Annex I

Ireland

Improving financial security in the context of the Environmental Liability Directive
No 07.0203/2018/789239/SER/ENV.E.4
May 2020
Final

Prepared by:
Valerie Fogleman, Stevens & Bolton LLP,
Cardiff University School of Law and Politics
Disclaimer: The information and views set out in this assessment are those of the author(s) and do not necessarily reflect the official opinion of the European Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission’s behalf may be held responsible for the use which may be made of the information contained therein.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. INTRODUCTION</td>
<td>5</td>
</tr>
<tr>
<td>2. ENVIRONMENTAL INSURANCE MARKET</td>
<td>6</td>
</tr>
<tr>
<td>2.1. Commercial insurers</td>
<td>6</td>
</tr>
<tr>
<td>2.2. Re/insurance pools</td>
<td>6</td>
</tr>
<tr>
<td>2.3. Mutuals</td>
<td>6</td>
</tr>
<tr>
<td>2.4. Other</td>
<td>7</td>
</tr>
<tr>
<td>3. VOLUNTARY INSURANCE POLICIES FOR ELD AND OTHER ENVIRONMENTAL LIABILITIES</td>
<td>7</td>
</tr>
<tr>
<td>3.1. Environmental insurance policies</td>
<td>7</td>
</tr>
<tr>
<td>3.2. Cover for ELD preventive costs</td>
<td>7</td>
</tr>
<tr>
<td>3.3. Cover for ELD primary, complementary and compensatory costs</td>
<td>7</td>
</tr>
<tr>
<td>3.4. Cover for non-ELD liabilities</td>
<td>7</td>
</tr>
<tr>
<td>3.5. Nature of policies (liability only or liability and on-site remediation)</td>
<td>7</td>
</tr>
<tr>
<td>3.6. Description of policies</td>
<td>7</td>
</tr>
<tr>
<td>3.7. Model terms and conditions</td>
<td>10</td>
</tr>
<tr>
<td>3.8. Date of general availability of environmental insurance policies</td>
<td>10</td>
</tr>
<tr>
<td>3.9. Environmental assessments and audits</td>
<td>10</td>
</tr>
<tr>
<td>3.10. Average premium</td>
<td>10</td>
</tr>
<tr>
<td>3.11. Average policy limit</td>
<td>11</td>
</tr>
<tr>
<td>3.12. Average deductible or self-insured retention</td>
<td>11</td>
</tr>
<tr>
<td>3.13. Average policy period</td>
<td>11</td>
</tr>
<tr>
<td>3.14. Sizes of typical insured businesses</td>
<td>11</td>
</tr>
<tr>
<td>3.15. Industrial and commercial sectors that typically purchase policies</td>
<td>11</td>
</tr>
<tr>
<td>3.16. Industrial and commercial sectors with limited or no accessibility to policies</td>
<td>11</td>
</tr>
<tr>
<td>3.17. Number and amount of claims</td>
<td>11</td>
</tr>
<tr>
<td>3.18. Coverage litigation</td>
<td>11</td>
</tr>
<tr>
<td>3.19. Cover for ELD liabilities in general liability policies</td>
<td>12</td>
</tr>
<tr>
<td>3.20. Cover for ELD liabilities in property policies</td>
<td>12</td>
</tr>
<tr>
<td>4. OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS</td>
<td>12</td>
</tr>
<tr>
<td>4.1. Type(s)</td>
<td>12</td>
</tr>
<tr>
<td>4.2. Availability</td>
<td>12</td>
</tr>
<tr>
<td>5. MANDATORY FINANCIAL SECURITY FOR ELD LIABILITIES (ARTICLE 14(1))</td>
<td>13</td>
</tr>
<tr>
<td>5.1. Competent authority(ies)</td>
<td>13</td>
</tr>
<tr>
<td>5.2. Legislative provisions</td>
<td>13</td>
</tr>
<tr>
<td>5.3. Environmental licence conditions</td>
<td>14</td>
</tr>
<tr>
<td>5.4. Date of introduction</td>
<td>17</td>
</tr>
<tr>
<td>5.5. Effective date</td>
<td>18</td>
</tr>
<tr>
<td>5.6. Key reasons for introduction</td>
<td>18</td>
</tr>
<tr>
<td>5.7. Withdrawal of mandatory financial security</td>
<td>19</td>
</tr>
<tr>
<td>5.8. Guidance</td>
<td>19</td>
</tr>
<tr>
<td>5.9. Operators subject to mandatory financial security</td>
<td>20</td>
</tr>
<tr>
<td>5.10. Amounts and limits of mandatory financial security</td>
<td>21</td>
</tr>
<tr>
<td>5.11. Growth of mandatory financial security</td>
<td>22</td>
</tr>
<tr>
<td>6. REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS</td>
<td>24</td>
</tr>
<tr>
<td>6.1. Review of financial security instruments or mechanisms</td>
<td>24</td>
</tr>
<tr>
<td>6.2. Financial security instruments and mechanisms accepted</td>
<td>25</td>
</tr>
<tr>
<td>6.3. Financial security instruments and mechanisms not acceptable</td>
<td>28</td>
</tr>
<tr>
<td>6.4. Time of review</td>
<td>28</td>
</tr>
</tbody>
</table>
Improving financial security in the context of the Environmental Liability Directive

6.5. Regulatory costs of review ........................................................................................................... 28
6.6. Requirements for operator to review ........................................................................................... 29
7. ENFORCEMENT OF FINANCIAL SECURITY REQUIREMENTS ...................................................... 29
8. EX POST ENVIRONMENTAL DAMAGE MANDATORY FINANCIAL SECURITY (ARTICLE 8(2)) ....... 30
8.1. Date legislation or policy for mandatory financial security introduced ........................................ 30
8.2. Effective date for ex post mandatory financial security ............................................................. 30
8.3. Financial security instruments and mechanisms accepted ......................................................... 30
8.4. Financial security instruments and mechanisms not acceptable .............................................. 30
9. PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS ......................................... 30
9.1. Insurers .................................................................................................................................... 30
9.2. Banks and other financial institutions ...................................................................................... 30
9.3. Sureties .................................................................................................................................... 30
9.4. Providers outside Member State .............................................................................................. 30
10. MEASURES TAKEN BY MEMBER STATE TO DEVELOP FINANCIAL SECURITY MARKETS .......... 31
11. EU ENVIRONMENTAL LEGISLATION WITH MANDATORY FINANCIAL SECURITY PROVISIONS .... 32
11.1. Landfill Directive ....................................................................................................................... 32
11.2. Extractive Waste Directive ....................................................................................................... 33
11.3. Carbon Capture and Storage Directive .................................................................................... 34
12. EU RECOMMENDATION ON HYDRAULIC FRACTURING .............................................................. 35
12.1. Status ....................................................................................................................................... 35
12.2. Competent authority(ies) ......................................................................................................... 35
12.3. Financial security provisions .................................................................................................... 35
12.4. Financial security instruments and mechanisms accepted .................................................... 35
12.5. Templates ................................................................................................................................. 35
12.6. Financial security instruments and mechanisms not acceptable ........................................... 35
13. EU ENVIRONMENTAL LEGISLATION WITH NO MANDATORY FINANCIAL SECURITY PROVISIONS .... 35
13.1. Industrial Emissions Directive .................................................................................................. 35
13.2. Seveso III Directive ................................................................................................................. 36
13.3. Other legislation ...................................................................................................................... 36
14. MANDATORY FINANCIAL SECURITY FOR OFFSHORE OIL AND GAS OPERATIONS ............. 37
14.1. Competent authority(ies) ......................................................................................................... 37
14.2. Status of offshore oil and gas operations ................................................................................. 37
14.3. Requirements for financial security ......................................................................................... 37
14.4. Requirement for financial security for ELD liabilities ............................................................ 37
15. FAILURE OF FINANCIAL SECURITY .......................................................................................... 37
15.1. Inadequate level of financial security instrument or mechanism to pay claims ....................... 37
15.2. Insolvency of operator leading to failure of financial security instrument or mechanism ......... 37
15.3. Other ....................................................................................................................................... 37
16. FUNDS ....................................................................................................................................... 38
16.1. Name(s) ................................................................................................................................... 38
16.2. Extension of existing fund to cover remedial costs under the ELD ......................................... 38
16.3. Purpose .................................................................................................................................... 38
16.4. Type ......................................................................................................................................... 38
16.5. Source(s) of funding .................................................................................................................. 38
16.6. Number and amount of claims ............................................................................................... 38
BIBLIOGRAPHY ................................................................................................................................. 39
1. **INTRODUCTION**

Financial security for the prevention and remediation of environmental damage under the ELD in the form of stand-alone environmental insurance policies is widely available in Ireland.

Extensions to general liability policies that provide cover for the remediation of off-site sudden and accidental off-site pollution from an operator’s activities at its own site are also available.

Environmental extensions to property policies are not available.

The ELD was transposed into Irish law by the European Communities (Environmental Liability) Regulations 2008, as well as other laws.

Mandatory financial security for ELD and other environmental liabilities, as well as environmental responsibilities, is required by the conditions of licences issued by the Irish Environmental Protection Agency (Irish EPA) for specified industrial and waste facilities. It is not required by specific legislative provisions.

The mandatory financial security system in Ireland is a hybrid under which the Irish EPA requires operators of specified facilities licensed by it to have financial security (referred to as financial provision) for the costs of (1) liabilities in the form of preventing and remediating environmental damage from accidents including the prevention and remediation of environmental damage under the ELD, and (2) responsibilities for the costs of closure, restoration and aftercare of licensed facilities. The Irish EPA accepts stand-alone environmental insurance policies (which must be approved by it) only for liabilities for preventing and remediating environmental damage from accidents; it does not accept them for closure, restoration or aftercare costs.

Before November 2019, the majority of holders of licences issued by the Irish EPA for specified industrial and waste facilities were required to have financial security for accidental environmental damage. They were also required, if specified by the licence, to have financial security for the costs of closure, restoration and aftercare.

In November 2019, the Irish EPA published its approach to the mandatory financial security system. Whilst it recommended that businesses should continue to have financial security for operations subject to the licences, it adopted a risk-based approach that requires mandatory financial security only for licensable classes of activity considered to be ‘high risk’.

2. **ENVIRONMENTAL INSURANCE MARKET**

The environmental insurance market in Ireland is mature.

Stand-alone environmental insurance policies that provide cover under the ELD for businesses with sites and/or operations only in Ireland are widely available. Demand is good.

Environmental extensions to general liability policies are also widely available. The extensions tend to be limited to pollution rather than including other types of environmental damage. In contrast to stand-alone environmental insurance policies, they do not generally provide cover

---


for liabilities under the ELD. Demand for the extensions is much lower than the demand for stand-alone environmental insurance policies.

In addition, stand-alone environmental insurance policies from multinational insurers for large businesses with sites in Ireland and other Member States are widely available through passporting.

2.1. Commercial insurers

2.1.1. Number of insurers

At least six insurers offer commercial environmental insurance policies in Ireland. At least two of those insurers are based in, or have branches in, Ireland whilst others offer environmental insurance policies in Ireland and other Member States by means of passporting, mainly from the London environmental insurance market.

2.1.2. New insurers entering the market since 2009

Most insurers that offer stand-alone environmental insurance policies in Ireland were already offering such policies either through their branches or through passporting prior to 2009.

2.1.3. Existing insurers that introduced environmental insurance policies since 2009

Various existing insurers have introduced environmental insurance policies in Ireland since 2009. Some of these insurers already offered other types of policies in Ireland.

2.2. Re/insurance pools

There are no re/insurance pools for ELD or other environmental liabilities in Ireland.

2.2.1. Date of establishment

Not applicable

2.2.2. Descriptions of policies issued

Not applicable

2.3. Mutuals

Irish Public Bodies (IPB) Insurance, which is the only indigenous mutual general insurance company that operates in the Irish insurance market, offers an environmental insurance policy as well as other types of policies.

2.3.1. Date of establishment

IPB Insurance was established in 1926 to enable public bodies to become their own insurers.3

2.3.2. Descriptions of policies issued

IPB offers a stand-alone environmental insurance policy called an Environmental Impairment Liability Policy.4 The policy provides cover for ELD liabilities as well as liabilities under other environmental legislation.

3 See IPB Insurance, ‘Our History’; https://ipb.ie/who-we-are/our-history/

3.2. Cover for ELD preventive costs

Stand-alone environmental insurance policies provide cover for the costs of emergency measures to prevent environmental damage and further environmental damage. Conditions and/or restrictions on such cover generally require an insured to report the emergency measures to insurers within a specified time period. Other restrictions, depending on the policy, limit the type of measures that are within the definition or scope of emergency costs.

Some stand-alone environmental insurance policies specifically provide cover for the cost of measures to prevent environmental damage under the ELD. The policies do not provide cover for the costs of measures to repair or upgrade equipment to prevent the occurrence of environmental damage or similar costs. Insurance is available only for fortuitous losses, that is, the risk of a possible loss; it is not available for certainties.

Some other stand-alone environmental insurance policies do not provide cover for preventive measures under the ELD due to the possibility that this could potentially include cover for improvement or similar costs.

3.3. Cover for ELD primary, complementary and compensatory costs

Virtually all stand-alone environmental insurance policies provide cover for primary, complementary and compensatory costs under the ELD.

3.4. Cover for non-ELD liabilities

All stand-alone environmental insurance policies offered for risks in Ireland provide cover for costs arising from pollution under other environmental legislation as well as environmental damage under the ELD.

3.5. Nature of policies (liability only or liability and on-site remediation)

All stand-alone environmental insurance policies offered for risks in Ireland provide cover for claims for the remediation of on-site, as well as off-site, environmental damage including pollution of soil and water. They do not provide cover for damage to on-site property in the form of buildings, other structures and equipment, with the caveat that some provide cover for the repair or replacement of some on-site property that is damaged during works to remediate environmental damage.

3.6. Description of policies

This section (3.6) describes ‘voluntary’ stand-alone environmental insurance policies issued for risks in Ireland. It does not refer to mandatory stand-alone environmental insurance policies with the caveat that there is major overlap between stand-alone environmental insurance policies that are designed for persons that are not subject to mandatory financial
security requirements and those that are subject to them. This is because some insurers have adapted their ‘voluntary’ stand-alone environmental insurance policies to meet the EPA’s mandatory financial security requirements.

Section 3.6 refers to the use of such policies for mandatory financial security requirements only as applicable. Features of stand-alone environmental insurance policies that are accepted by the Irish EPA pursuant to its mandatory financial security requirements are more specifically described in sections 5.3 to 5.11 below.

3.6.1. Format

Stand-alone environmental insurance policies offered for risks in Ireland generally have a menu format so that an insured may select the coverage it requires. The policies tend to have separate insuring agreements for the costs of preventing and remediating environmental damage under the ELD and the costs of remediating it under other environmental laws. The reason for this split is not because operators select only coverage under the ELD; they do not do so. Rather, the split demonstrates to brokers and insureds that the policy provides cover for both types of costs.

3.6.2. Claims made or occurrence based

With the exception of some policies for contractors, stand-alone environmental insurance policies are underwritten on a claims made and reported basis. That is, a claim must be made against an insured and the insured must report the claim to insurers during the policy period. Some policies have automatic and optional extended reporting periods. These extend the period during which the insured may report a claim for environmental damage that occurred during the policy period to insurers. Automatic extended reporting periods vary from 30 to 90 days depending on the insurer. Optional extended reporting periods may be purchased from some insurers for an additional premium for periods generally between one and three years.

3.6.3. Policies for operators

Insuring agreements in many stand-alone environmental insurance policies provide cover for the following:

- the remediation of on-site and off-site environmental damage under the ELD caused by operations, including transportation, carried out by the insured operator during the policy period;
- the remediation of pollution under other environmental legislation caused by operations, including transportation, carried out by the insured operator during the policy period;
- the remediation of pre-existing environmental damage including pollution at or emanating from sites owned or occupied by the insured provided that the damage is disclosed by the insured to insurers (in which case its remediation is typically excluded), or is unknown to the insured, before the inception of the policy;
- third-party claims for bodily injury and property damage from environmental damage including pollution;
- first party business interruption costs and extra expense caused by environmental damage including pollution;
- third party business interruption costs and extra expense caused by environmental damage including pollution;
- crisis response costs arising from an incident that has caused environmental damage including pollution;
• the remediation of environmental damage arising from the insured’s waste at an authorised non-owned disposal site;
• emergency measures to prevent or remediate environmental damage, including pollution, that occurs during the policy period; and
• related legal costs.

Cover tends to be site specific, especially for pre-existing environmental damage, in that sites owned or occupied by an insured are typically listed on an endorsement to the policy. Policies may be flexible in that cover may be provided automatically, or subject to satisfactory scrutiny by insurers, for sites (and sometimes companies) that are acquired by the insured during the policy period.

Cover for risks from transportation, claims for bodily injury and property damage, business interruption, crisis response costs, non-owned disposal sites and related legal costs are not required by the Irish EPA under its mandatory financial security criteria for ELD and other liabilities and responsibilities (see section 5.3.4 below). Rather, these categories may be sought by insureds to provide additional cover for their businesses either in a voluntary environmental insurance policy or a policy that also satisfies mandatory financial security for ELD and other liabilities. (Liabilities subject to the EPA’s mandatory financial security system must be ring-fenced; see section 6.2.3 below.)

All stand-alone environmental insurance policies offered by multinational insurers to operators with sites and/or operations only in Ireland as well as sites and/or operations in Ireland and other States are not necessarily designed for Irish operators. Some policies are specifically designed to reflect – and provide cover for – the legal and licensing situation in Ireland; others are not.

3.6.4. Policies for contractors and others

Environmental insurance policies that provide cover for ELD and other environmental liabilities are also available for contractors on a claims made and reported basis as well as an occurrence basis (cover is provided for environmental damage that occurs during a policy period; the claim may be made after that period). The policies tend to provide similar types of cover as the above policies for operators including liability for remediating environmental damage including pollution at sites at which the contractor is carrying out operations in addition to the insured contractor’s own site.

Stand-alone environmental insurance policies that provide cover for ELD and other environmental liabilities are also available for real estate portfolios.

Another type of environmental insurance policy provides cover for risks arising from agriculture carried out on an insured’s property and agricultural contracting carried out by the insured on third-party land. This type of cover may be offered in a stand-alone environmental insurance policy or as a specific section in a combined policy, that is, a policy with separate sections that provide cover for different types of risks including, for example, property, public/general liability, employers’ liability, etc. Both types of policies tend to provide cover for ELD and other environmental liabilities.

A further type of environmental insurance policy that was offered by at least one insurer, but no longer appeared to be offered when this report was published, is a remediation/clean-up cost cap policy. This policy provides cover for losses arising from costs that exceed a buffer above an amount agreed between the operator and insurers following detailed negotiations between them. The agreed amount is the projected cost of the remediation/clean up. The policy thus provides cover if the clean-up costs exceed the agreed amount plus the buffer amount.
3.7. **Model terms and conditions**

There are no model terms and conditions for environmental insurance policies or any other financial security instruments issued for risks in Ireland.

3.7.1. **Organisation issuing model terms and conditions**

Not applicable

3.7.2. **Description of model terms and conditions**

Not applicable

3.7.3. **Relationship between policies with model terms and conditions and environmental insurance policies**

Not applicable

3.8. **Date of general availability of environmental insurance policies**

Stand-alone environmental insurance policies became available in Ireland in the late 1990s. By the 2000s, they were widely available. Demand for them was still low as late as 2012, however, despite their wide availability.\(^5\)

Demand for them increased following publication by the Irish EPA of ‘Guidance on Financial Provision for Environmental Liabilities’ in 2015.\(^6\) The guidance provided clarity on the types of financial security instruments and mechanisms that were acceptable to the Irish EPA under its mandatory financial security requirements.

3.9. **Environmental assessments and audits**

A business that applies for a stand-alone environmental insurance policy is not required to carry out an environmental assessment or audit of sites to be covered by it before it is placed. If the putative insured already has information on the environmental condition of the site(s) to be insured, this information is provided to the insurer. Under Irish law, an insurer may deny cover if the insured fails to disclose material information before the policy incepts.

The availability of underwriting information (e.g., Phase II investigations for pre-existing pollution conditions) will determine the scope of cover available, and in turn may determine whether an environmental insurance policy meets the Irish EPA’s financial security requirements (see section 5.2 below).\(^7\)

3.10. **Average premium**

The average premium for a stand-alone environmental insurance policy varies depending on factors such as whether the insured is a large business or a small or medium sized business. Other factors include the number and type of facilities operated by the insured as well as its environmental management systems.

---


\(^7\) Ibid 18-19
3.11. **Average policy limit**

The average policy limit for a stand-alone environmental insurance policy varies depending on the factors indicated in section 3.10 above.

3.12. **Average deductible or self-insured retention**

The average deductible or self-insured retention for a stand-alone environmental insurance policy is between EUR 15,000 and EUR 20,000.

3.13. **Average policy period**

The average length of a stand-alone environmental insurance policy that provides cover for losses from environmental damage caused during the policy period is one to three years. Policies may, of course, be renewed.

Policies that provide cover for pre-existing environmental damage, as opposed to such damage from operational activities, are available for periods of up to 10 years.

3.14. **Sizes of typical insured businesses**

Typical businesses that purchase stand-alone environmental insurance policies have turnovers in excess of EUR 5,000,000.

3.15. **Industrial and commercial sectors that typically purchase policies**

No concrete information was available. The following figures, which are based on EPA licensed facilities provide some indication of industrial and commercial sectors that typically purchase policies.

Forty-three per cent of stand-alone environmental insurance policies in force in 2017 under the mandatory financial security system were for hazardous and non-hazardous waste transfer stations.\(^8\) Other main commercial and industrial sectors were chemical, food/beverage, energy, waste, pharmaceutical and agriculture. As described in section 5.3.2 below, businesses in the agriculture and food/beverage sectors are no longer routinely subject to the Irish EPA’s mandatory financial security system.

3.16. **Industrial and commercial sectors with limited or no accessibility to policies**

Some environmental insurance policies exclude cover for genetically modified organisms. In addition, insurers may refuse to offer policies to companies engaged in the testing or cultivation of genetically modified crops.

3.17. **Number and amount of claims**

It is not possible to estimate the number and amount of claims with any accuracy. Any information is anecdotal.

3.18. **Coverage litigation**

There are no reported Irish cases on the extent of coverage provided by the terms and conditions of environmental insurance policies.

---

\(^8\) Denise O’Riordan, Linda Dalton O’Regan and Stephen McCarthy, ‘Financial provision for environmental liabilities’ (2017) 29 Environmental Law & Management 183, 186
3.19. **Cover for ELD liabilities in general liability policies**

Public/general liability policies for risks in Ireland do not provide cover for remediating environmental damage including pollution under the ELD or any other environmental legislation. Further, the cover provided by them for losses from pollution is limited to losses from sudden and accidental pollution incidents.

Endorsements that provide cover for the costs of remediating off-site pollution caused by a sudden and accidental incident on an insured’s site under legislation other than the ELD are widely available. Endorsements that provide cover for off-site (or on-site) environmental damage under the ELD are not generally available.

Cover for off-site pollution may be available in combined policies as an extension to the public/general liability section of the policy, virtually always subject to a sub-limit of liability. Cover for off-site environmental liabilities, including ELD liabilities, in combined policies may also be included as a separate section.

When this report was published, environmental endorsements to general liability policies and/or combined policies, or as a separate section in a combined policy, did not satisfy the Irish EPA’s mandatory financial security requirements for ELD liabilities (see section 5.3 below).

3.20. **Cover for ELD liabilities in property policies**

Property policies do not provide cover for environmental damage, including pollution, under the ELD or other legislation. The policies provide cover for damage to ‘insured property’; land is not classified as ‘insured property’ that is covered by the policy.

Endorsements to property policies to provide cover for remediating pollution or other environmental damage on sites owned or occupied by the insured are not available. Such cover may be available in combined policies as an extension to the property section of the policy subject to a sub-limit of liability. They may also be available as part of a separate environmental liability section to a combined policy.

The endorsements, extensions, and separate environmental sections in combined policies would not satisfy the Irish EPA’s mandatory financial security requirements for ELD liabilities (see section 5.3 below).

4. **OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS**

4.1. **Type(s)**

Secured funds, performance bonds, parent company guarantees, charges over property, as well as environmental insurance policies and other financial security instruments are available for environmental damage from accidents. Their availability is due, in large part, to the Irish EPA’s mandatory hybrid financial security requirements that includes environmental responsibilities as well as liabilities (see sections 5.3 and 6.2 below). That is, such instruments are generally used as financial security for environmental responsibilities, not environmental liabilities.

4.2. **Availability**

Whereas operators and other persons may obtain or set aside funds, bonds, guarantees, charges and other financial security instruments voluntarily, it is highly unlikely that an operator or another person who is not subject to a requirement to have financial security would have any financial security instrument other than an environmental insurance policy.
for accidental damage under the ELD and other environmental laws because there is no incentive to do so.

5. **MANDATORY FINANCIAL SECURITY FOR ELD LIABILITIES (ARTICLE 14(1))**

5.1. **Competent authority(ies)**

The Irish EPA is the main competent authority that enters into financial security instruments or mechanisms with operators in Ireland under the legislation transposing the ELD and other environmental legislation.

In certain cases, another statutory authority may also be a competent authority. The EPA ‘Guidance on Financial Provision for Environmental Liabilities’ provides the example of the Minister for Communications, Energy and Natural Resources (now the Minister for Communications, Climate Action and Environment) being an additional party to financial security for a mining lease.\(^9\)

In addition, some local authorities in Ireland require holders of waste facility permits issued by them to have financial security.

5.2. **Legislative provisions**

5.2.1. **Name(s) of legislation**

The Irish Government has not enacted legislation that specifically mandates financial security for ELD or other environmental liabilities except for those required by EU legislation (see section 11 below).

5.2.2. **Stand-alone requirement or hybrid**

Not applicable

5.2.3. **Consideration of mandatory financial security legislation (if not enacted)**

Not applicable

5.2.4. **Reasons for decision not to enact mandatory financial security legislation**

Not applicable

5.2.5. **Revisions to legislation**

Not applicable

5.2.6. **ELD liabilities covered by mandatory financial security**

Not applicable

5.2.7. **Description of mandatory financial security provisions**

Not applicable

5.2.8. **Exception for low risk sites**

Not applicable

5.2.9. **Exception for ISO 14001 certification or EMAS registration**
Not applicable

5.2.10. **Other exceptions**
Not applicable

5.3. **Environmental licence conditions**

5.3.1. **Stand-alone requirement or hybrid**
The mandatory financial security system is a hybrid that includes liabilities for environmental damage under the ELD and other environmental legislation, and responsibilities for closure, restoration and aftercare costs.

Liability for environmental damage under the ELD and environmental responsibilities are not mutually exclusive. For example, an operator may cause environmental damage during the closure or post closure (aftercare) of a landfill.

5.3.2. **Revisions to licensing requirements**
The requirement for financial security for ELD and other environmental liabilities resulted in revisions to conditions in licences issued by the Irish EPA following transposition of the ELD into Irish law in April 2009.

The requirement for financial security for closure, restoration and aftercare costs was also substantially revised following transposition of the Industrial Emissions Directive (2010/75/EU; IED) into Irish law in April 2013.

In November 2019, the Irish EPA published its approach to the mandatory financial security system to a risk-based system so that it applies only to facilities that have been determined by the Irish EPA to pose the most significant environmental risks if an incident was to occur or on closure of the facility (see section 5.3.4 below).

5.3.3. **ELD liabilities covered by mandatory financial security**
Financial security is required for all measures under the ELD; namely preventive measures, primary remediation, complementary remediation, and compensatory remediation.

5.3.4. **Description of mandatory financial security conditions**
The Irish EPA requires operators of licences issued by it to have evidence of financial security for ELD and other environmental liabilities by the inclusion of conditions in those licences. The requirement applied to about 700 facilities prior to revisions to the mandatory financial security system in November 2019.10 The revised mandatory financial security system applies to approximately 192 facilities, with the caveat that this figure is dynamic.

The requirement for financial security under the ELD is derived from the Irish EPA being prohibited to grant or revise a licence unless, among other things, it is satisfied that ‘necessary measures will be taken to prevent and to limit the consequences of accidents and to remedy...

---

those consequences’. Further, in order for a person to be a ‘fit and proper person’ under Irish law and, thus, be able to be granted a licence, the person must, in the opinion of the Irish EPA, be:

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.12

Accordingly, the Irish EPA includes conditions in the licence for evidence to ‘be furnished of financial provision in relation to the licensee’s ability to meet the financial commitments or liabilities that the EPA reasonably considers will be incurred in carrying on the activity’.13

The EU regimes that apply to EPA licences, not all of which contain provisions for mandatory financial security, are as follows:

- IED;
- Extractive Waste Directive (2006/21/EC);
- ELD; and

The requirements under the IED and Landfill Directive are discussed in this section rather than under sections 13.1 and 11.1, respectively, due to the hybrid nature of the Irish system in which there is a close relationship between financial security requirements under both Directives, the Waste Framework Directive and the ELD.

The Irish EPA issues three main types of relevant licences: (1) industrial emissions licences for facilities covered by the IED; (2) licences for waste facilities; and (3) Integrated Pollution Control licences for activities below the threshold of the IED. The licences are collectively called Integrated Pollution Control/Industrial Emissions Directive (IPC/IED) licences.

Key legislation that governs or is relevant to an IPC/IED licence is: the Environmental Protection Acts 1992 to 2019,14 the European Union (Industrial Emissions) Regulations 2013/138,15 the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013/137,16 the Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013/283,17 and the Waste Management Acts 1996 to 2019.18

---

12 Ibid 5
13 Ibid
16 Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013/137; http://www.irishstatutebook.ie/eli/2013/si/137/made/en/print
17 Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013/283; http://www.irishstatutebook.ie/eli/2013/si/283/made/en/print
Among other things, strict liability applies to holders of IPC/IED licences due to application of the Environmental Protection Agency Acts 1992 to 2019\(^{19}\) and the Waste Management Acts 1996 to 2019.

High risk licensees must have financial security for two types of risks; Environmental Liability Risk Assessment (ELRA) costs for unexpected incidents, and Closure Restoration and Aftercare Management Plan (CRAMP) costs for foreseen events such as closure, restoration and aftercare plans for a licensed facility.

Conditions in IPC/IED licenses require the licensee to cover the costs of remediating environmental damage caused by it.\(^{20}\) More specifically in respect of remediation costs, IPC/IED licences include conditions that require the licensee to have financial security for the costs of preventing further damage, remediating environmental damage including pollution from incidents and also for the costs of closure and aftercare and, depending on the type of licensed facility, restoration of land.\(^{21}\) Preventive measures to reduce the risk of environmental damage are listed in the ELRA. Whilst these must be addressed under the conditions of a licence, they are not singly costed for.

The scope of financial security requirements for ELRA is similar for all IPC/IED licences. The scope of financial security requirements for CRAMP differs depending on the facility for which the licence is issued. For example, the conditions of a licence pursuant to the IED require the licensee to ensure that, when the licence is surrendered to the Irish EPA, the site of the licensed facility is returned to a ‘satisfactory state’, as required by the IED.\(^{22}\) Quarries and mines require restoration plans whereas other licensed facilities may not do so.

As indicated in section 5.3.2 above, the Irish EPA published its approach to financial security requirements in November 2019.

Under the post November 2019 system, licensable classes of activity that the Irish EPA considers to be high risk are required to carry out an assessment, to cost known and unknown liabilities, and to obtain financial security in accordance with the provisions of their licences and relevant guidance by the Irish EPA. All other holders of EPA licences are no longer subject to the mandatory financial security system. The Irish EPA recommends, however, that they continue to complete assessments and to retain financial security for their environmental risks.\(^{23}\)

Eight categories of facilities licensed by the Irish EPA remain subject to assessment and the mandatory financial security system. The categories are as follows:

- landfills;
- Category A extractive waste facilities;

---


22 Denise O’Riordan, Linda Dalton O’Regan and Stephen McCarthy, ‘Financial provision for environmental liabilities’ (2017) 29 Environmental Law & Management 183, 183; see IED arts 11, 22

• upper and lower tier Seveso facilities;
• hazardous waste transfer stations;
• non-hazardous waste transfer stations that accept more than 50,000 tonnes of waste per year;
• incineration and co-incineration waste facilities;
• high risk contaminated land; and
• sites for which there are exceptional circumstances.

The category for high risk contaminated land includes licensed facilities that are considered to pose a significant threat to groundwater bodies under the Water Framework Directive (2006/60/EC). In July 2018, the Irish EPA issued a letter to holders of licences in this category to advise them that such facilities are designated as Significant Groundwater Pressure Sites.24

The category for sites at which there are exceptional circumstances contains sites that are not included in the other seven categories of sites but which meet one or more of the following criteria:

• existence of a known documented liability;
• the known documented liability is unusual for the sector;
• significant waste stockpiling at a facility, that is, storage of large amounts of waste that would incur significant costs to remove and dispose of if the facility was suddenly closed; and
• groundwater/soil pollution that requires intervention to prevent or limit off-site impacts.

If a site falls into the category for exceptional circumstances, the Irish EPA contacts the holder of the licence for it to confirm that it is subject to an assessment and mandatory financial security.25

Facilities and sites in the above categories are not static. The Irish EPA provides the examples of a facility that is added or removed from the list of Seveso sites, and a site at which an incident occurs that results in the site being reclassified as having exceptional circumstances.26 If circumstances at a facility or site change such that it becomes subject to the mandatory financial security system, the Irish EPA contacts the holder of the licence for the facility/site to advise them that the system applies.27

The Irish EPA has established procedures, including contacting the holder of the licence for each facility/site, to phase facilities/sites that were formerly subject to assessment and the mandatory financial security system from such requirements.28

5.4. Date of introduction

There is no single date for the introduction of mandatory financial security for liabilities under the ELD and other environmental legislation due to their introduction in conditions in EPA licences.

24 Ibid 3
25 Ibid
26 Ibid
27 Ibid
28 Ibid
The Irish EPA, which was created in 1993, began including financial security provisions in licences issued by it in the 1990s. During the period of 1999 to 2006, these became more standardised. Typical conditions required financial security in a form acceptable to the Irish EPA to be made within nine months after the licence was granted or operations commenced, and to be reviewed annually. The conditions typically covered liabilities identified by the ELRA as well as obligations concerning the facility’s decommissioning and residuals management.\(^{29}\)

The system became more sophisticated in the mid 2000’s. The ‘Guidance on Environmental Liability Risk Assessment, Residuals Management Plans and Financial Provision’, published in 2006, sets out those requirements.\(^{30}\) Liabilities under the ELD were not originally included due to the ELD not being transposed into Irish law until 1 April 2009.\(^{31}\) The 2006 guidance was superseded in 2014. The Irish EPA advised operators to be cognisant of the ELD, noting that compensatory and complementary remediation under the ELD, in addition to primary remediation, could have a significant bearing on costs related to an incident.\(^{32}\)

The requirements for the licence conditions became even more detailed and specific in October 2015 following publication of ‘Guidance on Financial Provision for Environmental Liabilities’.\(^{33}\) Unlike the 2006 guidance, which covered ELRA and CRAMP, the 2015 guidance focuses only on financial security; other publications cover ELRA and CRAMP.

5.5. Effective date

There is no single effective date for the introduction of mandatory financial security for ELD and other environmental liabilities. Instead, from the mid 2000’s (2009 for the ELD), the conditions were included in new licences and phased into existing licences, many of which had been issued before the European Union (Industrial Emissions) Regulations 2013/138 and the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013/137, which transposed the IED into Irish law.

As a practical matter, the choice of financial security instrument was flexible and included not only bonds, upfront cash deposits, accumulating cash funds, escrow accounts and insurance but also basic credit checks for some facilities.\(^{34}\) Further, some insurance policies provided as evidence of financial security for environmental liabilities were public/general liability policies that did not provide cover for the costs of remediating environmental damage or losses from gradual environmental damage.

5.6. Key reasons for introduction

As indicated in section 5.4, the Irish EPA has gradually introduced financial security provisions in EPA licences since the 1990s, with the system becoming increasingly more sophisticated and effective.

---

\(^{29}\) See Conor Linehan, ‘Environmental Claims and Insolvency: Two Divergent Regimes’ (2011)


\(^{31}\) European Communities (Environmental Liability) Regulations 2008/547, reg 1(2))


\(^{34}\) See Conor Linehan, ‘Environmental Claims in Insolvency Scenarios’ (William Fry news article, 8 March 2011)
A major reason for the current system of mandatory financial security was the liquidation of some waste businesses during the recession that began in 2008 and the resulting costs to the Irish Government of remediating pollution caused by them.

An example is a site that was subject to an IPC licence for the initial production (melting) of iron or steel. The Irish EPA granted the licence, which also authorised the operation of a large on-site landfill, to Irish Ispat Limited on 22 June 2001, the same day that a statutory meeting was held to begin winding up the company. The company subsequently went into liquidation, following which the High Court granted a request by the liquidator to disclaim the licence as onerous property under then section 290 of the Companies Act 1963. The disclaimer meant that the Irish Government was responsible for the costs of its closure and remediation.\(^{35}\)

A publication by the Irish EPA, dated 2014, states that the Irish EPA’s focus on financial security reflects ‘a European wide spotlight on environmental liabilities of insolvent companies’.\(^{36}\) The publication further stated that:

> Companies and their directors have benefited from protections given by existing company law to minimise financial liability for environmental responsibilities. Therefore, there is a further requirement that financial provisions put in place are protected from insolvency, and changes to law will be proposed to ensure this.\(^{37}\)

Securing financial security for EPA licensed facilities is a priority under the Irish EPA’s Strategic Plan (2016–2020), which includes the strategic goal, to be achieved by 2020, of ‘[r]educed environmental risks at EPA regulated facilities through tailored interventions and by ensuring appropriate financial provisions are in place’.\(^{38}\)

### 5.7. Withdrawal of mandatory financial security

Ireland has not withdrawn the scope of requirements for mandatory financial security for ELD liabilities or liabilities or responsibilities under other environmental legislation. As described in section 5.3.2 above, the mandatory financial security system, however, the approach to a risk-based system in November 2019 resulted in a major reduction in the number of operators subject to the requirements.

### 5.8. Guidance

In August 2015 the Irish EPA published ‘Guidance on Financial Provision for Environmental Liabilities’\(^{39}\) after issuing draft guidelines for public consultation on 4 July 2014. The guidance was supplemented by ‘Additional guidance on environmental impairment liability insurance’

---


\(^{37}\) Ibid 34


in 2017. In turn, the Additional guidance was updated in 2019. Further, the Irish EPA has published templates for financial security instruments (see section 6.2.1 below).

The Irish EPA has also published the following guidance on calculating the amount of ELRA and CRAMP costs for which financial security is required:

- Guidance on assessing and costing environmental liabilities;
- Guidance on assessing and costing environmental liabilities – unit cost rates for verification; and
- Guidance on assessing and costing environmental liabilities; Frequently asked questions.

In addition, the Irish EPA’s website provides a link to a webinar on ‘Guidance on assessing and costing environmental liabilities’.

The guidance on unit cost rates provides unit costs for closure, restoration and aftercare, including costs specific to landfills. It is not, therefore, aimed at the costs of remediating accidental environmental damage covered by the ELD, although it does set out unit costs, among other things, for site investigations and remediating contaminated land.

A summary of the Irish methodology for assessing and costing environmental liabilities, together with a case study, is set out in a report by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), published in November 2018.

5.9. Operators subject to mandatory financial security

Operators subject to mandatory financial security for ELD liabilities are persons with IPC/IED licences. These include the following (category of annex III of the ELD indicated in parenthesis):

- IED (item 1);

---

40 Environmental Protection Agency, ‘Guidance on financial provision for environmental liabilities; Additional guidance on environmental impairment liability insurance’ (2017); https://www.epa.ie/pubs/advice/licensee/fp/financiaprosionsreport.pdf

41 Environmental Protection Agency, ‘Guidance on financial provision for environmental liabilities; Additional guidance on environmental impairment liability insurance’ (2019, Revision 2); https://www.epa.ie/pubs/advice/licensee/fp/Guidance_EIL_Insurance.pdf


43 Environmental Protection Agency, ‘Guidance on assessing and costing environmental liabilities – Unit cost rates for verification’ (2014); https://www.epa.ie/pubs/advice/licensee/fp/guidanceonassessingandcostingenvironmentalliabilities-unitcostrates.html

44 Environmental Protection Agency, ‘Guidance on assessing and costing environmental liabilities – Frequently asked questions’ (2014); https://www.epa.ie/pubs/advice/licensee/fp/guidanceonassessingandcostingenvironmentalliabilitiesfaq.html


• Waste Framework Directive (item 2);
• Landfill Directive (item 2);
• Extractive Waste Directive (item 13); and

Further, persons with IPC/IED licences may also be subject to other categories set out in annex III of the ELD.

In addition, operators subject to integrated pollution prevention and control legislation that is below the threshold for the IED may also be subject to mandatory financial security for ELD liabilities. Section 5.3.2 above sets out the eight categories of sites/facilities that are subject to the mandatory financial security system after November 2019.

5.10. Amounts and limits of mandatory financial security

The operator of an IPC/IED facility must prepare reports that calculate the costs of environmental liabilities and responsibilities. Two reports must be prepared: an ELRA for the costs associated with environmental damage from incidents; and a CRAMP for the costs of closure, restoration and aftercare of the licensed facility. The amount of financial security for the former is based on a plausible worst case scenario,\textsuperscript{47} that is, ‘the plausible event that poses the maximum environmental liability, i.e. consequence, during the period to be covered by the financial provision’.\textsuperscript{48} A factor in calculating the amount is the nature of the facility for which financial security for liabilities is required.\textsuperscript{49}

The Irish EPA reviews the ELRA and CRAMP costings and approves them if it agrees with them or requests revisions to them. The operator must then ‘promptly indicate the form of financial provision being considered as financial provision’.\textsuperscript{50} Alternatively, the licensee prepares the CRAMP and ELRA costings and the amount of financial security in parallel.\textsuperscript{51} If the costings in the ELRA or the CRAMP change, the amount of financial security must also be revised.\textsuperscript{52}

The Irish EPA describes the purpose of the ELRA as follows:

to identify and cost risks to the environment (surface water, groundwater, atmosphere, land, flora, fauna and human health). It should not include risks solely relating to health and safety, e.g. direct injury or death resulting from vehicular collisions. Also, the analysis and costing should cover the environmental aspects of an event, e.g. stopping it, preventing further emissions/pollution, clean-up of emissions/pollution caused. It

\textsuperscript{47} See Pol O’Séasnain, ‘Financial Guarantees in Ireland’ (presentation, 26 January 2017)


\textsuperscript{49} See Denise O’Riordan, Linda Dalton O’Regan and Stephen McCarthy, ‘Financial provision for environmental liabilities’ (2017) 29 Environmental Law & Management 183, 183


\textsuperscript{51} See Denise O’Riordan, Linda Dalton O’Regan and Stephen McCarthy, ‘Financial provision for environmental liabilities’ (2017) 29 Environmental Law & Management 183, 183

should not include other costs that, though associated, are non-environmental, e.g. legal fees/penalties and business interruption.\textsuperscript{53}

Inclusion of some of the above factors such as damage to the atmosphere, and flora and fauna that are not protected by the Birds Directive (2009/147/EC) and the Habitats Directive (92/43/EEC), are beyond the scope of the ELD. Further, the above factors to include damage below the threshold in the ELD. The costs specified in an ELRA, therefore, do not solely reflect costs that an operator may incur under the ELD; they are broader.

The costing under ELRA is calculated according to the following risk assessment procedure:

- scoping (to determine the type of environmental liabilities to be covered by the risk assessment); and
- a risk assessment consisting of the following stages:
  - identification of plausible risks in respect of the sensitivity of the receptor subject to the source of pollution and the potential pathway between the source and the receptor;
  - analysis of the risks including their likelihood and consequences;
  - evaluation of the risks to prioritise the programme to treat them;
  - the process to mitigate the risks, e.g. by removing them or minimising their likelihood or consequences; and
  - identification, quantification and costing of a plausible worst case scenario for financial provision.\textsuperscript{54}

\textbf{5.11. Growth of mandatory financial security}

The amount of financial security required by EPA licences has grown steadily. By 2014, the Irish EPA had secured EUR 8,300,000 in ELRA and CRAMP costs, with a total of EUR 77,000,000 having been agreed for all such costs by November 2014.\textsuperscript{55}

By 2016, the amount of financial security for ELRA and CRAMP costs had increased substantially.\textsuperscript{56} By November 2016, a total of EUR 290,000,000 in financial security had been secured, with EUR 786,000,000 for ELRA and CRAMP costs having been agreed. Most financial provisions were bonds (50%), 23% were parent company guarantees, 11% were stand-alone environmental insurance policies, 11% were secured funds, and 5% were charges on property.\textsuperscript{57} More specifically, ELRA costings, which were all for fire risks, varied between EUR 870,000 and EUR 1,350,000, with an average of EUR 1,200,000.\textsuperscript{58} Forty-three per cent of


\textsuperscript{54} Ibid 27

\textsuperscript{55} See Role and Functions: Environmental Protection Agency, Joint Committee on Environment, Culture and the Gaeltacht debate, Houses of the Oireachtas (4 November 2014); https://www.oireachtas.ie/en/debates/debate/joint_committee_on_environment_culture_and_the_gaeltacht/2014-11-04/2/


\textsuperscript{58} Jim Moriarty, ‘Financial provision requirements for EPA Licensed Facilities’ (presentation, 20 November 2016)
environmental insurance policies that had been issued were for hazardous and non-hazardous waste transfer stations.\textsuperscript{59}

The following are figures from the Irish EPA outlining the agreed potential incident liability as an average per site per sector at the end of 2016. They are not the amount of financial security secured by sector.

The figures in parentheses indicate the number of authorised facilities/sites with liability costings agreed with the EPA at that time.

- EUR 3,400,000: hazardous waste transfer stations (7);
- EUR 2,450,000: chemical facilities (28);
- EUR 2,100,000: landfills (17);
- EUR 1,950,000: energy and fossil fuel facilities (8);
- EUR 520,000: food and drink facilities (21);
- EUR 520,000: other industrial facilities (23); and
- EUR 510,000: non-hazardous waste transfer stations (27).\textsuperscript{60}

The following figures, also by the end of 2016, show financial security secured by the Irish EPA for closure, restoration and aftercare costing agreed with licensees. As above, the figures indicate the average liabilities per site for each sector. The figures in parentheses indicate the number of authorised facilities/sites with liability costings agreed with the EPA at that time:

- EUR 8,600,000: landfills (17);
- EUR 7,000,000: energy and fossil fuel facilities (12);
- EUR 4,000,000: chemical facilities (31);
- EUR 1,700,000: food and drink facilities (22);
- EUR 1,000,000: hazardous waste transfer stations (8);
- EUR 1,000,000: other industrial facilities (23); and
- EUR 100,000: non-hazardous waste transfer stations (31).\textsuperscript{61}

By May 2017, EUR 417,000,000 had been secured for 93 facilities/sites, with EUR 799,000,000 in financial security for ELRA and CRAMP costs at 167 facilities/sites having been agreed. Most financial security provisions were, again, bonds (54%), 22% were parent company guarantees, 14% were environmental insurance policies, 7% were secured funds, and 3% were charges on property.\textsuperscript{62}

By April 2018, EUR 667,000,000 in financial security for ELRA and CRAMP costs had been secured of which 43% were financial institution guarantees in the form of bonds and letters of credit, 28% were environmental insurance policies, 18% were parent company guarantees, 4% were cash deposits/secured funds, 2% were charges on assets/property, with the remaining 8% composed of other financial security instruments.\textsuperscript{63}

By the end of June 2019, EUR 688,000,000 in financial security for ELRA and CRAMP costs had been secured, with EUR 793,000,000 in financial security for such costs having been agreed. Most financial security provisions were, again, bonds (36%), 25% were environmental

\textsuperscript{59} See Denise O’Riordan, Linda Dalton O’Regan and Stephen McCarthy, ‘Financial provision for environmental liabilities’ (2017) 29 Environmental Law & Management 183, 186

\textsuperscript{60} Ibid 184

\textsuperscript{61} Ibid


\textsuperscript{63} See Stephen McCarthy, ‘Financial Provision for Environmental Liabilities’ (presentation, 26 April 2018)
insurance policies, 23% were parent company guarantees, 4% were secured funds, 3% were letters of credit, 2% were charges on property, with the remaining 8% composed of other financial security instruments.

By November 2019, the figures for ELRA and CRAMP costs were EUR 700,000,000 and EUR 804,000,000, respectively.

Except for the figures for the end of 2016, the above figures do not indicate the amount or percentages of financial security instruments between ELRA and CRAMP costs. That is, they reflect financial security for environmental responsibilities as well as environmental liabilities.

6. REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS

6.1. Review of financial security instruments or mechanisms

The Irish EPA considers financial security proposals on a case-by-case basis provided that:

- ‘the financial security is secure for the duration of the applicant’s licence including in the event that the applicant becomes insolvent;
- the financial security is sufficient to meet all of the applicant’s obligations under its licence including the cost of closure and environmental liability risks; and
- the funds from the financial security are available to the EPA when required to discharge the licensee’s obligations’.

As indicated in section 5.9 above, the Irish EPA reviews ELRA and CRAMP costings and approves them or requests revisions to them. Either following the review or in parallel with it,64 the operator submits evidence of financial security based on the CRAMP and ELRA costings.

---

64 See Denise O’Riordan, Linda Dalton O’Regan and Stephen McCarthy, ‘Financial provision for environmental liabilities’ (2017) 29 Environmental Law & Management 183, 183
costings for review by the Irish EPA. If those costings change, the amount of financial security must be revised.\textsuperscript{65}

6.2. Financial security instruments and mechanisms accepted

The following types of financial security instruments are, in principle, acceptable to the Irish EPA for ELD and other environmental liabilities and responsibilities:

- secured fund with a first ranking fixed charge in favour of the Irish EPA;
- perpetual and on demand performance bonds with the proviso that the failure, on expiry, to renew or replace the bond with an alternative financial security is a drawdown event;
- parent company guarantees (and guarantees from other affiliated companies) but not for the inevitable costs of closing a facility;
- first ranking fixed charge over property in favour of the Irish EPA provided that the charge is used only for a specified percentage of the value of the property; and
- environmental insurance.\textsuperscript{66}

Further, in order to be acceptable the Irish EPA must agree the wording of all financial security instruments in advance. That is, bonds and company guarantees must be agreed before their execution; the wording of insurance policies must be agreed before their finalisation and payment of the premium.

The Irish EPA may agree to accept other forms of financial security provided it is satisfied that they are secure, sufficient and available when required. The Irish EPA’s guidance provides the examples of letters of credit, industry-sponsored mutual guarantee funds, and other group funds as other forms of financial security instruments that it will consider accepting.\textsuperscript{67}

All the financial security instruments listed above, either individually or combined, are acceptable forms of financial security for ELRA incidents. Documentation, as specified in the guidance on financial provision for environmental liabilities, must be submitted for each type of financial security instrument.

Environmental insurance is acceptable only for ELRA incidents; it is not acceptable for closure, restoration or aftercare costs.\textsuperscript{68} Secured funds are generally only used for closure costs rather than incidents; closure costs are predominantly covered by bonds.\textsuperscript{69}


\textsuperscript{66} Ibid 6

\textsuperscript{67} Ibid

\textsuperscript{68} See Stephen McCarthy, ‘Financial Provision for Environmental Liabilities’ (26 April 2018); Pol O’Seasnain, ‘Financial Guarantees in Ireland’ (presentation, 26 January 2017); Jim Moriarty, ‘Financial provision requirements for EPA Licensed Facilities’ (presentation, 30 November 2016). The above presenters are all with the Office of Environmental Enforcement of the Irish EPA.

\textsuperscript{69} See Denise O’Riordan, Linda Dalton O’Regan and Stephen McCarthy, ‘Financial provision for environmental liabilities’ (2017) 29 Environmental Law & Management 183, 185
6.2.1. Templates

Templates for the following financial security instruments have been available on the Irish EPA’s website since 2017. Current versions are as follows:70

- on demand performance bond;71
- secured account – account charge72 and funding and drawdown agreement;73 and
- parent company guarantee,74 accompanied by an assessment of the financial strength of the company giving the guarantee.75

The Irish EPA approves the proposed financial security instrument ‘promptly’ provided that:

- no amendments have been made to the template that has been used;
- the proposed provider of the financial security is acceptable to it; and
- the financial security is suitable for the specific risk covered by it.76

6.2.2. Requirements for environmental insurance policies

There is no template for an environmental insurance policy (or a charge on property), efforts to develop one having not proved to be possible.77 Instead, the Irish EPA’s Guidance on Financial Provision for Environmental Liabilities,78 and its Additional guidance on environmental impairment liability insurance,79 set out the terms and conditions of acceptable environmental insurance policies. The Irish EPA must approve the policy wording and the accompanying documentation before the licensee may offer the policy as evidence of financial security. Further, the Irish EPA must approve each individual policy as evidence of financial security.

Terms and conditions that must be satisfied include the following:

- retroactive cover to the date on which the facility was authorised;
- receipt of the premium for the policy by the insurer prior to inception of the policy;

---

71 On demand performance bond No: [NUMBER] dated [DATE], Bond template (Version 3.0, June 2019); https://www.epa.ie/pubs/advice/licensee/fp/bondtemplate.html
72 EPA Account Charge (version 2.0, May 2017); https://www.epa.ie/pubs/advice/licensee/fp/securedfund/
73 Funding and Drawdown Agreement (version 2.0, May 2017); https://www.epa.ie/pubs/advice/licensee/fp/securedfund/
74 Environmental Protection Agency, ‘Guarantee, performance and payment agreement’ (Version 3.0, November 2019); https://www.epa.ie/pubs/advice/licensee/fp/parentcompanyguarantee/
75 Environmental Protection Agency, ‘EPA Financial Strength Assessment for Company Guarantees’ (2019); https://www.epa.ie/pubs/advice/licensee/fp/parentcompanyguarantee/Financial_Strength_Assessment.pdf
77 See Jim Moriarty, ‘Financial provision requirements for EPA Licensed Facilities’ (presentation, 30 November 2016)
79 Environmental Protection Agency, ‘Guidance on financial provision for environmental liabilities; Additional guidance on environmental impairment liability insurance’ (Revision 2, November 2019); https://epa.ie/pubs/advice/licensee/fp/Guidance_EIL_Insurance.pdf
Improving financial security in the context of the Environmental Liability Directive

- inclusion of the Irish EPA as a named insured or loss payee under the policy if the insured was to become insolvent during the policy period or dies, and notification of a claim under the policy by the Irish EPA as well as the insured; and
- elimination of any requirement for a deductible if the Irish EPA becomes the insured (or where a deductible remains in such circumstances, the licensee may be required to cover the deductible with a separate financial security instrument).

The Additional guidance on environmental impairment liability insurance, which was first published by the Irish EPA in 2017 and, as noted above, revised in November 2019, focuses on the following issues: ring-fencing, payment of premia, deductible/excess, disclosed documents, known conditions, asbestos and lead exclusion, an extended reporting period, and anti-vitiation.

In respect of ring-fencing, the Additional guidance refers to the ELD in stating that cover for the cost of remediating environmental damage under the ELD must not be diluted by claims for cover from other liabilities.

In respect of the payment of premia, the Additional guidance states that:

The insurer must confirm directly to the EPA that:

1) The premium under the relevant policy has been paid in full; and
2) The policy is effective for the policy period.

The insurer should attach the policy, as approved by the EPA, to the confirmation.

Similar confirmation is required if the broker procures the policy. The Irish EPA does not accept policies that are paid by instalments.

In respect of the deductible/excess, the Additional guidance provides as follows:

EIL policies may provide for deductibles depending on the relevant claim. Additional financial provision may be required to cover the excess if, for example, the EPA is liable for the excess in the event they become the insured. For this reason, the EPA reserves the right to require additional financial provision to cover the cumulative value of the potential excess of any claim under an EIL policy.

The requirement to provide additional financial provision in respect of any excess or deductible may be satisfied if the EIL policy provides that, in respect of the EPA’s cover and/or where the EPA makes a claim under the EIL policy pursuant to its terms, no excess/deductible will be applied to the EPA.

The EPA only accepts an approved ELRA report in the ‘disclosed documents’ schedule of a policy, commenting that the inclusion of additional documents are unacceptable because they may limit cover under the policy. (Environmental insurance policies typically include a disclosed documents schedule for sites covered by the policy. Typical disclosed documents include environmental reports, Phase I assessments, Phase II assessments, and monitoring reports.)

Any ‘known conditions’ schedule is also strictly limited. Inclusion of any existing ongoing pollution condition in the schedule is prohibited because it would exclude the licensee from any claims resulting from it.

---

80 Environmental Protection Agency, ‘Guidance on financial provision for environmental liabilities; Additional guidance on environmental impairment liability insurance’ (2017); https://www.epa.ie/pubs/advice/licensee/fp/financiaprovisionsreport.pdf
The Irish EPA examines any asbestos or lead exclusion in a policy on a case by case basis to determine whether it is appropriate.

In respect of the extended reporting period, the Irish EPA requires a minimum of 120 days from the date of non-renewal or cancellation of a policy in which both the Irish EPA and the insured may notify insurers of a claim (an increase from 60 days in the 2015 guidance).

Finally, the Additional guidance states that:

Misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of, or by, the Licensee in relation to the EIL Insurance policy should not affect the EPA’s coverage under the EIL Insurance policy.

6.2.3. Form of mandatory environmental insurance policy

It is not necessary for an operator to purchase a policy that covers only mandatory financial security or a separate policy for each licensed facility/site. Instead, the mandatory financial security provisions are incorporated into environmental insurance policies that are taken out voluntarily.

As indicated above, if the environmental insurance policy provides cover for liabilities other than preventing and remediating environmental damage, such as say claims for bodily injury and property damage, the indemnity payable to the Irish EPA must be ring fenced. That is, the amount specified in the schedule to the policy for the value of the ELRA cannot be reduced by claims for other types of cover provided by the policy.\(^8^1\)

6.3. Financial security instruments and mechanisms not acceptable

The Irish EPA has not listed the names of any financial security instruments and mechanisms that are not acceptable for ELRA costs. As indicated in section 6.1 above, however, the Irish EPA has the right to decline such instruments and mechanisms.

Further, the Irish EPA’s guidance on financial provision does not include self insurance, also called self provision, by which an operator that can demonstrate sufficient financial strength essentially promises to cover its liabilities or responsibilities if or when required. Under self insurance, the operator is not required to set aside the funding.

6.4. Time of review

The Irish EPA reviews proposals for financial security when it considers or renews a licence issued by it.\(^8^2\) The ELRA is revised to reflect any significant changes at the licensed facility/site and, in any case, every three years following the initial agreement.

6.5. Regulatory costs of review

The Irish EPA’s legal and other costs in reviewing proposals for financial security are incorporated into its licensing and enforcement charging policy.\(^8^3\) Depending on the type of financial security, the Irish EPA may instruct external legal and financial advisors, who may

---


\(^{8^2}\) See ibid 4

also continue to monitor the financial security instrument on its behalf. The applicant is responsible for its own fees and expenses.

6.6. Requirements for operator to review

The holder of an EPA licence must review its environmental liability costings on a regular basis, usually every three years. If the costings for the financial security change, the licensee must update the financial security to ensure that it is maintained at the required amount.

Licence conditions for CRAMP generally require an annual review of the CRAMP, with any amendments being notified to the Irish EPA as part of the annual environmental report. Financial security must be revised at least annually. If in the event that an agreed ELRA/CRAMP costing varies from that in the existing financial security instrument, the financial security instrument must be revised accordingly.

7. Enforcement of financial security requirements

The Irish EPA may take various measures to enforce financial security requirements. Measures include issuing a notification of non-compliance and compliance investigation due to non-compliance with licence conditions on ELRA, CRAMP and financial security that may result in a site being listed as a national priority site.

The Irish EPA has prosecuted licensees for failure to make financial provision for ELRA and CRAMP costs. The prosecutions, which include other charges against the licensees, include the following.

On 7 January 2013, in Environmental Protection Agency v Behans Land Restoration (unreported), the Naas District Court accepted a guilty plea from a company for, among other things, failing to make financial security to the satisfaction of the Irish EPA.

On 23 March 2015, in Environmental Protection Agency v T & J Standish (Roscrea) Limited and Directors (unreported), the Tullamore District Court accepted guilty pleas from directors for, among other things, failing to make financial provision to cover liabilities identified in the company’s licence. The company had previously pleaded guilty to the same (and other) offences on 27 November 2008 at the Roscrea District Court.

---

86 See ibid
87 See Environmental Protection Agency, ‘National Priority Sites’; http://www.epa.ie/enforcement/nationalprioritysites/
89 See ‘EPA prosecutes T&J Standish (Roscrea) Limited and Directors’ (23 May 2016); http://www.epa.ie/enforcement/prosecute/2016/name,61846.en.html
8. **EX POST ENVIRONMENTAL DAMAGE MANDATORY FINANCIAL SECURITY (ARTICLE 8(2))**

There are no *ex post* requirements for an operator who has caused environmental damage under the ELD or other environmental laws to obtain financial security for the costs of remediating that damage. There is no need for it to do so provided, however, that the mandatory financial security system applies to the operator, in which case the operator will already have financial security for the costs of preventive and remedial measures.

However, if environmental damage such as polluted land or groundwater has resulted in a potential liability that must be addressed during closure of a licensed site, licence conditions concerning remediation that require CRAMP costings, which would include remediation required as a result of the event, and associated financial provision would be triggered. This can act as an incentive to a licensee to prevent or remediate any environmental damage as soon as practicable in order to reduce the cost of financial security for such remediation.

8.1. **Date legislation or policy for mandatory financial security introduced**
Not applicable

8.2. **Effective date for *ex post* mandatory financial security**
Not applicable

8.3. **Financial security instruments and mechanisms accepted**
Not applicable

8.4. **Financial security instruments and mechanisms not acceptable**
Not applicable

9. **PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS**

9.1. **Insurers**
When this report was published, the Irish EPA had approved environmental insurance policies underwritten by five insurers for mandatory financial security under the ELD and other environmental liabilities.

9.2. **Banks and other financial institutions**
Banks and other financial institutions offer guarantees, letters of credit, and other types of financial security instruments for costs associated with closure, restoration and aftercare. Approximately 18 financial institutions authorised to do business in Ireland offer such instruments. They are primarily offered for CRAMP liabilities but may also be offered for ELRA liabilities.

9.3. **Sureties**
Several sureties that are authorised to do business in Ireland offer on demand performance bonds for environmental responsibilities in Ireland.

9.4. **Providers outside Member State**
If the provider of a proposed financial security instrument is based outside Ireland, the instrument must be subject to Irish law and jurisdiction. Further documentation is required including a legal opinion that confirms, among other things, that there are no insolvency
Improving financial security in the context of the Environmental Liability Directive

proceedings and, in some cases, a legal opinion from a law firm acceptable to the Irish EPA in that jurisdiction concerning incorporation, capacity/authority, execution, choice of law and judgments and enforcement of judgments.91

10. MEASURES TAKEN BY MEMBER STATE TO DEVELOP FINANCIAL SECURITY MARKETS

The Irish EPA has been very active in raising public awareness, and providing the public with details, of mandatory financial security requirements, instruments and mechanisms for environmental, including ELD, liabilities and responsibilities. Publication of the guidance on ELRA and financial provision for environmental liabilities, as well as the existence of mandatory financial security requirements, have significantly aided in developing the financial security market in Ireland.92

Examples of the Irish EPA’s activities include:

- presentations by XL Insurance on the ELD, environmental insurance and public liability and property insurance policies at an internal Irish EPA workshop on 2 October 2008;
- a presentation on financial provision in an EPA Workshop for Waste Licensees on 24 October 2013;93
- a presentation on financial provision requirements for EPA licensed facilities on 30 November 2016;94
- a presentation on financial provisions at the Ibec workshop on financial provisions entitled ‘Where do we stand?’ on 24 May 2017;95
- other presentations referred to throughout this report; and
- an article on financial provision for environmental liabilities, published in Environmental Law & Management.96

The Irish EPA also co-led the three-year IMPEL project on Financial Provision for Environmental Liabilities with the Scottish Environment Protection Agency. The main aim of the project, which included the publication of three reports,97 is ‘the development of pan-European


92 See Conor Linehan, ‘Environmental Claims and Insolvency: Two Divergent Regimes’ (2011)


11. **EU environmental legislation with mandatory financial security provisions**

As indicated in section 5.3.4, the Irish EPA requires persons who have IPC/IED licences issued pursuant to the Landfill Directive and Extractive Waste Directive to provide evidence of financial security. The Directive on the geological storage of carbon dioxide also contains financial security requirements for liabilities under the ELD as well as the Directive itself. The following sections briefly describe the mandatory financial security provisions of Irish law that implement these three Directives. Section 5.3.4 describes mandatory financial security for IPC/IED licences in more detail.

### 11.1. Landfill Directive

#### 11.1.1. Competent authority(ies)

The Irish EPA is the sole competent authority for the Waste Management (Licensing) Regulations 2004/395, as amended, which implement the Landfill Directive (1999/31/EC).

#### 11.1.2. Financial security provisions

Regulation 12(r) of the Waste Management (Licensing) Regulations 2004/395 provides that the applicant for a waste licence (now an IPC/IED licence) in respect of the landfilling of waste must give particulars of ‘such financial provision’ under the Landfill Directive and the Waste Management Act, 1996, as amended. Further, regulation 52(2) requires a conditioning plan for an existing landfill to include information and particulars concerning financial provision, again under the Landfill Directive and the Environmental Protection Agency Act 1992, as amended.

#### 11.1.3. Financial security instruments and mechanisms accepted

See section 6.2.

#### 11.1.4. Templates

See section 6.2.1.

---


11.1.5. Financial security instruments and mechanisms not acceptable

An environmental insurance policy is not an acceptable financial security instrument for closure, restoration or aftercare costs. A parent company guarantee is not an acceptable financial security instrument for the costs of inevitable closure of a landfill.

11.2. Extractive Waste Directive

11.2.1. Competent authority(ies)

The Irish EPA is the sole competent authority for the Waste Management (Management of Waste from the Extractive Industries) Regulations, 2009/566, as amended, which transposed the Extractive Waste Directive.

11.2.2. Financial security provisions

Regulation 14(1) of the Waste Management (Management of Waste from the Extractive Industries) Regulations 2009/566 provides that the competent authority (Irish EPA):

shall, prior to the commencement of any operations involving the accumulation or deposit of extractive waste in a waste facility, require a financial guarantee (e.g. in the form of a financial deposit, including industry-sponsored mutual guarantee funds) or equivalent, in accordance with procedures to be decided by the competent authority.

Other provisions of regulation 14 set out further details of the requirements including the requirement for funds for the rehabilitation of land affected by the waste facility, the calculation of the guarantee, and its periodic adjustment in accordance with any rehabilitation work that needs to be carried out.

11.2.3. Financial security instruments and mechanisms accepted

See section 6.2.

11.2.4. Templates

See section 6.2.1.

11.2.5. Financial security instruments and mechanisms not acceptable

An environmental insurance policy is not an acceptable financial security instrument for closure, restoration or aftercare costs.

A parent company guarantee is not an acceptable financial security instrument for the costs of inevitable closure. This would also apply, for example, to a mine tailings pond.


102 Ibid 12

103 Ibid 18
11.3. Carbon Capture and Storage Directive

11.3.1. Status of implementation

The Directive on the geological storage of carbon dioxide is transposed into Irish law by the European Communities (Geological Storage of Carbon Dioxide) Regulations 2011/575.\(^{104}\) Several studies have been carried out in Ireland for the storage of carbon dioxide including an assessment of the potential for the geological storage of carbon dioxide in 2008,\(^ {105}\) an assessment focusing on the Clare Basin in 2011\(^ {106}\) and an assessment of aquifer basins shared with the UK in the Irish Sea in 2012.\(^ {107}\)

Ireland has, however, exercised its right under article 4 of the Directive on the geological storage of carbon dioxide not to allow any storage facilities, either in part or in whole, in Ireland while it awaits further developments in the implementation of the regulatory framework for the storage of carbon dioxide.\(^ {108}\)

11.3.2. Competent authority(ies)

Not applicable

11.3.3. Financial security provisions

Not applicable

11.3.4. Financial security instruments and mechanisms accepted

Not applicable

11.3.5. Templates

Not applicable

11.3.6. Financial security instruments and mechanisms not acceptable

Not applicable

---


12. EU RECOMMENDATION ON HYDRAULIC FRACTURING

12.1. Status

12.2. Competent authority(ies)
Not applicable

12.3. Financial security provisions
Not applicable

12.4. Financial security instruments and mechanisms accepted
Not applicable

12.5. Templates
Not applicable

12.6. Financial security instruments and mechanisms not acceptable
Not applicable

13. EU ENVIRONMENTAL LEGISLATION WITH NO MANDATORY FINANCIAL SECURITY PROVISIONS

13.1. Industrial Emissions Directive
The Irish EPA requires businesses that are subject to the IED, and that meet the EPA’s approach to financial security, to have financial security for ELD and the costs of closure and aftercare, as well as restoration if required (see section 5.3.4 above).

13.1.1. Competent authority(ies)
See section 5.1.

13.1.2. Financial security provisions
See section 5.3.4.

13.1.3. Financial security instruments and mechanisms accepted
See section 6.2.

13.1.4. Templates
See section 6.2.1.

13.1.5. Financial security instruments and mechanisms not acceptable
See section 6.3.

13.2.  **Seveso III Directive**

13.2.1.  **Competent authority(ies)**

The Irish Health and Safety Authority is the central competent authority for the Chemicals Act (Control of Major Accident Hazards involving Dangerous Substances) Regulations 2015/209, as amended, which transposed the Seveso III Directive (2012/18/EU). An Gárda Síochána, the Health Service Executive, the EPA, planning authorities, and other authorities are local competent authorities.

13.2.2.  **Financial security provisions**

Financial provision is not specifically required under the legislation that transposed the Seveso III Directive. There is, however, overlap between safety reports prepared under the above legislation and safety reports prepared for businesses with IPC/IED licences. Businesses that must comply with the Seveso III Directive must use the safety report prepared under it to inform the ELRA. The Irish EPA notes that the report is ‘potentially very valuable in terms of risk identification, analysis, evaluation, treatment and … identification and quantification of the worst case scenario’.

13.2.3.  **Financial security instruments and mechanisms accepted**

Not applicable

13.2.4.  **Templates**

Not applicable

13.2.5.  **Financial security instruments and mechanisms not acceptable**

Not applicable

13.3.  **Other legislation**

There are no other requirements in Ireland for financial security for environment damage under the ELD or other environmental legislation or civil liabilities related to environmental damage.

---


113 See ibid question 9
14. **Mandatory financial security for offshore oil and gas operations**

14.1. **Competent authority(ies)**

The Department of Communications, Climate Action & Environment is the competent authority for offshore oil and gas licensing in Ireland.

14.2. **Status of offshore oil and gas operations**

No commercial amounts of offshore oil have been discovered. Four locations at which there are commercial amounts of offshore natural gas have been discovered.¹¹⁴

14.3. **Requirements for financial security**

The Licensing Terms for Offshore Oil and Gas Exploration, Development & Production 2007 issued by the Department of Communications, Energy and Natural Resources provide that the Minister must, among other things, take into account the financial resources available to the applicant. Section 42 of the Licensing Terms provides that the Minister:

may, upon granting an authorisation or at a later date, direct the authorisation holder to post a performance bond or guarantee to ensure fulfilment of the obligations to be undertaken as well as to cover any liability which may be incurred relating to the activity of the authorisation holder.¹¹⁵

The bond or guarantee is thus designed to cover obligations under the authorisation itself, namely the work programme; it is not designed to cover liabilities arising from accidents from offshore oil and gas operations that cause environmental damage.

14.4. **Requirement for financial security for ELD liabilities**

There is no requirement in Ireland for financial security for ELD liabilities for offshore oil and gas operations.

15. **Failure of financial security**

15.1. **Inadequate level of financial security instrument or mechanism to pay claims**

No reports of an inadequate level of financial security instrument or mechanism were provided.

15.2. **Insolvency of operator leading to failure of financial security instrument or mechanism**

No information was provided about the insolvency of any operator that led to a failure of a financial security instrument or mechanism.

15.3. **Other**

No reports of other types of failures of financial security were provided.

¹¹⁴ Department of Communications, ‘Climate Action & Environment, Oil and Gas (Exploration & Production)’;
[https://www.dccae.gov.ie/en-ie/natural-resources/topics/Oil-Gas-Exploration-Production/Pages/home.aspx](https://www.dccae.gov.ie/en-ie/natural-resources/topics/Oil-Gas-Exploration-Production/Pages/home.aspx)

¹¹⁵ Department of Communications, ‘Energy and Natural Resources, Licensing Terms for Offshore Oil and Gas Exploration, Development & Production 2007’;
[https://www.dccae.gov.ie/documents/LicensingTerms%202007.pdf](https://www.dccae.gov.ie/documents/LicensingTerms%202007.pdf)
16. **Funds**

16.1. **Name(s)**

There are no Irish funds for remediating environmental damage under the ELD or for remediating pollution under any other environmental legislation.

16.2. **Extension of existing fund to cover remedial costs under the ELD**

Not applicable

16.3. **Purpose**

Not applicable

16.4. **Type**

Not applicable

16.5. **Source(s) of funding**

Not applicable

16.6. **Number and amount of claims**

Not applicable
BIBLIOGRAPHY

Ireland

Legislation


Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013/283; http://www.irishstatutebook.ie/eli/2013/si/283/made/en/print

Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013/137; http://www.irishstatutebook.ie/eli/2013/si/137/made/en/print

European Communities (Environmental Liability) Regulations 2008/547; http://www.irishstatutebook.ie/eli/2008/si/547/made/en/print


Guidance

Environmental Protection Agency, ‘Guidance on assessing and costing environmental liabilities – Unit cost rates for verification’ (2014); https://www.epa.ie/pubs/advice/licensee/fp/guidanceonassessingandcostingenvironmentallabilities-unitcostrates.html

Improving financial security in the context of the Environmental Liability Directive


Environmental Protection Agency, ‘Guidance on financial provision for environmental liabilities; Additional guidance on environmental impairment liability insurance’ (2019, Revision 2); https://www.epa.ie/pubs/advice/licensee/fp/Guidance_EIL_Insurance.pdf

Environmental Protection Agency, ‘Guidance on financial provision for environmental liabilities; Additional guidance on environmental impairment liability insurance’ (2017); https://www.epa.ie/pubs/advice/licensee/fp/financiaprovisionsreport.pdf


Reports and other documents


Environmental Protection Agency, ‘Focus on Landfilling in Ireland’ (2010); https://www.epa.ie/pubs/reports/waste/stats/EPA_Focus_on_Landfilling_Ireland.pdf


Environmental Protection Agency, ‘National Priority Sites’; http://www.epa.ie/enforcement/nationalprioritysites/


‘EPA prosecutes T&J Standish (Roscrea) Limited and Directors’ (23 May 2016); http://www.epa.ie/enforcement/prosecute/2016/name,61846,en.html


Role and Functions: Environmental Protection Agency, Joint Committee on Environment, Culture and the Gaeltacht debate, Houses of the Oireachtas (4 November 2014); https://www.oireachtas.ie/en/debates/debate/joint_committee_on_environment_culture_and_the_gaeltacht/2014-11-04/2/
Articles, reports and presentations


Linehan, Conor, ‘Environmental Claims and Insolvency: Two Divergent Regimes’ (2011)

McCarthy, Stephen, ‘Financial Provision for Environmental Liabilities’ (presentation, 26 April 2018)

Moriarty, Jim, ‘Financial provision requirements for EPA Licensed Facilities’ (presentation, 20 November 2016)

