

Irish Congress of Trade Unions

Submission to the Expert Water Commission

September 2016

1. Introduction

1.1 The establishment of the Expert Water Commission presents an opportunity for the issues that have arisen in relation to water services to be assessed and Congress acknowledges the opportunity to make a submission for consideration by the Commission.

1.2 We will focus on four main areas as follows:

- *The necessity to recognise water as a ‘public good’ with access treated as a fundamental human right. This means that water cannot be considered as a commodity;*
- *The need for a National Water Utility to oversee the delivery of water services and implement the programme of capital investment required to upgrade and modernise the water infrastructure;*
- *The necessity to ensure that the utility is publicly owned and to provide assurances that it cannot be sold or privatised;*
- *How the future funding of the sector should be organised.*

1.3 While it can be argued that some of the issues raised in this submission are beyond the Commission’s terms of reference we are strongly of the view that they should be considered in order to help build a consensus on the future organisation of water services in this jurisdiction.

2. Water is a Public Good

2.1 The starting point in any debate on how water services are to be delivered and funded must be the acceptance that water is a valuable public good. The United Nations Committee on Economic, Cultural & Social Rights is clear in its view that access to water is a human right and a social good. A public statement from the UN Committee, in November 2012, reaffirmed the position that water is a limited natural resource and a public commodity which is fundamental to life and health.¹

¹ Geneva, 28th November 2002.

- 2.2 Acceptance of these principles means that the delivery of water services must be organised in manner that ensures each citizen is guaranteed access to a free and adequate supply of clean water for daily use, along with a system for safe and sustainable disposal of waste water.
- 2.3 It further requires that policy is directed towards ensuring this valuable and scarce resource is not wasted and that there are strong measures enacted to promote conservation.

3. A National Water Utility

- 3.1 In accepting that water is a public good it follows that the production, supply and control of water and waste water services should remain in public ownership.
- 3.2 Central to the most recent reforms was the transfer of responsibility for the delivery of water services and the ownership of the water distribution assets, to Irish Water. This gave Irish Water responsibility for the running of water services in tandem with prioritising and planning capital investment. In discharging its responsibility to deliver water services Irish Water has entered into service level agreements with each Local Authority, for an initial period of 12 years. This has meant that the work of delivering water services continues to be carried out primarily by public sector employees.
- 3.3 However the decision to establish Irish Water as a commercial utility has created a strong suspicion that the ultimate goal is the privatisation of the company and the sale of water distribution assets to private concerns. This is precisely what happened with *Eircom* in the 1990s.
- 3.4 Congress believes there is a compelling case for a national, publicly owned water utility. One of the main reasons for the inadequacy of the current water distribution system was the failure over many decades to approach the organisation of water services from an overall national perspective.
- 3.5 In a Congress submission² to the Department of Community, Environment & Local Government in March 2012, we argued for the

² Secure Supply? The Future of the Irish Water Sector. A copy of the document can be obtained at this link <http://www.ictu.ie/publications/fulllist/water-report-march-2012/>

establishment of just such an entity. We argued that it should have a strategic role in planning the development of the water sector along with a role in overseeing the work of the various Local Authorities.

- 3.6 Through legislation it would be possible to reshape the mandate of Irish Water and put in place governance structures that would allow citizens to have confidence that its main objective is the modernisation of the water system, bringing it up to the highest possible standard and thereafter maintaining it at that level, while protecting public sector jobs.
- 3.7 The Commission's terms of reference also require consideration of the role of the regulator. Irish water is currently regulated by the Commission for Energy Regulation (CER). The CER has a statutory role in approving the costs that Irish Water can incur and was involved in the setting of the price of water, until this role was suspended by the Oireachtas. By virtue of Section 7 of the Water Services Act (2014), the Public Water Forum (PWF) was established. The PWF is made up of domestic water users and representatives of various national organisations. The primary role of the PWF is to represent the interests of Irish Water customers. There is also a proposal to establish an External Advisory Body which will oversee the work of Irish Water and make regular reports to the Oireachtas. It is obvious that there is considerable overlap between the roles of these bodies and the Expert Commission will be required to recommend the appropriate governance arrangements to be put in place for the future. As we have outlined in paragraph 3.4 above, we support a publicly owned national water utility and believe there should be appropriate governance arrangements in place to ensure that it operates in an efficient and transparent manner.
- 3.7 A further building block in securing citizen support for a national water utility is to bring forward proposals that can prevent the entity from ever being sold off or privatised. We deal with this issue in the next section of this submission.

4. Public Ownership of the Public Water System.

- 4.1 A key reason for the failure of the most recent reforms of the water sector to win significant public support was the widely held suspicion that it was simply a stepping stone to privatisation.
- 4.2 We referred in paragraph 3.5 above to a submission made by Congress in March 2012. In that submission we called on government to ensure that they took measures to ensure that the public water system remained in public ownership. However they failed to address these concerns.
- 4.3 In 2014 the government did enact the Water Services Act (2014). Section 2 of this legislation requires that any proposal to dispose of Irish Water must be approved by both houses of the Oireachtas and in a plebiscite.
- 4.4 Critics of this legislation point out that any future government wishing to privatise Irish Water could simply repeal Section 2 of the 2014 Act in order to avoid having to hold a plebiscite.
- 4.5 We believe that in order to build a consensus around a reformed public water system it is vital to create confidence that the public water system cannot be privatised by any future government.
- 4.6 Congress has obtained legal advice on this issue and understands it would be possible to hold a referendum to amend the Irish Constitution to prevent a disposal by any future government, of the public water system. Although more detailed work is required to identify the appropriate article of the Constitution to amend and the precise wording of any such amendment, there is no legal constraint to the holding of such a referendum and we are of the view that this should be expedited.

5. Future Funding of the Sector.

- 5.1 One of the central issues that falls for consideration of the Commission is how the sector is to be funded.
- 5.2 The decision to levy charges on domestic users of water was never popular, was resisted by many and became a major subject of debate in political discourse over recent years.

5.3 We referred in paragraph 3.5 and paragraph 4.2 to an earlier Congress submission on the reform of the water sector. In that submission we cautioned that ***“if domestic water charges are introduced in isolation and not as part of a wider plan to broaden the tax base in a progressive way it will not attract wide public support.”*** This view was confirmed when a motion was passed at the 2015 Congress Biennial Delegate Conference (BDC) calling on Congress to oppose domestic water charges. It is clear to Congress that it will not be possible to win support for the re-introduction of the now suspended system of domestic water charges.

5.4 However what must be resolved is how the sector will be funded in the future. This is critical, not least because of the massive programme of capital works required to modernise the public water infrastructure.

5.5 Irish Water currently has two sources of income, as follows:

- income derived from charges levied on commercial users; and
- the direct subvention provided from central government funding.

5.6 It is possible to increase the income stream from commercial users by improving the rate of collection, but also by levying the full economic cost of production of water to commercial users. This income could in turn be used to allow for a national water utility to borrow money or raise bonds.

5.7 However this of itself will not be sufficient and the balance of the monies required will need to be raised through the general system of taxation. The precise details of such measures may become more apparent if and when the future ownership of the national water system has been clarified.

6. Conclusion

6.1 Congress acknowledges the opportunity to make a submission to the Expert Water Commission.

6.2 We believe that water should be accepted as a public good, essential to human life and access to which is a fundamental human right.

- 6.3 We strongly support the concept of a publicly owned national water utility, staffed by public sector employees with the appropriate oversight and governance arrangements.
- 6.4 We believe that a constitutional referendum should be held in the near future, the precise wording of which must provide that control of the water distribution system remains in public ownership.
- 6.5 The future funding of the system, while a difficult issue to resolve should prioritise maximising the revenue from commercial users. Central government funding will also be required to meet whatever additional costs are incurred. However the precise details of such measures may become more apparent if and when the future ownership of the national water system has been clarified.