**Special Rapporteur on the human rights to safe drinking water and sanitation**

**United Nations Human Rights – Officer of the High Commissioner**

**Questionnaire – State**

**Overview of water and wastewater services in Ireland:**

The majority of the Irish population (83%) have their water supplied by the public system operated by Ireland’s national water services authority, ‘Irish Water’. Irish Water is a State body, which is fully publicly owned. It was established as the national water services authority to provide safe, clean, affordable and environmentally compliant water and wastewater services to households and businesses across the country. Irish Water took responsibility for the operation and maintenance of water and wastewater assets from local authorities on 1 January 2014. It took over these responsibilities from 31 local authorities (County Councils and City Councils). Irish Water carries out these functions, as a public utility under EU procurement law.

Irish Water delivers much of its service by way of ‘Service Level Agreements’ entered into with each of the 31 local authorities. Staff members working under these arrangements remain local authority employees while continuing to perform key water services functions, with local authorities acting as agents of Irish Water.

The next phase in the development of Irish Water is to fully integrate its operations. A process is currently underway (2020) to replace the Service Level Agreements between Irish Water and the local authorities. Water services (drinking water and wastewater) are planned to be directly delivered by Irish Water as a stand-alone publicly-owned water utility. A process of engagement is taking place between Irish Water, the local authorities, and the trade unions representing workers with a view to agreeing the modalities of the revised arrangements.

The domestic element of the water supply system is funded through general taxation and citizens receive their supply at no charge (apart from in relation to excess usage). A further 7% of the population receive supplies from Group Water Schemes. These are member-owned co-operatives. These Group Water Schemes are subsidised through general taxation to ensure that people using this source for their water do not generally pay for the costs of supplying that water. The remaining 10% of the population receive their water from individual private wells in relation to which the State provides a scheme of capital grants for installation and improvement, with a payment of up to €5,000.

In relation to wastewater, 66% of households are connected to public wastewater services provided by Irish Water. The remaining 34% of households have individual, group (community) or other wastewater treatment systems – a figure very much in line with the scale of rural population in Ireland.

A new regulatory regime for domestic wastewater treatment systems was introduced under the *Water Services (Amendment) Act 2012*. All such systems must now be registered. Ireland’s Environmental Protection Agency is responsible for environmental compliance. A State grant scheme was introduced that allows for a payment of up to €5,000 per household for improvement works to be carried out in individual domestic wastewater treatment systems.

**Current situation and trends**

1. **How does the private sector participate in water and sanitation provision in your country? Please clarify the modalities of the relationship with the different tiers of government and types of contracts. Please provide information separately for water service provision and sanitation service provision.**

Private financing is not a significant feature of water services provision in Ireland. Likewise, private for-profit delivery of water and wastewater services is not a feature prevalent in Ireland.

There are statutory provisions in place in Irish law prohibiting the placing into private ownership of the national water services authority, the utility Irish Water (see the response to question 5).

Private sector involvement in respect of the provision of water services is largely confined to subsidiary activities, including supplying materials and equipment, developing engineering designs and building infrastructure.

One delivery mechanism used for water services is what are called ‘Design, Build, Operate’ contracts, whereby private companies tender to perform these services, which are managed by Irish Water and local authorities (see the response to question 3).

1. **If there is no provision of water and sanitation by private entities in your country, please clarify the rationale behind such policy.**

The established public policy position is that water services are provided by a State-owned utility. This is set out in policy and in legislation.

In May 2018, the *Water Services Policy Statement 2018-2025* was approved by the Government and published. This was the first time such a comprehensive and all-encompassing statement of policy on water services was prepared in Ireland. To inform the development of water services over the period to 2025, four high-level policy principles have been identified. These represent key considerations that are contributing to meeting the needs and expectations of citizens and users of water services, in compliance with legal obligations, and in a fair, cost-effective and sustainable way.

One of the four principles is that there is “One single publicly owned national water services authority”. This is further described, as follows:

*“…the public water system is to remain in public ownership. Public water services are to be delivered by an efficient single regulated public national water services authority, accountable to the Oireachtas [Ireland’s Parliament]. This responsibility is being performed by Irish Water. Irish Water is a regulated commercial public State owned body.”*

The State ownership of Irish Water and the legal provisions which prohibit its placement into private ownership are set out in the Water Services Act 2013 and the Water Services Act 2014 (see the response to question 5).

Having a single national water services authority has facilitated a more consistent and targeted approach to investment prioritisation, driving efficiency in the provision of infrastructure, and ensuring the development of best operational practice.

1. **How has the level of involvement of private providers in water and sanitation evolved in the last decades?**

Irish Water predominantly operates a core ‘in-sourced’ model. Work is undertaken within the organisation itself, as opposed to being ‘out-sourced’, where services are contracted externally.

There is a specific contracting arrangement that involves the participation of private contractors in the provision of water services. These are called ‘Design Build Operate’, or ‘DBO’ contracts.

DBO Contracts for water and wastewater services in Ireland can be defined as construction contracts whereby an asset is designed and built, and then subsequently operated and maintained by a contractor for a period of up to 20 years, with the contractor being paid by the State as work proceeds, and where the asset remains in State ownership at all times. They are not concession contracts, the asset is never in private ownership, nor is there any element of private finance.

Much of the rationale for adopting this model is contained in the report on water investment prepared in 2010 (Chapter 5 of the [Report On The Value For Money Review Of The Water Services Investment Programme 2007-2009](https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/Environment/Water/FileDownLoad%2C27138%2Cen.pdf))

The following were identified as the key benefits of this approach:

* + acceleration of infrastructure provision as the contractor can only become eligible for service phase payments after the construction is completed, thereby reducing exposure to construction inflation;
	+ single point responsibility for design, construction, operation and maintenance incentivises the private sector contractors to optimise the whole life cost of the project and to provide reliable robust treatment processes and technologies and associated mechanical and electrical equipment;
	+ better allocation of risk resulting in greater certainty of final capital cost;
	+ encouragement to use newer technologies with associated technical and economic advantages;
	+ contractually guaranteed performance and maintenance standards over the 20 years operational phase; and,
	+ better economies of scale were achieved by contractors procuring nationally than individual local authorities, allied to competitive pricing, assisted the potential for more economical and efficient operation of plants than individual authorities may have been able to provide.

Contractors were provided with a contract that contained strict Employer’s Requirements, setting out specific requirements that had to be met by the plant at Design Build (DB) and Operation & Maintenance (O&M) phases, including performance metrics.

The model was adopted in the early 2000’s by local authorities and continued as the preferred method of contracting water services until Irish Water was established in 2014.

In 2014, all existing DBO contracts transferred to Irish Water from the local authorities, at various stages of the Design, Build and Operate process. These contracts covered some 212 sites, 80% of which were wastewater and 20% of which were drinking water.

The DBO model was favoured for wastewater sites more so than drinking water, as Local Authorities generally preferred to retain direct control over drinking water plants. The wastewater treatment plants in major urban areas are generally contractor operated, with the drinking water plants operated by the Local Authorities. As a result, calculated by volume, circa 75% of all wastewater treated by Irish Water is done so under a DBO contract, with less than 15% of drinking water under DBO contracts.

1. **What are the expectations of your Government about the level of involvement of private providers in the short, medium and long terms? If there is a trend of increasing or decreasing private provisions, please clarify the underlying reasons.**

The expectation is that water services would continue to be provided by a State-owned national water services authority, with the costs predominantly met by Exchequer (State) through revenues raised by general taxation.

1. **Please provide detailed information on legislation concerning participation of the private sector in water and sanitation (please highlight whether the legislation of your country encourages, allows for or prohibits this to occur) and concrete examples of related instruments and mechanisms.**

Legislation is in place which contains a statutory prohibition on the placement of the national water services utility Irish Water into private ownership. This legislation sets out a range of steps that would need to be taken in the event that the statutory prohibition was to be removed.

The Water Services Act 2013 vests the shares of Irish Water in two Ministers of Government - the Minister for the Housing, Planning, and Local Government; the Minister for Finance; as well as the Board of Ervia (which is a combined water and gas utility company, and is 100% owned by the State). The Water Services Act 2013 prevents the disposal of the shares in the company without approval of the two Ministers of Government, who hold the shares on behalf of the State.

The Water Services Act 2014 provides that any change to the public ownership of Irish Water, its privatisation or the sale of any Irish Water share held by the Government, cannot be initiated unless three specific conditions are met. These are:

(1) both Houses of the Oireachtas must pass a resolution approving such a proposal (these are the upper and lower houses of Parliament);

(2) the approval of a majority of voters in a plebiscite referendum on the proposal through a national public vote;

(3) the Minister could then initiate legislation to privatise Irish Water or to dispose of any share held by the Government.

The policy intent of these provisions is to maintain public water services in public ownership, and to allow for a public vote if there is a proposed change to this arrangement.