwise.

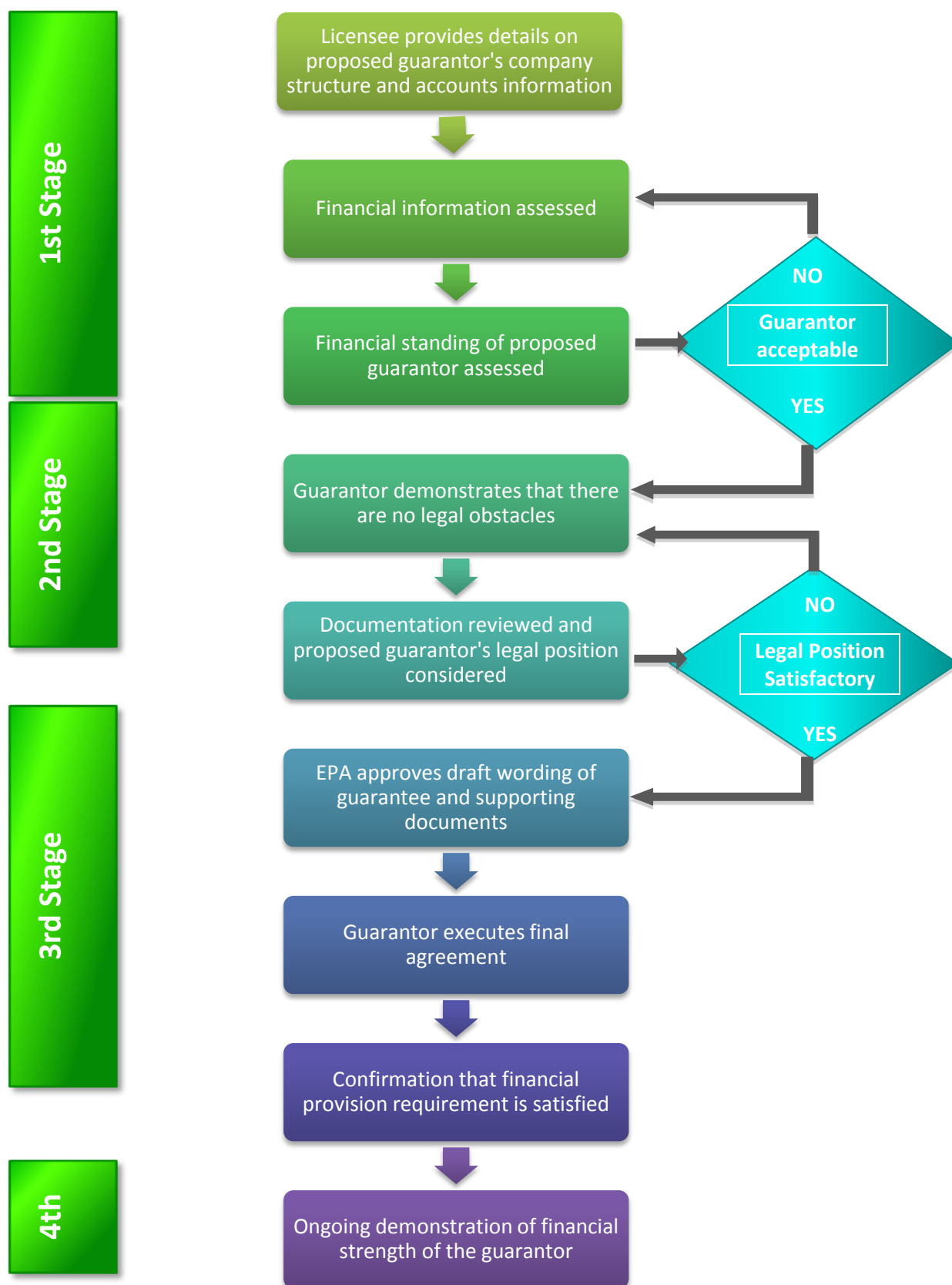
See **Table 4.1** - Summary of information required from the proposed guarantor and licensee

See **Figure 4.3** – Flow-chart for putting a parent company guarantee in place

Table 4.1: Summary of information required from the proposed guarantor and licensee

Information Required	
Corporate structure – confirmation from the auditors that there is a group structure in place between the parent company and the licensee.	
A set of audited financial accounts containing details, in particular, of profit/loss achieved in the last three financial years.	
Irish Guarantor	Guarantor outside the jurisdiction
<ul style="list-style-type: none">▪ A certified copy of the Constitution for each company.	Legal opinion from an approved lawyer, will be required from the surety as to: <ul style="list-style-type: none">▪ Incorporation▪ Capacity/authority▪ Execution▪ No contravention of law▪ Choice of law/jurisdiction▪ Enforcement of judgments▪ No insolvency proceedings
<ul style="list-style-type: none">▪ A board minute/extract from each company confirming that its board has authorised it to enter into the financial security agreement.	
<ul style="list-style-type: none">▪ A form of corporate certificate to be completed by each company may be required.	
Parent company guarantee executed by the guarantor	
Monitoring of the Guarantor – licensee, at the request of the EPA, may be required to submit to the EPA:	
The guarantor’s annual audit financial statement within 120 days of its financial year end.	
The guarantor’s set of management accounts on a half yearly or quarterly basis.	
Notice if the Guarantor is acquired, merged, restructured or otherwise.	

Figure 4.3 – Process for putting a parent company guarantee in place



Section 4.5: Charge on Property

A charge on property is a first ranking mortgage/charge over a specific piece of real estate in favour of the EPA. The real estate remains the property of the licensee (or other person) prior to activation of the mortgage/charge. The purpose of the charge is to give the EPA access to the real estate asset which can be sold if the licensee fails to meet its obligations. The resulting funds can then be used by the EPA to cover the cost of complying with the licensee's obligations. The charge is activated, allowing the EPA to sell the real estate, if the licensee fails to meet obligations.

A charge on property is a suitable financial provision for all liabilities. Due to fluctuations in the value of properties (which can be severe and rapid in certain cases), the EPA will only accept a certain percentage of a property's valuation towards satisfaction of the licensee's financial provision obligations (the "**property value : FP ratio**"). For instance, a property with a value of €1 million may only be counted as the provision of financial provision in the amount of €300,000 based upon a 30% property value : FP ratio. The EPA may also consider accepting charges over other fixed assets where these are sufficiently secure. Property will also only be accepted as a partial fulfilment of a financial provision as more liquid assets are also required to cover situations where funding will be required under a short timeline. The relative proportion of property assets to more liquid assets will be determined on the basis of the individual circumstances of each case.

A licensee who wishes to avail of this option should submit the following documents:

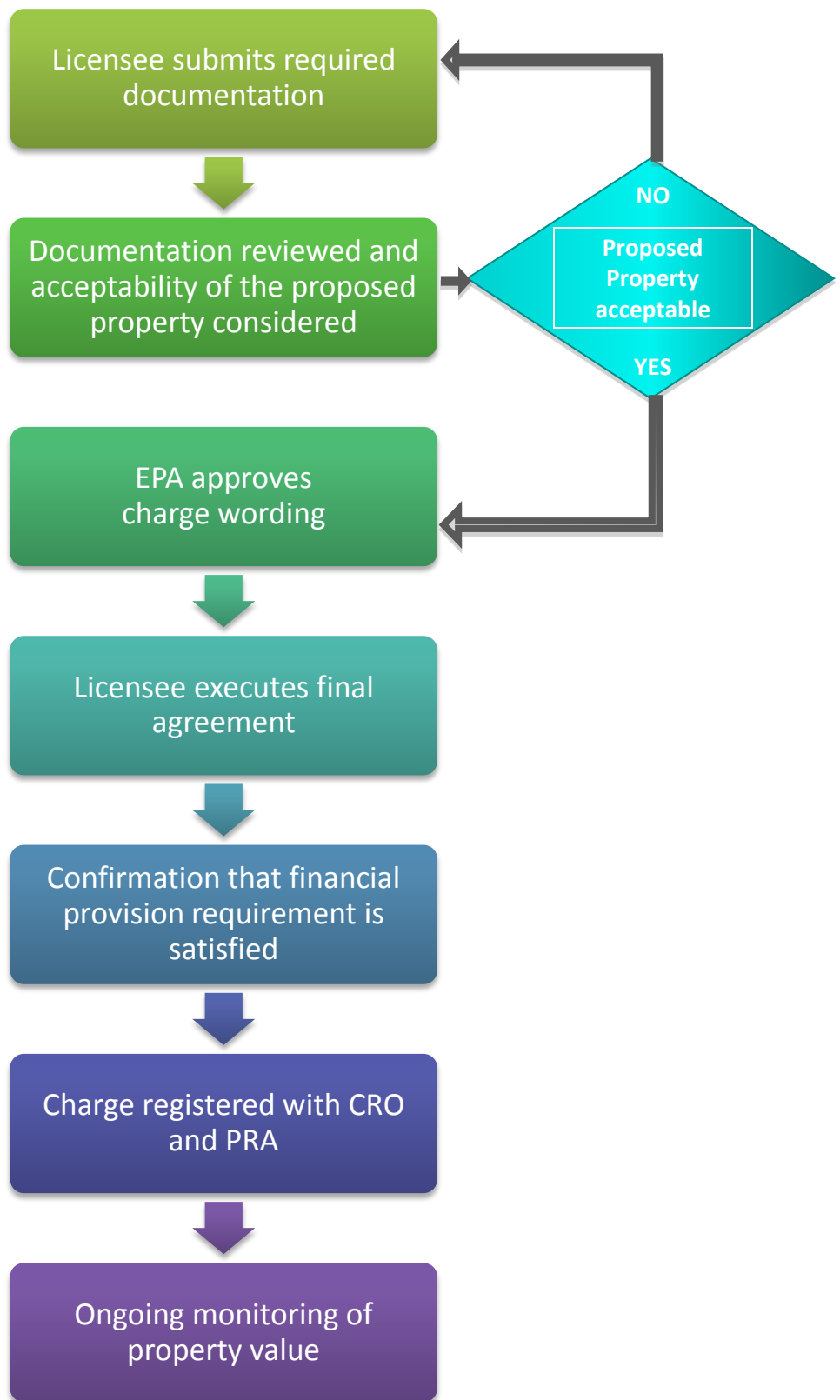
- Original/copy title documentation. The EPA will need to carry out a full review of the title documentation in relation to the property in order to ensure that there is good and marketable title;
- Confirmation that no licensed or permitted activity is carried out on the property;
- An independent valuation of the property upon which the EPA can rely;
- Confirmation that there are no prior charges registered against the property;
- Approved property charge executed in duplicate (template available on the website); and
- Signed but undated and fully compiled corporate certificate. The corporate certificate sets out important information in relation to the licensee. The EPA will rely on the statement set out in the corporate certificate.

Upon receipt of the above and provided that it is all acceptable to the EPA, the EPA will issue the following:

- A letter confirming that the financial provision requirement has been satisfied;
- Fully executed and dated property charge;
- Copy of the dated corporate certificate (which shall be dated on the date of the property charge); and
- Confirmation that the property charge has been registered in the Companies Registration Office ("**CRO**") and Property Registration Authority ("**PRA**").

A further phase of the process is on-going monitoring of the charge. The charge instrument will provide that a breach of the required property value: FP ratio will entitle the EPA to exercise the charge. The licensee will accordingly be required to periodically (as well as on request) provide an independent valuation of the property to the EPA (and which can be relied upon by the EPA) so that the EPA can confirm that the property value : FP ratio continues to be satisfied. If the property value : FP ratio is breached at any time, the EPA will be entitled to immediately exercise the charge.

See **Figure 4.5** – flow-chart of the process for putting a charge on property in place.

Figure 4.4 – Process for putting a charge on property

Section 4.6: Environmental Impairment Liability Insurance

Insurance is an undertaking by a third party (“insurer”) to compensate the licensee and/or the EPA for environmental damage.

Insurance is not a suitable financial provision for known liabilities such as closure. Insurance is potentially acceptable as a financial provision for unknown liabilities. However, general third party liability policies will not be acceptable as financial provision.

The EPA may consider, in respect of unknown liabilities, environmental impairment liability policies for licensed facilities, provided that the policy wording is acceptable to the EPA.

In this respect, the EPA has determined that any such environmental impairment liability policy must, to the satisfaction of the EPA, adequately operate to achieve the following requirements:

- (i) responds to environmental and pollution loss and damage in accordance with the Environmental Liability Directive;
- (ii) responds to the release of pollutants, howsoever occurring;
- (iii) expressly provides for retroactive cover in respect of the operation of the licensed facility (effective from the original licence grant date of the licensed facility);
- (iv) extends coverage to the EPA as a named insured and loss payee under the policy, in the event that:
 - a. the licensee policyholder becomes insolvent or bankrupt during the policy period; or
 - b. the licensee policyholder is deceased; or
 - c. the circumstances identified in part (v)(b) below arise;
- (v) in the event of a pollution event or in circumstances where the EPA has exercised its right to incur clean-up costs:
 - a. does not prevent or restrict the EPA from notifying the insurer of a claim that the EPA has against the licensee policyholder at the same time as the EPA gives notice of that claim to the licensee policyholder; and
 - b. requires the insurer, where pursuant to paragraph (a) the EPA has notified the insurer of a claim but the licensee policyholder has failed to notify the insurer of that claim, to accept receipt of and respond to the EPA’s notice of claim as though it was a notice of claim given by and received from the licensee policyholder or the EPA itself was a named insured under the policy;
- (vi) requires, as a condition of making a policy application, that the licensee has disclosed to the insurer a copy of the approved ELRA report submitted in respect of the licensed facility. This is to be included as part of a schedule of disclosed information also to be required by the insurer;
- (vii) requires, as a pre-condition to the policy taking effect, that the insurer has received payment of all *premia* for the policy, evidence of which must be provided by the insurer to the EPA as a pre-condition to the licence taking effect, and to the licensee’s operation of the licensed facility commencing;

- (viii) requires that the licensee policyholder and the insurer give the EPA not less than sixty (60) days' notice in writing of any policy cancellation; and
- (ix) ring-fences the policy limits to the licensee's operation of the licensed facility having regard to the risk values identified in the licensee's ELRA report.

Insurers offering environmental impairment liability policies must ensure their policies suitably address the above requirements if the policies are to be acceptable to the EPA.

Where any policy is proposed which includes a deductible/excess the licensee may be required to provide financial provision to the value of the deductible/excess.

The licensee will also be required to provide evidence to the EPA of payment of all *premia* for the insurance policy.

A licensee who wishes to avail of this option must provide the following:

- A draft insurance policy (including all terms and conditions), for the EPA's review and approval (including consideration of the sufficiency of the proposed limits);
- Confirmation that the proposed insurer is authorised to provide insurance products in Ireland and has a financial security rating of at least 'A' as defined by Standard and Poor's, or such other rating that the EPA in its absolute discretion considers satisfies the EPA's credit requirements at that time; and
- Financial provision in respect of any excess/deductible.

Upon receipt of the above and provided the proposed policy is confirmed by the EPA as acceptable to the EPA, then following delivery of confirmation that the policy and, if applicable, any required financial provision in respect of the excess/deductible is in place, the EPA will issue:

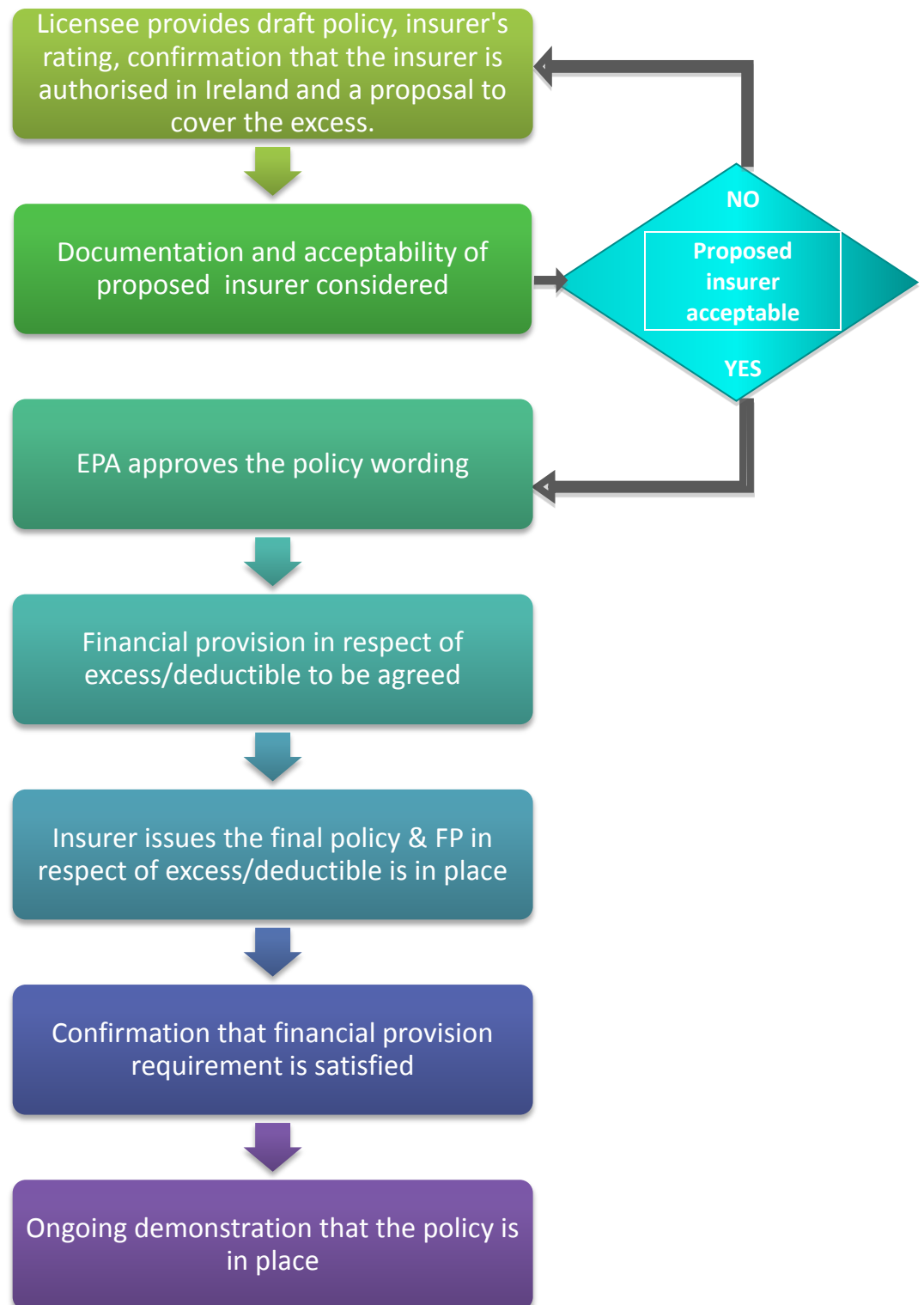
- A letter confirming that the financial provision requirement has been satisfied.

A further phase of the process is ongoing monitoring of the insurance policy. The licensee will be required to:

- At the EPA's request, provide confirmation that the policy remains in place;
- Annually, provide evidence of payment of *premia* in accordance with the principles set out in this guidance;
- At least three (3) months prior to expiry of the policy, notify the EPA of the licensee's intent to replace the policy on the same terms of the existing policy; and
- At least thirty (30) days prior to the expiry of the policy, provide evidence to the EPA that the policy has been so replaced.

If the above information is not presented to the EPA's satisfaction, the licensee will be required to put in place a replacement financial provision that is acceptable to the EPA.

See **Figure 4.4** – flow-chart of process for putting an insurance policy in place

Figure 4.5 – Process for putting insurance in place

Section 5: Contact Details for Financial Provisions

Call us on: +353 21 4875540

Electronic contact: Via the EDEN Portal

Postal Address: Waste and Financial Provision Team,
Office of Environmental Enforcement,
EPA Regional Inspectorate
Inniscarra
Co. Cork
P31 VX59

Glossary

Activity	'Activity' is used in this guidance in the general sense and may refer to an Integrated Pollution Control, Industrial Emissions, Waste Water Discharge, Dumping at Sea or, indeed, any other activity.
Closure	Closure refers to relatively short-term measures necessary to close a facility satisfactorily, including closure, decommissioning, restoration, aftercare and residuals management.
EDEN	Environmental Data Exchange Network.
ELRA	Environmental liability risk assessment refers to the assessment and costing of liabilities arising from incidents. Incidents include accidents.
EPA	Environmental Protection Agency.
Incident	'Incident' generally refers to a change of circumstances from the norm with actual or potential negative consequences. The Industrial Emissions Directive refers to incidents and accidents, but for the purposes of this guidance the term 'incident' only is used. However, in this guidance the term 'incident' is taken to include accidents within its meaning.
Inevitable closure costs	Costs associated with the closure of an activity with a finite lifespan, for example a landfill or a mine.
Licensed facility	A facility which has been granted any licence, permit or authorisation by the EPA.
Licensee's obligations	All present and future obligations of the Licensee in respect of the known liabilities and the unknown liabilities, whether under environmental law and/or the licence.
Financial Provision	Financial provision refers to the putting in place of a financial instrument or other approved financial security or provision to cover the cost of remediation if an incident occurs during the operating life of a licensed facility and the costs of closure at the end of the operating life of a licensed facility.

IED	Industrial Emissions Directive 2010/75/EU.
IPC	Integrated Pollution Control.
Parent company	Parent company refers to the parent or ultimate parent or a subsidiary or another affiliate of the parent or ultimate parent who can demonstrate net worth of a level acceptable to the EPA. The company must also be financially independent of the licensee and demonstrably not reliant on the financial performance of the licensee.
Pollution	As defined in relevant legislation.
RBME	Risk-based methodology for enforcement
Remedial measures	As defined in Directive 2004/35/CE on Environmental Liability

AN GHNÍOMHAIREACHT UM CHAOMHNÚ COMHSHAOIL

Tá an Gníomhaireacht um Chaomhnú Comhshaoil (GCC) freagrach as an gcomhshaol a chaomhnú agus a fheabhsú mar shócmhainn luachmhar do mhuintir na hÉireann. Táimid tiomanta do dhaoine agus don chomhshaol a chosaint ó éifeachtaí díobhálacha na radaíochta agus an truaillithe.

Is féidir obair na Gníomhaireachta a roinnt ina trí phríomhréimse:

Rialú: *Déanaimid córais éifeachtacha rialaithe agus comhlíonta comhshaoil a chur i bhfeidhm chun torthaí maithe comhshaoil a sholáthar agus chun díriú orthu siúd nach gcloíonn leis na córais sin.*

Eolas: *Soláthraimid sonraí, faisnéis agus measúnú comhshaoil atá ar ardchaighdeán, spriocdhírthe agus tráthúil chun bonn eolaís a chur faoin gcinnteoireacht ar gach leibhéal.*

Tacaíocht: *Bímid ag saothrú i gcomhar le grúpaí eile chun tacú le comhshaol atá glan, táirgiúil agus cosanta go maith, agus le hiompar a chuirfidh le comhshaol inbhuanaithe.*

Ár bhFreagrachtaí

Ceadúnú

- Déanaimid na gníomhaíochtaí seo a leanas a rialú ionas nach ndéanann siad dochar do shláinte an phobail ná don chomhshaol:
- saoráidí dramhaíola (m.sh. láithreáin líonta talún, loisceoirí, stáisiúin aistrithe dramhaíola);
- gníomhaíochtaí tionsclaíocha ar scála mór (m.sh. déantúsaíocht cógaisíochta, déantúsaíocht stroighne, stáisiúin chumhachta);
- an diantalmhaíocht (m.sh. muca, éanlaith);
- úsáid shrianta agus scaoileadh rialaithe Orgánach Géinmhodhnaithe (OGM);
- foinsí radaíochta ianúcháin (m.sh. trealamh x-gha agus radaiteiripe, foinsí tionsclaíocha);
- áiseanna móra stórála peitrlí;
- scardadh dramhuisce;
- gníomhaíochtaí dumpála ar farraige.

Forfheidhmiú Náisiúnta i leith Cúrsaí Comhshaoil

- Clár náisiúnta iniúchtaí agus cigireachtaí a dhéanamh gach bliain ar shaoráidí a bhfuil ceadúnas ón nGníomhaireacht acu.
- Maoirseacht a dhéanamh ar fhreagrachtaí cosanta comhshaoil na n-údarás áitiúil.
- Caighdeán an uisce óil, arna sholáthar ag soláthraithe uisce phoiblí, a mhaoirsiú.
- Obair le húdaráis áitiúla agus le gníomhaireachtaí eile chun dul i ngleic le coireanna comhshaoil trí chomhordú a dhéanamh ar líonra forfheidhmiúcháin náisiúnta, trí dhírú ar chiontóirí, agus trí mhaoirsiú a dhéanamh ar leasúchán.
- Cur i bhfeidhm rialachán ar nós na Rialachán um Dhramhthrealamh Leictreach agus Leictreonach (DTLL), um Shrian ar Shubstaintí Guaiseacha agus na Rialachán um rialú ar shubstaintí a idíonn an ciseal ózóin.
- An dlí a chur orthu siúd a bhriseann dlí an chomhshaoil agus a dhéanann dochar don chomhshaol.

Bainistíocht Uisce

- Monatóireacht agus tuairiscíú a dhéanamh ar cháilíocht aibhneacha, lochanna, uisce idirchríosacha agus cósta na hÉireann, agus screamhuisc; leibhéil uisce agus sruthanna aibhneacha a thomhas.
- Comhordú náisiúnta agus maoirsiú a dhéanamh ar an gCreat-Treoir Uisce.
- Monatóireacht agus tuairiscíú a dhéanamh ar Cháilíocht an Uisce Snámha.

Monatóireacht, Anailís agus Tuairiscíú ar an gComhshaol

- Monatóireacht a dhéanamh ar cháilíocht an aeir agus Treoir an AE maidir le hAer Glan don Eoraip (CAFÉ) a chur chun feidhme.
- Tuairiscíú neamhspleách le cabhrú le cinnteoireacht an rialtais náisiúnta agus na n-údarás áitiúil (m.sh. tuairiscíú tréimhsiúil ar staid Chomhshaol na hÉireann agus Tuarascálacha ar Tháscairí).

Rialú Astaíochtaí na nGás Ceaptha Teasa in Éirinn

- Fardail agus réamh-mheastacháin na hÉireann maidir le gáis cheaptha teasa a ullmhú.
- An Treoir maidir le Trádáil Astaíochtaí a chur chun feidhme i gcomhair breis agus 100 de na táirgeoirí dé-ocsaíde carbóin is mó in Éirinn

Taighde agus Forbairt Comhshaoil

- Taighde comhshaoil a chistiú chun brúnna a shainaithint, bonn eolaís a chur faoi bheartais, agus réitigh a sholáthar i réimsí na haeráide, an uisce agus na hinbhuanaitheachta.

Measúnacht Straitéiseach Tímeallachta

- Measúnacht a dhéanamh ar thionchar pleananna agus clár beartaithe ar an gcomhshaol in Éirinn (m.sh. mórpheananna forbartha).

Cosaint Raideolaíoch

- Monatóireacht a dhéanamh ar leibhéil radaíochta, measúnacht a dhéanamh ar nochtadh mhuintir na hÉireann don radaíocht ianúcháin.
- Cabhrú le pleananna náisiúnta a fhorbairt le haghaidh éigeandálaí ag eascairt as taismí núicléacha.
- Monatóireacht a dhéanamh ar fhorbairtí thar lear a bhaineann le saoráidí núicléacha agus leis an tsábháilteacht raideolaíochta.
- Sainseirbhísí cosanta ar an radaíocht a sholáthar, nó maoirsiú a dhéanamh ar sholáthar na seirbhísí sin.

Treoir, Faisnéis Inrochtana agus Oideachas

- Comhairle agus treoir a chur ar fáil d'earnáil na tionsclaíochta agus don phobal maidir le hábhair a bhaineann le caomhnú an chomhshaoil agus leis an gcosaint raideolaíoch.
- Faisnéis thráthúil ar an gcomhshaol ar a bhfuil fáil éasca a chur ar fáil chun rannpháirtíocht an phobail a spreagadh sa chinnteoireacht i ndáil leis an gcomhshaol (m.sh. Tímeall an Tí, léarscáileanna radóin).
- Comhairle a chur ar fáil don Rialtas maidir le hábhair a bhaineann leis an tsábháilteacht raideolaíoch agus le cúrsaí príinnfhreagartha.
- Plean Náisiúnta Bainistíochta Dramhaíola Guaisí a fhorbairt chun dramhaíl ghuaiseach a chosc agus a bhainistiú.

Múscailt Feasachta agus Athrú Iompraíochta

- Feasacht chomhshaoil níos fearr a ghiniúint agus dul i bhfeidhm ar athrú iompraíochta dearfach trí thacú le gnóthais, le pobail agus le teaghlaigh a bheith níos éifeachtúla ar acmhainní.
- Tástáil le haghaidh radóin a chur chun cinn i dtithe agus in ionaid oibre, agus gníomhartha leasúcháin a spreagadh nuair is gá.

Bainistíocht agus struchtúr na Gníomhaireachta um Chaomhnú Comhshaoil

Tá an gníomhaíocht á bainistiú ag Bord lánaimseartha, ar a bhfuil Ard-Stiúrthóir agus cúigear Stiúrthóirí. Déantar an obair ar fud cúig cinn d'Oifigí:

- An Oifig Aeráide, Ceadúnaithe agus Úsáide Acmhainní
- An Oifig Forfheidhmithe i leith cúrsaí Comhshaoil
- An Oifig um Measúnú Comhshaoil
- An Oifig um Cosaint Raideolaíoch
- An Oifig Cumarsáide agus Seirbhísí Corparáideacha

Tá Coiste Comhairleach ag an nGníomhaireacht le cabhrú léi. Tá dáréag comhaltaí air agus tagann siad le chéile go rialta le plé a dhéanamh ar ábhair imní agus le comhairle a chur ar an mBord.



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