

Notes On Reform Of Water Sector In Ireland Position Paper (DOECLG), January 2012

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Overall

We support the approach and most of the recommendations. The background report by PWC is evidence-based and well written. Below we identify our key recommendations, and their rationale.

Recommendation 1: Take The Opportunity To Review And Amend Water Law And Property Rights

Although the Constitution claims that all water rights belong to the State, it protected existing vested water abstraction rights at the time of its enactment. There is some doubt as to the nature and extent of these rights.

It is essential that ownership issues relating to water rights are clarified before any new regulatory regime is provided. Certainty as to the ownership of water rights is crucial for the orderly development and regulation of water because investors and developers need this to resolve access, development, environment and other issues. Moreover clarification of ownership is essential because this could affect rights to compensation.

Clarity on the powers to regulate water abstraction is also required. There does not appear to be any specific mandate for local authorities to ensure that groundwater resources are not depleted. (In practice, developers have sometimes been required to ensure that their developments will not ‘dewater’ other lands, or they have been required to provide alternative supplies but the vires of planning authorities to do this is somewhat nebulous in most cases.) An efficient and inexpensive mechanism for identifying existing rights and for resolving disputes relating to water them should be provided for.

Recommendation 2: Do Likewise In Regard To Building Bylaws And Regulation

New buildings – residential, commercial and industrial – should be designed to facilitate internal water conservation, surface water capture, separation of potable and grey water etc.

Recommendation 3: Identify And Implement Best Practice In Transition From The Status Quo To New Organisation

There is no guidance on how to effect the transition from the status quo to the new regime. Examples of transfer of local or regional responsibilities to national authorities in Ireland include: environmental responsibilities to EPA, national roads to the National Roads Authority, health to HSE. There are lessons to be learnt from these experiences. It is critical that mistakes in institutional design and execution are not repeated.

Recommendation 4. Adopt Principles Relating To Hiring, Costs, Linkage (Avoiding The Silo), Risk Management, Innovation, Consumers.

Specifically:

1. *The importance of hiring the best people:* For all management posts, there should be no bias in favour of incumbents – the most talented and experienced should get the job.
2. *The importance of understanding costs at all levels:* Costs and other performance data should be compiled and published annually, showing outcomes at local, river basin and national level. A key weakness with the privatisation model in the UK is that such data are often kept secret for competitiveness reasons. These data will also help identify local units that are already operating highly efficiently, and from whom lessons can be learnt.
3. *The importance of effective linkage to planning at local level:* The organisation of Irish water will need to reflect the reality that planning decisions still reside at local level, and these decisions can have a major impact on water use and quality. Both organisationally and operationally, the structure should reflect this reality. The National Roads Authority (NRA) provides an interesting precedent: it has a planning expert, who engages with local authorities to ensure a good fit between road plans and development plans, and appeals decisions made locally¹ to An Bord Pleanála that have negative implications for safety and economy of roads provision.
4. *The importance of supporting innovation:* For the foreseeable future, Ireland will be spending about €0.5 billion annually on investment in water schemes, and the same again on operation. With continuing expenditure of this magnitude, there is an opportunity to foster innovation that delivers some combination of cost reduction, enhanced outcomes in terms of quality, customer satisfaction and environmental impact and creates platforms for enterprise creation and job growth. The NRA provides a useful precedent. It funds applied research focussed on issues and opportunities identified by staff, who are then in a position to act on the findings.
5. *The importance of managing risk effectively.* History is always a surprise. How the organisation handles the ‘the surprise’ is a key test of competence. [For example, Northern Ireland is cited favourably in terms of unit costs, but there is a perception

¹ Mostly by elected members supporting one-off houses.

that it was not effective, or at least not more effective than the decentralised model in ROI, at dealing with the ‘big freeze’ of 2010/2011. How organisations handle major stresses and surprises is an important test of their resilience and effectiveness, and this dimension needs to be explicitly addressed.]

6. *The importance of avoiding the silo:* The other key institutional players in Ireland are EPA (water quality), Office of Public Works (flood control and river basin planning) and the Wildlife Service (Biodiversity). The new organisation needs to have effective and continuing interactions with these so as to maximise the prospects of outcomes that deliver water when and where needed in ways that protect environmental endowments, and do so at minimum cost. There should be a mandatory separate section in annual reports addressed to the impact of operations on the implementation of the Water Framework Directive, the Habitats Directive and EU and domestic Climate change legislation, including adaptation to climate change.

These six elements should be translated into indicators used by the policy system – Oireachtas, departments, civic society, the general public, etc – to judge performance.

Recommendation 5. We Strongly Support The Case For Metering.

It Is Important That It Deliver A Range Of Capacities, Including:

1. *Knowing about leaks:* A key benefit of metering is to tell the consumer in real time about the leakage within their curtilage; this allows consumers to take remedial action quickly, and is an important source of reduction in ‘consumption’.
2. *Saving water when it is most precious:* It also provides effective incentives when there is extreme shortage; when a big freeze results in the threat of burst pipes, with metering, the minority of households that with free water would run the taps to prevent freezing will have a huge incentive to stop doing so. And this conservation happens when water is most scarce and therefore especially valuable. The same benefit is provided under extreme drought conditions. With metering, the price of *additional* water use above a minimum can be sharply increased - increasing block rates per month – under drought conditions; this chokes off excess use immediately, and makes sure that the precious resource is available to all who need it for essential purposes. These swings are likely to be more common as global climate changes.

3. *Savings depend on the steepness of the charge as consumption rises.* The PWC report cites mostly UK data to estimate a 10% reduction in consumption achieved by metering. But where a rising block rate has been used, the reductions can be more than twice this saving.
4. *Large capital-intensive additions to supply can be deferred.* Example: the addition to supply to be extracted from the Shannon and transported to the Dublin region is estimated by PWC to cost €0.5 billion, at a time when capital is scarce. It is entirely appropriate that planning for such a supply increase proceeds, but it makes sense to defer major investment until a pricing regime is implemented and we can judge its effectiveness.
5. *Creating a platform for enterprise;* Irish companies and research groups have developed world class capacity in IT generally, and monitoring in particular. As this investment is rolled out, there is an opportunity to find business niches that have export potential (see: '*The importance of supporting innovation*' above)

The case for an economic regulator is made, citing: the variation in charges for non-domestic water (€1.74/M³ in Kildare vs. €3.04/M³ in Wicklow) as justification; the monopoly power that will be enjoyed by Irish Water; the precedent set in Northern Ireland. And this function should be taken on under the aegis of the Energy Regulator.

Recommendation 6. We Support The Case For A Regulator, But The Key Challenge Of Regulatory Capture Needs To Be Addressed, And A Best Practice Model In This Regard Presented.

Avoiding Regulatory Capture – where those being regulated get too close to the regulator – is critically important. Such capture can be compounded and facilitated when policy provides antagonistic mandates, as for example in the case of financial services, where mandates to promote the industry and the prudential role of protecting the integrity of the financial system came into conflict; the promotion mandate trumped the regulatory, with disastrous consequences. There is a wider issue of oversight of the regulatory system as a whole. Regulation is quite properly set up deliberately to prevent political or administrative interference in individual decisions. But when it goes astray, the

consequences can be catastrophic. A 'best practice' regulatory model should have been presented by PWC for discussion.

Recommendation 7. The Importance Of Consumers

The mandate should give consumers (households, enterprise, others) rights to information, and independent assessment of value for money and quality.