

Irish Water's Non-Domestic Tariff Framework: Tariff Application Rules

April 2020

Overview:

Chambers Ireland is a business representative network with a presence in every major town and city in the country. Our member chambers are active in every constituency in the country and draw a membership which ranges in scale from the very largest multi-national enterprises companies right the way down to sole traders.

With regard to the supply of water and waste-water services, the primary concern of our network centres around security of supply. There are many parts of the country where the supply of water is not sufficiently robust to ensure that there is no interruption of services. In other parts of the country, limitations on wastewater capacity are restricting development of homes, of business development, and are restricting the investment which can be made.

The infrastructural capacity of Irish Water is a limiting factor on our country's economic development, and our network hopes that the legacy service and infrastructural capacity bottlenecks can be removed at the earliest opportunity.

Simultaneously the businesses from which our network is formed are the payees of the non-domestic tariffs to Irish Water and it is vital that they are not overburdened with the costs of upgrading the Irish Water infrastructure to the level which is appropriate to our stage of economic development.

Therefore, our approach to the Irish Water Revenue Control 3 (RC3) consultation process has been to support the building and expansion of the necessary water infrastructure, within the context of appropriate cost control measures.

In our [earlier submission](#) on RC3¹ we argued we need to have a water network that is resilient to shocks; a water network that is robust. The element of this robustness that relates to infrastructure strongly suggests that there ought to be a degree of excess capacity in the water network to smooth out those periods where shocks to the system occur. Having spare capacity may in the short-run increase costs for the consumer but will obviate the costs associated with the beyond the normal range shocks that a system like a water supply system is inevitably going to experience.

¹ <https://www.chambers.ie/wp-content/uploads/2019/09/Chambers-Ireland-Health-and-Climate-Change-Submission-September-2019.pdf>

Given our network's concerns regarding climate change, and the impact on our water networks that an increased frequency of extremities of weather will have upon these water networks, it is clear that these systems will need sufficient degrees of freedom within them to allow for flexibility in the face of weather shocks if consumers are not to suffer from the exceptional costs associated with insufficient supply.

We do not underestimate the challenge that the Commission faces in balancing these concerns, in particular the challenge implicit in setting the assumptions that are made with regard to what the 'normal' operating environments for our utilities are.

Just as an overinvestment in capital creates excess costs for both suppliers and consumers, efficiencies can too create a less than optimal outcome for both consumers and suppliers - where they create rigidities which make these utilities vulnerable to shocks.

Focusing on the specifics of this consultation, it is useful to consider how far outside the range of normal expectations the Covid-19 crisis has drawn our economy and how that impacts the assumptions which underly the issues of appropriate tariff bands, and leakage.

The CRU's proposals regarding Annual Quantity/transitioning of connections between tariff classes, and the leakage allowances are all arguably more favourable to Irish Water than the non-domestic users, relative to Irish Water's own proposals.

In an ideal world they may be the perfect recommendations for operating a water utility, unfortunately the experience of businesses over the last month, and over the next as yet undetermined period of time, suggests that they may be insufficient to the challenges we face.

Many businesses will not be using the typical quantities of water which they would be expecting to use at the moment. This could force a considerable number onto an inappropriate tariff, creating a scenario where these businesses will have to challenge and justify the change in tariff. Given that that will be occurring in tandem with the CR3 changes in tariff prices this runs the risk of undermining the process. Strict application of the assigned tariff class, as the Commission proposes, could impose an undue burden on struggling businesses. Many businesses will find that they will have to open up new lines of enterprise, or close sections of activity, as a result of their response to the Covid-19 crisis, or as a result of the economic upheavals that we can reasonably expect as a result of the crisis. Even what ought to be a simple matter, such as discovering and fixing a leak may be impossible to remedy over the coming months.

Chambers Ireland therefore urges the Commission to reconsider, and accept, Irish Water's initial proposals on the Tariff Application Rules as they will allow for a more flexible, and more common-sense, approach to these problems.

Rules for Assigning Connections to a Tariff Class:

Question 1: Given that the issues discussed under Topic 1 should be remedied in three years' time when the tariff rates under the Non-Domestic Tariff Framework are revised, do you think that targeted tariff application rules should be introduced to cover the intervening period? Or do you think that no such rules are necessary?

Please provide rationale for your answer.

Chambers Ireland believes that it will be necessary to have targeted tariff application rules. All else being equal Chambers Ireland would hold that it will be important to allow for flexibility at the margins so that edge cases (like those that arise in the hinterland of different tariff boundaries) can be accommodated.

This is all the more pressing as a result of the Covid-19 crisis. The impact of closures on the activity, and the viability, of many businesses has yet to be assessed. These closures will have consequences for the Annual Quantities consumed by businesses across the country which will have a direct impact on the revenue which Irish Water will accrue in 2020, but will also have consequences for the tariff band that businesses will find themselves in in 2021.

It is essential that the Commission allows for there to be appropriate flexibility with regard to the tariff classes that businesses will be allocated into, and that Irish Water will be free to allow businesses which find themselves in an inappropriate band to transition in as simple a way as possible.

Given the degree of economic disruption that is underway, the Commission should consider requiring Irish Water to calculate the appropriate charge across all tariff classes and then invoice the business for the lowest amount.

We feel that with the reduced consumption this year, the Commission's proposals, as is, would place many business users in a tariff class which is inappropriate to their actual consumption as it would be allocated to the class appropriate to last year's consumption levels.

The Commission's proposals would put the onus on the business to challenge the class they have been allocated to and Irish Water would have no discretion to be flexible about this. And then next year, when everything hopefully returns to normal, as a result of next year's automatic tariff classification being based on actual consumption this year, all these businesses would have to go through the process of challenging their bills again.

Given the exceptional circumstances of the moment, Chambers Ireland argues that for the duration of RC3 businesses would be charged the lowest rate for their actual annual consumption in whatever tariff class is most optimal for their actual consumption.

Any alternative would be burdensome for the consumers and will be an administrative challenge for Irish Water, and worse would undermine the legitimacy of both the Commission and the process which led to the creation of these tariff classes if there is a sense that it is inequitable.

Question 2: Do you agree with the CRU's or Irish Water's proposed policy approach for dealing with disputed assigned AQ?

Please provide rationale for your answer. If you disagree with both approaches, please provide an alternative approach that you think would be better.

Chambers Ireland believes that the Commission's proposals are too rigid and inflexible, consequently we cannot agree with the CRU's proposal, and would therefore support Irish Water's proposals.

We are at the beginning of an economic shock of indefinite duration, the regulator ought to be requiring the maximum amount of flexibility not limiting it.

Question 3: Do you agree with the CRU's or Irish Water's proposed policy approach regarding how a connection is assigned to a tariff class?

Please provide rationale for your answer. If you disagree with both approaches, please provide an alternative approach that you think would be better.

Chambers Ireland supports, at a minimum, Irish Water's proposals that non-domestic users which are within a range of a tariff boundary should be permitted to select the tariff range which they believe is appropriate for their business. Given the closures

associated with the Covid-19 crisis, the range should be increased from the 5% band that Irish Water initially suggested.

Question 4: Do you agree with the CRU's or Irish Water's proposed policy approach regarding connections that reduce their annual water use (or wastewater discharge for wastewater only connections), move tariff class and face an increased annual bill?

Please provide rationale for your answer. If you disagree with both approaches, please provide an alternative approach that you think would be better.

Chambers Ireland argues that as a result of the increased economic uncertainty as a result of the Covid-19 crisis that for the duration of RC3 period that the default approach that Irish Water should take is that if a transition from one tariff class to another would result in an increase in charges to a business for the same volume of water used, then that change in tariff class should not occur.

Question 5: Do you agree with the CRU's or Irish Water's proposed policy approach regarding connections that increase their annual water use (or wastewater discharge for wastewater only connections), move tariff class and face an increase in their annual bill?

Please provide rationale for your answer. If you disagree with both approaches, please provide an alternative approach that you think would be better.

Chambers Ireland argues that the more flexible of the two approaches - the Irish Water proposals - should be considered the more appropriate tariff regime given the circumstances that have arisen out of the Covid-19 crisis. The range from the boundary where no-fault transition from one tariff rate to another ought to be increased beyond the 5% which Irish Water's original suggestion.

Question 6: If a transitioning connection increases its water use (or wastewater discharge for wastewater only connections) and moves tariff class and faces an increased annual bill on the enduring rates of its new tariff class, should this connection be treated differently to connections on enduring tariffs and continue to be given the benefit and protection of a glide-path to its new enduring tariff rates or should it move straight to the enduring tariff rates of the new tariff class?

Do you agree with the CRU's proposed policy approach (i), CRU's proposed policy approach (ii) or Irish Water's proposed policy approach regarding this scenario?

Please provide rationale for your answer. If you disagree with all approaches, please provide an alternative approach that you think would be better.

Chambers Ireland supports Irish Water's approach which endeavours to avoid bill shock for the non-domestic consumer, it can take considerable time and investment, to accommodate alterations to business practice and a concern of our network is that the consequence of the CRU's proposals would be contrary to the sustainability of businesses which are already undergoing considerable stress. The likelihood is that many businesses will be struggling to survive over the next 12-24 months, and that the only way for them to avoid these increased tariffs will be to make investments in the short-term, while their business survival is still precarious, that can only see returns in the long run. As a result, it is unlikely that the effect the Commission aims to achieve will be attained, and instead struggling businesses will find their margins reduced.

Question 7: Do you think that the connections covered by Question 4 should have to request to stay on their previously assigned tariff rates, or should they stay automatically?

Please provide rationale for your answer.

It is Chambers Ireland's position that the default principle ought to be that if a business reduces their consumption of water, then their bill should ideally decrease, or at a minimum, not increase – any regulatory regime which creates perverse incentives such that waste is incentivised should be reconsidered.

Leaks:

Choosing between Option 3 and Option 4

The key question in relation to Irish Water's enduring leak allowance policy regards who should take on the financial risk of leaks that are on the customer-side of a non-domestic meter, i.e. should the financial risk be:

- a) placed on all non-domestic connections equally;
- b) placed entirely on non-domestic connections with a leak; or
- c) shared between non-domestic connections with a leak and all other non-domestic connections, with connections with a leak covering a larger share of the cost.

Question 1: Do you agree, in principle, that leak allowances should be offered to non-domestic connections? Or do you think that leak allowances should not be granted and that non-domestic connections should pay for their metered water use regardless of leaks? Please explain your reasoning.

The assumptions which are implicit under the CRU's proposals is that it is reasonable that a business would be alert to the presence of a leak, and that it is possible to readily remedy such a leak upon becoming aware of this.

There are profound issues with these assumptions under the current circumstances. With many businesses shut in response to a government directive it is likely that many leaks are ongoing undetected at present, and when it is revealed to the businesses that that are occurring, it may not be possible to have someone fix said leak. Even where it will be possible to find people to remedy the leak, problems around cashflow and credit may make it difficult or impossible to have the leak remedied, particularly when a business is closed, there is no revenue, and lines of credit are absent.

The present circumstances of the Covid-19 crisis demonstrate that the approach of the Commission, while optimal in an ideal world, is too removed from the practicalities of the moment and therefore **Chambers Ireland suggests that the recommended approach returns to Irish Water's proposed leak allowance policy** (Option 2).

The present circumstances are complex, and it is clear that there are occasions where it is inappropriate to place the entirety of the risk on the non-domestic sector.

Question 2: Do you think that the time limits proposed by Irish Water, outlined below, are reasonable?

(a) The maximum period over which the leaked water volume will be calculated for the purpose of calculating the leak allowance will be limited to the billing period of the bill where the leak was first evidenced, plus a maximum of six months to allow a customer identify the leak and notify Irish Water plus a further maximum of six weeks to fix the leak (noting that the six weeks to fix the leak may be extended by Irish Water in extenuating circumstances); and

(b) The period over which the leaked water volume is calculated will be limited to a maximum of six months plus six weeks if the time limits in (a) are not met.

Please provide rationale for your answer.

Chambers Ireland position is that **for the duration of the CR3 period Irish Water's proposals on leaks ought to be considered as appropriate** to the circumstances. While it may seem to be unfavourable to those who are not the direct payees, in the case of the leak not being remedied in the appropriate period, any other water user who is not that particular payee with the leak could have undergone a similar experience and so could be the one who received the excess bill.

Given that many businesses are likely to be shuttered for a considerable time, over what might be a period that extends to 18 months, and where there may be start/stop interruptions of economic activity as a result of episodic waves of infection from the Covid-19 virus there are numerous valid circumstances where it might not be possible for a non-domestic consumer to remedy a leak within the period that the Commission would otherwise demand.

This demonstrates that there ought to be sufficient flexibility within the regulatory regime to account for reasonable, if perhaps unlikely, circumstances may arise.

Question 3: Which of the CRU proposed options below do you support where the time limits in question 2 above are not met?

(a) That the leak allowance will be calculated based on 50% of the leaked water volume, calculated over a maximum of six months plus six weeks; or

(b) That no leak allowances will be granted if the time limits are not met.

Please provide rationale for your answer.

Neither of the Commission's proposed options are equitable, as they are too rigid and deny the possibility that there may be valid reasons as to why these leaks may have remained without being fixed within the time frame that the Commission desires.

Question 4: Do you disagree with the CRU's proposals

(a) to limit the availability of self-certified leak allowances to one per customer per premises, for however long the customer occupies that premises; and/or

(b) that leak allowances should only be granted for leaks which occur on the external supply pipe, not for leaks on the internal pipework of a customer's premises?

Please provide rationale for your answer.

- a) While it is possible that there are bad faith actors that may be claiming multiple leak allowances in order to deprecate their bills, assuming that most non-domestic users will not engage in such activity, and given the very large numbers of customers which are involved, there is a far greater risk of doing harm to those that have through no fault had the bad luck to discover more than one leak over the lifetime of the premises that they are occupying.

Secondly there is underlying this proposal from the commission the suggestion that the commission believes that any given leak which occurs is independent of every other leak which happens. It would however seem likely that a premises where a leak has occurred (through whatever mechanism) is more likely to have another leak than another randomly selected premises; e.g. older buildings will be more likely to have complex plumbing and therefore more likely to have leaks occur within them, or, where leaks have occurred, say as a result of subsidence, the proximate cause of the leak may be impossible to remove.

- b) While it may be arguable that a leak may never be reasonable within the internal pipework of a customer's premises, the inflexibility that the Commission would require of Irish Water in this instance may not be reasonable in practice, given the complexity inherent in the variety of premises and circumstances that exist.

Chambers Ireland would be interested in understanding the frequency with which the Commission believe that either bad faith, or negligent behaviour, is associated with the claiming of leak allowances, and how the Commission came to that understanding.

Question 5: Are there any other conditions that you would like to see placed on the granting of leak allowances? If so, please explain your proposed condition(s) and explain how they would be beneficial.

Chambers Ireland is not in principle against the imposition of time/volumetric/economic/frequency of incidence limits on the granting of leak allowances, but remains against the imposition of inflexible requirements that may seem rational, but only because they are modelled on a set of normal assumptions which are not reasonable to the circumstances.

Discretion ought to be included within the application of the regulations that the Commission will require of Irish Water, along with a principle of fairness on how that discretion is applied. It is not likely that most businesses are acting in bad faith when it comes to the application of leak allowances, and where there is an issue with a particular non-domestic consumer, or premises, then Irish Water ought to be able to form the opinion that there is something abnormal occurring and then be able to apply more, or less, flexibility that it would ordinarily do as appropriate to the particular circumstances.