



Technical Guidelines on the

Categories of Abstraction that are likely to require
a Retrospective EIA or
a Retrospective Screening Determination



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February 2025

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Acknowledgements

This document has been prepared by the Environmental Protection Agency. The EPA expresses gratitude for the contributions of public authorities during the consultation period.

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1. Introduction

The Water Environment (Abstractions and Associated Impoundments) Act 2022 provides for a registration, licensing and control regime for water abstractions and associated impoundments. The Act also includes provisions in relation to retrospective Environmental Impact Assessment (EIA) for existing abstractions. The Environmental Protection Agency is required under Section 58 of the Act to prepare and issue technical guidelines on the categories of abstraction that are likely to require a retrospective EIA (rEIA) or a retrospective EIA screening determination under Part 5 (*Licensing of Abstractions*) of the Act.

Requirements in relation to rEIA screening/rEIA will differ depending on whether an existing abstraction requires a licence or is required to be registered. The requirements in relation to rEIA screening/rEIA are specifically addressed in Part 7 and 8 of these technical guidelines and are summarised in the flowchart in each section. The categories of abstraction not likely to be subject to rEIA considerations (preliminary assessment, rEIA screening or rEIA) are set out in Part 5 of these guidelines. These include new abstractions that were not in operation prior to the commencement of the Act (28th August 2024).

All references to sections of legislation in these guidelines are referring to the various sections of the Water Environment (Abstractions and Associated Impoundments) Act 2022 (the Act) unless otherwise specified.

These guidelines apply to existing groundwater abstractions and to existing surface water abstractions that fall within an EIA project type as set out in Appendix 1¹: Relevant project types, Appendix¹ which are governed by the Act and that were existing prior to the commencement of the Act. This is regardless of whether they are already on the EPA Water Abstraction register.²

A retrospective Environmental Impact Assessment Report (rEIA) will need to be prepared and submitted as part of the licence application if rEIA is required.

These guidelines only deal with rEIA screening and rEIA.

Part 5 of these Technical Guidelines sets out some of the categories of abstractions not likely to be subject to rEIA considerations. It should be noted that abstractions that do not have retrospective considerations may, however, be subject to EIA screening and/or EIA.

EIA screening and/or EIA (i.e. not retrospective) is limited to:

1. **New** groundwater abstractions and any new surface water abstractions that fall within an EIA project type as set out in Appendix 1 (not in operation prior to the commencement of the Act), and
2. **Proposed changes** to groundwater abstractions or to surface water abstractions that fall within an EIA project type set out in Appendix 1 which already hold an authorisation from the State pre-dating the EIA Directive or have already been subject to an EIA screening and/or EIA, as the case may be.

It is the role of the Agency to carry out an rEIA screening, where required. For an rEIA screening determination on existing abstractions, the Agency will consider whether the abstraction has had or is likely to have significant effects on the environment, whereas for an EIA screening determination on a proposed abstraction, the consideration is whether the abstraction is likely to have significant effects on the environment.

These technical guidelines will be subject to review by the Agency at intervals as it considers appropriate and will be revised as necessary in accordance with the requirements of Section 58 of the Act.

1 Appendix 1 includes directly relevant project types from Part 1 and Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended.

2 The register contains information on water abstractions of 25 cubic meters (25,000 litres) or more per day that have been registered with the EPA.

These guidelines are prepared by the Agency for the purposes of outlining the categories of abstraction that are likely to require a retrospective EIA or a retrospective screening determination under Part 5 of the Water Environment (Abstractions and Associated Impoundments) Act 2022 only, and cannot be relied upon as containing, or as a substitute for legal advice. Legal advice should always be sought in relation to individual cases.

2. Overview

Retrospective EIA screening

A retrospective EIA screening determination is the determination made by the Agency as to whether an existing abstraction is required to be subject to retrospective EIA (rEIA). If screened in, rEIA will be required. If screened out, rEIA will not be required. Not all abstractions will require an rEIA screening determination. The categories of abstraction subject to an rEIA screening determination are set out in Part 3 of these Technical Guidelines. When carrying out rEIA screening, the Agency will take into account the information provided by the applicant and any other criteria relating to the nature, size and location of the abstraction, as required by the legislation.

Retrospective EIA

rEIA is the actual process (including the assessment) as defined in the glossary (Appendix 2: Glossary) and the Act. rEIA can only be carried out as part of the consideration of a licence application and in order to carry out rEIA the Agency must be satisfied that exceptional circumstances exist such that it is appropriate to carry out an rEIA. Not all licence applications will require rEIA. The Act requires the assessment of groundwater abstractions and any surface water abstractions that fall within an EIA project type as set out in Appendix 1 to determine if they should be subject to rEIA. This will include groundwater and surface water abstractions both above and below the licensing threshold (2,000m³/day).

Projects requiring EIA are defined in Article 4 of the EIA Directive, and are set out in Annexes I and II, of that Directive. In relation to abstractions specifically, these requirements have been transposed nationally into Schedule 5 of the Planning and Development Regulations 2001, as amended (P&D Regulations) and extracts are provided in Appendix 1 of these Technical Guidelines. If an abstraction is not of a project type covered by the EIA Directive, there is no statutory requirement for it to be subject to EIA or rEIA.

It is important to note that EIA project types should be interpreted broadly and should take into consideration all aspects of a project. rEIA screening/rEIA will apply to existing surface water abstractions if there is an associated impoundment or transfer of water resources between river basins that falls within a project type of Part 1 or Part 2 of Schedule 5 of the P&D Regulations. In that regard, it is important for the applicant to consider all components of an abstraction project when looking at EIA requirements and what EIA projects would be relevant.

Combined licence application

A combined licence application will apply in circumstances where there is an existing abstraction in addition to proposed alterations to the abstraction (e.g. increase in the rate of abstraction). In relation to combined applications, the rEIA requirements apply to the existing abstraction(s) only. rEIA considerations would only apply to the existing abstraction, with EIA considerations relevant to the proposed alterations. Both will be dealt with at the same time as part of a single combined licence application.

3. Categories of abstraction subject to an rEIA screening determination

1. All licence applications for existing abstractions that fall within an EIA project type but are below an EIA threshold and should have previously been subject to EIA screening. (See Figure 1)
2. All existing abstractions that fall within an EIA project type but are below an EIA threshold and that meet or exceed the abstraction registration threshold (25m³/day) that are:
 - (i) below the licensing threshold (and do not otherwise require a licence under Section 15(1)(b) or (c) of the Act) (See Figure 2)

and

- (ii) where the Agency's rEIA preliminary assessment concludes that there is a significant and realistic doubt as to the likelihood of whether there have been or there may be significant effects on the environment arising from the abstraction.

4. Categories of abstraction subject to rEIA

1. All existing abstractions that equal or exceed an EIA threshold and should have previously been subject to EIA.
2. All existing abstractions that are below an EIA threshold and where the rEIA preliminary assessment or rEIA screening determination completed by the Agency concludes that the abstraction has had or is likely to have significant effects on the environment.
3. Licence applications for existing abstractions that are already accompanied by a retrospective EIAR. This category will not be subject to a prior rEIA screening determination by the Agency.

It should be noted, rEIA cannot be considered a process to be carried out as a matter of course and there is a need to apply an exceptionality test to the application (see Appendix 2 for further information). Where the Agency determines that an application for a licence requires rEIA, the Agency must first be satisfied that exceptional circumstances exist so that it is appropriate to carry out rEIA and consider the licence application.

5. Categories of abstraction not likely to be subject to rEIA considerations

The below categories of abstractions are not likely to be subject to rEIA considerations (preliminary assessment, rEIA screening or rEIA). The Agency retains the discretion to determine on a case-by-case basis what abstractions will actually require rEIA screening and/or rEIA and the following categories are provided by way of guidance only.

1. Existing abstractions from surface water, unless there is an associated impoundment or transfer of water resources between river basins that falls within a project type of Part 1 or Part 2 of Schedule 5 (see Appendix 1).
2. Existing abstractions that have an authorisation from the State pre-dating the EIA Directive and have been continually operated in accordance with that authorisation.
3. Existing abstractions that have an authorisation from the State and have already been subject to a valid EIA screening determination and/or EIA as the case may be.
4. Abstractions referenced in Section 20(8) of the Act.

New abstractions that were not in operation prior to the commencement of the Act are not subject to rEIA considerations.

6. Factors that will be taken into account in rEIA screening

For a retrospective screening determination, the Agency shall determine whether or not the existing abstraction has had or is likely to have significant effects on the environment. It should be noted that this rEIA screening test regarding significant effects on the environment under Section 32 of the Act is not the same as the significance assessment under Section 18 of the Act (identification of a significant abstraction). However, the Agency's determination under Section 18 will be a useful indication in some cases. The Section 18 significance assessment is not dealt with further in these Guidelines.

Whether the effects on the environment are significant in terms of rEIA screening will depend on considerations such as the type, extent, duration, intensity, timing, probability and cumulative effects of the abstraction in addition to the sensitivity of the environment. In this context, what may be deemed significant in relation to one abstraction may not be in relation to another, which highlights the importance of individual assessments based on the unique characteristics of the abstraction and its surrounding environment. Consideration of effects will include the direct and indirect, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. Effects on the environment are considered with regard to the impact of the abstraction on the environmental factors in the EIA Directive, population and human health, biodiversity, land, soil, water, air, climate, material assets, cultural heritage, the landscape and the interaction between the factors.

The consideration of cumulative effects is a very important and multifaceted part of the rEIA screening process. The addition of many minor effects together, including effects from similar projects and other projects can lead to more significant effects. Single abstractions will not be considered in isolation but collectively with other planned and permitted projects likely to affect the same waterbody. The consideration of cumulative effects in this context is much broader than a comparison against EIA thresholds. Furthermore, the cumulative assessment will not be restricted to pressures from abstractions alone but also from pressures associated with other projects affecting a waterbody in the same or different ways, such as in relation to water quality.

When carrying out an rEIA screening, the Agency will take into account the information provided by the applicant and any other criteria relating to the nature, size and location of the abstraction as required by legislation including the following:

- ▲ Nature and extent of abstraction,
- ▲ Physical characteristics,
- ▲ Location of abstraction with particular regard to the environmental sensitivity of geographical areas affected and impacts on ecologically sensitive sites (including those areas as set out specifically in section 24(4)(f) of the Act),
- ▲ The environmental objectives of the water body concerned,
- ▲ The groundwater status or surface water status of the source of the abstraction and the impact of the abstraction on that water status,
- ▲ Any assessment and determination by the Agency under Section 18 of the Act in relation to significant abstractions,
- ▲ Information from other relevant environmental assessments available (e.g. under Habitats Directive, Water Framework Directive, EU Floods Directive etc.),
- ▲ Information on any features of the abstraction and/or measures incorporated or envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment (mitigation measures),
- ▲ Cumulative effects with other abstractions or projects (pressures),
- ▲ Climate related risks and effects,

- ▲ Land use,
- ▲ The relative abundance, availability, quality and regenerative capacity of natural resources in the area and its underground,
- ▲ The possibility of effectively reducing the effect.

When considering the criteria above, regard will be had to the interaction between the effects such as the nature, extent and other physical characteristics of the abstraction and the sensitivity of the location. Impacts of a smaller magnitude will have more significant effects on the environment where the receiving environment is more sensitive. The categories of abstraction that are likely to require rEIA are those that have had or are likely to have significant effects in relation to some of the criteria listed above.

The Agency's [Guidelines on the Information to be contained in Environmental Impact Assessment Reports](#) provides further information on types of effects in addition to definitions in relation to quality, significance, extent and context, probability, duration and frequency of effects.

7. Existing abstractions requiring a licence under Section 15(1)(a) to (c) of the Act

Existing groundwater abstractions and any existing surface water abstractions that fall within an EIA project type as set out in Appendix 1 that require a licence, that equal or exceed an EIA threshold and should have previously been subject to EIA will be subject to rEIA.

Existing groundwater abstractions and any existing surface water abstractions that fall within an EIA project type as set out in Appendix 1 that require a licence, are below an EIA threshold and should have previously been subject to EIA screening will require rEIA screening by the Agency to determine if rEIA is required. Note that preliminary assessment does not apply to existing abstractions that require a licence under Section 15(1)(a) to (c).

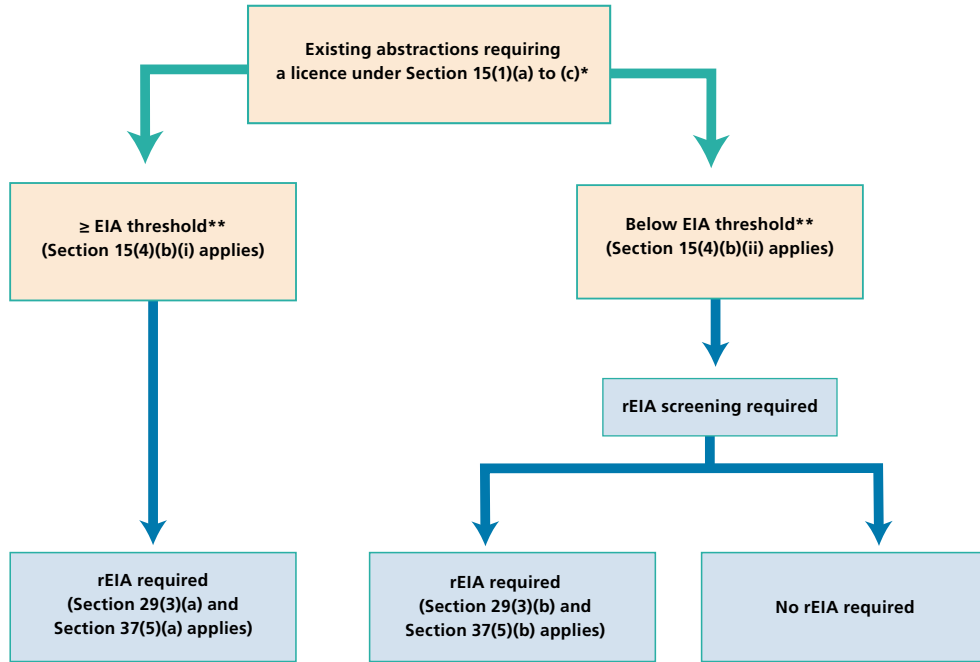
The flowchart in Figure 1 sets out the scenario for existing abstractions that already require a licence under Section 15(1)(a) to (c).

When using this flowchart, refer to Part 5 of these Technical Guidelines for categories of abstractions not likely to be subject to rEIA considerations.

If an abstraction does not fall within a relevant EIA project type, such as a surface water abstraction with no other components³, then rEIA considerations and this flowchart does not apply.

³ Example of other components: an associated impoundment or a transfer of water resources between river basins that will fall within a relevant EIA project type

Figure 1: Abstractions requiring a licence under Section 15 (1)(a) to (c)



* Refer to Part 5 of these Technical Guidelines

** Refer to project types and EIA thresholds in Appendix 1

8. Existing abstractions that do not otherwise require a licence under Section 15(1)(a) to (c) of the Act

Preliminary assessment by the Agency in relation to rEIA applies to existing groundwater abstractions and any existing surface water abstractions that fall within an EIA project type as set out in Appendix 1 which meet or exceed the registration threshold (but not including an abstraction which requires a licence). See Figure 2.

In the context of these Technical Guidelines, the term ‘preliminary assessment’ should be interpreted to mean the requirement set out in 19(6) and 19(7) of the Act. If it is determined by the Agency that such an existing abstraction requires rEIA either by a preliminary assessment alone or preliminary assessment and subsequent rEIA screening, the abstraction owner will be required to apply for a licence.

The preliminary assessment is an initial look at the characteristics of the existing abstraction and any information available in relation to the effects on the environment arising from it. It will involve consideration of at least the nature, size and location of the abstraction. There are three potential outcomes as shown in bullet points below.

- ▲ In some circumstances, the Agency may have sufficient evidence at this preliminary assessment stage to conclude that there have been no significant effects on the environment arising from the existing abstraction and there is no real likelihood of such significant effects. This may be due to factors such as small scale and lack of connection to sensitive features. Consequently, no rEIA screening or rEIA would be required.
- ▲ Conversely, there may be sufficient evidence at this preliminary assessment stage to conclude that there have been significant effects on the environment arising from the existing abstraction or there is a real likelihood of significant effects. Therefore, a licence application would be required and rEIA would be required provided that the Agency is satisfied that exceptional circumstances exist.

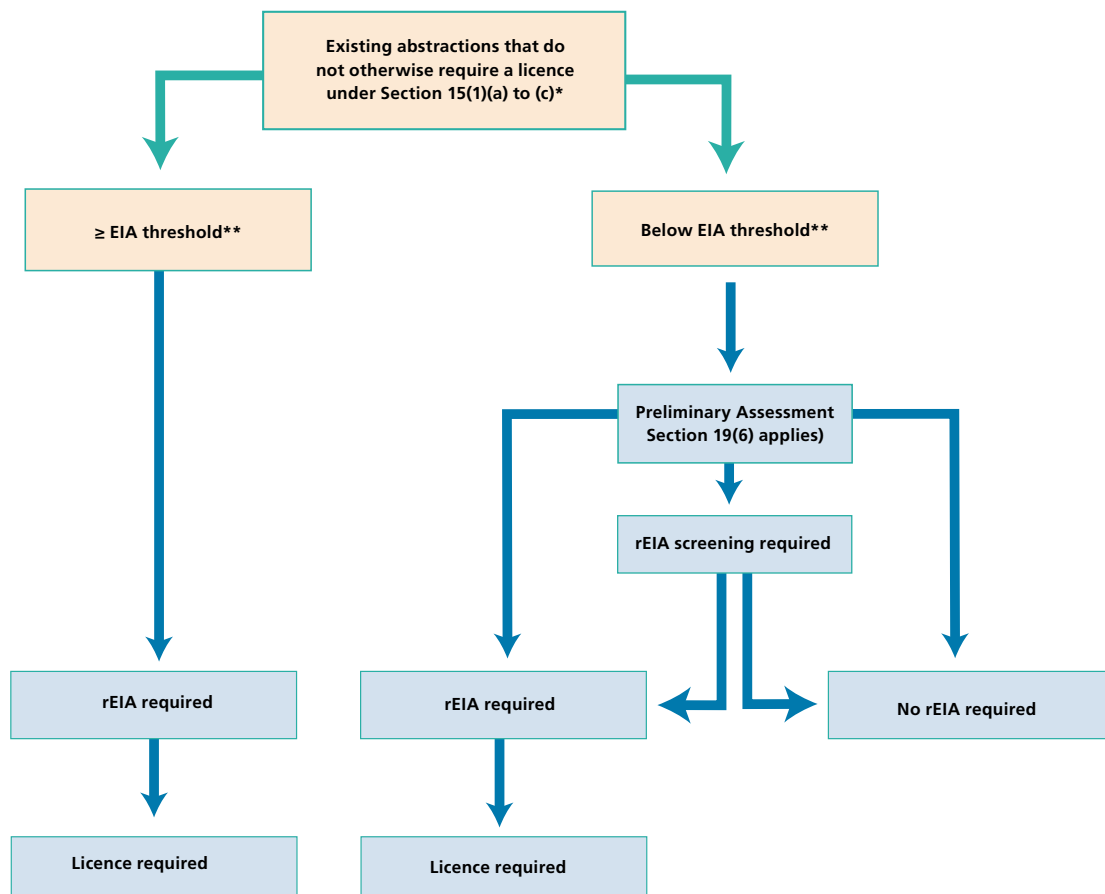
- ▲ The third option at preliminary assessment stage is that the Agency concludes that there is a significant and realistic doubt as to the likelihood of whether there have been or there may be significant effects on the environment arising from the existing abstraction. In this third scenario, the Agency will determine that an rEIA screening assessment is required.

The flowchart in Figure 2 sets out the scenario for an existing abstraction that does not otherwise require a licence under Section 15(1)(a) to (c).

When using this flowchart, refer to Part 5 of these Technical Guidelines for categories of abstractions not likely to be subject to rEIA considerations.

If an abstraction does not fall within a relevant EIA project type, such as a surface water abstraction with no other component⁴, then rEIA considerations and this flowchart do not apply.

Figure 2: Abstractions not otherwise requiring a licence under Section 15(1)(a) to (c)



* Refer to Part 5 of these Technical Guidelines

** Refer to project types and EIA thresholds in Appendix 1

4 Example of other components: an associated impoundment or a transfer of water resources between river basins that will fall within a relevant EIA project type

Appendix 1: Relevant project types

Directly relevant project types from Schedule 5 of the Planning and Development Regulations 2001, as amended are shown in the extracts below.

Part 1

11. Groundwater abstraction or artificial groundwater recharge schemes, where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
12. (a) Works for the transfer of water resources between river basins, where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.

(b) In all other cases, works for the transfer of water resources between river basins, where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5 per cent of this flow.

In the case of (a) and (b) above, transfers of piped drinking water are excluded.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

Part 2

- 10 (g) Dams and other installations not included in Part 1 of this Schedule which are designed to hold water or store it on a long-term basis, where the new or extended area of water impounded would be 30 hectares or more.
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Part 1 of this Schedule where the average annual volume of water abstracted or recharged would exceed 2 million cubic metres. **Note 1**
- (m) Works for the transfer of water resources between river basins not included in Part 1 of this Schedule where the annual volume of water abstracted or recharged would exceed 2 million cubic metres.

Note 1 *Should be interpreted taking note of the wide scope and broad purpose of the EIA Directive meaning that it covers all groundwater abstraction and artificial groundwater recharge schemes not included in Annex 1 (Part 1), irrespective of their purpose. This means that it also covers schemes which do not involve the subsequent use of that groundwater.⁵*

5 *European Commission Guidance Interpretation of definition of project categories of annex I and II of the EIA Directive, 2024*

Appendix 2: Glossary

Authorisation from the State pre-dating the EIA Directive - An authorisation from the State pre-dating the latest date of transposition of the EIA Directive (03 July 1988), such as under the Water Supplies Act 1942, the Local Government Sanitary Services Act 1964, enactments as set out in Section 87(8) of the Act and any other relevant legislation authorising an abstraction as defined by Section 3(1) of the 2022 Act, which entitled the developer to proceed with the project.

Combined application for a licence – As set out in Section 37 (1) of the Act

(1) A person referred to in section 15(5) shall make an application for a licence for—(a) an abstraction referred to in section 15(4) (in this Chapter referred to as an “existing abstraction”), and (b) a revised abstraction, in one application (in this Part referred to as a “combined application for a licence”).

EIA threshold – Any threshold set out in the relevant project types in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended (see extract in Appendix 1)

Exceptionality test – as set out in Section 30 of the Act.

30.

- (1) An application for a licence that requires a retrospective EIA under section 29(3) shall not be granted unless the Agency is satisfied that exceptional circumstances exist such that it is appropriate to carry out a retrospective EIA.
- (2) The Agency may give notice to an applicant requiring him or her to submit, within the period specified in the notice, any information that the Agency considers necessary for the purposes of this section.
- (3) In considering whether exceptional circumstances exist under subsection (1), the Agency shall have regard to the following matters:
 - a) whether carrying out a retrospective EIA would circumvent the purpose and objectives of the EIA Directive;
 - b) whether the ability to carry out an EIA and the ability of the public to participate in that process has been substantially impaired;
 - c) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the abstraction;
 - d) whether the abstraction is being or has been managed and operated in accordance with an authorisation from the State pre-dating the EIA Directive, if applicable;
 - e) whether the applicant has complied with previous licenses issued by the Agency under any enactment;
 - f) such other matters as the Agency considers relevant.
- (4) Where the Agency is not satisfied that exceptional circumstances exist, the Agency shall not carry out a retrospective EIA and the application for a licence shall be refused under section 35.
- (5) Where information required by the Agency under subsection (2) is not submitted by the applicant within the period specified, or any further period as may be specified by the Agency, the application for a licence shall be deemed to be withdrawn.

Groundwater – as per Section 2 of the Act ‘groundwater’ means ‘all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil’.

Impoundment – as per Section 3(10) of the Act ‘impoundment’ means ‘the doing of anything whereby the water level or flow in surface waters or the continuity of the morphological condition of a body of surface water is permanently or temporarily changed by means of a structure, including a dam or weir, situated in the water and built or maintained for the purpose of an abstraction or works situated in the water and carried out for that purpose’.

Preliminary assessment – In the context of these Technical Guidelines, the term ‘preliminary assessment’ should be interpreted to mean the requirement set out in Section 19(6) and 19(7) of the Act.

retrospective EIA - means a retrospective environmental impact assessment—

- a) consisting of—
 - (ii) the identification of the existence of exceptional circumstances within the meaning of *section 30(3)*,
 - (iii) the preparation of a retrospective EIAR by the applicant, the carrying out of consultations in accordance with this Act and regulations made under *section 57*,
 - (iv) the examination by the Agency of—
 - (I) the information presented in the retrospective EIAR,
 - (II) any supplementary information provided, where necessary, by the applicant in accordance with *section 23(6)*, as modified by *section 31(3)*, or *section 40(2)* as the case may be, *section 26(1)*, as modified by *section 34*, *section 30(2)* or that section as modified by *section 39(2)* as the case may be, and *section 43(1)*, and
 - (III) any relevant information received through the consultations carried out pursuant to *subparagraph (iii)*,
 - (v) the reasoned conclusion of the Agency on the significant effects of the abstraction on the environment, taking into account the results of the examination carried out pursuant to *subparagraph (iv)* and, where appropriate, its own supplementary examination, and
 - (vi) the integration of the reasoned conclusion of the Agency into the Agency’s decision on the licence application,

and

- b) which includes an examination, analysis and evaluation, carried out by the Agency in accordance with this Act and regulations made under *section 57*, that identifies, describes and assesses, in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of the abstraction, including significant effects derived from the vulnerability of the abstraction to risks of major accidents and disasters relevant to it on—
 - (i) population and human health,
 - (ii) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Birds Directive,
 - (iii) land, soil, water, air and climate,
 - (iv) material assets, cultural heritage and the landscape,
 - (v) the interaction between the factors mentioned in *subparagraphs (i) to (iv)*;

River basin - For the purposes of interpreting the term ‘river basin’ in the context of these Technical Guidelines, refer to the Water Action Plan 2024: A River Basin Management Plan for Ireland.

Surface water – means all standing or flowing fresh water on the surface of the land.



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