



Rialtas na hÉireann
Government of Ireland

General Scheme of the Water Environment (Abstractions) Bill 2018

Public Consultation Submissions A-I

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**SUBMISSION TO THE DEPARTMENT OF HOUSING,
PLANNING AND LOCAL GOVERNMENT**

**CONSULTATION PROCESSSS IN RELATION TO THE WATER
ENVIRONMENT (ABSTRACTIONS) BILL 2018 (General
Scheme)**

OCTOBER 2018



Introduction to An Fóram Uisce

An Fóram Uisce (the Water Forum) was established in June 2018 in accordance with the provisions of Part 5 of the Water Services Act 2017. An Fóram is the only statutory body representative of all stakeholders with an interest in the quality of Ireland's water bodies. An Fóram consists of 30 members including representatives from a wide range of organisations with direct connections to issues relating to water quality and also public water consumers. Approximately 50 different organisations were involved in the nomination of members.

Consultation regarding Water Environment (Abstractions) Bill 2018

An Fóram welcomes the drafting of the Water Environment (Abstractions) Bill 2018 as an important step in the implementation of the River Basin Management Plan for Ireland 2018 – 2021 and working towards compliance with the requirements of the Water Framework Directive. It is also noted that the abstractions register has recently been opened which is also to be welcomed.

It is understood that the EPA has estimated that no more than 6% of water bodies are potentially at environmental risk due to abstraction pressures. While this appears to be low, in the context of overall pressures, it still is of concern and having regard to recent weather events experienced in the country, An Fóram is concerned with potential further pressures posed by similar weather events in the future and the on-going impact of climate change.

In addition to this, in its role in the context of water services, An Fóram has a concern in relation to the protection of public and rural water sources which are served by abstractions. The Group Scheme Sector in particular is heavily reliant on such sources. Having regard to the importance of such services, and the impact of drought conditions in relation to same, An Fóram considers it important that priority is given in any decision making process to securing water abstractions for drinking water purposes.

One of the main issues of concern with the draft Bill is the setting of the exemption threshold for registration at 25 cubic metres. While it is appreciated that abstractions below this threshold are relatively minor in themselves, their registration would assist in developing a greater level of understanding in terms of catchment information. Further,

while one low volume abstraction may not of itself be a concern, the cumulative effect of a number of such abstractions within any one catchment may result in concerns. Bearing these considerations in mind there is a view within An Fóram that the exemption level should be reduced to 10 cubic metres. Should such a level pose an administrative burden in the early stages of establishing the register, then perhaps a phased approach over a period of time could be adopted.

The position with regard to temporary abstractions is noted and An Fóram would like to be consulted in relation to same in due course.

Finally, An Fóram is concerned that there appears to be a low level of awareness amongst the public in general and in particular amongst those to whom these proposed provisions apply. While it is understood that there have been consultation with some of the sectors, it is considered that a public awareness campaign might be advisable. Not only would this lead to advising those affected by the registration requirements but would also lead to greater public awareness with regard to the importance and vulnerability of our water environment.

Conclusion

An Fóram would like to thank the Department of Housing, Planning and Local Government for this opportunity to submit in relation to the proposed legislation and hopes that its views will be of assistance in finalising same and is available to assist in any way it can in relation to this process.

End/

Please address any correspondence as follows:

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sent by email to:

waterquality@housing.gov.ie

12th October 2018

An Taisce wish to make the following submission on the General Scheme of the Water Environment (Abstractions) Bill 2018

An Taisce welcome the opportunity to take part in this public consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018. The Water Environment (Abstractions) Bill 2018 provides for the introduction of a regime for the control of the abstraction of water on a risk-based approach, in order to comply with Ireland's obligations under the Water Framework Directive (WFD). The WFD outlines that *'For water quantity, overall principles should be laid down for control on abstraction and impoundment in order to ensure the environmental sustainability of the affected water systems.'* This is most necessary, as in 2015 the European Commission officially identified over-abstraction as the second most common pressures on the ecological status of surface water bodies in the EU¹. Excessive abstraction significantly affects 10% of surface water bodies and 20% of groundwater bodies.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0120:FIN>

An Taisce would like to support the arguments laid out in the submission by SWAN, and in addition would like to raise the following points in regard to the Draft Plan.

1. Registration and Metering

It is outlined in the consultation paper that:

'it is proposed to exempt from registration or licensing abstractions of less than 25 cubic metres per day. This approach mirrors that taken in Scotland and Wales, where abstractions of a relatively small quantity of water (10 cubic metres in those jurisdictions) are exempted from the requirement to either be registered or licensed'

The consultation makes reference to it mirroring the approach taken in Scotland and Wales, and while we would welcome something akin to what is in place there, there is a very substantial difference between the thresholds proposed in this legislation, and the 10 m³ threshold in use in Northern Ireland and Scotland. An Taisce would express concern that 25 m³ is much too high a threshold, given that it is enough water to service approximately 115 people.

In addition, Article 7(1) of the WFD outlines that:

'Member States shall identify, within each river basin district: all bodies of water used for the abstraction of water intended for human consumption providing more than 10 m³ a day as an average or serving more than 50 persons'

An Taisce would highlight that this will not be possible under the proposed 25 m³ threshold, as they will be unable to pinpoint these locations due to a lack of data. The rationale given for the 25 m³ threshold is for consistency with regulations made under section 9 of the Local Government (Water Pollution) Act 1977. However, An Taisce would highlight that it is 40 years since that legislation was enacted, and this Abstraction Bill is predicated on Ireland's obligations under the WFD. An Taisce feel that basing this new legislation on very outdated legislation, which was enacted long before the establishment of the WFD, is flawed. The

proposed legislation should endeavour to fulfil the requirements under the WFD, not to be 'consistent' with outdated national legislation.

In addition, An Taisce submit that all abstractions should be metered, regardless of volume. The Northern Irish Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland 2006, as amended by the Water Abstraction and Impoundment (Licensing) (Amendment) Regulations (Northern Ireland) 2007 stipulate that there must be a means to demonstrate that an abstraction does not breach the 10 m³ threshold above which an abstraction must be registered. An Taisce believe this should also be required in Ireland, and we submit that in order to properly regulate abstractions, a metering system is essential.

2. Licensing

Article 11(1) (e) of the WFD calls for:

'controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated.'

An Taisce are aware that in 2015, a working group on abstraction was established and concluded that any licensing regime will focus only on the '*most significant volumes and pressures*' without imposing an '*unnecessary regulatory burden*'. In this proposed legislation, only abstractions above 2000 cubic meters would require licensing, with abstractions between 250-2000 needing a licence only where the agency has determined it to be a significant abstraction. This would omit most abstractions from requiring licensing.

The need for a nationwide picture of abstractions is acknowledged in the draft Bill:

'The establishment of such a register is obligatory under the Water Framework Directive and is being done in advance of this Bill to allow the Agency to build up a

nationwide picture of the extent and size of current abstractions in order to better manage abstractions in areas of high risk in future.'

We would highlight that in Scotland and Northern Ireland, all abstractions greater than 10 m³ have to be authorised. In Scotland, SEPA took the view that abstractions between 10-50 m³, licensing is not required in order to facilitate a reduced administrative burden, however, registration is still required for these. If the Irish authorities are concerned with 'unnecessary regulatory burden', the Scottish model could be applied.

In addition, the WFD outlines that abstractions which have '*no significant impact on water status*' may be exempted from the abstraction register, however, An Taisce would argue that without a comprehensive list of the abstractions, it will be virtually impossible to determine these areas at high risk of over-abstraction. The cumulative impact simply can't be assessed. We submit that the current threshold for licensing is much too high, and would undermine the objectives of the WFD, the primary reason for the drafting of this Bill.

In regard to sensitive areas, An Taisce submit that more rigorous assessment of abstraction must be implemented for vulnerable water bodies, high status catchments, and for Natura 2000 sites. This should potentially include a licensing requirement for all abstractions, regardless of the threshold, within these areas.

3. Water Abstraction GIS Database

We submit that a GIS database should be developed in tandem with the new legislation. This database should contain all of the abstraction points, proposed, existing and licensed, and contain information about the location, the rate and quantum of the abstraction. Areas of sensitivity, and protected areas should also be included. This could be added as a layer to the existing interactive spatial mapping tool on the EPA website. This system could then be used to inform any planning or licensing decisions, and to inform a cumulative assessment for abstraction under the Habitats and EIA Directives, as necessary (see following sections).

4. Climate change

An Taisce submit that there is a need for any abstraction legislation to provide for a responsive, risk-based licensing system. It is essential that a license can be revoked, suspended, or that certain conditions be imposed post licencing, should the need arise. In Northern Ireland, the Department of Agriculture, Environment and Rural Affairs may unilaterally revoke a licence where it is satisfied that '*the revocation is necessary in order to protect the water environment from serious damage*'. Part 5 of the Regulations provides a suite of enforcement powers, and provides that the Department may write to the holder of a licence and impose additional conditions and/or require the cessation of abstraction.

This is an essential part of any abstraction authorisation, particularly with the growing threat of climate change. The recent IPCC report has outlined the huge difficulties in limiting global warming to 1.5 degrees. As a result of climate change, significant changes are projected to occur in the Irish climate. The drought situation in Ireland this summer demonstrates how vulnerable our water supply is to decreased precipitation. Research by Sweeney *et al.* (2001)² has indicated that by the 2050s, summer reductions of 20–28% in precipitation are projected for the southern and eastern coasts, increasing to 30–40% by the 2080s. In addition groundwater recharge is likely to be lower for longer, sustained periods, increasing the risk of drought. Given the predictions in the IPCC report, it is likely that these changes will occur sooner than forecast. Changes in temperature and precipitation will alter subsurface hydrology, with significant changes in soil moisture storage, groundwater recharge and groundwater storage likely. This will lead to far more frequent drought situations in Ireland. It is imperative that any abstraction authorisation framework must take account of up to date climate modelling and forecasting.

Licensed abstraction points must be regulated in such a way that they can be adjusted to account for the fluctuations in the levels of precipitation, and ground and surface water. This is also extremely pertinent for making the case for the registration and licensing of abstractions over 10 m³. The cumulative impact of unlicensed and unregistered abstractions

² Sweeney et al (2001). Climate change – Refining the Impacts for Ireland (2001-CD-C3-M1) STRIVE Report

below 25 m³ in a drought situation could have very serious consequences, with impacts on water quality, wildlife and the availability of drinking water. If these abstractions are unknown to the relevant authority, there is no way to suspend or alter them in such a necessary circumstance. This should be a very serious consideration in any abstraction legislation.

5. Cumulative impact for Habitats and EIA Directives

a. Natura 2000 Sites

Any abstraction legislation must be drafted in accordance with the European Legislation which is already enacted in Ireland, in particular the Habitats Directive and the European Communities (Birds and Natural Habitats) Regulations 2011. If any abstraction is to be carried out within, or in close proximity to an SAC or an SPA, it is imperative that an appropriate assessment be carried out. This is particularly pertinent if the abstraction point is hydrologically linked to one of these sites.

In respect of potential impacts on European sites (i.e. SPAs, SACs, cSACs, etc.), the Minister must screen for the need for an appropriate assessment under regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. 477 of 2011), which provides:

‘A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site.’

The European Court of Justice (ECJ) has interpreted this screening requirement very broadly, and regulation 42 must by law be read in light of this interpretation. That is, the ECJ held, in Case C-127/02 (emphasis added):

*‘any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or **in combination with other plans or projects.**’* (emphasis added)

In addition to a determination as to whether the development would have an adverse impact on the integrity of the European Sites, the AA:

- a) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development, which can, by itself or **in combination** with other plans or projects, affect the European Site. This requires both examination and analysis;
- b) Must contain complete, precise and definitive findings and conclusions and **may not have lacunae or gaps**. This requires analysis, evaluation and decisions in light of the best scientific knowledge in the field;
- c) May only include a determination that the proposed development will not adversely affect the integrity of any European Site where, on the basis of **complete, precise and definitive findings** and conclusions made, and when no reasonable scientific doubt remains as to the absence of identified potential effects.

Cumulative impact is an integral part of screening. An Taisce feel that with the omission of any abstractions below 25m³ this cannot be adequately assessed, and we would highlight the need for a thorough catchment wide knowledge and assessment of abstraction, with sufficient temporal, spatial and quantitative details to properly assess any potential impact. The cumulative effects of plans and projects must be taken into account when considering

whether the effect of the plan or project would be likely to be significant. MN2000 and the DEHLG Guidance advise that the authorities should consider the cumulative impact of plans or projects which are completed, those which have been approved but not completed and those proposed (but not yet approved).

Thus, An Taisce submit, that without detailed knowledge of all abstraction points within and surrounding a Natura site, particularly those which are hydrologically connected to water dependant Natura sites and species, there will most certainly be lacunae in the data, and the findings cannot be precise and definitive. The precautionary principle would provide for the refusal of any abstraction within these areas based on the lack of complete cumulative assessment. To permit abstraction within this areas based on an incomplete screening would be in contravention of the Habitats Directive.

b. Environmental Impact Assessment Report (EIAR)

An Taisce submit that larger abstractions should be screened under the EIA Directive, including those that are sub-threshold. Similar to the above section, cumulative impact is an integral part of EIAR, and the sensitivity of the environment, and number of established or proposed abstraction points should inform the need for such a screening.

Article 4 of the EIA Directive provides for circumstances where an EIAR should be submitted. The principle legal instrument in the planning context implementing Article 4 of the EIA Directive is the Planning and Development Act 2000 (as amended) (PDA). By virtue of Section 172(1) of the PDA, certain projects will be subject to EIAR prior to consent. An EIAR is mandatory for activities listed under Annex I of the Directive. Activities listed in Annex II are subject to a screening procedure. Annex I and Annex II of the Directive are transposed into Schedule 5, Part I and Schedule 5, Part II of the Planning and Development Regulations (PDR) respectively.

Part 10, Article 103 of the PDR provides for the requirement to submit EIAR with sub threshold planning application:

‘Where a planning application for sub-threshold development is not accompanied by an EIAR, the planning authority shall carry out a preliminary examination of, at the least, the nature, size or location of the development.’

And Article 103 (1) (b) outlines that:

*‘Where the planning authority concludes, based on such preliminary examination, that— [...] (ii) there is significant and realistic doubt in regard to the likelihood of significant effects on the environment arising from the proposed development, it shall, by notice in writing served on the applicant, require the applicant to submit to the authority the information specified in **Schedule 7A** for the purposes of a screening determination unless the applicant has already provided such information, or [...]’*
(Emphasis added)

And Schedule 7 outlines the need for a cumulative assessment in these EIARs:

*“The characteristics of proposed development, in particular—[...] **cumulation** with other existing development and/or development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment”* (emphasis added)

In order to aid the relevant authorities and/or ABP in carrying out a full assessment in accordance with the provisions for the Habitats Directive and the EIA Directive, a publicly available list of registered abstraction projects and their locations and extent of works should be available. This list should comprise of projects which are ongoing, those which have been approved but not commenced, and those proposed but not yet approved. As already outlined, a layer should be created and added to the EPA interactive spatial mapping tool to assess the cumulative effects of plans and projects to aid planning authorities and An Bord Pleanála in

carrying out their function. As outlined above, in regard to cumulative assessment for an Appropriate Assessment, An Taisce submit that the current 25 m³ threshold does not allow for a sufficiently conclusive cumulative assessment under the requirements of the EIA Directive either.

5. Recommendations

The system in place in both Scotland and Northern Ireland offers a fully functioning and appropriate model around which the Irish system could be based. An Taisce would strongly recommend that these models be given due consideration, and that the following points be essential elements of any abstraction legislation:

- All abstractions must be metered, to keep a record of the volume of water abstracted over any given time period and for regulatory control
- Abstractions over 10 m³ should be registered, and authorised in line with the regulations in Northern Ireland and Scotland, and the requirements under the WFD
- The process of registration should be straightforward, and modelled on the system used in Northern Ireland, with the use of a web portal
- The data should be publicly accessible, as is the case in Northern Ireland and Scotland. This would also enable prescribed bodies, like An Taisce, to properly review the potential impact caused by proposed projects.
- A GIS database should be established, and constantly updated, reflecting the current rates and quantum of abstraction, points of extraction, and the areas at risk of over-extraction. Any authorisation of abstraction should be carried out in consultation with these data. This is imperative for fulfilling the requirement under the Habitats and EIA Directives to assess cumulative impact
- Licensing should be reactive and risk based, and reflective of the predicted future drought situations as a result of climate change

Is mise le meas,

Elaine McGoff, PhD

Natural Environment Officer,

An Taisce- The National Trust for Ireland.




Allison Treanor [redacted]

☐ WaterQuality; ☐ [redacted]

26/09/2018

Cavan County Council - Submission

 You forwarded this message on 26/09/2018 15:35.



To whom it may concern,

Having reviewed the bill/process it appears that there is no specific reference made to group water schemes and perhaps this should or could be considered.

Regards

Allison Treanor

Environment Section

Cavan County Council

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35-39 Ushers Quay,
Dublin 8,
D08 XKP7.
11 October 2018

Re: Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

To whom it may concern,

On behalf of the CCMA, I would like to make the following observations on the above Bill.

That consideration be given to the limiting of abstractions in terms of a percentage of 95% flow, to protect smaller water streams.

The draft Bill refers to "a person abstracting....". Is it proposed to expand on this? The 1942 Act had limited the process to Sanitary Authorities.

Is it proposed to alter the Planning Application process/form to allow for the specific identification of location, number and volumes of abstractions?

Thank you.

Yours sincerely,

S. Neely

Séamus Neely

Chairman

CCMA Water Services Sub-Committee



Dear Sir / Madam,

The Department of Communications, Climate Action and Environment has already alerted the Department of Housing, Planning and Local Government that the Inland Fisheries (Consolidation) Bill, currently being drafted by this Department, contains a provision in relation to small scale abstraction of water (5,000 litres or less) in the context of fisheries waters. This provision does not appear to conflict with what is being proposed in this Bill. We have already suggested that if it is deemed useful, officials from both Departments can meet to discuss matters.

The Department also wishes to advise that its State Agency, Inland Fisheries Ireland (IFI), is making a comprehensive submission to the public consultation in the inland fisheries context. IFI is the statutory authority responsible for the protection, management, development and conservation of Ireland's inland fisheries and sea angling resources.

Kind regards,

Mary Breslin



Comments on the Consultation Paper

General Scheme of the Water Environment (Abstractions) Bill 2018

Introduction

For over a year, the [Dingle Hub](#) has been involved in supporting a number of initiatives on the Dingle Peninsula, aimed at facilitating the development of start-up companies and new jobs on the Peninsula, while also addressing specific challenges in the community that can benefit from the use of new technologies. One of these use cases is real-time environmental monitoring of water in the river catchment areas. The system being tested utilises a Low Power Wide Area Network ([LORA](#)) and sensors that collectively demonstrate the huge potential for effective deployment of the [Internet of Things](#) in environmental monitoring of water (and, indeed, air).

General Comments on the Consultation Paper

The Consultation Paper is welcome and the Dingle Hub considers that, if some changes are made to the proposed legislation, as proposed later in this document, there is an opportunity, through the use of modern communications technologies, particularly the Internet of Things, to significantly enhance the following:

- (i) real-time monitoring (and recording) of water quality and water abstraction levels in rivers, making the system more efficient, effective and cost-effective for all;
- (ii) real-time alerting of relevant parties, in the event of certain parameters not being met, making the operation of the system safer and more responsive to problems arising; and
- (iii) more effective (and cost-effective) compliance with national and EU legislation, in a manner that can also provide for greater public awareness and transparency in relation to water supply.

The growing public expectation of food traceability has driven a consumer demand for much greater access to data across the full food chain (from 'farm to fork'). With the growing awareness by the consumer of having access to high quality water, there will be similar demand for such data in respect of water supplies. Therefore, the opportunity should be utilised to avail of the current technologies that are now available and to require (through these regulations) the introduction of real-time, remotely accessible, publicly available data on water quality. The technologies are available to do this and the cost benefits are likely to be hugely positive, in addition to the additional benefits of raising awareness of the importance of maintaining and improving water quality in the community.

The work being done in Ireland in relation to Climate Mitigation and Environmental Protection (including the Water Framework Directive and the Nitrates Directive) would be significantly enhanced and made more effective and efficient if the proposals suggested in this submission were implemented. These provide for the use of Internet of Things monitoring networks, with real-time monitoring and remote access to the data (including by the public) and triggering of relevant alerts as certain thresholds are passed.

This proposal would also enhance Ireland's positioning under the 'EU Digital Agenda' and provision of public data in a manner that is of interest and relevant to people.

Specific Comments on the Consultation Paper (referring to the titles of Heads in the Consultation Paper)

Introduction

Any abstraction of 25 cubic metres (or more) of water per day is required to be registered. As provided for in the Consultation Paper, there appears to be no requirement for the use of real-time monitoring (with online data storage) so that there is a record of what has been abstracted and, if the threshold is being exceeded, there can be a real-time alert to the regulatory authorities. The system would be greatly enhanced if there was such a requirement and the technologies are readily available for this today.

Head 5:

- (1) The word 'must' should be replaced by 'shall' throughout the document
 - (a) '*water leakage must be kept to a minimum*' – This is a very sensible aspiration but, without monitoring, it is fairly meaningless.
 - (b) '*There must be a means of measuring the rate of abstraction*' – With the technologies available today, this requirement should be expanded to specify that this should 'automated, with real-time measurement, and remote access available to the data by regulatory authorities and others (including the public)'

Explanatory Note:

The level of 25 cubic metres per day seems very high. That is, in effect, about 25 households, whereas Scotland and Wales use a limit of 10 cubic metres per day. While accepting the requirement to exempt from registration abstractions of less than 25 cubic metres per day, there should still be a requirement for all sources 'for monitoring which is automated, with real-time measurement and remote access available to the data by regulatory authorities and others (including the public).'

There is statement that the rules in the Head '*provide that leakages must be minimised; that there must be a way to demonstrate the volume of water being abstracted; that pollutants must not be allowed to enter the water....*'

This is very sensible but, without monitoring in real-time and with remote access to the data (and historical data) and trigger levels that send alerts (which is easily possible today at reasonable cost), this section is fairly meaningless.

Head 6 - Register of Abstractions

'....and a separate entry shall be made in respect of each abstraction.'

This should be automated, as referred to above and it should be available for viewing on cloud-based system that has access for all relevant bodies.

'(3) The Minister shall make regulations in relation to the registration of abstractions.'

There is clearly an opportunity for the Minister to require provision 'for monitoring which is automated, with real-time measurement and remote access available to the data (including historic data) by regulatory authorities and others (including the public).'

'(5) Other than in respect of abstractions to which Head 5(2) apply, it shall be an offence for a person abstracting 25 or more cubic metres of water in any 24 hour period to fail to notify the Agency of that

abstraction, or to knowingly provide false information to the Agency in respect of any abstraction of 25 or more cubic metres in any 24 hour period.

(6) Where required by the Agency, a person who is abstracting less than 25 cubic metres in any 24 hour period must provide proof that the abstraction is below the level required for registration.'

It will be quite difficult to monitor this requirement but, with the use of real-time data, with remote access, this could be easily monitored and be much more efficient for all parties involved.

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

To provide that:

(1) As part of the characterisation of river basin districts undertaken for the purpose of Article 5 of the Water Framework Directive, the Agency shall undertake a review of the environmental impact of existing abstractions on water status using the register of abstractions established under Head 6, The Agency shall undertake a review of the environmental impact of existing abstractions on water status using the register of abstractions established under Head 6, and shall identify all significant abstractions in a catchment.

(2) The Agency shall publish this review in the form of a draft list of significant abstractions as soon as practicable after completion for consultation of not less than [three] months' duration.

That will be the role of the Agency and they could be hugely assisted by the use of an Internet of Things (IoT) network or similar.

Why not let Ireland move ahead of others here and provide real-time access, through an on-line portal, to all the relevant data about the water source and also provide for specific triggering of an alarm when certain pre-conditions are met in respect of water quality?

(5) The Agency shall periodically review and update the requirements at sub-heads (1), (2) and (3) in keeping with the timeframes required for the review and update of River Basin Management Plans, and taking account of any abstractions which have been considered under section (4) in the period since the last review.

It would be much more efficient and cost-effective for the Agency and everybody else if all of this was automated and the data provided online to the relevant bodies and others (including the public) through a public portal.

Explanatory Note:

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

Rather than being reactive and having to deal with problems later, would it not be better if there was greater access to better quality water data through the use of real-time, remotely-monitored, water quality data that can trigger alerts as specified in advance? This is a great opportunity to do something very significant that is also cost-effective and far more efficient than the current system.

Head 9 – Licensing of existing abstractions

(4) Without prejudice to the generality of subhead (2), regulations under this Head may make provision for all or any of the following:

(f) the setting of a limit on the amount of water which may be abstracted or the termination of an abstraction;

Can a provision be made for a mechanism for real-time recording of the water flows and the availability of this data to the regulatory bodies and the public?

(j) reporting and monitoring;

(k) the need to prevent deterioration in water status and to provide for the efficient use of water resources,

How will this be done if not with real-time monitoring and an alarm system in the event of certain limits being exceeded?

Head 10: Licensing of abstractions commencing after the prescribed date

(2) On receipt of a notification under subhead (1), the Agency shall assess the information received and determine whether or not the abstraction is likely to be significant

It is important to build up historical data on these issues (particularly with the significant changes due to climate change) and to make them public online.

(3) Should the Agency consider that the proposed abstraction in respect of which it received notification under subhead (1) is a significant abstraction, it shall inform the person wishing to commence the abstraction, or the agent acting for that person, that a licence is required in respect of the proposed abstraction

How is this enforced? If somebody decided to proceed without approval, how will the regulatory body know? Surely, the potential of remote, real-time monitoring should be utilised here, with direct access to the data by the Agency and, indeed, the public.

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

Explanatory Note:

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

The Regulations also provide an opportunity for the Integrated Pollution Control licences to be mandated to provide similar real-time, remotely accessible data to regulatory bodies and to public.

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

(4) Where a proposal to abstract water by Irish Water is not subject to approval of An Bord Pleanála under 34 or 37A of the Planning and Development Act 2000 to 2017, Irish Water will prepare a notice in the format prescribed by the Minister under subhead (7) which shall be

(a) submitted to the Agency;

(b) published on its website for a period of 3 months; and

(c) published in a newspaper circulating in the catchment area of the existing or proposed abstraction.

Can this require an impact analysis on the process that is being sought and can this be made public online, so that the public are made aware of it?

The regulations should require the 'prominent' display of the notice on its website. In fairness to the public, this should also be posted on the local authority or similar site for the area and, if people register with the Irish Water site, they should be given the option to be notified of any applications in their area (by Irish Water).

The public agencies should be encouraged and mandated to utilise online notices and to facilitate the public registering so that they can receive relevant notices when they are put online. Simply putting the notice online, cannot be seen to be really engaging with the public.

(7) The Minister may prescribe the format of a notice for the purpose of this section which shall include information in relation to the proposed abstraction or extension or increased abstraction, as to -

(a) the source of water:

(b) the place or places of abstraction;

(c) the level of proposed abstraction, including any seasonal variability;

(d) particulars of any ancillary operations.

The notice should mandate the likely impact on the river and the catchment area of the proposed abstraction and there should also be a requirement to provide real-time data (available online and publicly) in respect of the abstraction and compliance with the quality parameters for the water. The historical data should also be available for all (including the public) to view.

Head 18: Power to abstract in specified statutes unaffected

Explanatory Note:

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

There is an opportunity to make more transparent what ESB does and, utilising real-time data, and online, public availability of that data, would make ESB more accountable and transparent with the use of its very significant powers. It would be more effective and make regulatory compliance easier for the company and the regulator.

CONSULTATION ON THE GENERAL SCHEME OF THE WATER ENVIRONMENT (ABSTRACTIONS) BILL 2018

OBSERVATIONS OF ELECTRICITY SUPPLY BOARD

BACKGROUND

1. ESB is a statutory authority and an electricity-generating and distributing utility. It is a public authority for the purposes of the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (“**the 1919 Act**”). ESB makes this Observation in response to the Public Consultation on the General Scheme of Water Environment (Abstractions) Bill 2018 announced by the Minister for Housing Planning and Local Government on 31 August 2018. ESB notes that the compensation scheme for water abstraction is also under the 1919 Act.
2. ESB exercises its power for placing overhead lines under Section 53 of the Electricity (Supply) Act 1927 (“**the 1927 Act**”), which involves the service of a Wayleave Notice before a line is placed. Although ESB does not CPO land, the 1919 Act applies (since 1985) in respect of assessing compensation where agreement cannot be reached.
3. It is the placing of a line, or the repairing or alteration of the line, as opposed to the service of the Wayleave Notice that attracts compensation.
4. Since 2016 ESB has recorded an exponential increase in the number of landowner claims being made against ESB. This has led to a more than tenfold increase in the number of claims being made for numerous different transmission and distribution lines, from Donegal to Cork. Information has

been obtained about lines under the Access to Information on the Environment Regulations and the Freedom of Information Acts. It is entirely foreseeable that landowner representatives will focus on prospective claimants under the General Scheme of the Water Environment (Abstractions) Bill 2018 also.

5. It has been ESB's experience in the past two years, having dealt with many of the claims advanced that the current Arbitration process under the 1919 Act is very much in need of reform. This is particularly so because of the deficiencies that ESB sees in the complex, protracted, inefficient and, in particular, costly aspects of the procedure.

COSTS

6. The table below gives examples of the level claimed in some recent cases compared to the amount of compensation claimed and the settlements or awards. This table has been anonymised.

	Amount claimed	Settlement/ Award	Costs claimed
	€34,000	€12,500	€145,968.85
	€111,000	€37,503	€106,672.05
	€766,650	€81,100	€187,663.07
	€852,600	€85,003	€182,700.67
	€277,500	€51,600	€180,909.40
	€259,500	€78,000	€93,067.67
	€266,500	€60,503	€127,492.95
	€368,700	€63,003	€99,394.55
Average	€367,056.25	€58,651.50	€140,483.65
Total	€2,936,450.00	€469,212.00	€1,123,869.21

7. These costs do not include ESB's costs in dealing with the claims, which are also significant. Our experience of the Arbitration procedure is that the total costs often considerably dwarf the compensation ultimately agreed or awarded. Costs ought to be proportionate and commensurate to the compensation accepted or awarded, particularly when these costs are ultimately paid from the public purse.
8. In light of the foregoing, ESB made observations to the Law Reform Commission on the adequacy of the existing compensation regime in Ireland for the compulsory acquisition of electricity wayleaves (in particular, as regards the reference to Arbitration) and has suggested a number of improvements that could be made. In ESB's view, there are a number of key reforms – most significantly, the introduction of a Wayleave Compensation Assessment Board and amendments to the Property Arbitration procedure – which would greatly enhance the efficiency and effectiveness of the assessment of compensation in Ireland. A summary of the proposed reforms is set out in the Annex hereto. These observations were made in a submission to the Law Reform Commission (following their public consultation process) in a more extensive format but containing the same summary as in this Annex.
9. In the said submission ESB expanded upon its reasoning in the following areas:

A. AGREEMENT BETWEEN LANDOWNER AND ESB

B. INVESTIGATION OF TITLE

C. ENTRY ONTO LANDS

D. WHAT TO DO WHEN LANDOWNERS CANNOT BE IDENTIFIED OR LOCATED

E. VALUATION DATE

F. INTEREST

G. WAYLEAVE COMPENSATION ASSESSMENT BOARD

**H. PRINCIPLES AND RULES FOR THE ASSESSMENT OF
COMPENSATION**

I. PROCEDURE BEFORE THE PROPERTY ARBITRATOR

J. LIMITATION OF ACTIONS

K. EXAGGERATED CLAIMS

L. UNCONDITIONAL OFFERS

M. COSTS

SUMMARY

10. ESB reiterates its submission to the Law Reform Commission on the current state of the law of compulsory acquisition as it relates to the Wayleave Procedure under the 1927 Act and Arbitration under the 1919 Act and as it may apply under the General Scheme of the Water Environment (Abstractions) Bill 2018. The proposal to extend the mechanism under the 1919 Act for assessing compensation under the 2018 Bill will further embed a system of assessing compensation that ESB considers unfit for purpose.
11. As outlined above, ESB considers that radical reforms are desirable in the interests of streamlining and improving the current Arbitration system in place under the 1919 Act.

Electricity Supply Board

08 October 2018

ANNEX

No.	Subject	Recommendation
1.	Jurisdiction of Property Arbitrators in Wayleave Compensation Claim	In order for a Property Arbitrator to have jurisdiction under the 1919 Act, and for the wording in subs. 53 (5) “in default of agreement” to have any real meaning, it is submitted that ESB must be afforded a reasonable period in which to engage with the party seeking compensation in an effort to secure agreement by negotiation before referring a claim to Arbitration. A period of three months from the letter of claim would be appropriate. In this regard, the letter of claim should be sufficiently particularised before the 3 month period starts. The claimant should also be required to make a bona fide attempt to negotiate.
2.	Investigation of Title	Property Arbitrators are concerned only with assessing compensation, not with title issues. Property Arbitrators will proceed with hearings even if there is a title issue, with the title issue to be subsequently determined. This can lead to a situation where there is a full hearing in respect of a claim where the claimant has no good title or entitlement to compensation. To avoid this, we submit that title (and entitlement to compensation) and identification of all persons entitled should be determined before an assessment of compensation proceeds.
3.	Investigation of Title	ESB submits that there should only be one claim per landholding. At present, a claimant

		<p>only has to notify interested parties but he/she can then proceed with the claim and ESB is exposed to multiple claims (from co-owners and occupiers) on each landholding. This suggestion would be consistent with the view of Feeney J. in <i>Cooney v Cooney</i> wherein he noted that the scheme under the 1927 Act provides for a “...one-off payment to the owner of lands who are affected by statutory works carried out on such lands and the compensation to which such owner becomes liable is to be paid to the then owner of the lands ...”.</p>
4.	Investigation of Title	<p>If a claim is advanced by an occupier, that occupier should be required to provide information about the ownership of the land. On the other hand, if a claim is advanced by an owner, that owner should be required to provide information about any occupiers of the land. The ESB legislation (s 53 (5)) provides that owners or occupiers are entitled to compensation. Although the word “or” is used, compensation is sometimes claimed by both owners and occupiers in respect of the same land.</p>
5.	Entry onto Lands	<p>At present, ESB pays significant sums of money upfront to landowners in relation to the development (and in some cases upgrading) of certain transmission lines and 38kV lines. These are known as “<i>flexibility of access payments</i>” (“FOA payments”). ESB submits that it should be expressly provided for in legislation that these payments are to be set off against any</p>

		eventual compensation awarded by an Assessment Board/ Property Arbitrator.
6.	Jurisdiction of Property Arbitrators in Wayleave Compensation Claim	ESB considers it desirable to clarify that an application to the LVRC under the 1919 Act for the nomination of a Property Arbitrator may not be made and the LVRC may not nominate a Property Arbitrator to hear the claim for compensation until the line has been placed on the relevant lands. It would make sense for a line to be deemed to be placed on a landowner's land when it has been strung as opposed to when the line is energised, as it is often the case that a number of months can pass between the stringing of a line and the energisation of the line.
7.	Valuation Date	ESB also considers it desirable to expressly provide that the valuation date shall be the date of entry to place the line.
8.	Valuation Date	There is no Irish provision comparable to the UK provision to the effect that " <i>[n]o adjustment is to be made to the valuation in respect of anything which happens after the relevant valuation date</i> ". It is desirable that a similar provision should be included in Irish legislation. This would have the effect of clarifying the somewhat uncertain present position as to the relevance of matters which occur after the valuation date.
9.	Interest	S. 18 of the 2010 Act does not apply to Arbitrations conducted by a Property Arbitrator appointed under s. 2 of the 1960 Act such that there is no jurisdiction for a Property Arbitrator to award interest in a

		<p>wayleave claim. This should remain the position. The exercise of ESB's statutory powers under s. 53 (5) and s. 53 (9) do not deprive the owner of his or her lands and there is no basis for the payment of interest.</p>
10.	Pre-Arbitration Process	<p>A pre-Arbitration process is required to enhance the efficiency and effectiveness of the assessment of compensation for electricity wayleaves in Ireland. Given that liability is typically not in issue in these claims, unless perhaps where a claim is made by a subsequent owner (i.e. somebody who did not own the land when the line was placed) or where a claim is statute barred, the initial assessment could be a paper-based exercise carried out by a Wayleave Compensation Assessment Board, similar to the role of the Personal Injuries Assessment Board.</p>
11.	Costs	<p>ESB submits that for claims which do not resolve at the Assessment Board stage and which go to Arbitration, there should be a scale of costs that mirrors the scale that applies in the Courts as follows:</p> <ul style="list-style-type: none"> • Claims under €15,000 - the District Court scale – with no provision for Senior Counsel • Claims under €75,000 - the Circuit Court scale – with no provision for Senior Counsel • Claims over €75,000 - the High Court scale
12.	Compensation	<p>The 1927 Act (as amended) provides for the 1919 Act to be the basis for a Property</p>

		<p>Arbitrator to assess compensation in default of agreement. In addition, we have suggested the introduction of a Wayleave Compensation Assessment Board. The 1927 Act (as amended) is drafted in such terms as to allow for proper compensation under the principle of equivalence. Of course, it is of the greatest importance that Property Arbitrators are properly trained in law and legal procedures and made fully aware of the true basis of permissible compensation assessment principles in every case.</p> <p>The legal principles governing compensation in compulsory acquisition cases are generally satisfactory, having been refined over very many years so as to be fair to each party. To take one example, there is a clear duty to mitigate loss. However, consideration might be given to the introduction of a requirement for claimants to prove loss of sites (where claimed), by way of planning permission.</p>
13.	Arbitration Procedure	<p>In order to assist Property Arbitrators and to address the infirmities identified above, ESB submits that in addition to the aforementioned training, the LVRC should be tasked with providing guidance to Property Arbitrators on the conduct of Arbitration hearings in the form of a Practice Direction. This guidance should address: the pre-hearing procedural requirements (in relation to pleadings and particulars as set below), the conduct of hearings and the relevant principles to be applied in the assessment of compensation (i.e. the principle of equivalence and compensatable losses). ESB notes that a</p>

		number of professional bodies have prepared guidance for their members acting as arbitrators including the Royal Institute of Chartered Surveyors and the Chartered Institute of Arbitrators.
14.	Arbitration Procedure	The inclusion of references to notice to treat in the 1919 Act has been treated as otiose in wayleave acquisition cases and has been ignored. However, it might be appropriate to ensure that any new legislation will, in relation to ESB wayleave cases, provide that references to notice to treat in that Act (or any replacement legislation) should be taken to be references to a notice under s 53 (3). It would be appropriate to make specific legislative provision to allow the acquiring authority to withdraw any notice served under s. 53 (3) save insofar as works have been done on foot of that notice.
15.	Arbitration Procedure	<p>It would be appropriate that provision be made setting time limits for: (i) the formal furnishing of a Notice of Claim and Points of Defence; and (ii) Notices for Particulars and Replies to Particulars. It would also be appropriate to make provision for the exchange of written legal submissions <i>inter partes</i> at an appropriate time prior to the hearing.</p> <p>It would also be appropriate to include a provision that hearing dates should not be fixed by Property Arbitrators before pleadings have closed.</p>

16.	Arbitration Procedure	There should be no recognition of an unrestricted right on the part of a claimant to add to or amend the claim after service of Notice of Claim or after the service of the pre-Arbitration letter of claim. This would avoid the current practice of ESB receiving a grossly exaggerated pre-Arbitration letter of claim, which is apparently designed to make settlement at the pre-Arbitration stage highly unlikely and which is invariably radically changed after the claim has been referred to Arbitration when ESB receives the Statement of Claim. It should be expressly provided, by appropriate rules (included in the relevant statutory instrument) that the leave of the Property Arbitrator must be sought and obtained for any such addition or amendment and that there must be valid grounds justifying the same. The Respondent should be entitled to oppose same.
17.	Arbitration Procedure	It should also be provided that any subsequent unconditional offer made in response to an amended claim should take effect as if it were made at the time when the first unconditional offer was made.
18.	Arbitration Procedure	It would be desirable to make provision for a restricted right of appeal from the High Court similar to that provided for in planning judicial review cases under section 50A(7).
19.	Arbitration Procedure	It would be wise to preserve a provision whereby the Property Arbitrator could send forward a consultative case stated. In addition, either party should have a right of appeal on a point of law to the High Court

		including appeal on a point of law arising from a Property Arbitrator's decision.
20.	Limitation of Actions	<p>It would be appropriate to provide that an application to the Reference Committee pursuant to s. 1 (1) of the 1919 Act for the nomination of a Property Arbitrator shall not be made after the expiration of a specified period from the date on which right to make such application accrued. It would be appropriate for this to be done by way of amendment to the Statutes of Limitation in such a way as to provide for extension of the limitation period in case of disability, acknowledgment, part payment, fraud and mistake.</p> <p>There is no reason why the limitation period should be as long as six years. Of note, there is a 12 month limitation period under s. 90 of the Minerals Development Act 2017 (plus a possible extension of 12 months). A limitation period of two years would be appropriate having regard to the fact that the matters in issue are relatively straightforward and issues in relation to land valuation are best dealt with soon after the valuation date.</p>
21.	Exaggerated Claims	As indicated above, in recent times, a number of claims advanced before the Property Arbitrators have been significantly exaggerated. As a result, it is difficult or impossible to settle claims at the pre Arbitration stage and to reliably calculate an unconditional offer and ESB is forced to incur excessive legal costs. ESB believes that it would be appropriate to include provisions in relation to exaggerated claims in any amending

		<p>legislation. These provisions could be similar to those which have been legislated for in relation to personal injury claims, whereby, in the event of an exaggerated claim, the Property Arbitrator would be empowered to deprive the claimant of his costs and, if appropriate, award costs to the acquiring authority.</p>
22.	Unconditional Offers	<p>No time limit for making an unconditional offer is specified under the 1919 Act and a respondent can make an unconditional offer at any time after service of a letter of claim. The time for acceptance of an unconditional offer should be specified. For example, a period of 7 days might be allowed for acceptance (“the permitted period”).</p>
23.	Unconditional Offers	<p>Given the present uncertainty as to the precise format of a valid unconditional offer, and repeated challenges to the validity of ESB’s unconditional offers, it would be appropriate to specify a form of Notice of Unconditional Offer as well as a form of Notice of Acceptance of Offer. Such provisions could be modelled on the Tender Offer provisions of the Rules of the Superior Courts.</p> <p>The form of Notice of Unconditional Offer should require the offeror to: (i) specify the amount being offered for compensation, excluding the pre-reference costs, (i.e. the costs of preparation and submission of the claim and negotiations), (ii) specify whether or not the pre-reference costs are being offered with such costs to be determined by the Property Arbitrator in default of</p>

		agreement and (iii) specify whether or not the reference costs are being offered with such costs to be determined by the Property Arbitrator or the Taxing Master in default of agreement.
24.	Unconditional Offers	It is also desirable to expressly provide that unconditional offers, if accepted, shall preclude all further claims for compensation arising out of the matters the subject of the Arbitration.
25.	Unconditional Offers	There should also be specific provision as to the time of payment of the amount of the unconditional offer, if accepted within the permitted period, and, in particular, that provision could be made that an unconditional offer if accepted shall be payable within 21 days. However, if an unconditional offer is accepted after the permitted period it would be appropriate for the costs that were incurred after the offer was made to be awarded against the claimant and s5(6) of the 1919 Act, which essentially provides for a set off of the unconditional offer against the Acquiring Authority's costs, should remain in force.
26.	Unconditional Offers	Provision should also be made that if an unconditional offer is accepted there shall be no need to include the amount of the offer in a formal award and that the amount shall be recoverable by way of simple contract debt. The provision should go on to specify that the Property Arbitrator shall (without convening a hearing of the parties) issue an order providing for the claimant's costs in

		accordance with the terms of the unconditional offer, if the unconditional offer is accepted within the permitted period.
27.	Costs	In light of the above, and the fact that bills for reference costs are often six figure sums, ESB submits that all costs (pre-reference and reference) should be taxed by the Taxing Master in default of agreement.
28.	Costs	In the light of the pre-existing practice we think it desirable that the statutory provision be amended to provide that the Property Arbitrator's discretion to award costs is a discretion to award costs on a party and party basis.



Energy for
generations

ESB Response: General Scheme of the Water Environment (Abstractions) Bill 2018

12th October 2018

Generation & Trading



Energy for
generations

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1. EXECUTIVE SUMMARY

ESB welcomes the opportunity to respond to the Department of Housing, Planning and Local Government public consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018.

In general, ESB supports the proposals within the consultation paper, and recognises the need for the bill to govern the abstraction of water in compliance with the Water Framework Directive.

ESB wish to highlight the following items for further consideration:

- **Head 4.** Section 4 of Local Government (Sanitary Services) Act 1964 should be retained or should be replaced by a similar provision to allow ESB to enter into agreements with third parties who wish to abstract from ESB reservoirs.
- **Head 5.** The means of measuring the rate of abstraction should be appropriate to the type of abstraction taking place. In some cases (i.e. the hydro stations), it's not practically possible to measure the rate of flow directly. Alternative methods can be used, with an appropriate level of accuracy, and should be permitted under the binding rules.
- **Head 6.** Deadline for the register of abstractions stated under this provision differs from the deadline issued by the EPA.
- **Head 13.** Nothing in the legislation should preclude ESB from specifying conditions in its agreements to abstract from ESB reservoirs or facilities associated with hydro schemes. ESB would need to set out such conditions to ensure the safety of its dams and embankments, and to avoid impairing the stations from loss of black start capabilities associated with its primary statutory function.
- **Head 15:** Item 1 of this provision should be amended from '*Compensation may be payable on proof of loss*', to '*Compensation shall be payable on proof of loss*'.
- **Schedule 2:** The Schedule should be extended to cover the amending pieces of legislation associated with the Acts and Statutory Instruments included.

2. ITEMS FOR FURTHER CONSIDERATION

The following items have been identified by ESB in the draft legislation governing the abstraction of water as requiring further consideration.

Head 4

Section 4 of Local Government (Sanitary Services) Act 1964 states:

“4.—(1) A sanitary authority and the Board may enter into an agreement (in this section referred to as a water agreement) whereby the sanitary authority may abstract and the Board may permit the authority to abstract from a reservoir, upon such terms and subject to such conditions as may be specified in the agreement, water impounded by the Board in the reservoir.”

Under this Act, ESB has the power to enter into agreement with Irish water for abstractions. The repeal of this act would hamper ESB’s ability to enter into further agreements with Irish Water, or any other third party wishing to abstract from an ESB reservoir.

This provision should be retained, as ESB is the party best placed to take account of dam safety requirements, seasonal changes, and maintaining statutory compensation flows. Furthermore, significant abstraction in the absence of an agreement of this nature could endanger embankments and could lead to loss of black start capabilities at hydro stations.

Head 5

ESB agrees with the need of general binding rules for the abstraction of water to comply with the Water Framework Directive. Nonetheless, the direct measurement of the rate of abstraction may not be appropriate or practically feasible for all abstractions.

An abstraction has been defined in Head 2 as:

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

Under this definition, there are likely to be numerous instances, particularly where water is only diverted, where it may not be appropriate or practically feasible to measure flow. Abstraction at ESB Hydro stations, is one such example where it's not feasible to directly measure the flow. Flow rates can be calculated using rate curves for the given units. ESB would recommend that the wording be amended to permit the indirect calculation of flow rates where direct measurement is not practicable.

Similarly, for cooling water systems at thermal stations, the flow rate is currently estimated based on the performance curves of the water pumps. ESB would recommend that the draft legislation be amended to allow calculated flow rates to meet the '*means of measuring the rate of abstraction*' under the binding rules.

Head 6

The deadline for all qualifying abstraction to be registered is stated as the 16th of October 2018 under the explanatory note related to this provision. The EPA have separately given notice that the register for abstraction deadline is November 16th of 2018¹. ESB would request for the deadline to be clarified, and the legislation to be amended to a common date.

Head 13

This provision in conjunction to the repeal of Section 4 of Local Government (Sanitary Services) Act 1964 under Head 4, would hinder ESB's ability to enter any further agreements with Irish Water in relation to abstractions. Such an agreement would be required to ensure the technical safety of ESB facilities and reservoirs and that statutory compensation flows are maintained. Furthermore, any significant abstraction carried out in the absence of any agreement between these two parties could result in adverse implications. It is imperative to ensure that nothing in the legislation would preclude ESB from specifying conditions in its agreements to abstract from ESB reservoirs or facilities associated with hydro schemes. ESB would need to set out such conditions to ensure the safety of its dams and embankments, and to provide system security or black start capabilities associated with its primary statutory function.

Head 15

ESB agrees that compensation by Irish Water shall be payable where a person suffers an unjust loss arising from a power of Irish Water to take a supply of water under the provision of Head 13 within this draft legislation.

ESB recommends that the wording of first item under Head 15 be amended to

- (1) *Where a person is of the view that he or she has suffered an unjust loss arising from a power of Irish Water to take a supply of water under the provisions of Head 13, compensation **shall** be payable on proof of loss or as otherwise agreed between the parties based on a pre estimate of the loss.*

Schedule 2

The amending pieces of legislation to the Acts and Statutory Instruments included in this schedule have been omitted. ESB would recommend extending the Schedule to cover these amending pieces of legislation.

The schedule should be amended to include the following pieces of legislation:

1. Shannon Fisheries Act 1938
2. Electricity (Supply)(Amendment) Act 1961
3. S.I. No. 34/1958 - River Lee Hydro-Electric Scheme Approval Order 1949 (Amendment Order 1949 (Amendment) Order 1958

¹ <http://www.epa.ie/licensing/watwaste/watabs/>

Dept of Housing, Planning & Local Government, Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

Enterprise Ireland Submittal

Enterprise Ireland welcomes the opportunity to provide a submission to the Dept of Housing, Planning and Local Government's consultation process regarding the General Scheme of the Water Environment (Abstraction) Bill 2018.

Enterprise Ireland in its role as the national economic development agency for SMEs, and with responsibility for the foreign direct investment portfolio for the Food sector, is keenly aware of how the provision of water is key to the operations of our client companies, and that the management and cost of this asset is key to the competitiveness of Irish industry.

Water is vital to; support long-term economic growth, maintain and grow a broad enterprise base and continue to attract high levels of foreign direct investment, particularly in key growth sectors such as food and drink, pharmaceuticals, technology and manufacturing. These industries provide considerable employment in Ireland and represent a substantial portion of our exports and economic activity.

The sustainability of the natural environment and a commitment to environmentally friendly policies are key determinants of long-term quality of life as well as being an important resource for economic growth. Ireland's move to comply with the EU Water Framework Directive is welcomed.

Enterprise Ireland works with our client base in supporting environmental awareness¹. The "Build a Green Sustainable Business" programme encourages efficient use of utilities (energy, water). These supports allow companies to

- understand and embed improved environmental management practices,
- assess and apply current international environmental best practices and standards and
- undertake Life Cycle Assessment projects including the European Water Stewardship Standard,

The efficient monitoring and usage of water is encouraged within our client company base. Not only is such stewardship a move towards improved competitiveness, it also is environmentally positive.

¹ <https://www.enterprise-ireland.com/en/Productivity/Build-a-green-sustainable-Business/>

Dept of Housing, Planning & Local Government, Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

Enterprise Ireland Submittal

While the focus of this consultation paper is on ensuring Ireland can comply with the EU Water Framework Directive in the control and registration of water abstraction, the proposal also impacts on enterprises operating in Ireland in a number of ways, which need to be considered. These include:

- The changing environment in Ireland on water management, and the impact on business development.
- The administration of a centralised water abstraction scheme and regulatory burden on companies.
- Collaboration between industry and agencies with responsibility for water and the wider environment.

1 Changing environment in Ireland on water management

The provision of water is vital to; support long term economic growth; maintain and grow Ireland's broad enterprise base; continue to attract high levels of foreign direct investment and retain and create jobs, particularly in key growth sectors such as food and drink, life sciences, ICT, and manufacturing. Water supply is a major consideration in the establishment and development of businesses in the dairy, meat processing and pharma sectors.

Historically, many large companies in establishing businesses chose water abstraction for the supply for water. This was as the public services were not in place (nor could they cater without large expense to industry) to provide the volume, quality and continued supply required for businesses. Abstraction was at times the best, or only option for water supply for some companies. The advent of Irish Water offers the opportunity for a state utility to provide a water supply service to meet the needs of industry into the future, ² however the asset planning and costs for expanded or new connections, to industry is as yet unknown. The proposed legislation on water abstraction is an outline for the control of water in Ireland but, as yet, the Heads of Bill provides insufficient details for companies **to plan for future water management.**

² CRU's consultation on water connections

Dept of Housing, Planning & Local Government, Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

Enterprise Ireland Submittal

The recent consultation from the Commissioner for Regulation of Utilities ³sees a proposal in which 93-95% of industrial and commercial users would see an increase in the price of water. The cost of water and its management is a concern to companies in Ireland.

This abstraction consultation also coincides with the competitive pressures and trade uncertainties of Brexit, which imposes challenges on industries – particularly on the Food sector. The uncertainty of the draft legislation in introducing new registration, licensing and potential fees, places an additional administrative burden on industry at an already **economically challenging time**.

2. The administration of a centralised water abstraction scheme and regulatory burden on companies.

The draft legislation outlines a process for registration and in some circumstances licensing with “an agency”. Previous business development was managed by industry directly with the Local Authority, who worked with industry on planning, infrastructure provision and licensing. The regulatory landscape has changed and at times is difficult to navigate.

The scope of the proposed legislation includes some additional responsibilities on companies that currently are not in place.

- “where a person wishes to commence an abstraction of between 250 & 2,000 cubic meters in any 24-hour period.... notify the agency”.

Temporary abstractions appear to be covered by this clause, and there is no indication provided on the process for “the agency” to engage with industry, and the timelines to provide a decision to progress with the planned business.

- “every abstraction.... must (have the) means of measuring the rate of the abstraction” Head 5 (1) (b)

Whereas most manufacturing (pharma/food) industries may have flow meters on the water supply this is not the case for all industries, and additional costs may be incurred by industry, in meeting this proposed requirement.

³ https://www.cru.ie/document_group/establishing-irish-waters-non-domestic-tariff-framework/cru18114-cru-consultation-paper-irish-waters-proposals-for-a-new-non-domestic-tariff-framework/

Dept of Housing, Planning & Local Government, Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

Enterprise Ireland Submittal

We request that in developing the legislation, the Department ensures that administrative burden and additional costs imposed on Irish businesses of all sizes are kept to a minimum.

The consultation paper outlines a proposed process of registration, licensing and administration for water abstraction. The World Bank's Doing Business 2018⁴ report is an annual report investigating the regulations that enhance business activity and those that constrain it. In the latest report, Ireland is ranked 17th – from 190 countries. It will be important in the introduction of any new processes and procedures that the **administrative and regulatory burden** on industries is considered, and a streamlined, efficient, and transparent process is in place to allow for the development of business (existing and new) . An industry focussed, regulatory environment is required.

Ireland's economic environment relative to other jurisdictions is a crucial consideration as entrepreneurs and enterprises decide where to locate businesses. It is important that any change in legislation that impacts on companies is managed in a transparent and efficient manner, allowing investors and business development to progress in a controlled manner. This legislation, as described in this Heads of Bill remains ambiguous and does not provide clear timelines for industry to engage with "the agency" for decisions. A series of deliverables and decisions are due from "the agency" for industry to comply with the water abstraction proposed new legislation. However, there is a complex series of interactions required between industry and 'the agency'. The timelines for such interactions, decision issuance, is key to allow industry progress on any water management plan, and also to allow collaboration between industry and 'the agency'.

For example,

- At present, 6% of water bodies are deemed by the EPA to be potentially at risk due to abstraction pressures.
It may be prudent to publish this list and provide industry insights into where there may be water pressures. This is key to allow new, and developing, industry decide where best to locate.
- What is the potential cost of licences?
As the management of water becomes more streamlined industry need to

⁴ <https://tradingeconomics.com/ireland/ease-of-doing-business>

Dept of Housing, Planning & Local Government, Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

Enterprise Ireland Submittal

plan how best to source, and discharge water, and the potential costs.

- “Information as agency requests”
The information required should be known in advance to applicants. Clear, transparent, and consistent communications is required to allow industry to comply with the requirements, and to allow speedy decisions for both parties.

The handling of registrations needs to be streamlined and efficient, ensuring that business developments can progress, where applicable, as promptly as possible. A service guideline should be made available to businesses on how to navigate this process, and **clear customer service guidelines** including timelines issued.

3. Collaboration between industry and water environment agencies

A clear process for management of water abstraction and clarity on the process for industry to engage and “the agency’s” customer service timelines proposed, is required.

Any draft legislation should consider situations where:

- “The Agency” considers that the proposed abstraction is likely to be a significant abstraction, and how current or proposed water supply/discharges can be managed without economic or environmental impact.
- There are a number of registrations made in the same area, and how such situations can be best managed
- Technical assessment work, and the national skills and expertise available to conduct such work.
- The water discharged by industry is higher than the water abstracted and how to accommodate this.

Understanding that this consultation is seeking to allow Ireland to comply with the EU Water Directive, it is important that there is an active engagement between the various stakeholders throughout the process

The consultation could potentially have a large impact on industry, yet the proposed abstraction registration process is currently unknown to some companies. The consultation document is unwieldy to navigate and unlikely to elicit optimal public comment and feedback.

Dept of Housing, Planning & Local Government, Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

Enterprise Ireland Submittal

Conclusion

The consultation is welcomed. However, in planning new legislation, the Department of Housing, Planning and Local Government needs to consider how the proposed registration, licensing process to industry, and the planned service levels of such an agency as proposed would be provided in practice.

The delivery of a national standardised approach to abstraction will require the collaboration between 'the agency' and current abstraction facilities. It will be important for all stakeholder groups to be involved in the development of an equitable and efficient process.

Response to Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018 from Geological Survey Ireland

The draft Heads of the Water Environment (Abstractions) Bill 2018 are very economically drafted and clearly set out. Our comments below relate to Head 5, General Binding Rules for geothermal wells, and borehole development and testing, and to Head 6, Register of abstractions, with respect to data sharing. We preface our specific observations with an outline of the ways in which abstraction data support GSI's national groundwater resource and environmental mapping products that are used extensively by EPA, Local Authorities, the private sector, academia and the general public, and the public good and savings to the exchequer that would arise from access to data collected through the abstraction register.

GSI use of 3rd party abstraction data:

GSI's national groundwater resource (aquifer) map is used widely in Water Framework Directive (WFD) and other applications, particularly planning decisions, and water resources development and protection. The map is based on GSI geological base maps and primary data and, to a very significant extent, on 3rd party borehole information (around 30,000 data currently, of a total of about 45,000). Borehole and spring groundwater data are analysed in the context of the geological information to derive aquifer classifications that cover the national territory.

Due to the expense of collecting primary data through fieldwork, and in order to maximise the benefit to the state of data collected through the abstractions database, there are far-reaching benefits and costs savings to the tax-payer and the environment for GSI to have access to the abstractions database.

Yield is one of the main concerns in aquifer development projects, yields from existing wells are conceptually linked with the main aquifer categories. Therefore, abstraction rates from the database will be of considerable utility to GSI in either supporting or indicating that updates are required to the national aquifer map (abstractions of >100 m³/d and >400 m³/d are part of the aquifer classification criteria).

Borehole yield or abstraction rate is not the only criterion used in aquifer classification (see table here: <https://www.gsi.ie/en-ie/publications/Pages/GSI-aquifer-classification-flowchart.aspx>). Access to the database could have an additional benefit for the GSI to be able to further follow up with willing and interested individuals to gain supplementary geoscientific information (geology, hydrogeology, hydrology, hydrochemistry). Provision for this in the Bill would be greatly beneficial to the GSI and sectors outlined above.

Head 6

The Heads should include a provision in Head 6 that "the Agency shall make available the data submitted to the register of abstractions to the Geological Survey for the purpose of advancing the technical understanding of groundwater systems in Ireland in order to assist the protection of drinking groundwater and the implementation of the Water Framework Directive". The specific data required to support these aims should be specified in the regulations setting out the information to be provided to the register. As well drilling data are collected by third parties engaged in water abstraction, their provision to the GSI would be a cost-effective way of data collection and avoid additional expenditure by the Exchequer.

Geological Survey Ireland (GSI) is the national geoscience authority and has developed a leading national expertise in understanding groundwater systems in Ireland. GSI has provided expert advice on groundwater systems to assist the protection of underground drinking water supplies to Irish Water, local authorities, and the National Federation of Group Water Schemes. It would be important to ensure that groundwater well/abstraction data can be made available by the EPA to

the GSI to ensure that all relevant information is available to the national centre for groundwater expertise in the GSI. This will ensure that the best available groundwater technical advice can be provided to entities such as Irish Water, local authorities, and Group Water Schemes, and to support WFD and other environmental management objectives. This legislation should provide a clear legal basis for exchange of such data in order to avoid any doubt or future difficulties related to data protection.

Head 5

Head 5(1)

Provisions under Head 5(1)(f) will also prevent the ingress of pollution into the aquifer via the open borehole. Suggest modifying to:

- (f) when the well or borehole is not being used for abstraction, it must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer and to prevent ingress of contaminated surface or shallow groundwaters into the aquifer;

Head 5(2)

Geothermal energy: The reference in Head 5(2)(b) should be clarified in relation to the ‘temporary abstraction and return’ of groundwater for the purpose of extracting geothermal energy. Suggest modifying to:

- (b) the temporary abstraction and return of groundwater for the purpose of extracting geothermal energy from the abstracted water.

Borehole drilling and testing: Where boreholes are drilled for potable groundwater abstraction, groundwater monitoring, or other purposes, there are borehole development (the cleaning out of drilling products from the borehole, and fine particles in flowing fractures) and aquifer testing phases.

Volumes of groundwater displaced from the aquifer are likely to exceed 25 m³/d in development and testing phases, even if the constructed borehole is ultimately operated below 25 m³/d. Suggest adding an additional item to account for short-term pumped volumes:

- (c) the temporary abstraction of volumes greater than 25 cubic metres during borehole development and aquifer hydraulic testing.

The abstracted water is usually pumped to infiltration areas on land, or to nearby surface waters. Therefore, the local water balance is maintained, and linked surface waters are not adversely impacted. Sometimes, abstracted water is pumped to constructed drains, and there is a net loss to the local water balance. Depending on the site hydrology, hydrogeology and ecology, borehole development and testing may have an adverse effect on linked surface water receptors or groundwater dependent ecosystems.

Considerations in the proposed “specific General Binding Rules more appropriate to secondary legislation” for temporary abstractions exceeding 25 m³/d during well development and hydraulic testing should include, but will not be limited to:

- The duration of the borehole development phase and likely volume of produced water;
- The duration of the aquifer hydraulic testing phase and proposed pumping rates;
- The proximity to surface waters or groundwater dependent ecosystems;
- The magnitude of the proposed pumping rates compared to the estimated groundwater recharge rates and flow rates/volumes in nearby surface water bodies;
- The aquifer classification of the groundwater resource.

Water Quality Section,
Department of Housing, Planning and Local Government,
Government Buildings
Newtown Road
Wexford
Y35 AP90

12 October 2018

**Response to Public Consultation on General Scheme of Water Environment (Abstractions) Bill
2018**

Dear Sir/Madam,

Ibec is grateful for the opportunity to comment on this consultation. We represent thousands of businesses across the country, many of whom are reliant a clean and affordable water supply. We welcome the drafting of the Water Environment (Abstractions) Bill 2018; this is an important step in the implementation of the River Basin Management Plan 2018 – 2021.

Ibec agrees with the 25m³ threshold for registration. Abstractions below this threshold are relatively minor and Ibec has not seen any evidence that abstractions lower than 25m³ per day would pose an environmental risk to water bodies. For example, lowering the daily threshold to 10m³ could potentially triple the number of required registrations with minimal volumetric increase. Creating an unnecessary administrative burden for many small businesses as well as the EPA.

Ibec is a trade association of Ibec clg. Ibec clg is registered in Ireland, registration no. 8706. Website: www.ibec.ie
Directors: Paraic Curtis, Pat McCann, Larry Murrin, Alastair Blair, Edel Creely, Gerry Collins, Frank Gleeson, Cathriona Hallahan, Anne Heraty, Brian MacCraith, Patrick Manley, Eugene McCague, Danny McCoy, Francesca McDonagh, Liam O'Donoghue, Tony Smurfit, Siobhan Talbot, Kevin Toland.

In regard to the administration fee for licensing we ask that will be minimal, equitable and justified. Businesses have significant costs regarding water supply and wastewater treatment. We therefore ask that this is considered when deciding the administration fee discussed in the Bill.

Ibec would appreciate more clarity regarding emergency abstractions. Businesses may have temporary back up water supplies e.g. lake or lagoon. These water bodies would only be used in the case of an emergency such as firefighting. Although infrequent the abstraction would be greater 25m³ per day, it is not clear if these additional water supplies would need to be registered. Greater clarity would be helpful as there is a possibility business may be unintentionally non-compliant.

We thank you for this opportunity to respond to the proposed legislation. I hope that the above comments are helpful. Please feel free to contact me, or my colleague Neil Walker, if you require any further clarification.

Yours sincerely,

Aoife O'Donovan

Environment Policy Executive



**Iascach Intíre Éireann
Inland Fisheries Ireland**

September 14th, 2018.

To: Department for Housing, Planning and Local Government

Re: Consultation Document - General Scheme of the Water Environment (Abstractions) Bill 2018.

Dear Sir or Madam,

Thank you for the opportunity to contribute to the Department of Housing, Planning and Local Government's consultation on the General Scheme of the Water Environment (Abstractions) Bill, 2018.

Background

Inland Fisheries Ireland (IFI) is a Statutory Body established on the 1st July, 2010. Under section 7(1) of the Inland Fisheries Act 2010 (No. 10 of 2010) the principal function of IFI is the protection, management and conservation of the inland fisheries resource. Ireland has over 70,000 kilometres of rivers and streams and 144,000 hectares of lakes all of which fall under the jurisdiction of IFI. The agency is also responsible for sea angling in Ireland.

IFI is mandated to ensure that the fisheries of the State are protected. To protect means to keep safe, defend, to shield from danger, injury or change. "Fisheries" includes all inland fisheries recreational and commercial, sea angling and mollusc fisheries stipulated under the Fisheries Acts, the physical habitat upon which the fishery relies, the facilities and access, the quantity and quality of the water and the plant and animal life on which fish depend for shelter and food and the spawning areas where in fish deposit their eggs. The protective role of IFI relates to all aspects of the aquatic environment and all factors that influence the biotic communities within waters, which in any way relate to the propagation of fish stocks / populations.

Under section 7(3) of the IFI Act it is stated that: *without prejudice to subsection (1), IFI shall in the performance of its functions have regard to –*

(g) the requirements of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) and the need for the sustainable development of the inland fisheries resource (including the conservation of fish and other species of

fauna and flora habitats and the biodiversity of inland water ecosystems),



**Iascach Intíre Éireann
Inland Fisheries Ireland**

(h) as far as possible, ensure that its activities are carried out so as to protect the national heritage (within the meaning of the Heritage Act 1995).

Inland Fisheries Ireland is the competent authority for fish and has significant responsibilities and powers under S.I. 477 of 2011 whereby Ireland transposed into Irish law its responsibilities under the European Communities (Birds and Natural Habitats) regulations – the Habitats Directive.

The EU Water Framework Directive (2000/60/EC) entered into force in December 2000 and requires the protection of the ecological status of surface and ground waters – this encompasses (among other elements) water quality, quantity and requires the conservation of habitats for ecological communities. One of the primary objectives of the Directive is to establish a framework which prevents further deterioration and protects and enhances the status of aquatic ecosystems. The Bill recognises that protection of aquatic ecosystems requires that river systems be protected on a catchment basis - a shared objective between all relevant public authorities. Article 5 of the 2009 Surface Water Regulations requires that a public authority, in performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water. Article 28(2) of the said regulations states that a surface water body whose status is determined to be less than good shall be restored to at least good status not later than the end of 2015.

Ireland is now in the second cycle of the Water Framework Directive (2015 – 2021). For this purpose a newer single Catchment Management approach has been adopted and Ireland has been broken into up into 46 large catchments, and 583 sub catchments.

The Bill must recognise that protection of the aquatic environment / habitat not only requires the protection of water quality but also necessitates the protection and maintenance of physical habitat and hydrological processes and regimes (with a particular emphasis on abstraction impacts and pressures). In this context and bearing in mind obligations to ensure sustainable development, the Bill should address the overarching requirement to prevent deterioration in the chemical or ecological status of waters.



Protection of the aquatic environment must imply a greater commitment than merely to prevent fish mortality or protect water quality or quantity. Sustainable management of hydrological regimes is necessary to safeguard the fisheries resource and avoid potential negative impacts on habitat and biological functions. Maintenance of habitat is a particularly important objective of fisheries and broader environmental authorities (WFD objectives).

Comments on specific provisions in the General Scheme of the Water Environment (Abstractions) Bill, 2018:

Head 5 - General binding rules:

IFI advocates a requirement to accurately measure and record abstraction data at each regulated location. The provision of flow measurement infrastructure should not impact on natural habitat and the fisheries resource.

As provided for under the Water Framework Directive, IFI understands that it is proposed to exempt from registration or licensing, abstractions which have no significant impact on water status. IFI welcomes this proposal. The proposal mirrors the approach taken in Scotland and Wales where a system of lower thresholds is in operation. IFI note that a threshold of 25m³ per day was chosen in the Bill for consistency with Section 9 of the Local Government (Water Pollution) Act 1977. IFI are concerned that this threshold may not afford adequate protection to the fisheries resource at all sites and advocates a precautionary approach. The threshold of 10 m³ per day (as in operation in Welsh and Scottish jurisdictions) is recommended as the lower threshold for registration.

IFI suggests that the system in operation in Scotland (a biogeographical region similar to Ireland) would be more precautionary from a resource management perspective and may be more appropriate in an Irish context. The system is understood to operate as follows:

- 10 to > 50 m³ – register
- 50 to >2000 m³ – licence
- >2000 m³ – complex licence

IFI highlights that fact that notwithstanding any general approach developed on the basis of such thresholds, further assessment or regulation may be necessary in site specific cases where the fisheries resource may be at risk. It must be assumed that all watercourses, no



**Iascach Intíre Éireann
Inland Fisheries Ireland**

matter how small, are fish bearing or have potential to bear fish or the food of fish – (until proven otherwise).

A number of activities may require specific consideration for inclusion under general binding rules. These activities include but are not limited to areas such as extractive industry, aquaculture, horticulture, sub-threshold (IPPC) activity, forestry nursery operations, hydroelectric installations, put and take fisheries / ornamental lakes and ponds, *ad hoc* water abstraction (e.g. to water crops, parks, public areas) etc..

Head 6 - Register of abstractions:

The definition of 'abstraction point' appears restrictive and risks excluding sites of significant abstraction activity currently in operation. IFI recommends revisiting this definition when remaking provisions of S.I. No. 261 of 2018 in any new Act to include 'diversionary channels or canals' or other similar abstraction points not specifically listed.

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

IFI welcomes the enhanced characterisation (via the WFD process) of abstraction pressures proposed. IFI should be listed as a notifiable body in respect of the EPA's regulatory function as outlined in this Head (e.g. in relation to the 'significance of abstractions') and the Bill more generally.

Any regulation of abstraction should thoroughly consider relevant requirements of fisheries and WFD legislation with a particular focus on fish entrainment and fish passage / migration.

IFI is grateful for the opportunity to have these views considered and incorporated as a component of the current review. Should you require clarification on any of the above or require a further consultation meeting please contact the signatory on the accompanying letter.



Greg Forde

Head of Operations

Inland Fisheries Ireland

14th September 2018

INLAND WATERWAYS ASSOCIATION OF IRELAND

Cuman Uiscebhealaigh Intire na H-Eireann

Web Site: www.iwai.ie



IWAI Response to Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

The Inland Waterways Association of Ireland (IWAI) welcomes the invitation by Minister Eoghan Murphy to the Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018

IWAI is a voluntary body representing over three thousand enthusiasts, with 23 branches across the island of Ireland, with members all sharing a keen and passionate enthusiasm for the waterways of Ireland. IWAI advocates the navigation, use, maintenance, protection, restoration and improvement of the inland waterways of Ireland. It was formed in 1954 to promote the development, use and maintenance of Ireland's navigable rivers and canals. IWAI has campaigned for the preservation, protection and development of the Irelands Waterways as navigations to be used by all. This has facilitated the growth of a domestic tourist industry that brings significant visitor numbers with key economic spend in areas requiring much needed investment. The impacts of abstraction on navigable rivers such as the Shannon, Barrow, Suir and the Suck have wide reaching environmental and economic consequences.

Currently, IWAI members are active in restoration projects on the Boyne, Newry and Lagan Canals. IWAI Branches hold approximately 200 events each year across inland navigations, working in collaboration with the wider communities in many locations. These events include Boat Rallies, Harbour Festivals, Walks, Social Gatherings, Heritage Activities; Family activities and Youth focused events. These provide a much-needed economic stimulus to areas significantly affected by the current post recessionary times as they still struggle to survive economically. This gives the IWAI a unique insight into navigation usage and we wish to bring this insight to this consultation process.

IWAI Views and Comments on Abstraction

As mentioned in the IWAI submission to Irish Water on the Eastern Region Water supply project, the importance of maintaining water levels to the fauna and flora of the River and its Lakes is a key goal of our Association. This makes them an attractive destination for national and international tourists. With the predicted population growth assumptions on water usage will only increase over time. This leads to the possibility of a point where a decision has to be made to restrict abstraction or risk causing ecological and environmental havoc. IWAI believes that steps to prevent such a catastrophic situation should be planned for now rather than reacted to when they occur.

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Gathering data

Climate change is happening now and most definitely into the future, its impacts should be reflected in all abstraction modelling and not just the use of historic data. In our response to Irish Water we suggested that this additional information should be considered in the development of their Preferred Scheme. We submit that the proposed legislation should direct Abstractors to collate and examine information such as;

1. Data on flows at each weir point should be obtained over a significant time period and fed into the flow models as developed. These flow levels should be made public now and into the future via a suitable web based portal. This will inspire public confidence in the project.
2. An analysis of extreme events (high & low water levels) should be published prior to abstraction.

One Approval Body

To date all abstractions have been treated separately, however many are coming from one single source, such as we see on the River Shannon. With population growth and the desire to reduce small water schemes further demands will be made. This will lead to a similar process as the recent Irish Water Eastern Region Supply Consultation. In our view this furthers the need to form one body to deal with such matters.

IWAI are of the strong view that a body charged with the protection of the Navigable Waterways should be established with appropriate Service Level Agreements to ensure that

water levels and flows are kept to levels set by statute. Indeed, this proposed statute could cater for the establishment of such a body.

It would not be good to permit one body have control of water levels that has as its primary objective the supply of water to their paying customers such as Irish Water. We seek a standalone body acting as an independent arbitrator that can decide and act on all requests for abstraction be they municipal, commercial or agricultural.

Maintenance of Legislative Protection

We note that The General Scheme of Water Environment (Abstractions) Bill 2018 will repeal the Water Supplies Act 1942 and the Local Government (Sanitary Services) Act 1964 and replace them with a new piece of legislation governing the abstraction of water. We are of the view that the provisions of The Water Supplies Act 1942 in section 21(Appendix A) referring to the protection of Navigation levels should be retained in the new legislation.

In conclusion as the major user of the Navigable Waterways of Ireland for recreational and boating purposes this Association has serious concerns that, as a result of abstraction, should the water levels decrease to a point that regular navigation is not possible, then a unique recreation and tourism jewel will be lost. This loss will not just affect the users of the navigation but many towns and communities along the route of these waterways. A huge source of revenue to the economies of rural areas, that are limited re their commercial attractiveness, could be lost.

Kay Baxter

Hon Secretary

On behalf of the Inland Waterways Association of Ireland.

APPENDIX A – Section 21 1942 Water Supplies Act

Protection of navigable rivers and canals.

21.—(1) In this section—

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

(2) Nothing in this Act shall be construed as entitling a sanitary authority to take water in such manner, or from such source of water,

or of such amount as to make the navigation of any navigable water impossible or unreasonably difficult.

(3) Where a sanitary authority make a proposal, they may at any time, whether before or after such proposal comes into force, give to the navigation authority of any navigable water written notice of such proposal.

(4) Where the navigation authority of any navigable water is given by a sanitary authority notice under sub-section (3) of this section in relation to any proposal, such navigation authority may, before (but not after) the expiration of twenty-one days from the giving of such notice, give written notice (in this section referred to as an interference notice) to such sanitary authority that such navigation authority are of opinion that the taking of water in accordance with such proposal makes or will make the navigation of such navigable water impossible or unreasonably difficult and shall include in the interference notice a statement of their reasons for being of that opinion.

(5) Where a navigation authority has given an interference notice to a sanitary authority in relation to any proposal, such sanitary authority may alter such proposal by reducing the amount of water to be taken thereunder and—

(a) if such proposal had come into force before such notice was given, it shall continue in force as so altered and this Act shall apply accordingly, and

(b) if such proposal had not come into force before such notice was given, anything done in relation to such proposal in compliance with this Act by such sanitary authority before the giving of such notice shall be deemed to have been so done in respect of such proposal as so altered and this Act shall apply accordingly.

(6) A sanitary authority to whom an interference notice relating to any proposal has been given by a navigation authority shall consider the objections of such navigation authority to such proposal and shall negotiate with such navigation authority for the withdrawal of the interference notice.

(7) Where a navigation authority gives an interference notice, such navigation authority may at any time withdraw such notice by giving written notice in that behalf to the relevant sanitary authority.

(8) A sanitary authority to whom an interference notice relating to any proposal has been given may apply to the High Court for the annulment of such notice and, if the High Court on such application is of opinion that the taking of water in accordance with such proposal does not make or will not make the navigation of the relevant navigable water impossible or unreasonably difficult, the High Court shall annul such notice.

(9) Where notice of a proposal has been given under sub-section (3) of this section to a navigation authority and either such navigation authority has not within twenty-one days after the giving of such notice given an interference notice in relation to such proposal or any such notice so made has been annulled by the High Court or withdrawn, it shall not be open to such navigation authority to contend in any court that the taking of water in accordance with such proposal makes or will make the navigation of the relevant navigable water impossible or unreasonably difficult.



Submission by the Irish Concrete Federation on the General Scheme of the Water Environment (Abstractions) Bill 2018

Irish Concrete Federation

The Irish Concrete Federation (ICF) is the national representative organisation for the Irish aggregates and concrete manufacturing industry. ICF has 90 members operating in approximately 300 locations throughout Ireland and members are involved in the manufacture of aggregates and concrete products for supply to the construction industry.

Introduction

This submission by the Irish Concrete Federation (ICF), the industry federation for the quarrying and concrete industries, refers to the General Scheme of the Water Environment (Abstractions) Bill 2018. The ICF is available to meet with the Water Quality Section of the Department of Housing, Planning and Local Government to discuss or expand on the contents of this submission.

Having consulted with the Environmental Protection Agency (EPA) with regard to the dissemination of information about and execution of the Abstraction Register, it is clear that the quarrying and concrete manufacturing sectors will be required to register very large numbers of sites nationally, and this involves sites with very significant abstractions down to those barely over the minimum threshold for registration.

Most of these abstractions have been in place for decades, with rock quarry de-watering, essentially a water transfer between groundwater and surface water bodies, providing instances of large scale abstractions.

Having read the 'Heads' of the Bill, ICF is concerned at a lack of express provisions to protect established abstractions at existing authorised developments, and of appeal mechanisms outside of judicial review. These issues are dealt with hereunder but there may be wider application of the principles beyond what is noted in this submission.

Head 5: General binding rules

Section 1 - (b) there must be a means of measuring the rate of the abstraction

In extractive sites, groundwater often arises from being below the groundwater (normal ingress) or from springs at discrete points where springs populate the working face(s) so total ingress is impossible to account for. Thereafter, uses of that water may be many and varied and no single metered pump may capture the multiple uses; therefore, there should be an auditable process by which usage may be calculated. For example, a meter on a discharge combined with known calculated usage in products is appropriate.

Section 1 - (c) subject to paragraphs (d) and (e), the construction or extension of any well, borehole or other works by which water is being abstracted must be such as to avoid the entry of pollutants or water of a different chemical composition into the body of groundwater;

Quarry sumps are, by their nature, large openings which are not easily closed, other than by in-filling, which is not appropriate for a temporary cessation. The use of a hydrocarbon boom across the top ensures that normal pollution risks are mitigated. This practice should remain unaffected by sub-section (c).

Section 1 - (f) when the well or borehole is not being used for abstraction, it must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer;

Per the above example, the ground sump will remain open for the duration of the development regardless of the regularity of the use of the groundwater. The use of larger sumps, which are dissimilar to normal well and boreholes, should remain unaffected by sub-section (f).

Section (2) - The Minister shall make regulations setting out general binding rules specifically applicable to – (a) the temporary abstraction of groundwater at a construction site for roads, railways, buildings, pipelines, communication links or other built development by means of pumping the groundwater from any excavation or pumping the groundwater from any wells or boreholes on the site in order to help dewater an excavation;

Extraction which requires quarry de-watering should be viewed in terms of temporary development (however long term) as large abstractions will end with the completion of extraction below the water table, as extraction is a temporary use of the land. The de-watering results in water transition from ground to surface water body in almost all cases (occasionally ground to ground). These instances should be dealt with outside the proposed Abstraction Licencing arrangements, as the discharged water is not used for processing.

Due to the nature of a significant number of extractive sites, where extraction occurs below the water table, many large abstractions are required to de-water the extraction areas. These extractive sites have discharge licences and a single combined abstraction/discharge licence should be possible, as it is more efficient and requires an holistic view of the water regime to be considered. Thus, quarries which de-water should be considered differently and outside of the proposed licencing system.

Head 6 – Register of abstractions

(2) In addition to complying with the general binding rules laid out in Head 5, a person abstracting 25 or more cubic metres of groundwater or surface water from an abstraction point or points in any 24 hour period shall arrange to have that abstraction entered onto the register of abstractions maintained by the Agency, and a separate entry shall be made in respect of each abstraction.

Quarry and concrete related abstractions are often erratic due to the nature of production which is substantially to order. Where quarry de-watering occurs, the use of water in production processes is generally small compared to the discharge, and the discharge can vary quite substantially by season. Thus, registrations are being made based on maximum estimated use, not average or constant uses.

(4) Without prejudice to the generality of subhead (3), regulations under this Head may make provision for all or any of the following:(d) offences and penalties.

Given that the Abstraction Register is already underway, ICF does not see how missing a cut-off date (16th November as it is now) can attract a penalty retrospectively under this legislation. ICF would advise that many sites are still unaware that the registration requirement exists, and/or that the register is open.

Head 7: Requirement for a licence to abstract

*To provide that: (1) Every abstraction registered under the provisions of Head 6, which is –
(b) an existing abstraction of between 250 and 2,000 cubic metres in any 24 hour period and which has been deemed to be a significant abstraction by the Agency in accordance with Head 8;*

There is no provision for an appeal of a determination, as set out above, that an abstraction in this class is significant. As this is more than a procedural measure, fair procedure would appear to warrant an appeal mechanism, especially as consultation by the EPA with the abstractor is not mandatory.

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

To provide that:

(1) As part of the characterisation of river basin districts undertaken for the purpose of Article 5 of the Water Framework Directive, the Agency shall undertake a review of the environmental impact of existing abstractions on water status using the register of abstractions established under Head 6, and shall identify all significant abstractions in a catchment.

(3) Following consultation, the Agency shall finalise the list which thereafter will provide the basis for the estimation of abstraction pressures on the quantitative status of waters and the development of programmes of measures to be included in river basin management plans.

It is not clear what this consultation actually means. The published list will include abstractions in the 250-2,000m³/day which the EPA have already deemed to be significant so this consultation is not an appeal process.

Head 8 is written such that even abstractions <250m³/day could be deemed significant; a reference to abstraction deemed significant under Head 7 would clarify the correct intention here.

Head 9 – Licensing of existing abstractions

4(c) the level of fee, if any, for a licence;

The licence application should be of the same order as a discharge licence application; as before, the opportunity to amend a discharge licence to become an abstraction/discharge licence should be available.

(6) It shall be an offence to undertake an abstraction deemed by the Agency to require a licence unless a licence in respect of that abstraction has been applied for and duly granted by the Agency or to continue an abstraction contrary to the provisions of a licence granted under this Head.

There needs to be an express provision that all existing abstractions which require a licence, duly applied for within the appropriate period, remain authorised until the final decision on any licence application has been made by the EPA or the Courts on judicial review.

The minimum period provided for submitting an application should be 12 months, as describing the existing water regime in the vicinity of a site can be complex and require seasonal reporting.

Also, there needs to be a statutory timeframe for the EPA to issue licences duly applied for. In many instances, the lack of resources at the EPA has led to applications under provisions with no statutory timeframes for decisions being long-fingered by the EPA to the point of exasperation of the applicant.

There should be an express presumption that existing abstractions for developments which have undergone a planning process or water discharge licencing process shall receive licences, where required, save in exceptional circumstances. Otherwise, this would appear to retrospectively apply EU legislation to existing development which is generally unconstitutional without compensatory measures. It should be expressly stated that regard shall be given to the existing authorised status of site development and site processes.

Head 10: Licensing of abstractions commencing after the prescribed date

To provide that:

(1) Where a person wishes to commence an abstraction of between 250 and 2,000 cubic metres in any 24 hour period after the prescribed date, that person or an agent acting for that person shall notify the Agency of that intention in such form as may be determined by the Agency and shall provide the Agency with such information as the Agency requests in relation to the proposed abstraction.

(2) On receipt of a notification under subhead (1), the Agency shall assess the information received and determine whether or not the abstraction is likely to be significant

As per previous comments with regard to existing abstractions, an appeal process is needed where abstractions in this class have been deemed significant and to require a licence.

Similar to a previous comment, there needs to be a statutory timeframe for the EPA to deal with new applications, at all stages. In many instances, the lack of resources at the EPA has led to applications under provisions with no statutory timeframes for decisions being long-fingered by the EPA to the point of exasperation of the applicant. A developer could easily have a limited term permission and be waiting for the EPA to issue a licence for a large part of the permitted term, while being unable to proceed without the licence.

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

Consideration should be given to also amend the Waste Management Act so as to allow for abstractions to be dealt with under that licencing system too, where appropriate.

Head 19: Offences and penalties

To provide that:

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

(2) Where an offence under this Bill is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or other officer of such body, such person shall also be guilty of an offence.

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

The availability of the register was poorly communicated, even to some who were in direct consultation with the EPA. Consequently, it is likely that the last day for registration of existing abstractions will expire without anything close to full compliance.

ICF respectfully submits that there has been little regard to the duty of care of the regulators with regard to ensuring that all (likely) stakeholders were made aware of the period. To have ignorance of this date constitute an offence is unconscionable.

Head 20: Transitional arrangements

This 'Head' deals solely with Irish Water and some of the necessary transitional arrangements while the EPA complete licencing should be set out here.



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11th October 2018

Email: waterquality@housing.gov.ie

Re: Water Environment (Abstractions) Bill 2018
IFA submission to public consultation

Dear Cian,

I would like to thank yourself and Donal for addressing the Association's National Environment Committee and providing an overview of the proposed Water Environment (Abstractions) Bill 2018 ("the Bill"). We appreciate the opportunity to provide this additional written submission and request that you consider it along with the feedback you received from members of the Committee on the day.

1. Water abstraction pressures in Ireland

Your presentation to the Committee recognised that water abstraction represents a low risk pressure in Ireland, compared to other EU countries, such as the United Kingdom. This broadly reflects the registration rationale set out in the European Union (Water Policy) (Abstractions Registration) Regulation introduced by your Department in July of this year. This registration threshold was supported by the fact that Ireland's overall water quality is of high quality by European standards, for example:

- Ireland, Sweden and Greece have the lowest annual average nitrate concentrations (highest proportion less than 2mg/L) in rivers and lakes in the EU¹
- Ireland has some of the best groundwater quality in Europe, with almost no groundwater stations exceeding 50mg nitrate per litre.²
- Ireland's nitrogen balance is 9kg lower than the EU average.³

Regarding general water use in the agriculture sector, Ireland has a low water footprint for food production, with most of the water used in production being "green", that is rainfall water rather than water

¹ European Commission (2018) *Report from the Commission to the Council and the European Parliament on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution from agricultural sources based on Member State reports for the period 2012-2015.*

² European Commission (2018) *Report from the Commission to the Council and the European Parliament on the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution from agricultural sources based on Member State reports for the period 2012-2015.*

³ UCC (2018) *The Economic and Societal Importance of the Irish Suckler Beef Sector*

abstracted from rivers. In addition, the UN has placed Ireland as a top performer in food production with a 0.2 percent stress rating for water, compared to a 40 percent rating in the UK, for example.⁴

2. Compensation where land sterilisation, crop loss and disturbance take place on farmers' lands due to water abstractions taking place.

IFA has, over a long number of years⁵, advocated for the development of an equitable national package of measures, including compensation to replace the ad-hoc arrangements implemented by local authorities and now Irish Water. This package of measures must address restrictions such as yield and income losses arising when bore holes, buffer zones and other measures are imposed on farmers' land where an abstraction takes place.

This right to compensation is reflected in Articles 14 and 15 of the Water Supply Act, 1942 ("the 1942 Act") and subsequent relevant case law including *Gormley v ESB*. It is implemented in a very practical way by agencies such as the National Federation of Group Water Schemes and some local authorities.

The Bill proposes to repeal the 1942 Act, including Articles 14 and 15 and replaces them with an Article (Head 15), which is more limited in scope. The new proposals regarding access to compensation are as follows:

"Head 15: Compensation by Irish Water

To provide that:

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

Explanatory note:

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

The following issues arise:

- The *Explanatory Note* seems to seek to limit access to re-dress, when compared to the 1942 Act, to landowners "downstream of the abstraction". Unlike the 1942 Act, it does not consider the losses of landowners who are hosting the water-abstractions nor their adjoining neighbours who may be in a sterilisation zone, or have their lands in use as an access route to the abstraction point.

⁴ UCC (2018) *The Economic and Societal Importance of the Irish Suckler Beef Sector*

⁵ IFA (2013, 2017) Submissions to reviews of the nitrates regulations

- Head 15, sub head 2 proposes to limit any claim for compensation, to “within 10 years of the authorised abstraction commencing”. Consequently, this allows the State to side-step its existing obligations to landowners, resulting in a haphazard approach across the country by differing local authorities and many compensation issues remaining unresolved. This inequity should be addressed by -
 - removing the time limit on a claim for compensation,
 - amending Head 14 sub head 4 and obliging Irish Water to notify all landowners directly by registered post that they may be impacted by a proposed water abstraction and
 - developing a national protocol and package of measures, which equitably resolves concerns regarding losses arising, where abstractions are imposed.

The requirement to notify impacted landowners will enable them to engage with the planning process and also bring their views to the attention of relevant agencies.

- Mediation is a widely used and acceptable alternative dispute resolution mechanism. For individual citizens such as farmers, mediation represents a more affordable mechanism to arrive at an outcome, where an agreement is not reached. It is proposed that Head 15 sub head 4 is amended to include an obligation on all parties to firstly engage in mediation, in default of agreement. This sub head (Head 15 sub head 4) is also wholly inadequate in terms of providing guidance for the determination of compensation. The 1942 Act clearly sets out the relevant legislation (Land Clauses Consolidation Act 1845, Acquisition of Land (Assessment of Compensation) Act, 1919, etc) for the determination of compensation, however the Bill provides absolutely no framework for the determination of compensation. The Bill should be amended to address this and provide clarity that the existing framework for compensation will continue to apply.
- Head 15 sub head 1 seeks to place the burden of “proof of loss” on to individual landowners, which is unusual when it comes re-dress. For example, Irish Water’s sister company Gas Networks Ireland (GNI) recognises from the outset that a loss exists and endeavours to address such losses through negotiation. GNI’s approach represents established practice and the adversarial “proof of loss” obligations should be avoided. Instead the proposed legislation should be amended to facilitate positive discussions to bring matters to conclusion.

3. Information in relation to the proposed abstraction or extension or increased abstraction

Head 14, sub head 7 of the Bill requires the following to be included in a notice of intention to abstract or increase the abstraction of water:

- (a) the source of water;
- (b) the place or places of abstraction;
- (c) the level of proposed abstraction, including any seasonal variability;
- (d) particulars of any ancillary operations.

However, there should also be an **obligation to disclose the full impact** of the proposal to abstract or increase abstraction of water, to the landholders impacted (host landholders and adjoining landholders). Therefore, sub head 7 should be amended to include wording such as **land sterilisation zones**. Head 14 should also be amended to include a provision, which sets out how the impact of the land sterilization zone will be mitigated and compensated for.

4. Power for Irish Water to take a supply of water

Head 13, sub head 1 seeks to extend Irish Water powers to take a water supply beyond lands it owns or acquires. However, the overall Bill itself fails to adequately provide for the necessary package of measures, including compensation where such powers are exercised. As already outlined, the *notice of intention* must be directly communicated with all landowners impacted, including any landowner in a zone of sterilization.

The matters raised in this submission necessitate a response, which recognises the losses incurred by landowners, as they facilitate the *common good* in the provision of a water supply to their local communities. Many of these water supplies were provided by the landowners free of charge to these communities and were subsequently *gifted* at no cost to the state. There is an obligation to ensure this proposed Bill reflects better the rights of landowners and also makes provision for an equitable package of measures, including compensation where losses arise due to a water abstraction. I look forward to working with you and your colleagues in the coming weeks to resolve these issues.

Yours sincerely,

A black rectangular box redacting the signature of Thomas Cooney.

Thomas Cooney
National Environment Chairman

11th October 2018

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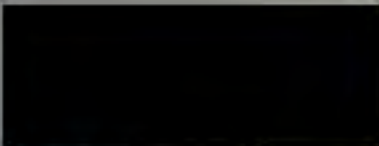
A Chara,

**Re:- Public Consultation on the General Scheme of the Water Environment
(Abstractions) Bill 2018**

The Irish Hydropower Association represent small hydroelectric power station owners that provide reliable renewable power throughout Ireland.

We welcome the statement "there will be no charge for the abstraction of water".

As a small industry with low margins, and a challenging energy markets, the viability our plants continue to be at risk. Any administration fee needs to reflect the size and scale of the hydroscheme and the important contribution they make to Irelands renewable portfolio.



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25th September 2018

Re: Consultation Paper – General Scheme of the Water Environment (Abstractions) Bill 2018

As one of the largest abstractors of water nationally, Irish Water (IW) welcomes the opportunity to consult on the General Scheme of the Water Environment (Abstractions) Bill 2018.

IW has almost 1,200 individual water abstractions which were commenced over a long period of time, often predating modern environmental legislation. Approximately 280 of these are surface water abstractions, supplying 80% of public water supply by volume, with the remaining abstractions being groundwater or springs. The abstractions feed into 535 individual water supplies, historically spread across thirty-two (32) local authority jurisdictions and over 60,000 kilometres of distribution network. Given the complexity and dispersed nature of the water supply network, the Bill will pose significant challenges to our organisation, but will also provide for the first time the legal framework by which we can strategically align our current and future abstractions with the requirements of the Water Framework Directive, allowing certainty in terms of planning for and delivering water services.

IW has set out below general comments on the Draft Scheme, as well as its comments in respect of each proposed Head of Bill.

General Comments:

- Given the thresholds within the Heads of Bill, significant numbers of our existing abstractions will require an abstraction licence. The application process for these licences may involve lengthy and complex environmental studies over a number of years. Due consideration must be given to the requirement to maintain continuity of water supply until such time as sites are licensed (or replacement supplies developed), where necessary, and also the large body of work, in terms of both time and cost of preparing a significant number of abstraction licence applications. IW would be concerned to ensure that the process for obtaining a licence is proportionate to the level of abstraction required and not unnecessarily complex.

Irish Water has a number of live projects in progress under the current Capital Investment Plan which, based on proposed thresholds, will be subject to licence. Whilst recognising that the abstraction legislation is the important first step in the process for licencing new and existing sites, there may be a long timescale before any new licences are granted due to the requirement to set up the necessary technical and administrative processes. As many of our proposed projects are required to take supplies off remedial action lists or to address critical supply demand issues within committed timescales, we are concerned that the potential timeframes required to

achieve new licences would have a significant impact on our ability to meet current programmes.

- In 2018, Ireland experienced periods of extreme weather conditions, including storms, winter freeze and drought. These varying conditions, in particular the historic dry period experienced in June and July, placed significant stress on water supplies. In order to ensure continuity of water supply during extreme conditions, which may become more frequent due to climate change, emergency powers for temporary new abstractions, modifications to licence thresholds or prioritisation of public drinking water supply should be considered to address potential public health risks during these events.

Comments under each head of bill are as follows:

1. Head 2 – Interpretation

The definition of “navigable authority” should be amended to “navigation authority” and we suggest that this is defined as “Waterways Ireland” for clarity. Otherwise, other individuals may argue they are entitled to navigate and fall within this definition, whereas, in reality, it is only Waterways Ireland that should fall within this definition.

2. Head 4 - Repeals

Section 4 of the 1964 Sanitary Services Act allowed the Sanitary Authorities to enter into agreements with ESB for the abstraction of water for public water supplies. If this is to be repealed, we suggest that it is expressly made clear by statutory provision that ESB still has the power to allow abstractions from its reservoirs.

3. Head 5: General Binding Rules

There are no timeframes or transitional arrangements mentioned for implementation of general binding rules. As the Public Water Supply consists of nearly 1,200 individual abstractions, and a connected water supply network, a significant programme of work and investment will be required to comply with this head, particularly in the context of:

- Leakage: leakage reduction is a process that involves systematic change in the way we manage, operate, maintain and rebuild our networks. Irish Water has a detailed Leakage Reduction Programme that involves all of these activities; however, leakage reduction will be a systematic process that is delivered over many investment cycles. In order to ensure clarity, and consistency with the requirements of the River Basin Management Plan, we suggest that for infrastructure linked to public drinking water supply abstractions, it should be provided that water leakage should be dealt with in accordance with the targets set out under the National Water Resources Plan;
- Measurement: The Public Water supply consists of nearly 1,200 individual abstraction points. A significant programme of work will be required to individually measure the volume abstracted at each abstraction point;
- Remediation of boreholes not in use: There are likely to be legacy issues in relation to disused boreholes and investigative boreholes across the country. A

process will be required to initially identify these and then to implement appropriate remediation processes.

4. Head 6: Register of Abstractions

The register of abstractions will, for the first time, provide clarity for an assessment of the impact of combined abstractions within a catchment, affording the opportunity for all water users on the register to appropriately plan and manage their water assets. Therefore, the accuracy of the register is extremely important.

As it is an offence not to register an abstraction, could it be stipulated that a person loses rights to abstract if they do not register within the required timeframe? This would provide the necessary clarity when reviewing abstractions in combination, or for planning water supplies/ and any potential compensation that might arise.

In many abstractions for Public Water Supply, there may be multiple intake points and intake levels for a single volumetric abstraction, or duty/standby boreholes for abstraction from aquifers. Head 6(2) could be clarified by defining what a separate entry fee for “each abstraction” means. The European Union (Water Policy) (Abstractions Registration) Regulations 2018 defines abstraction points, and provides where these join to form a combined water supply, this is construed as a single abstraction.

It should be provided, either in this section or elsewhere, that anyone increasing an abstraction should be required to give notice to the EPA.

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

As per comments under head 6, the register of abstractions is a unique opportunity to have a robust method for assessing the impacts of combined abstractions on a catchment.

In respect of Head 8(1), confining the EPA to knowledge obtained by registrations could be problematic, as people may fail to register. We suggest that the EPA may consider (in addition to registered abstractions) “any other relevant information”. Similarly, in Head 8(3) we suggest that the EPA’s list should form the main, but not the only basis, for estimation of abstraction pressures.

6. Head 9: Licensing of existing abstractions

Public water supply is a public health issue. Although transitional arrangements have been included in Head 20, provision needs to be made for cases where a licence application for an existing abstraction is denied, and significant periods of time may be required to deliver replacement supplies. There is a potential risk of prosecution for maintaining supplies, if this is left as currently drafted.

7. Head 10: Licencing of abstractions commencing after the prescribed date

It is not clear from the Head whether the EPA will have to give reasons for declining a licence application, or any appeals mechanism. We suggest that in line with good administrative principles, reasons for declining an application should be provided.

If possible, provision should be considered for emergency abstractions from replacement sources, or amendments to licences in the case of extreme weather or outage events, to maintain public water supply. This could be perhaps done by Ministerial Order, such as that provided for under section 100 of the Water Services Act 2007.

Provision should also be considered to allow the EPA to stop or require the cessation of abstractions in droughts/emergencies. A hierarchy of abstractions is required in the event of emergencies, where public health risks may arise.

8. Head 12: Amendment to Planning and Development Acts 2000 and 2007

Where a new abstraction requires the consent of both the EPA and the Board, express provision should be made and procedures allow for an integrated assessment of a proposal.

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

This section should also enable Irish Water to take a supply over land where we have the appropriate statutory easements.

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

Clarity is required in terms of objections to abstractions. Head 14 states that any objection to the proposed abstraction should be made to the relevant planning agency; however, Head 12 provides that abstraction control is for the EPA. We trust these procedures and coordination between the two bodies will be further elaborated upon the draft Bill and Regulations.

11. Head 15: Compensation by Irish Water

Clarity and proper balancing of riparian rights with the need under EU and human rights law for a safe, sustainable public drinking water is to be welcomed. Irish Water would be concerned, however, to ensure that any compensation regime is efficient and not overly burdensome. It should not create unwieldy processes, and excessive and uncertain costs, in respect of licences for public drinking water supply.

12. Head 20: Transitional arrangements

As water supply is a public health issue, transitional arrangements must allow sufficient time for new sources of water to be planned, funded, designed and delivered, before an existing supply can be terminated, in the event of failure to secure an abstraction licence.

Due to the storm and drought conditions, restrictions have been in place across the many of public water supplies throughout 2018. Therefore, current rates of abstraction are on the basis of suppressed demand and cannot be sustained at this level. Transitional arrangements need to cover normal demand with the required allowances for peaking, headroom and growth until new supplies are delivered.

Irish Water also considers that those abstractions which have been authorised in accordance with law, but have not yet commenced (for example, if the construction of required infrastructure has not been completed) should also benefit from these transitional provisions.

13. Conclusion

In conclusion, Irish Water is grateful for the opportunity for early engagement on the submission. We trust the above comments may be of use in consideration of some of the implications of the new legislation in terms of the public water supply.

Regards,

Sean Laffey

Head of Asset Management



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10th October 2018

R.e.: Submission on the Public Consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018.

The Irish Wildlife Trust (IWT) would like to make a submission with regards to the public consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018. The Irish Wildlife Trust is a national organisation dedicated to protecting our natural heritage and raising public awareness.

The **Irish Wildlife Trust** fully supports and endorses the submission made by **SWAN** (Sustainable Water Network). In addition to their submission we would also like to raise the following points:

Our water resource is not an infinite resource as we have seen with water shortages affecting most, if not all the country. It is therefore incorrect to assume that some water abstractions have no significant impact on our water status, particularly if they are not registered, therefore, controlled.

The IWT welcomes a risk-based approach to managing our water resources. However, while a risk-based approach is mentioned in the public consultation we see little of it in the Bill itself. Very little has been included to future-proof water usage in an age of uncertainty regarding; climate change, growing population and increased demand for water from water hungry industries. Also, protection of habitats from direct and indirect risks caused by abstraction have not fully been addressed.

Minimum amount exempt from registration or licencing

In the IWT's opinion exempting abstractions from registration or licencing up to 25 cubic metres is too high for the following reasons:

- As stated in the public consultation, the figure of 25 cubic metres dates back to 1977⁽²⁾ when there was less pressure or risk to our water resources.
- Today with a growing population and industrial base, along with the uncertainty of climate change, the pressures are more severe, and this Bill should reflect this, rather than look in the past.
- The impact on our water supplies needs to be future-proofed due to the uncertainty of the impacts that could be experienced due to climate change, where water could become scarcer. This has already been seen in the recent drought experienced in the Summer 2018.
- The maximum volume of abstraction before registration does not take into account multiple extractions from the same waterbody, either surface water or aquifers.
- The IWT would like to see a maximum threshold of at most 10 cubic metres before registration or licencing is required, if not lower.

- The IWT would like to see a register of all abstractions. Without knowledge of all abstractions it is impossible to identify all abstractions in a catchment, and risk assess whether the abstractions are significant to the catchment area.
- The IWT believes a more regulated method of monitoring abstraction, with the inclusion of a '**calibrated**' means of measuring the abstraction rate is required, to avoid inaccurate measurements.

Through poor land management including, but not limited to: peat extraction, intensive agriculture, deforestation, development and flood control measures Ireland has a poor ability to retain water. This inability to retain water puts our existing water supplies at risk. Abstraction of water should also take into account the ability of water reserves to replenish, and this must be addressed within this Bill to encourage better land management for future water needs, also taking into account the risks associated with climate change.

Abstraction affecting Natura 2000 Sites and Species

The availability of surface and ground water plays a vital role in shaping and maintaining natural habitats. Most, if not all the habitats directly influenced by surface or groundwater have had their conservation status assessed as bad or inadequate.⁽¹⁾

- The proposed Bill does not cover abstraction that is likely to impact areas of conservation such as SAC's or SPA's or offer legal protection from abstraction activities.
- The impact of abstraction from that could be caused to salmonid rivers has not been addressed, where abstraction could result in habitat loss or reducing the ability for fish to be able to migrate along them.

The impacts on areas important to conservation have not been significantly addressed.

- Abstraction can directly impact habitats through changing the surface water flow and volume, or indirectly by lowering groundwater levels, affecting the flows to springs, wetlands lakes and rivers. The proposed Bill does not consider that the altering of natural levels can have a direct and indirect adverse impact on the environment its ecology.

The IWT recommends that measures to protect sites of natural importance from water abstraction must be included within the Bill.

Enforcement

- While the Bill outlines the penalties for committing an offence under this Bill, it does not state how this will be enforced, or procedures to handle complaints regarding abstraction.
- The Bill does not include a requirement that would allow periodic inspection of abstraction, which the IWT believes would be important for assessing and managing the risks associated with water abstraction.

References

- 2018 *Consultation Paper General Scheme of the Water Environment (Abstractions) Bill 2018*
- ⁽¹⁾2013 *National Parks & Wildlife Service 'The Status of EU Protected Habitats and Species in Ireland 2013 Habitat Assessments Volume 2'*
- ⁽¹⁾2013 *National Parks & Wildlife Service 'The Status of EU Protected Habitats and Species in Ireland'*⁽¹⁾
- 2000 *Water Framework Directive 2000/60/EC*
- ⁽²⁾1977 *Local Government (Water Pollution) Act, 1977*
- 2018 *Finlayson C., Arthington A. and Pittock J. (eds) et al 'Freshwater Ecosystems in Protected Areas'. Routledge, London*

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