

Mr Cian Ó Lionáin
Principal
Water Quality Section
Department of Housing, Planning & Local Government
Newtown Road,
Wexford
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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.

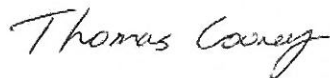
However, there should also be an **obligation to disclose the full impact** of the proposal to abstract or increase abstraction of water, to the landholders impacted (host landholders and adjoining landholders). Therefore, sub head 7 should be amended to include wording such as **land sterilisation zones**. 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 handwritten signature in cursive script, reading "Thomas Cooney".

Thomas Cooney
National Environment Chairman