



To: Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils,
Senior Planners, City and County Councils,
Directors of Regional Assemblies,
An Bord Pleanála.

Circular Letter PL 02/2019

19 March, 2019

Re: Provision of Security provided under section 34(g) of the Planning and Development Act 2000 (as amended) for the satisfactory completion of developments and application of Irish Water's Connection Charging Policy

I am directed by Mr. Eoghan Murphy, T.D., Minister for Housing, Planning and Local Government to advise planning authorities in relation to new arrangements that are to come into force from 1st April 2019 concerning securities for the satisfactory completion of developments, including bonds, and the application of Irish Water's Connection Charging Policy as regards such matters. This Circular complements and adds to previous circulars PD 1/08, PL 11/2013, PL 21/2013 and PL 5/2014 on this matter.

Purpose of this Circular

This circular letter sets out the procedures for planning authorities in relation to grants of planning permission from 1st **April 2019** that include conditions relating to the giving of a security for the satisfactory completion of development to be connected to public water supply and/or wastewater collection systems.

Irish Water's Connection Charging Policy was approved by the Commission for Regulation of Utilities (CRU) on the 18th December 2018 and sets out the utility's infrastructure and connection charging structure in relation to its customers connecting to public water and wastewater networks. The charging policy includes certain provisions in relation to sureties that will ensure water services networks are delivered to the standards required by Irish Water before they are allowed to connect to its networks and form part of the national water services infrastructure network. Irish Water consulted separately with the CRU to determine the appropriate level of surety for different water services assets.





This circular adds to previous policy guidance issued by the Department under Circular Letters PD 1/08 and PL 5/14 in relation to taking in charge policy, Circular PL 11/2013 on the provision of security provided under section 34(g) of the Planning & Development Act 2000 (as amended) and Circular Letter PL 21/2013, Transfer of Water Service Functions to Irish Water.

Planning authorities will be aware that procedures for the transfer to Irish Water of water and wastewater infrastructure located in residential estates taken in charge by planning authorities are set out in the Water Services (No. 2) Act 2013.

Planning Securities/Bonds

Given the approval of Irish Water's Connection Charging Policy by CRU as outlined above, planning authorities are advised that from the 1st April 2019, **it will no longer be necessary to include conditions in a grant of planning permission requiring bonds and / or cash securities in respect of water supply and waste water collection infrastructure** that are to be vested in Irish Water.

As and from the 1st April 2019, IW will apply a Self-Lay Financial Security through its Connection Agreements in respect of connection applications for water supply and wastewater collection infrastructure for developments approved by a grant of planning permission, where that application is made to the relevant planning authority on or after the 1st of April 2019.

With respect to developments that have applied for and received planning permission prior to 1st April 2019, IW will also apply a Self-Lay Financial Security. In such cases, developers may apply to the planning authority to review their development bond requirements for the element of the security which relates to the water supply and wastewater collection infrastructure.

A summary of these arrangements is set out below, which have been developed to ensure a rigorous approach so that water services laid by developers meet required standards before connection to public water services operated by Irish Water as well as appropriate enforcement measures by Irish Water in circumstances of non-compliance.

Complementing Irish Water's Connection Charging Policy, any grant of planning permission or approval pursuant to the Planning and Development Act 2000 (as amended) requiring direct and



indirect connection(s) to water services infrastructure must include a condition requiring the applicant or developer to enter into a connection agreement(s) with Irish Water prior to the commencement of development.

Where phased or multiple connections are proposed or connection is to either the water supply or wastewater collection network, the condition should be adapted as appropriate. The granting of a water supply or wastewater connection agreement is a matter for Irish Water as in other analogous utility connection consent arrangements.

The planning condition to be included in this regard should read as follows:

“The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.”

Planning authorities are to continue to apply appropriate levels of financial security for the provision of roads, footpaths, open spaces and amenities, car parks, public lighting and surface water drainage systems to ensure satisfactory completion of non water-services related infrastructure.

Appendix A sets out the Irish Water Connection Guide for Developers.

Transitional Arrangements

Bonds and/or cash securities applied to planning permissions granted prior to 1st April 2019 will continue to be held by the relevant planning authority. Where enforcement and compliance issues arise in relation to water services infrastructure constructed on foot of permissions granted prior to 1st April 2019, it will remain a matter for the relevant planning authority to investigate and enforce the matter, including considering the application of a proportion of the bond or cash security to rectify defects.

However, where Irish Water has issued a Self-Lay Connection Agreement prior to 1st April 2019 for developments which have received planning permission prior to this date, enforcement and compliance issues will be managed by Irish Water and the vesting of water supply and waste water collection infrastructure in Irish Water will occur at the time of their connection to the public network(s). For these developments, Irish Water will rely on the planning authority’s financial security for the satisfactory completion of the water and wastewater services infrastructure to be connected to public network systems.



Effective enforcement of permissions approved before the 1st April 2019 requires close co-operation between personnel from the relevant local authority and Irish Water in identifying the relevant issues and potential solutions.

Where a development has obtained planning prior to the 1st April 2019 and Irish Water issues a Self-Lay Connection Agreement after the 1st April 2019, enforcement and compliance issues will be managed by Irish Water and the vesting of water supply and waste water collection infrastructure in Irish Water will occur at the time of their connection to the public network(s). As outlined above, developers may apply to the planning authority to review the development bond requirement associated with their planning permission for the element of the security which relates to the water supply and wastewater collection infrastructure.

As regards the application of any bonds or securities to resolve defects in a particular development, an equitable approach must be applied in relation to the allocation of funding across all infrastructure categories (roads, public lighting, open spaces, water services etc.) to ensure the integrity of water services assets when the development is taken in charge.

The Department's Circular Letters PL21/13 and PL5/14 and the Draft Water Services Guidelines for Planning Authorities (as already issued under Section 28) address the issues of bonds and cash securities applied to permissions granted before April 2019.

Irish Waters Self-Lay Financial Security Arrangements

An outline of Irish Water's Self-Lay Financial Security Arrangements for vesting assets is set out below:

- Standard Residential Connection in a Development
 - A risk exposure of **€1,125** per dwelling has been set as the proportionate value as financial security for a standard connection to a unit (detached or semidetached house) within a development.
 - Where only one service (either water or wastewater) is being connected, the level of security will be reduced by 50% (i.e. €562 per unit).
- Apartment and Duplex Development
 - A risk exposure of **€750** per dwelling has been set as the proportionate value as financial security for a standard connection to an apartment or duplex unit within a development.



- Where only one service (either water or wastewater) is being connected, the level of security will be reduced by 50% (i.e. €375 per apartment or duplex unit).
- In addition to the risk exposures outlined above for the water supply and wastewater collection infrastructure within the development, an additional risk exposure for pump stations (this includes other stand-alone infrastructure facilities) in a development will apply as follows:
 - up to 40% of the total cost of the pump station or stand-alone infrastructure for the duration of the defects liability period; and/or
 - up to 100% of the annual estimated cost of operation and maintenance of these facilities for the duration of the defects liability period,

(where 'defects liability period' is the period specified in the relevant connection agreement (typically twelve months) during which the developer/applicant will remain responsible for remedying any defects arising).

Irish Water's Connection Charging Policy is published on Irish Water's website and can be accessed at <https://www.water.ie/connections/information/connection-charges/>

Irish Water's Quality Assurance

Irish Water's quality assurance procedures involve on-site inspection of the water supply and waste water collection infrastructure by its field engineering teams or its agents during construction and within the defects liability period. This is provided for through the connection agreement which will also apply a defects liability period (typically twelve months) after the infrastructure is connected to the public network(s).

If defects are found in the water supply and waste water collection infrastructure during the defects liability period, the developer will, in the first instance, be given an opportunity to rectify the defects. If the developer does not remedy the defects, Irish Water will undertake the defects remediation and will recover the cost of these works from the Irish Water Financial Security. At the end of the defects liability period, the Financial Security, or balance thereof, will be returned to the developer.

Position regarding taking in charge of water services infrastructure

As stated in Circular Letter PL 21/2013, the powers and functions relating to the provision of water services (with certain limited exceptions) under Section 180(4) of the Planning and Development Act 2000 (as amended) were transferred to Irish Water from local authorities.



This was in accordance with Section 7 of the Water Services (No.2) Act 2013. It is important to note that the Act did not change the definition of a “water services authority” in the Water Services Act 2007 and accordingly, local authorities remain as water service authorities (with certain water services functions).

Therefore, the obligations on planning authorities to initiate taking in charge procedures under section 180(1) and (2) remain, and subsection (4) also remains which provides that when an order is made under section 11 of the Roads Act in compliance with subsection (1) or (2), the planning authority, when taking an estate in charge pursuant to S.180(1) and 180(2), shall take in charge “*any sewers, water mains or service connections within the attendant grounds of the development*”.

Irish Water’s Connection Charging Policy does not change the position in respect of a Planning Authority’s taking in charge functions.

When water services infrastructure is taken in charge by a planning authority pursuant to section 180 of the Planning and Development Act 2000, the water services legislation provides that it will be subsequently transferred to Irish Water by Ministerial Order.

Where a development is the subject of an Irish Water Self-Lay Connection Agreement, the water supply and wastewater collection infrastructure within the development will vest directly in Irish Water at the time of its connection to the public networks.

Water Services Guidelines for Planning Authorities, 2019

Draft Water Services Guidelines have already issued to planning authorities under Section 28 of the Planning and Development Act 2000 (as amended). These Guidelines provide best practice guidance in relation to the interface between the planning and development functions provided by planning authorities and the delivery of public water services by Irish Water. The Final Guidelines will issue shortly.

Any queries in relation to the content of this Circular letter may be addressed Colin Ryan, Senior Adviser (colin.ryan@housing.gov.ie, tel no 01 888 2810) or to Laura Courtney, Planning Adviser (laura.courtney@housing.gov.ie, tel no 01 888 2203).



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