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An Taisce wish to make the following submission on the General Scheme of the Water Environment (Abstractions) Bill 2018

An Taisce welcome the opportunity to take part in this public consultation on the General Scheme of the Water Environment (Abstractions) Bill 2018. The Water Environment (Abstractions) Bill 2018 provides for the introduction of a regime for the control of the abstraction of water on a risk-based approach, in order to comply with Ireland's obligations under the Water Framework Directive (WFD). The WFD outlines that '*For water quantity, overall principles should be laid down for control on abstraction and impoundment in order to ensure the environmental sustainability of the affected water systems*.' This is most necessary, as in 2015 the European Commission officially identified over-abstraction as the second most common pressures on the ecological status of surface water bodies in the EU[1]. Excessive abstraction significantly affects 10% of surface water bodies and 20% of groundwater bodies.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0120:FIN

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An Taisce would like to support the arguments laid out in the submission by SWAN, and in addition would like to raise the following points in regard to the Draft Plan.

1. Registration and Metering

It is outlined in the consultation paper that:

> *'it is proposed to exempt from registration or licensing abstractions of less than 25 cubic metres per day. This approach mirrors that taken in Scotland and Wales, where abstractions of a relatively small quantity of water (10 cubic metres in those jurisdictions) are exempted from the requirement to either be registered or licensed'*

The consultation makes reference to it mirroring the approach taken in Scotland and Wales, and while we would welcome something akin to what is in place there, there is a very substantial difference between the thresholds proposed in this legislation, and the 10 m^3 threshold in use in Northern Ireland and Scotland. An Taisce would express concern that 25 m^3 is much too high a threshold, given that it is enough water to service approximately 115 people.

In addition, Article 7(1) of the WFD outlines that:

> *'Member States shall identify, within each river basin district: all bodies of water used for the abstraction of water intended for human consumption providing more than 10* m^3 *a day as an average or serving more than 50 persons*'

An Taisce would highlight that this will not be possible under the proposed 25 m^3 threshold, as they will be unable to pinpoint these locations due to a lack of data. The rationale given for the 25 m^3 threshold is for consistency with regulations made under section 9 of the Local Government (Water Pollution) Act 1977. However, An Taisce would highlight that it is 40 years since that legislation was enacted, and this Abstraction Bill is predicated on Ireland's obligations under the WFD. An Taisce feel that basing this new legislation on very outdated legislation, which was enacted long before the establishment of the WFD, is flawed. The

proposed legislation should endeavour to fulfil the requirements under the WFD, not to be ‘consistent’ with outdated national legislation.

In addition, An Taisce submit that all abstractions should be metered, regardless of volume. The Northern Irish Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland 2006, as amended by the Water Abstraction and Impoundment (Licensing) (Amendment) Regulations (Northern Ireland) 2007 stipulate that there must be a means to demonstrate that an abstraction does not breach the 10 m^3 threshold above which an abstraction must be registered. An Taisce believe this should also be required in Ireland, and we submit that in order to properly regulate abstractions, a metering system is essential.

2. Licensing

Article 11(1) (e) of the WFD calls for:

> *'controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated.'*

An Taisce are aware that in 2015, a working group on abstraction was established and concluded that any licensing regime will focus only on the '*most significant volumes and pressures*' without imposing an '*unnecessary regulatory burden*'. In this proposed legislation, only abstractions above 2000 cubic meters would require licensing, with abstractions between 250-2000 needing a licence only where the agency has determined it to be a significant abstraction. This would omit most abstractions from requiring licensing.

The need for a nationwide picture of abstractions is acknowledged in the draft Bill:

> *'The establishment of such a register is obligatory under the Water Framework Directive and is being done in advance of this Bill to allow the Agency to build up a*

nationwide picture of the extent and size of current abstractions in order to better manage abstractions in areas of high risk in future.'

We would highlight that in Scotland and Northern Ireland, all abstractions greater than 10 m^3 have to be authorised. In Scotland, SEPA took the view that abstractions between 10-50 m^3, licensing is not required in order to facilitate a reduced administrative burden, however, registration is still required for these. If the Irish authorities are concerned with 'unnecessary regulatory burden', the Scottish model could be applied.

In addition, the WFD outlines that abstractions which have '*no significant impact on water status*' may be exempted from the abstraction register, however, An Taisce would argue that without a comprehensive list of the abstractions, it will be virtually impossible to determine these areas at high risk of over-abstraction. The cumulative impact simply can't be assessed. We submit that the current threshold for licensing is much too high, and would undermine the objectives of the WFD, the primary reason for the drafting of this Bill.

In regard to sensitive areas, An Taisce submit that more rigorous assessment of abstraction must be implemented for vulnerable water bodies, high status catchments, and for Natura 2000 sites. This should potentially include a licensing requirement for all abstractions, regardless of the threshold, within these areas.

3. Water Abstraction GIS Database

We submit that a GIS database should be developed in tandem with the new legislation. This database should contain all of the abstraction points, proposed, existing and licensed, and contain information about the location, the rate and quantum of the abstraction. Areas of sensitivity, and protected areas should also be included. This could be added as a layer to the existing interactive spatial mapping tool on the EPA website. This system could then be used to inform any planning or licensing decisions, and to inform a cumulative assessment for abstraction under the Habitats and EIA Directives, as necessary (see following sections).

4. Climate change

An Taisce submit that there is a need for any abstraction legislation to provide for a responsive, risk-based licensing system. It is essential that a license can be revoked, suspended, or that certain conditions be imposed post licencing, should the need arise. In Northern Ireland, the Department of Agriculture, Environment and Rural Affairs may unilaterally revoke a licence where it is satisfied that '*the revocation is necessary in order to protect the water environment from serious damage*'. Part 5 of the Regulations provides a suite of enforcement powers, and provides that the Department may write to the holder of a licence and impose additional conditions and/or require the cessation of abstraction.

This is an essential part of any abstraction authorisation, particularly with the growing threat of climate change. The recent IPCC report has outlined the huge difficulties in limiting global warming to 1.5 degrees. As a result of climate change, significant changes are projected to occur in the Irish climate. The drought situation in Ireland this summer demonstrates how vulnerable our water supply is to decreased precipitation. Research by Sweeney *et al.* (2001)[2] has indicated that by the 2050s, summer reductions of 20–28% in precipitation are projected for the southern and eastern coasts, increasing to 30–40% by the 2080s. In addition groundwater recharge is likely to be lower for longer, sustained periods, increasing the risk of drought. Given the predictions in the IPCC report, it is likely that these changes will occur sooner than forecast. Changes in temperature and precipitation will alter subsurface hydrology, with significant changes in soil moisture storage, groundwater recharge and groundwater storage likely. This will lead to far more frequent drought situations in Ireland. It is imperative that any abstraction authorisation framework must take account of up to date climate modelling and forecasting.

Licensed abstraction points must be regulated in such a way that they can be adjusted to account for the fluctuations in the levels of precipitation, and ground and surface water. This is also extremely pertinent for making the case for the registration and licensing of abstractions over 10 m^3. The cumulative impact of unlicensed and unregistered abstractions

[2] Sweeney et al (2001). Climate change – Refining the Impacts for Ireland (2001-CD-C3-M1) STRIVE Report

below 25 m^3 in a drought situation could have very serious consequences, with impacts on water quality, wildlife and the availability of drinking water. If these abstractions are unknown to the relevant authority, there is no way to suspend or alter them in such a necessary circumstance. This should be a very serious consideration in any abstraction legislation.

5. Cumulative impact for Habitats and EIA Directives

a. Natura 2000 Sites

Any abstraction legislation must be drafted in accordance with the European Legislation which is already enacted in Ireland, in particular the Habitats Directive and the European Communities (Birds and Natural Habitats) Regulations 2011. If any abstraction is to be carried out within, or in close proximity to an SAC or an SPA, it is imperative that an appropriate assessment be carried out. This is particularly pertinent if the abstraction point is hydrologically linked to one of these sites.

In respect of potential impacts on European sites (i.e. SPAs, SACs, cSACs, etc.), the Minister must screen for the need for an appropriate assessment under regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. 477 of 2011), which provides:

> '*A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site*.'

The European Court of Justice (ECJ) has interpreted this screening requirement very broadly, and regulation 42 must by law be read in light of this interpretation. That is, the ECJ held, in Case C-127/02 (emphasis added):

> '*any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or* ***in combination with other plans or projects***.' (emphasis added)

In addition to a determination as to whether the development would have an adverse impact on the integrity of the European Sites, the AA:

> a) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development, which can, by itself or **in combination** with other plans or projects, affect the European Site. This requires both examination and analysis;
>
> b) Must contain complete, precise and definitive findings and conclusions and **may not have lacunae or gaps**. This requires analysis, evaluation and decisions in light of the best scientific knowledge in the field;
>
> c) May only include a determination that the proposed development will not adversely affect the integrity of any European Site where, on the basis of **complete, precise and definitive findings** and conclusions made, and when no reasonable scientific doubt remains as to the absence of identified potential effects.

Cumulative impact is an integral part of screening. An Taisce feel that with the omission of any abstractions below $25m^3$ this cannot be adequately assessed, and we would highlight the need for a thorough catchment wide knowledge and assessment of abstraction, with sufficient temporal, spatial and quantitative details to properly assess any potential impact. The cumulative effects of plans and projects must be taken into account when considering

whether the effect of the plan or project would be likely to be significant. MN2000 and the DEHLG Guidance advise that the authorities should consider the cumulative impact of plans or projects which are completed, those which have been approved but not completed and those proposed (but not yet approved).

Thus, An Taisce submit, that without detailed knowledge of all abstraction points within and surrounding a Natura site, particularly those which are hydrologically connected to water dependant Natura sites and species, there will most certainly be lacunae in the data, and the findings cannot be precise and definitive. The precautionary principle would provide for the refusal of any abstraction within these areas based on the lack of complete cumulative assessment. To permit abstraction within this areas based on an incomplete screening would be in contravention of the Habitats Directive.

b. Environmental Impact Assessment Report (EIAR)

An Taisce submit that larger abstractions should be screened under the EIA Directive, including those that are sub-threshold. Similar to the above section, cumulative impact is an integral part of EIAR, and the sensitivity of the environment, and number of established or proposed abstraction points should inform the need for such a screening.

Article 4 of the EIA Directive provides for circumstances where an EIAR should be submitted. The principle legal instrument in the planning context implementing Article 4 of the EIA Directive is the Planning and Development At 2000 (as amended) (PDA). By virtue of Section 172(1) of the PDA, certain projects will be subject to EIAR prior to consent. An EIAR is mandatory for activities listed under Annex I of the Directive. Activities listed in Annex II are subject to a screening procedure. Annex I and Annex II of the Directive are transposed into Schedule 5, Part I and Schedule 5, Part II of the Planning and Development Regulations (PDR) respectively.

Part 10, Article 103 of the PDR provides for the requirement to submit EIAR with sub threshold planning application:

> *'Where a planning application for sub-threshold development is not accompanied by an EIAR, the planning authority shall carry out a preliminary examination of, at the least, the nature, size or location of the development.'*

And Article 103 (1) (b) outlines that:

> *'Where the planning authority concludes, based on such preliminary examination, that— […](ii) there is significant and realistic doubt in regard to the likelihood of significant effects on the environment arising from the proposed development, it shall, by notice in writing served on the applicant, require the applicant to submit to the authority the information specified in* ***Schedule 7A*** *for the purposes of a screening determination unless the applicant has already provided such information, or […]'* (Emphasis added)

And Schedule 7 outlines the need for a cumulative assessment in these EIARs:

> "*The characteristics of proposed development, in particular—[…]* ***cumulation*** *with other existing development and/or development the subject of a consent for proposed development for the purposes of section 172(1A)(b) of the Act and/or development the subject of any development consent for the purposes of the Environmental Impact Assessment Directive by or under any other enactment"* (emphasis added)

In order to aid the relevant authorities and/or ABP in carrying out a full assessment in accordance with the provisions for the Habitats Directive and the EIA Directive, a publicly available list of registered abstraction projects and their locations and extent of works should be available. This list should comprise of projects which are ongoing, those which have been approved but not commenced, and those proposed but not yet approved. As already outlined, a layer should be created and added to the EPA interactive spatial mapping tool to assess the cumulative effects of plans and projects to aid planning authorities and An Bord Pleanala in

carrying out their function. As outlined above, in regard to cumulative assessment for an Appropriate Assessment, An Taisce submit that the current 25 m^3 threshold does not allow for a sufficiently conclusive cumulative assessment under the requirements of the EIA Directive either.

5. Recommendations

The system in place in both Scotland and Northern Ireland offers a fully functioning and appropriate model around which the Irish system could be based. An Taisce would strongly recommend that these models be given due consideration, and that the following points be essential elements of any abstraction legislation:

- All abstractions must be metered, to keep a record of the volume of water abstracted over any given time period and for regulatory control
- Abstractions over 10 m^3 should be registered, and authorised in line with the regulations in Northern Ireland and Scotland, and the requirements under the WFD
- The process of registration should be straightforward, and modelled on the system used in Northern Ireland, with the use of a web portal
- The data should be publicly accessible, as is the case in Northern Ireland and Scotland. This would also enable prescribed bodies, like An Taisce, to properly review the potential impact caused by proposed projects.
- A GIS database should be established, and constantly updated, reflecting the current rates and quantum of abstraction, points of extraction, and the areas at risk of over-extraction. Any authorisation of abstraction should be carried out in consultation with these data. This is imperative for fulfilling the requirement under the Habitats and EIA Directives to assess cumulative impact
- Licensing should be reactive and risk based, and reflective of the predicted future drought situations as a result of climate change

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