



Mr. Darragh O'Brien T.D.
Minister for Housing, Local Government & Heritage
Custom House
Dublin 1
D01 W6X0

15 December 2022

Re: WAB Advice regarding the Environmental and Economic Regulatory Framework for Irish Water

Dear Minister

As you are aware the Water Advisory Body (WAB) has a statutory function under Section 44(1)(a) of the Water Services Act 2017 ("the Act") to advise you, as Minister, on the measures needed to improve the transparency and accountability of Irish Water for the purpose of increasing the confidence of members of the public in Irish Water.

In late 2021, the WAB initiated a high level review of the overall effectiveness of the regulatory framework both environmental and economic under which Irish Water operates. This work came about on foot of observed performance issues with Irish Water in delivering on its environmental obligations and economic performance targets, being reported on in the WAB's quarterly statutory reports. It also arose from the WAB's review of various reports produced by the Environmental Protection Agency (EPA) and the Commission for Regulation of Utilities (CRU) in their respective statutory environmental and economic regulation roles.

In short, based on the observations of WAB and following discussions with the EPA, the CRU, and An Fóram Uisce (AFU), the WAB recommends:

1. Closer alignment on capital investment planning across the Department of Housing, Local Government & Heritage, the CRU, the EPA and Irish Water.
2. Provision for the licensing of Irish Water by the CRU.
3. Enhanced powers of direction and sanction for both the EPA and the CRU.

The WAB consider these important in the context of the transparency but also, critically, the accountability of Irish Water. Details are set out in the short Annex to this letter

We would be happy to meet with you to discuss and elaborate on our advice.

Yours sincerely



Paul McGowan
Chairperson

- c.c. Fintan Towey, Assistant Secretary, DHLGH
Karen Kavanagh, Director, CRU
Tom Ryan, Director, EPA
Matt Crowe, Chairperson, An Fóram Uisce

Annex - WAB Advice regarding the Environmental and Economic Regulatory Framework for Irish Water

Initiation

As part of its discussion on the results of the effectiveness review under the Code of Practice for Governance of State Bodies (9 November 2021), the WAB agreed to discuss whether a review of the regulatory framework governing Irish Water was warranted as part of the WAB's 2022 work programme development.

Subsequent discussion at WAB (9 December 2021) confirmed the WAB's intention to consider whether it has a view on the overall regulatory framework and associated regulatory powers concerning Irish Water and whether this might give rise to advice to the Minister in line with WAB's statutory functions.

Context

Legal Remit of WAB

The Water Services Act 2017 – Section 44(1) states:

“The Advisory Body shall have the following functions: (a) to advise the Minister on the measures needed to improve the transparency and accountability of Irish Water for the purpose of increasing the confidence of members of the public in Irish Water”.

Recent Events

Over the course of the last few years, the EPA and the CRU have had occasion to undertake enforcement action and/or audit of Irish Water with respect to Irish Water's performance of its functions. For example, the Gorey (EPA Site Visit Report SV22782/SV22740) and Ballymore Eustace (EPA Site Visit Report SV22715) incidents and the Bailieborough incident (Document CRU21128).

The WAB notes the range of non-compliances by Irish Water identified under these reports along with a series of recommendations. These include failure in oversight by Irish Water in the delivery of water services under the current Service Level Agreement arrangements with local authorities and breakdown in communications between Irish Water and local authorities resulting in risks to public health (as evidenced by the Gorey outbreak).

A sample of these recommendations include:

- Irish Water is responsible for producing a safe and secure supply of water, and should have sufficient management oversight of operations at Ballymore Eustace water treatment plant.
- Irish Water should ensure a permanent presence of suitably qualified and competent water services personnel at Ballymore Eustace water treatment plant, to support the plant operators and to ensure management oversight of plant performance.
- Irish Water should notify the EPA and the Health Service Executive (HSE) without delay, if the water treatment plant does not meet the level of performance required to provide adequate treatment to ensure safe water.
- Irish Water should ensure prompt and timely consultation with the HSE and notification to the EPA of incidents and parametric failures.

- Irish Water should review the Disinfection Programme assessments for Creagh Water Treatment Plant and provide to the EPA the rationale for not completing the Programme upgrade to the Creagh Water Treatment Plant to bring it up to Irish Water specification, and why it was reported as complete and commissioned in the Quarter 2 report for 2020.
- Review internal Irish Water processes to categorise customer contacts to ensure that complaints are captured and escalated as appropriate.
- Review processes to ensure recognition and escalation of clusters of contacts/complaints.
- Amend processes to ensure that a cluster of contacts/complaints can be escalated even if it appears the cause is known.

Monitoring and Reports

The EPA and the CRU also publish frequent reports across various topics, including:

- Drinking Water Quality in Public Supplies
- Urban Waste Water Treatment
- Irish Water’s Capital Investment Monitoring Report
- Irish Water Performance Assessment Framework Report

WAB has noted recurring themes as part of its reporting on various matters, including:

- Delays to projects designed to address water and wastewater treatment issues.
- Increasing incidence of long-term Boil Water Notices and/or Do Not Consume Notices and recurring/repeat notices for some water supplies.

In addition, the WAB notes:

- The results of the recent WAB Customer Survey¹ highlight high levels of dissatisfaction of customers with Irish Water with respect to responses to complaints on foot of service disruptions, and the need for early and frequent communication in the event of disruptions to service.

Basis for Review

In accordance with its statutory function, the WAB decided to consider whether the overall environmental and economic regulatory framework that applies to Irish Water is adequately robust or whether improvements are identified that warrant consideration at Departmental/Ministerial level and that might be reasonably expected to lead to improvements in the transparency and/or accountability of Irish Water, thus increasing the confidence of members of the public in Irish Water.

To this end, during 2022, the WAB engaged on this matter with:

- The EPA;
- The CRU; and
- AFU.

¹ <https://wateradvisorybody.ie/wp-content/uploads/2022/05/WAB-Survey-of-Irish-Water-Customers-Final-April.pdf>

Review Findings

The focus of WAB discussions was to consider the robustness of the economic and environmental regulatory frameworks. From these discussions, the WAB noted a series of matters which warrant further consideration in order to further improve the accountability and transparency of Irish Water, in the public interest. These are:

- Alignment on national investment priorities and national plans (e.g. River Basin Management Plan) should be targeted by the CRU, the EPA, DHLGH and Irish Water.
 - This alignment should take place in the context of preparing a stable, targeted and appropriately ambitious baseline Capital Investment Programme which aligns with the Water Services Policy Statement 2018-2025, delivers compliance with environmental obligations and meets the requirements of efficient and timely delivery.
- CRU power to license Irish Water with appropriate obligations, under appropriate terms and conditions.
 - Irish Water is the only network utility subject to regulation by the CRU and which is not regulated under license. A sole reliance on legislative provisions for economic regulation removes the agility with which the economic regulatory frameworks can evolve.
- Comprehensive sanctions regimes, including powers of direction, enforcement and prosecution are essential regulatory tools for both the CRU and the EPA. This should include Administrative Sanctions powers for the CRU. Such a tool goes hand in hand with the regulatory agility referred to earlier in terms of licensing and associated compliance.
 - Note: Administrative sanctions act as on an ex-post basis due to a failure to comply. Ex-ante signals of areas where improved performance is required is typically addressed using regulatory incentives.
- Both the EPA and the CRU should have powers of prosecution and the power to seek High Court Orders to enforce compliance by Irish Water with license obligations and directions. Examples include:
 - Failure to comply with Directions
 - Failure to notify specific non-compliances incl. parametric failures under S.I. 122 of 2014 (as amended) and incidents which may have posed a risk to public health.
 - Failure to supply clean and wholesome water to consumers
 - Failure to supply adequately disinfected water
 - Where a water supplier has acted negligently and giving rise to a risk to public health
 - Failure to make records/specific data available upon request
 - Failure of Irish Water's complaints management and response including protecting public health and customer service standards.
 - Failure to provide accurate and timely information to consumers and the public where there are water, wastewater or customer service failures.
 - Determinations on ownership of disputed Drinking Water and Waste Water treatment plants.
 - Failure to prepare and implement Drinking Water Safety Plans.
 - Failure to submit requisite data, or sufficient quality within designated timelines.

- The EPA and the CRU, who already co-operate under a Memorandum of Understanding, should enhance those arrangements to ensure good communication and avoid duplication of enforcement action.