



Right2Water submission to the Department for Housing, Planning, Community and Local Government in respect of the draft River Basin Management Plans for Ireland 2018-2021

Right2Water welcomes the opportunity to submit the enclosed evidence in respect of the draft River Basin Management Plans (RBMP) for Ireland 2018-2021. The arguments and supporting evidence presented herein also incorporate the results of a survey of more than 630 Right2Water affiliates and supporters.

1. Right2Water: Background and policy

Established in 2014, Right2Water is a campaign of activists, citizens, community groups, political parties, independent politicians and trade unions which is campaigning for the Irish government to recognise and legislate for access to clean and safe water and sanitation as a human right. Right2Water's policy, as endorsed by our affiliates and supporters, is to demand:

- The scrapping of metering and all domestic water charges, including the proposed excessive usage levy (i.e. charge) for households;
- That the Joint Oireachtas Committee on Housing, Planning, Community and Local Government, along with the Irish government, delivers a referendum to enshrine public ownership of the water system in Bunreacht na hÉireann;¹ and
- The abolition of Irish Water, to be replaced with a national public water authority following said referendum.

It is our view that domestic household payments to Irish Water for 'excessive usage' renders water a commodity and, coupled with the provision for meters in new dwellings, facilitates the phasing back in of water charges i.e. it enables a gradual reduction of the allowance thereby subjecting increasing numbers of households to charges. We are concerned that, in the absence of a referendum to enshrine public ownership of the water system in Bunreacht na hÉireann, future governments may seek to use excessive usage levies to move towards the reintroduction of universal metered charges and prepare our water system for privatisation, in part or whole, through EU Competition Law.

¹ On legal advice, Right2Water has commissioned the drafting of a wording and enumeration of a new Article 28 Section 4:2.1, which reads: 'The Government shall be collectively responsible for the protection, management and maintenance of the public water system. The Government shall ensure in the public interest that this resource remains in public ownership and management.'

Right2Water advocates the scrapping of all domestic water charges in favour of funding the Republic of Ireland's public water system through progressive general taxation, with additional contributions from industries who use water – not for day-to-day living – but for profit motives, through abstraction charges and commercial rates. This policy necessarily invokes the utilisation of Article 9(4) of the EU's Water Framework Directive (WFD), which enables Member States to seek an exemption from domestic water charges if they can demonstrate that their plan enables them to fulfil the objectives of the Directive. Right2Water's unequivocal support for utilising the 9(4) exemption is on the public record, for example in our submission to the Expert Commission on Domestic Public Water Services.² This position is reiterated in Section 5 below, in the context of addressing the environmental objectives and priorities set out in the draft River Basin Management Plan.

To date, Right2Water has hosted nine national demonstrations, the largest single one of which brought over 120,000 people onto the streets of Dublin. We will continue to campaign for the full implementation of our popular demands and the protection of our water system from the persistent threat of commodification and privatisation.

2. Background and approach to developing the plan

Right2Water welcomes the Department's acknowledgement that 'water is essential for life' and 'vital to our natural environment' (p. 20). However, we wish to reiterate the important point that the human right to water has been internationally recognised since 2010:

[The UN] recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.³

In accordance with this UN resolution, Right2Water believes that no one should be deprived of access to safe and clean drinking water and proper sanitation based on their ability to pay. The only way of guaranteeing zero water poverty is to fund water and wastewater services through general taxation, with additional contributions from commercial rates and abstraction charges.

It is telling that the Irish Government, in 2010, abstained from the UN vote that finally recognised water as a human right, and it is telling that the Department has now omitted any reference to water as a human right from its draft RBMP. The reason for this, we believe, is that such recognition would undermine its agenda to commodify and privatise the public water system.

3. Review of the first cycle River Basin Management Plan

² Right2Water submission to the Expert Commission on Domestic Public Water Services, 11 September 2016, <http://www.right2water.ie/sites/default/files/media/Right2Water%20submission%20to%20the%20Expert%20Commission%20on%20Domestic%20Public%20Water%20Services%20-%20final%20%281%29.pdf>.

³ UN Resolution 64/292. 'The human right to water and sanitation,' 28 July 2010, <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>.

While noting the Department’s acknowledgment that there is a need for ‘further significant capital investment and operational improvements to fully address the requirements of the Urban Waste Water Treatment Directive (UWWTD) and progress towards the objectives of the Water Framework Directive’, we reject the implication that the historic underfunding of water services over the years can be solely attributed to the ‘fragmented’ nature of local authority delivery prior to 2014 (p. 28). It is successive central governments, rather than local authorities, that have followed a policy of systematically underfunding water services over many decades, including the period leading up to the establishment of Irish Water. This policy has been roundly criticised not only by Right2Water but also by the Expert Commission on Domestic Public Water Services,⁴ the Environmental Protection Agency (EPA)⁵, the European Commission⁶ and Irish Water itself.⁷

The Department states that ‘a key learning from the first cycle is the need for an improved evidence base, and the need to use this evidence base to arrive at priorities and resultant ambitious but achievable targets. They state that this is a central part of this second cycle plan, and one which allow for more focussed implementation of measures over the period to 2021’ (p. 32). Yet there appears to be little or no attempt to draw upon international case study evidence or international best practice, particularly as it relates to countries with the same or similar climactic conditions, water resources, ecosystems and environmental pressures, or to undertake a comparative analysis with the Republic of Ireland’s peer countries. In the sections below, we attempt to provide this evidence for the Department’s consideration.

4. Current state of the water environment & the catchment characterisation process

Given that there is still work to be completed with regards to assessing the pressures on water bodies, particularly at a catchment scale and particularly with reference to transitional waters and groundwaters, it is difficult for Right2Water to offer a definitive assessment of this process. However, we would suggest that not enough has been done to provide a breakdown of the origins of the various pressures by source, activity and type, or to weight them for the purposes of identifying and prioritising appropriate corrective actions. This carries the danger of creating a false equivalence between large scale, commercial pressures and small producers on the one hand, and between socially useful or

⁴ Report on the Funding of Domestic Public Water Services in Ireland (November 2016), <https://www.oireachtas.ie/parliament/media/committees/futurefundingofdomesticwaterservices/Report-of-Expert-Commission-on-Domestic-Public-Water-Services.pdf>.

⁵ EPA, *Urban Waste Water Treatment 2015*, http://www.epa.ie/pubs/reports/water/wastewater/2015%20urban%20waste%20water%20report_Web%20Version.pdf.

⁶ European Commission Working Document, *The EU Environmental Implementation Review: Country Report – Ireland*, 3 February 2017, http://ec.europa.eu/environment/eir/pdf/report_ie_en.pdf.

⁷ Irish Water, *Irish Water Business Plan: Transforming Water Services in Ireland to 2021*, <https://www.water.ie/docs/Irish-Water-Business-Plan.pdf>.

necessary – ‘new sustainable human’⁸ – activities and exploitative profiteering activities on the other.

5. Environmental objectives and priorities

Ireland’s obligations in relation to the WFD

In outlining the ‘general thrust’ of the WFD objectives, the draft RBMP alludes to the existence of possible exemptions available to EU Member States (p. 48). This, we believe, is deliberately opaque, evasive and altogether insufficient in that it omits what Right2Water and many other stakeholders regard to be an important factor in the future provision of water services in Ireland – namely the 9(4) exemption from water charges contained in the WFD, which was secured by the Irish Government during the legislative process.

To quote in full, Article 9 of the WFD⁹ states that:

1. Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter pays principle.

Member States shall ensure by 2010

— that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive,

— an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III and taking account of the polluter pays principle.

Member States may in so doing have regard to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.

2. Member States shall report in the river basin management plans on the planned steps towards implementing paragraph 1 which will contribute to achieving the environmental objectives of this Directive and on the contribution made by the various water uses to the recovery of the costs of water services.

3. Nothing in this Article shall prevent the funding of particular preventive or remedial measures in order to achieve the objectives of this Directive.

4. Member States shall not be in breach of this Directive if they decide in accordance with established practices not to apply the provisions of paragraph 1, second sentence, and for that purpose the relevant provisions of paragraph 2, for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of this Directive. Member States shall report the reasons for not fully applying paragraph 1, second sentence, in the river basin management plans.

The exemption or derogation from water pricing is contained in Article 9(4) of the WFD, highlighted above. Drawing on the available evidence, there are a number of points Right2Water wishes to make in relation to this.

Firstly, the European Commission in response to a series of MEP questions between June 2009 and December 2014 has, on the record, made the following statements:

- The responsibility for implementation of the Water Framework Directive (WFD) lies with the Member States and there is no obligation to follow particular schemes or methods.¹⁰
- There is no specific requirement in Article 9 of the WFD that cost recovery be linked to individual consumption.¹¹
- The Commission is of the view that Directive 2000/60/EC of Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy gives the possibility for Member States to apply the provisions in Article 9.4 for specific water use activities such as domestic use.¹²
- Article 9(4) provides the possibility for Member States not to apply the provisions of Article 9(1) to a given water-use activity, where this is an established practice at the time of adoption of the directive and where this does not compromise the purposes and the achievement of the objectives of the directive.¹³

In addition to these Commission statements, there is legal advice provided in relation to Ireland's EU obligations on the WFD. Firstly, the legal opinion received by Sinn Féin MEP Lynn Boylan, dated 12 July 2016, makes it clear that it is up to Member States to determine, on the basis of an economic analysis, the measures to be adopted for the purposes of the application of the principle of recovery of costs. How the Directive is to be implemented is left to the Member State, so long as the steps taken do not impede or compromise the objectives of the Directive. '[I]t is likely,' the advice concludes, 'that Ireland will be able to

¹⁰ P-008827/2014. Answer given by Mr Vellas on behalf of the Commission (5 December 2014) in response to a question by Nessa Childers (6 November 2014), <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2014-008827&language=EN>.

¹¹ Ibid.

¹² E-3313/09. Answer given by Mr Dimas on behalf of the Commission (16 June 2009) in response to a written question by Proinsias De Rossa (24 April 2009), <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-3113&language=CS>.

¹³ E-3366/10. Answer given by Mr Potočník on behalf of the Commission (22 June 2010) in response to a written question by Alan Kelly (12 May 2010), <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-3366&language=EN>.

show that it is taking steps to attain these objectives without the need for individual direct water charging'.¹⁴

The advice received by Lynn Boylan has in turn been substantiated by Fianna Fail's publication, on 3 March 2017, of the comprehensive legal advice received from barristers Darren Lehane and Conleth Bradley. It concludes that:

- a. The WFD is a framework directive which does not seek to achieve complete harmonisation of the rules of the Member States concerning water;
- b. Article 9 of the WFD does not per se impose the generalised pricing obligation in respect of all activities relating to water use;
- c. The objectives pursued by the WFD do not necessarily imply that the definition of water services contained in Article 2(38)(a) of the WFD must be interpreted as meaning that they subject all activities to which they refer to the principle of recovery of costs contained in Article 9 of the WFD;
- d. There is no specific requirement in Article 9 of the WFD for cost recovery to rely on individual consumption;
- e. The measures for the recovery of the costs of water services are one instrument, among others available to the Member States, for qualitative management of water in order to achieve rational water use;
- f. The absence of pricing for water service activities will not necessarily jeopardise the attainment of the objectives of the WFD;
- g. Article 9(4) of the WFD provides that a Member State shall not be in breach of the Directive if it decides in accordance with established practices not to apply the principle of costs recovery for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of this Directive and where the Member State reports the reasons for not fully applying Article 9(1);
- h. The application of Article 9(4) is informed by certain principles, including that cost recovery is not necessarily applicable to all activities and even where such activities could – in and of themselves - be liable to undermining the WFD's objectives; it does not mean that any lack of pricing of those activities would necessarily jeopardize the attainment of such objectives; partially suspended cost recovery is, in principle, allowed and does not necessarily imply that attainment of the objectives of the WFD have been jeopardised;
- i. Member States have a very wide discretion in relation to Article 9;

¹⁴ Lynn Boylan MEP, 'Legal advice confirms water charges can be scrapped – Boylan', *Sinn Féin*, 12 September 2016, <http://www.sinnfein.ie/contents/41496>.

j. Ireland can avail of the ‘established practice’ exemption in Article 9(4) as (i) it is for Ireland to determine what an established practice is and (ii) it was an established practice not to have domestic water charges when the Water Directive was adopted.¹⁵

All of this evidence combined leads to one conclusion: the Irish Government enjoys discretion to abolish domestic water charges without jeopardising the Directive’s objectives.

Established practices

There is no legal definition of ‘established practices’ contained within the WFD, while the responses of the Commission to MEP questions are revealing in terms of the political subterfuge being used in collaboration with the Irish Government – all in the pursuit of imposing domestic water charges on the Irish public. On 24 June 2016, in response to a question by Marian Harkin MEP, the Commission stated that:

Ireland made a clear commitment to set up water charges to comply with the provisions of Article 9(1). Ireland subsequently applied water charges and the Commission considers that the directive does not provide for a situation whereby it can revert to any previous practice.¹⁶

Not only does this assertion collapse under the scrutiny of the legal advice cited above, but it is also compromised by the Commission’s statement that it considers ‘established practices’ to be those practices which were ‘an established practice at the time of the adoption of the directive’ (see above). This Directive was adopted on 23 October 2000, and transposed into Irish law in 2003, when it is beyond doubt that Ireland had been recovering costs for water services via general taxation since 1997.

Furthermore, the contention that Irish Water and its system of water charges, universal or for ‘excessive usage’, can be considered ‘established practice’ is simply not tenable. Citizens of the Republic of Ireland have been extremely vocal in their opposition to domestic water charges since their introduction, taking to the streets in their tens of thousands on no fewer than nine occasions to have such views heard. In February 2016, the majority of TDs elected to the 32nd Dáil – at least 97 TDs – won their seats following pre-election pledges to abolish domestic water charges; Fianna Fáil’s subsequent u-turn represented a betrayal of its democratic mandate and has yet to be put to the electorate. Finally, the high level of non-payment – as high as 57% during Irish Water’s first billing cycle and 70% in its fifth cycle –

¹⁵ Joint Opinion, Re: Whether Ireland can reintroduce a statutory prohibition on domestic water charges in a manner which is compatible with its obligations under European Union Law, 6 April 2016, <https://www.fiannafail.ie/wp-content/uploads/2017/03/FF-Legal-Advice-Water.pdf>.

¹⁶ P-004707/2016. Answer by Mr Vella on behalf of the Commission (24 June 2016) in response to a question by Marian Harkin (8 June 2016), <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2016-004707&language=EN>.

indicates that the domestic water charging system has never enjoyed the consent of those whom it regards as ‘customers’.¹⁷

It should also be noted here that the Government’s own ‘Expert Commission on Domestic Public Water Services’ considered all of these matters during a period of wide public consultation and analysis. In its report published November 2016 the Commission found, among other things, that taxation is the best means of paying for normal domestic water use in Ireland. As a result, domestic water charges have now been abolished and the system of paying for this use has now reverted to general taxation.

Right2Water submit that any description of a short (just over one year) experiment of payment for domestic water through a charges system as our ‘established practice’ would, if held by the EU Commission, have to be challenged in the European Court of Justice. In this regard it should be noted that this short interlude of domestic charges collapsed because of widespread public opposition, had no political mandate, and that it has now been replaced by taxation following a full independent analysis.

Furthermore, in the 2016 General Election, two thirds of those elected to the national parliament advocated the abolition of domestic water charges and Irish Water. This is backed up by an Irish Times/Ipsos MRBI opinion poll from October 2016 which stated “almost two-thirds of voters favour the complete removal of water charges.”¹⁸ Therefore there has never been a democratic mandate to impose water charges on the Irish public.

European case law

As noted in the Report on the Funding of Domestic Water Services in Ireland, ‘While considerable weight must be given to the opinion of the European Commission, the definitive interpretation of European law is a matter for the Court of Justice of the European Union.’¹⁹ And the key point here is that the only legal precedent concerning the WFD is the following case taken against Germany, which the Commission lost. In this instance, the Commission argued that Germany had failed to implement the cost recovery obligations contained within Article 9 of the WFD. Although the ruling is concerned primarily with Germany’s decision not to recover costs for hydroelectricity, the Court’s judgment contains some findings which are of relevance to the arrangements being considered by Member States in relation to domestic/household water use:

56 Although, as rightly pointed out by the Commission, the various activities listed in Article 2(38) of Directive 2000/60, such as abstraction or impoundment, may have an impact on the state of bodies of water and are therefore liable to undermine the

¹⁷ ‘FactCheck: How many people boycotted water charges?’, *The Journal.ie*, 1 December 2016, <http://www.thejournal.ie/irish-water-charges-payment-statistics-boycott-3112027-Dec2016/>.

¹⁸ Irish Times /MRBI poll: “are you in favour or against the complete removal of water charges?”, 7 October 2016 <http://www.irishtimes.com/news/politics/nearly-two-thirds-of-voters-want-water-charges-abolished-1.2821187>

¹⁹ Report on the Funding of Domestic Public Water Services in Ireland, para 5.9.4.

achievement of the objectives pursued by that directive, it cannot be inferred therefrom that, in any event, the absence of pricing for such activities will necessarily jeopardise the attainment of those objectives.

- 57 In that regard, Article 9(4) of Directive 2000/60 provides that the Member States may, subject to certain conditions, opt not to proceed with the recovery of costs for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of that directive.
- 58 It follows that the objectives pursued by Directive 2000/60 do not necessarily imply that Article 2(38)(a) thereof must be interpreted as meaning that they all subject all activities to which they refer to the principle of recovery of costs, as maintained in essence by the Commission.
- 59 In those circumstances, the fact that the Federal Republic of Germany does not make some of those activities subject to that principle does not establish by itself, in the absence of any other ground of complaint, that that Member State has thereby failed to fulfil its obligations under Articles 2(38) and 9 of Directive 2000/60.²⁰

Again, we would urge the Department to take cognisance of this ruling and its implications regarding the scope to introduce flexibility provisions as part of any revision to its draft RBMP.

Evidence of the 9(4) exemption used in the River Basin Management Plans of Peer Member States

In the first series of RBMPs which were submitted in 2009/2010, several regions/Member States made use of these flexibility provisions: Scotland, Northern Ireland, certain regions in France (Scheldt, Meuse, Sambre, Rhine, Corsica, Seine, Guyana and Réunion) and Bulgaria.

In the Bulgarian and Czech Republic RBMPs at least, and according to the Commission implementation reports published in 2012, social affordability reasons were given for using the flexibility provisions.

Many Member States are, like Ireland, almost two years late in submitting their second RBMP. However, we can see that at least Northern Ireland and Scotland – two regions with similar climactic conditions, water resources, ecosystems and environmental pressures to the Republic of Ireland – have reiterated their intention to re-use the 9(4) derogation having included them in their first RBMPs for the period 2009-2015.

North Eastern, North Western & Neagh Bann River Basin Management Plans 2015-2021 (Northern Ireland):

It is considered that households make a contribution towards the costs of water and sewerage services through contributions paid through the domestic regional rate. It

²⁰Judgment of the Court (Second Chamber), 11 September 2014. European Commission v Federal Republic of Germany. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0525>.

is estimated that this contribution equated to about half of the level of funding required to provide services to domestic customers in 2008/09. In the absence of specific additional household water and sewerage contributions, the Northern Ireland Executive, through the DRD, provides NIW with monthly payments (on behalf of domestic customers), raised through central Government taxes to cover the remaining cost for its services. Therefore the cost of providing water and sewerage services for domestic users is both directly and indirectly borne by the householders who benefit from these services.

The necessary regulatory and financial structures are in place to implement any Northern Ireland Executive decisions on future funding arrangements. In line with Article 9 of the Directive, and to ensure compliance with the terms of NIW's Licence, the costs of providing water and sewerage services are apportioned between each of the customer groups (including households) on a fair and equitable basis...

Article 9(4) provides a justification for not implementing full water pricing for all significant uses where this does not compromise the purposes and achievement of the objectives of the Directive. Water pricing policies are required to take into account social, environmental and economic factors as well as geographic and climatic conditions.

Due to Northern Ireland's relatively wet climate (annual average rainfall of about 1150mm across the first WFD cycle), there have not been any water scarcity issues within the 3 Northern Ireland River Basin Districts during the last 10 years. Furthermore demand for water as indicated by the Distribution Input (DI) measure has decreased by almost 11% over the period of the first WFD cycle.

Northern Ireland has a strong record of compliance with many of the key EU water Directives, such as the Bathing Water Directive, the Nitrates Directive and the Urban Waste Water Treatment Directive, which form the framework of basic measures under the WFD. The improvements in terms of bathing water quality, drinking water quality and compliance with the Urban Waste Water Treatment Directive have been in part attributable to the level of investment over the last number of years by NIW.

The water pricing policy for domestic households has not significantly impaired the achievement of the WFD objectives in Northern Ireland and it takes account of the relevant environmental, climatic, social and economic factors. Therefore it is considered that the water pricing policy for households meets the conditions set out in Article 9(4) of the WFD.²¹

²¹ Northern Ireland Environment Agency, North Eastern River Basin Management Plan 2015-2-21 (December 2015), pp. 14-15, <https://www.daera-ni.gov.uk/sites/default/files/publications/doe/water-report-north-eastern-river-basin-plan-2015.pdf>; North Eastern River Basin Management Plan 2015-2021 (December 2015), pp. 14-15 <https://www.daera-ni.gov.uk/sites/default/files/publications/doe/water-report-north-western-river->

River Basin Management Plan for the Scotland River Basin District, 2015-2027:

‘In Scotland, the household sector pays for the costs of the water services provided to it. The average price paid by domestic billed property is £346/year in 2015 – 2016. In setting water charges for households, Scottish Ministers balance a number of public policy considerations. It is our established practice to take account of ability to pay, as permitted by the social and economic provisions of the Directive, by charging households on a flat rate basis linked to local taxation. As Scotland is generally a water rich country it is believed that the lack of direct fiscal incentives on individual households to conserve water will not compromise the achievement of the objectives of the Directive.

Furthermore, national publicity campaigns to encourage households to conserve water are carried out regularly through press and TV advertising, and the Climate Change (Scotland) Act places a duty on Scottish Water to promote water efficiency.’²²

If the Department had any regard for international best practice, it would use these case study examples – in particular Northern Ireland, with which the Republic of Ireland shares a land border along with the water resources, climactic conditions, ecosystems, environmental pressures and, yes, river basins – to demonstrate that it is possible to deliver a sustainable funding model for water services and fulfill the objectives of the WFD without implementing full cost recovery for individual/household consumption.

Ireland and the WFD objectives

The Republic of Ireland, like Northern Ireland and Scotland, is a water rich country. Research shows that Ireland has a one of the highest rates of water availability in the world – actual renewable water resources are about 13,000 m³ per capita per annum. By comparison, France’s actual renewable water resources are 3,371 m³, while Israel’s are just 255 m³ per capita per annum.²³ Similarly, we have a relatively wet climate, with an annual average rainfall of approximately 1250mm, compared with the already high figure of 1100mm recorded for Northern Ireland.

In addition, as we have noted previously, domestic water consumption accounts for only 10% of all water usage in Ireland, while agriculture and industry accounts for a combined

[basin-plan-2015.pdf](https://www.daera-ni.gov.uk/sites/default/files/publications/doe/water-report-neagh-bann-river-basin-plan-2015.pdf); Neagh Bann River Basin Management Plan 2015-2021 (December 2015), pp. 14-15, <https://www.daera-ni.gov.uk/sites/default/files/publications/doe/water-report-neagh-bann-river-basin-plan-2015.pdf>.

²² Scottish Government, Appendices to the river basin management plan for the Scotland river basin district: 2015 – 2027 (21 December 2015), p. 112, <https://www.sepa.org.uk/media/163444/appendices-to-the-river-basin-management-plan-for-the-scotland-river-basin-district-2015-2027.pdf>.

²³ Report on the Funding of Domestic Public Water Services in Ireland, para 2.3.1.

90% of water usage.²⁴ Domestic consumption is relatively low in Ireland with average consumption of 123 litres per capita compared to 140 litres per capita in the UK, where domestic water charges have been in place for three decades. When you remove ‘outliers’ that figure is 111 litres per capita – or between 15-25% less water consumption than the UK on average. Recent consumption data suggests that Ireland is at the lower end of the spectrum of EU countries with regard to domestic consumption.²⁵ To quote the Expert Commission on Domestic Public Water Services, ‘domestic consumption figures for Ireland compare favourably with other developed countries and do not show evidence of extensive excessive or wasteful water consumption by households in Ireland.’²⁶

It is recognised by Right2Water, the Expert Commission on Domestic Public Water Services,²⁷ and the Department itself that there is a serious problem of water leakage in Ireland, and that significant investment is required to bring Ireland’s Victorian water system up to an acceptable standard and therefore relieve existing pressures on the supply and treatment of water. According to the most recent estimates provided in the draft RBMP, a staggering 49% of Ireland’s treated water is lost to leakage. This is more than double the international benchmark figure of 20% which is considered as ‘good practice’, and is comparable to the rates found in parts of Eastern Europe and Asia.²⁸

What is not mentioned in the draft RBMP is that the overwhelming majority of leakage is not to be found on the household side. The Department, in spite of this, attempts to infer, quite cynically, that Irish Water’s wasteful domestic metering programme is a major component of an overall effort to reduce leakage from 49% to 38% by 2021 (p. 82). Right2Water rejects this suggestion and argues that the Department’s disproportionate focus on household consumption is not only unwarranted and extremely inequitable, but also uneconomical and highly unlikely to yield environmental gains that outweigh the excessive costs of domestic metering, billing and collection. Furthermore, it is our view that the Government has for some time devoted considerable energy and resources to domestic water charges and preparing Irish Water for privatisation, in conjunction with regressive budgetary measures, *at the expense* of investment in conservation measures and vital infrastructural improvements (more on this below).

The European Commission is taking the Irish Government to the Court of Justice for breaches of the Urban Waste Water Directive, namely over the inadequate state of at least

²⁴ Right2Water, ‘Irish Water: Killing off conservation and the real agenda behind water charges’, *Right2Water blog*, <http://www.right2water.ie/blog/irish-water-killing-conservation-and-real-agenda-behind-water-charges>. also <http://www.worldometers.info/water>

²⁵ Report on the Funding of Domestic Public Water Services in Ireland, paras 2.3.5. & 2.3.6.

²⁶ *Ibid.*, para 4.1.2.

²⁷ Right2Water, ‘Irish Water: Killing off conservation and the real agenda behind water charges’; Right2Water evidence to the Joint Committee on the Future Funding of Domestic Water Services, 21 February 2017, <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FFJ2017022100002?opendocument>; Report on the Funding of Domestic Public Water Services in Ireland, paras, 2.2.3 & 2.3.3.

²⁸ OECD, *Benefits of Investing in Water and Sanitation: An OECD Perspective* (2011), p. 88.

38 waste water treatment plants which are pumping raw sewage into our waters. These legal proceedings come after the Commission initiated the infringement against Ireland in September 2013, followed by warnings in September 2015 and September 2016.²⁹ These legal proceedings appear to have injected at least a degree of urgency into the Department's efforts to address some of the infrastructural deficits evident in the water and sanitation system, having largely ignored the repeated warnings of the EPA over the years.

However, it is important to reiterate the point that it is decades of underinvestment by successive governments, not the conservative water consumption habits of the Irish population, which is to blame for the serious weaknesses in our public water system – the lack of spare capacity, which can lead to water shortages; the prevalence of antiquated and potentially hazardous pipework; the high level of boil water notices and general decline in drinking water quality; and the high number of water treatment plants at risk of failure, to name but a few. And it is this underinvestment which led to the loss of water supply to tens of thousands of people in Louth, Meath and Donegal in recent months.

During Fianna Fáil's last term in office, capital investment in waste water treatment averaged out at an inadequate €244 million. On taking office in 2011 Fine Gael and Labour slashed this to €140 million in 2012 and again to €124 million in 2013. The overall water infrastructure picture is similar. When Fianna Fáil was last in power capital investment in water infrastructure averaged €423 million annually. When Fine Gael and Labour took over it dropped to €382 million per year.³⁰

These investment decisions made by the Government in the context of its budgetary strategy are not merely technical or legal matters, but political choices to which alternatives have been counterposed by Right2Water and other stakeholders. The establishment of Irish Water and its accompanying domestic water charging system has proven to be an extremely costly crusade on the part of the last two governments. To summarise:

- Advertising expenditure totalling €2.85 million to date, with €717,000 going to RTE alone.³¹
- A total of €574 million on water metering between 2014 and 2016. These meters, of course, have a lifespan of 5-10 years and will need to be replaced at a further cost.³²
- Maintaining the meters, reading them and what is called 'cost to serve' will cost approximately €54m per year.³³

²⁹ European Commission press release, 'Commission takes Ireland to Court for failure to upgrade waste water infrastructure', 15 February 2017, http://europa.eu/rapid/press-release_IP-17-236_en.htm.

³⁰ Eoin Ó Broin, 'Water crisis boiling over', *Sunday Business Post*, 30 July 2017, <https://www.businesspost.ie/opinion/water-crisis-boiling-394564>.

³¹ Freedom of Information request.

³² Irish Water Business Plan, p. 23.

³³ Stephen Donnelly 22 September 2015 <http://stephendonnely.ie/the-uncomfortable-truth-about-irish-water/>

- €70 million on consultants to date.³⁴
- €25 million per year on billing.³⁵

The combined total of this unnecessary expenditure is well in excess of the annual average capital investment pledged by Irish Water for the period 2014-2021.³⁶ To this it must be added that the suspension and abolition of water charges has resulted in the utility receiving approximately €240.5 million per year from general taxation rather than charges (€130.5 million net when the water conservation grant is abolished), while the 2015 Eurostat ruling has meant that Irish Water and its borrowings remain on the Government balance sheet. And in their June 2016 Funding Options Paper, NewEra recommended that Irish Water shift its borrowing from private to Government sources as this would save money.³⁷

All of this confirms what Right2Water has been arguing all along: that a water and sanitation system funded through general taxation, with additional contributions from commercial rates and low-cost government borrowing, is much more cost effective than the failed Irish Water experiment. It is also more socially just, since it would maintain our zero water poverty rate. And, with the right political choices and investment-driven economic policies, its implementation could contribute to the fulfilment of the WFD objectives.

A final comment on abstraction is necessary, because it does not appear to us that the Department is giving the issue the attention it demands. Whilst the number of water bodies at risk due to abstraction pressures is comparatively low, the sheer volumes of water being abstracted – approximately 1000 abstractions have an abstraction rate greater than 100 cubic metres per day – is a cause for concern.

Right2Water has gone some way to revealing the scale of this practice in Ireland. A series of Freedom of Information requests lodged by Right2Water supporter James Moore revealed that companies such as Ballygowan, which is owned by Britvic and recorded profits of €90.68m for 2015, are free to extract and bottle millions of litres of water for profit without incurring any charges.³⁸ In turn, the Expert Commission on Domestic Public Water Services has stated that ‘there is no comprehensive system of abstraction charges for water, and this matter should be addressed’.³⁹ Yet, despite the existence of abstraction licensing and charging models in Northern Ireland, Scotland, England & Wales – all of which provide lessons in best practice for this industry – there is no provision in the draft RBMP for the

³⁴ Sarah Bardon, ‘Irish Water spends €25m on billing, committee hears’, *Irish Times*, 12 January 2017, <https://www.irishtimes.com/news/ireland/irish-news/irish-water-spends-25m-a-year-on-billing-committee-hears-1.2934872>.

³⁵ Ibid.

³⁶ Irish Water Business Plan, p. 23.

³⁷ Ó Broin, ‘Water crisis boiling over’.

³⁸ ‘Free water in Ireland – but only if you’re a corporation’, *Right2Water blog*, <http://www.right2water.ie/blog/free-water-ireland-%E2%80%93-only-if-you%E2%80%99re-corporation>.

³⁹ Report on the Funding of Domestic Public Water Services in Ireland, para 2.4.24.

introduction of primary regulation or serious reform with regards to large scale abstraction. This, coupled with the non-payment rate of almost 50% of commercial water charges,⁴⁰ makes a mockery of the Government's apparent commitment to the 'polluter pays' principle contained within the WFD.

Right2Water's position

Righ2Water believes, along with 98% of our affiliates and supporters, that the Irish Government can and should follow Northern Ireland in invoking the Article 9(4) exemption as part of its second River Basin Management Plan. In doing so, the Department must clearly outline how the Government intends to fulfil the WFD objectives, using the Northern Ireland RBMPs as a guide. This should include provision for the progressive funding model proposed by Right2Water, a commitment to a more substantial capital investment programme, and the adoption of additional measures to promote efficient and sustainable water use (see Section 6 below).

It will then be for the Commission to assess whether the conditions for this flexibility provision are met. If the Commission were to reject the Second River Basin Management Plan solely on the grounds of domestic water charges, the Government should then seek legal advice with a view to challenging the Commission's verdict through the European Court of Justice. If the political will exists, and particularly if it is pursued with the same vigour that the Government has exhibited in contesting the Apple ruling, this could be done with reference to the 2014 landmark case cited above.

6. The proposed programme of measures & economic analysis

(a) As noted above, the funding of Ireland's water and sanitation services is, and has been, subject to the political choices and shifting priorities of successive governments. The same argument could be made in relation to any other public spending area, from health, education and transport to pensions, social protection and public sector pay. In this sense, the €2.6 billion in tax cuts introduced in the three budgets up to 2016 is money that could have been set aside for public investment, including in water and sanitation services. The same goes for the additional €2.6 billion which the Government has pledged to cut from the tax base by 2021.

The level of public investment in our water and sanitation system is now slightly higher than in 1995, and it remains the case that a minimum of €13 billion of investment is required just to meet good infrastructure and service standards.⁴¹ In 2015, we published a fiscal framework which showed that, with modest increases to taxation along with increases to Employers' PRSI contributions, public investment could be doubled to €6-€7bn per year by 2020 with scope to go further. Within this, there was provision for the abolition of domestic water charges and increased funding of the water and sanitation system through

⁴⁰ Ibid., para 2.4.22.

⁴¹ Report on the Funding of Domestic Public Water Services in Ireland, para 2.4.26.

progressive general taxation.⁴² Since then, Right2Water affiliates including Unite the Union,⁴³ Sinn Féin⁴⁴ and the AAA-PBP⁴⁵ have presented their own proposals for increasing public investment including in the water and sanitation system.

Utilising the fiscal discretion highlighted above, we urge the Government to make provision for a more substantial, targeted capital investment programme than is outlined in the Irish Water Business Plan and draft RBMP. As the Nevin Economic Research Institute (NERI) has shown, the net cost of this investment would be significantly less than the nominal figure, when one takes into account impact on employment, domestic demand, growth and the resulting tax revenue.⁴⁶

(b) In support of this, the Government should outline its commitment to ringfence funding through the general budget that would, along with commercial rates, abstraction charges and low-cost Government borrowing, ensure a sustainable funding model for Ireland's public water and sanitation system. The ringfencing of a proportion of environmental taxes for this purpose is one possible part of the solution.

(c) An ambitious New Green Deal, funded in the long term through the European Investment Bank or the European Strategic Investment Fund. This would include the energy retrofitting of existing dwellings in addition to water conservation retrofitting with current technologies (dual-flushed toilets, repairing leaks) and new technologies (grey water reclamation systems, rain harvesting technology, etc.). Plans for all new builds would necessarily incorporate, not costly meters, but the installation of water saving and rain harvesting technologies.

(d) The Department should work with the Government to incentivise water saving devices including but not limited to water butts, aerated shower heads, and energy and water efficient white goods (dish washers, washing machines, etc.) as a means of achieving the objectives of the WFD. This could be done by reducing VAT on said devices, for example.

(e) The Department should work with the Government to bring R&D investment up to EU levels and identify new renewable technologies appropriate to Ireland which can be rolled out as a priority, whether through Government itself or through a national public water authority.

⁴² Right2Water unions, A New Fiscal Framework for a Progressive Government (2015), <http://www.right2water.ie/sites/default/files/media/R2W%20Unions%20Fiscal%20Framework%20Document.pdf>.

⁴³ Unite the Union 2017 Pre-Budget Submission, <https://unite.theunionireland.files.wordpress.com/2016/09/budget-2017-for-publication-september-2016.pdf>.

⁴⁴ Sinn Féin's Alternative Budget 2017, https://www.sinnfein.ie/files/2016/SF_Budget2017_ENGLISH.pdf.

⁴⁵ AAA-PBP Pre-Budget Statement 2017, <http://antiausterityalliance.ie/wp-content/uploads/2016/10/AAA-PBP-Budget-Statement-2017.pdf>.

⁴⁶ Rory O'Farrell, 'An Examination of the Effects of an Investment Stimulus', NERI WP 2012/No 4, July 2012, https://www.neriinstitute.net/download/pdf/neri_working_paper_rof_no_4.pdf.

(f) The Department should work with the Government to initiate a major national education campaign to promote awareness of the need for water conservation and more environmentally friendly lifestyles and behaviours, including major public exhibitions, educational visits to schools and the publication of educational materials.

(g) The Department should outline its intention to bring forward primary legislation and accompanying abstraction charges for for-profit activities, based on models of industry best practice in Britain and Northern Ireland, thus demonstrating its commitment to conservation in line with the WFD objectives. The issue of over-abstraction is one that needs stronger action with regulation, charges and penalties if the overall importance of water conservation is to come to the public's attention.

(h) The Government should outline measures for stricter enforcement of the Water Services Act 2007, which contains provisions for penalising the wasteful usage of water. This may include an annual cost for households using swimming pools, which could be identified through the planning permission process.

(i) The Government should outline its commitment to ending the use of Public Private Partnerships (PPPs) in public water provision. PPPs are not only costly to the Exchequer and poor value for money, because they involve the subsidisation of private companies out of the public purse (through contract fees, tolls, user charges etc.), but they constitute a deepening form of privatisation and as such remove public control and accountability from vital areas of the water and sanitation system.⁴⁷ This trend of creeping privatisation is not only contrary to the wishes of the Irish public, but it inevitably impinges upon the Government's ability to fulfil the WFD objectives.

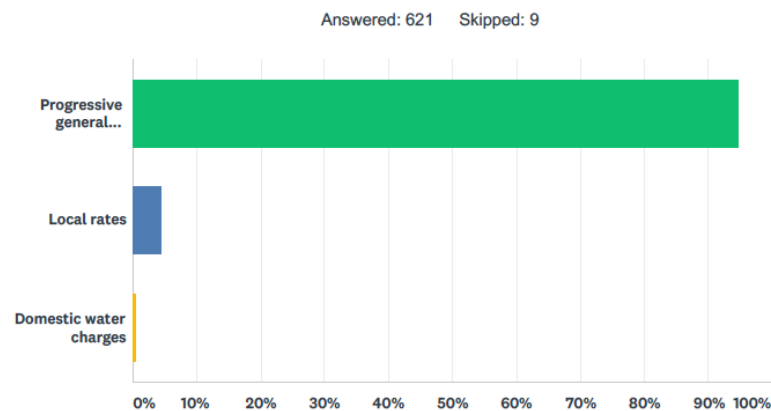
7. Communication and public & stakeholder engagement

Right2Water welcomes the proposed establishment of a National Water Forum to 'facilitate stakeholder engagement on all water issues' (p. 92). However, for the same reasons that we have questioned the notion that domestic water charges is 'established practice' in Ireland – mass demonstrations, the 2016 election results, the consistently high rates of non-payment – we reject the designation of 'Irish water customers' in favour of the more appropriate catch-all designation of 'Irish citizens', and suggest that the Department amends the text accordingly.

⁴⁷ Rory Hearne, 'Public Private Partnerships are already privatising our public water system', *Right2Water blog*, <http://www.right2water.ie/blog/public-private-partnerships-are-already-privatising-our-public-water-system>.

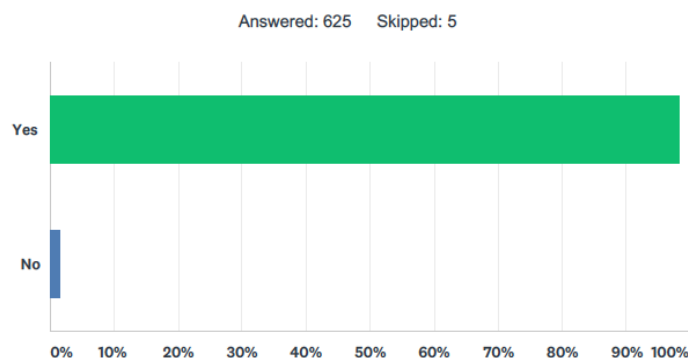
Appendix 1 - The Right2Water River Basin Management Plan Survey Results

Q: How do you think Ireland’s public water system should be funded?



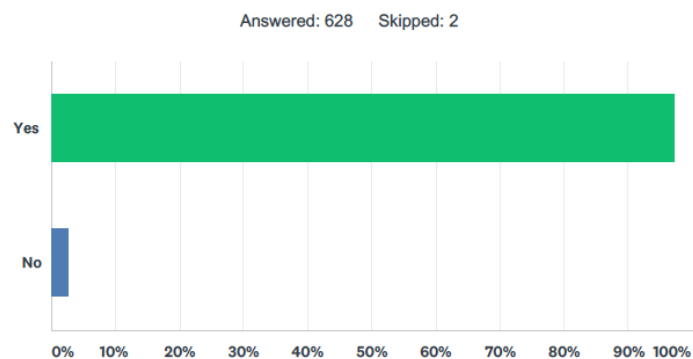
ANSWER CHOICES	RESPONSES
Progressive general taxation	94.85% 589
Local rates	4.51% 28
Domestic water charges	0.64% 4
TOTAL	621

Q: In developing the River Basin Management Plan (2018-2021), do you believe the Irish government should continue to utilise Article 9.4 of the EU Water Framework Directive, which enables Member States to seek an exemption from domestic water charges if they can demonstrate that their plan enables them to fulfil the objectives of the Directive?



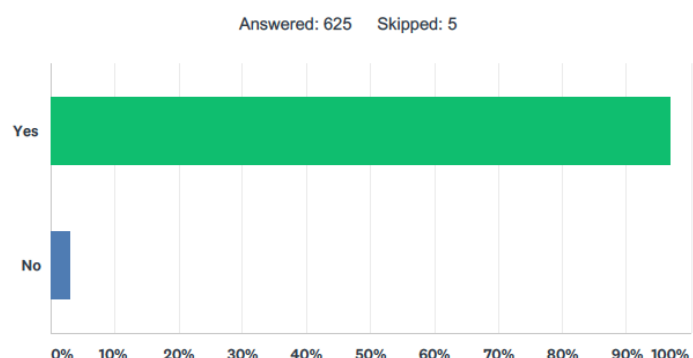
ANSWER CHOICES	RESPONSES
Yes	98.24% 614
No	1.76% 11
TOTAL	625

Q: Right2Water has consistently argued that the government’s apparent commitment to the ‘polluter pays’ principle is undermined by its failure to address the huge industrial wastage of water through distilleries, the pollution of rivers by commercial farming interests, the free water obtained from our springs by multinational companies, and the 50 percent of companies who are refusing to pay commercial water charges. Do you support this view?



ANSWER CHOICES	RESPONSES	
Yes	97.29%	611
No	2.71%	17
TOTAL		628

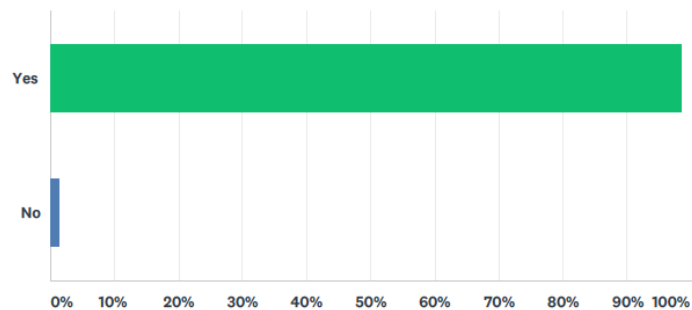
Q: Do you agree that the government should pursue the 50 percent of companies who refuse to pay their commercial water charges, introducing measures to penalise those firms which continue to refuse payment?



ANSWER CHOICES	RESPONSES	
Yes	96.80%	605
No	3.20%	20
TOTAL		625

Q: Do you agree that the Irish government should introduce abstraction charges for for-profit companies like Britvic, which are extracting our natural spring water in limitless supplies free of charge? (this would help achieve the objectives of the Water Framework Directive).

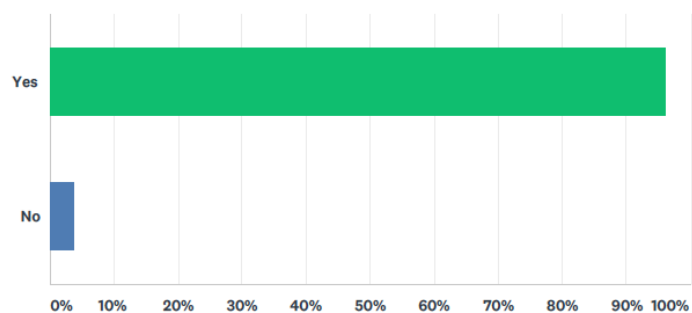
Answered: 628 Skipped: 2



ANSWER CHOICES	RESPONSES	
Yes	98.57%	619
No	1.43%	9
TOTAL		628

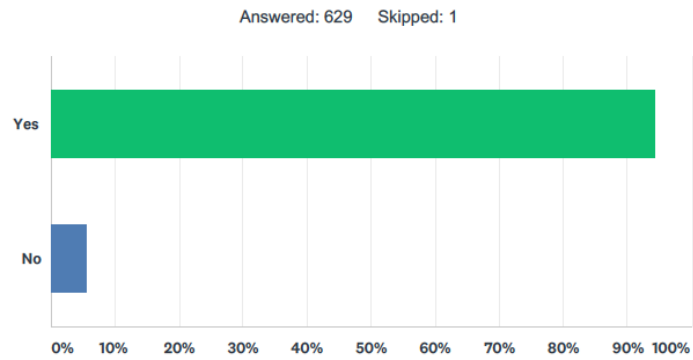
Q: Do you believe the Irish government should launch an education campaign to raise awareness of water conservation which would enable the Irish government to achieve the objectives of the Water Framework Directive?

Answered: 625 Skipped: 5



ANSWER CHOICES	RESPONSES	
Yes	96.32%	602
No	3.68%	23
TOTAL		625

Q: Do you believe the Irish government should incentivise water saving devices like water butts, aerated shower heads and energy and water efficient white goods (dish washers, washing machines, etc), in order to achieve the objectives of the Water Framework Directive?



ANSWER CHOICES	RESPONSES	
Yes	94.44%	594
No	5.56%	35
TOTAL		629