

Memorandum of Understanding between the Commission for Regulation of Utilities and the Environmental Protection Agency

October 2020

1. Objective and Scope of the Memorandum of Understanding

The objective of this Memorandum of Understanding (MoU) between the Commission for Regulation of Utilities (CRU) and the Environmental Protection Agency (EPA) is to facilitate co-operation and mutual assistance between the CRU and the EPA (the bodies) in the discharge of their respective statutory responsibilities in order to:

- enhance the actions of both bodies;
- avoid unnecessary duplication of effort;
- avoid the imposition of unnecessary regulatory burden;
- best promote the interests of customers of Irish Water and the efficient provision of water and waste water services¹;
- ensure, as far as practicable, consistency between decisions made or measures taken by the CRU and the EPA in relation to water and waste water services; and
- facilitate decarbonisation of the Irish economy.

Notwithstanding a commitment to co-operate generally, the specific focus of this MoU relates to co-operation and co-ordination of the regulation, research, provision of information or advice as appropriate, of the following:

- designated petroleum activities, petroleum undertakings, owners, operators or contractors²;
- electricity generation stations (combustion of fuels and waste incineration);
- practices involving radioactive substances, irradiating apparatus or other sources of ionising radiation or activities involving public exposure to non-ionising radiation;
- public water and waste water services; and
- energy matters and services relevant to the decarbonisation of the Irish economy, including the provision of advice or information to the public on decarbonisation options.

¹ As set out in the Water Services Act 2007, 'water services' here refers to both drinking water and waste water services.

² As defined in section 13A of the Electricity Regulation Act 1999 (as amended).

2. Statutory Responsibilities of EPA and CRU relevant to the scope of the MoU

a) EPA

The EPA is an independent public body established under the *Environmental Protection Agency Act 1992* as amended, with responsibility for the protection of the environment in Ireland. Its functions are mainly set out in the 1992 Act and the *Waste Management Act 1996* as amended, the *Waste Water Discharge (Authorisation) Regulations 2007* as amended, the *European Union (Drinking Water) Regulations 2014* as amended, the *Radiological Protection Act 1991* and the *Foreshore and Dumping at Sea (Amendment) Act, 2009*. Its mission statement is:

To protect and improve the environment as a valuable asset for the people of Ireland. To protect our people and the environment from harmful effects of radiation and pollution.

The EPA is specifically responsible for:

- Environmental Licensing;
- Enforcement of environmental law;
- National environmental policing;
- Monitoring, analysing and reporting on the environment;
- Regulating Ireland's greenhouse gas emissions;
- Environmental research and development;
- Strategic environmental assessment;
- Environmental planning, education and guidance;
- Proactive waste management, and
- Radiation protection.

The EPA has a broad range of environmental responsibilities, and its regulatory role with respect to petroleum exploration and extraction activities, electricity generating stations (combustion of fuels and waste incineration) and infrastructure is related to the granting of Volatile Organic Compound Emissions Permits and Waste, Integrated Pollution Control and Industrial Emissions Licences for those activities that fall within the scope of the *Environmental Protection Agency Act 1992, as amended* and the *Waste Management Act 1996, as amended*, and implementation of the EU Emissions Trading System for installations and aircraft operators falling within the scope of the ETS Directive³

The EPA also has a regulatory role with respect to the disposal of disused or abandoned offshore installations. Any person who wishes to dump material at sea, such as an offshore installation, must apply to the EPA for a Dumping at Sea permit under the *Foreshore and Dumping at Sea (Amendment) Act, 2009*. A petroleum processing facility may be subject to the EU Emissions

³ The Emissions Trading Directive (Directive 2003/87/EC as amended) established a scheme for greenhouse gas emission allowance trading within the European Union.

Trading Directive which requires monitoring and annual reporting of greenhouse gas emissions and surrendering of allowances to cover them.

The EPA's functions include the authorisation of practices involving radioactive substances, irradiating apparatus and other sources of ionising radiation. The EPA also prepares codes and regulations for the safe use of ionising radiation. In addition, the EPA provides information to the public on exposure to ionising as well as non-ionising radiation.

The EPA also holds a regulatory role in relation to the quality of water intended for human consumption supplied by Irish Water. The EPA monitors and audits drinking water treatment plants and can direct Irish Water to improve the management or quality of a public water supply. Under the *European Union (Drinking Water) Regulations 2014* as amended, Irish Water must notify the EPA of drinking water non-compliances or risks to public health from a public water supply. The EPA investigates any failures to meet the drinking water standards and ensures that necessary action is taken by Irish Water.

In addition, the EPA has a regulatory role with respect to the granting of Waste Water Discharge Authorisations (WWDA) to all discharges from agglomerations within the responsibility of Irish Water. Agglomerations with a population equivalent of more than 500 are required to hold a Waste Water Discharge Licence, whereas agglomerations with a population equivalent of less than 500 are required to hold a Certificate of Authorisation. Irish Water is the licensee for all WWDAs and the EPA is responsible for the enforcement of the conditions of these authorisations.

b) CRU

The CRU was established in 1999 and its role and functions have been expanded over time by legislation including the *Electricity Regulation Act 1999*, the *Gas Act 1976*, the *Gas (Interim) Regulation Act 2002*, the *Energy (Miscellaneous Provisions) Acts 2006 and 2012*, the *Energy Act 2016*, the *Petroleum (Exploration and Extraction) Safety Act 2010*, the *Petroleum (Exploration and Extraction) Safety Act 2015*, the *Water Services (No 2) Act 2013*, the *Water Services Act 2014*, the *Water Services Act 2017*, and related secondary legislation.

The CRU's mission is "*Protecting the public interest in water, energy and energy safety*". The CRU's 2019-2021 Strategic Plan envisions a secure, low carbon future.

The CRU has various safety and economic regulatory functions. These include the regulation of electricity and gas undertakings, where its role is to ensure electricity and natural gas are available at reasonable cost to Irish energy customers. The CRU is also overseeing the roll-out of the National Smart Metering Programme and is working to empower and engage energy consumers to participate in the decarbonisation agenda.

The CRU is responsible for the safety regulation of upstream petroleum activities carried out by petroleum undertakings, operators and owners. The CRU also regulates the safety of gas supply, transmission, distribution, storage and use of gas, and the registration of electrical contractors and gas installers.

In addition, the CRU is responsible for the economic regulation of Irish Water in the provision of water and waste water services to its customers.

The specific functions of the CRU which are particularly relevant to the scope of this MoU in relation to safety are:

- to regulate designated petroleum activities with respect to safety;
- to investigate and report to the Minister for the Environment, Climate and Communications on petroleum incidents;
- to monitor and enforce compliance by petroleum undertakings, operators and owners with their obligations;
- to assess, and where relevant accept or reject, safety cases and notifications submitted by operators and owners;
- to issue safety permits;
- to provide safety information to the public when appropriate;
- to carry out its objectives as competent authority, including:
 - to cooperate with other competent authorities and contact points in other Member States;
 - to jointly adopt measures with the competent authority of relevant Member States to prevent significant impact on the environment from potential major accident hazards;
 - the establishment of mechanisms for the confidential reporting of safety and environmental concerns relating to a designated petroleum activity and the investigation of such reports;
 - reporting to the European Commission on any investigation of petroleum incidents which resulted in an offshore major accident⁴;
 - requesting a report from a petroleum undertaking, operator or owner on the circumstances of any major accident in which they or their subsidiaries have been involved outside the European Union;
- to regulate natural gas undertakings with respect to safety including:

⁴ Section 13A of the Act (as amended by the Act of 2015) defines major accident in relation to petroleum infrastructure or petroleum activities as ' (a) an event involving an explosion, fire, loss of well control, or release of oil, gas or dangerous substances involving, or with a significant potential to cause, fatalities or serious personal injury, (b) an event leading to serious damage of petroleum infrastructure involving, or with a significant potential to cause, fatalities or serious personal injury, (c) any other event leading to fatalities or serious injury to multiple persons, or (d) any major environmental incident resulting from incidents referred to in paragraphs (a), (b) and (c) and which relates to petroleum activities carried out offshore.

- the injection of renewable natural gas into the natural gas distribution and transmission system. Gas flaring activities while not regulated by the CRU can take place at these injection points, and
- demonstration of the management of gas quality risks in the undertakings' safety cases. A change to the natural gas quality specification would require a material change to the undertakings' safety case and can result in differing greenhouse gas emissions.

The principal objective of the CRU in carrying out its safety functions is to protect the public by fostering and encouraging safety as respects the carrying on of designated petroleum activities, with the duty to perform its functions in the public interest and to do all things necessary and reasonable to further its objectives and exercise its powers. How the CRU discharges this petroleum safety regulatory role is set out in the regulatory document, Requirements of the Petroleum Safety Framework. The regulation of gas undertakings is set out in the CRU decision paper Gas Safety Regulatory Framework – High Level Approach.

Specific to its role as competent authority under Directive 2013/30/EU on the Safety of Offshore Oil and Gas Operations, the CRU's principal objective is the effective safety regulatory oversight of operator and owner compliance with the Act in reducing the risk and potential consequences (including major environmental incidents) of major accidents offshore to a level that is as low as is reasonably practicable.

The specific functions of the CRU which are particularly relevant to the scope of this MoU in relation to water and waste water services are:

- to approve or refuse to approve a water charges plan of Irish Water setting out charges to customers in relation to water and waste water services, taking account of the most recent Irish Water investment plan and the costs likely to be incurred by Irish Water in the performance of its functions;
- to approve or refuse to approve an agreement in relation to water charges made by Irish Water with a customer;
- to approve or refuse to approve a code of practice prepared by Irish Water providing for the standards in relation to the performance by Irish Water of its functions;
- to provide a dispute resolution service to customers of Irish Water regarding unresolved complaints relating to Irish Water.

The CRU's primary objective in carrying out these functions is to protect the interests of Irish Water's customers, whilst seeking to ensure that water and waste water services are delivered in a safe, secure and sustainable manner and that Irish Water operates in an economic and efficient manner. In addition, the CRU must have regard to the need to ensure that Irish Water performs its functions in a manner that will enable the achievement by the State of the environmental objectives of the Water Framework Directive and the recovery of costs of water and waste water services in accordance with Article 9 of that Directive.

3. Areas for Co-operation and Co-ordination

The EPA and the CRU will co-operate and co-ordinate activities in relation to:

- any facilities of a petroleum undertaking, owners, and operators or contractors that fall within the scope of Part IV of the *Environmental Protection Agency Act 1992 as amended*, including:
 - Onshore extraction facilities;
 - Onshore oil and gas refineries;
 - electricity generating stations (combustion of fuels and waste incineration);
- designated petroleum activities or contractors which are subject to Radiological Protection authorisations issued by the EPA;
- the performance of their respective functions in so far as they relate to the provision of public water and waste water services by Irish Water; and
- the performance of their respective functions in so far as they relate to the transition to a low carbon economy in Ireland.

The CRU and the EPA acknowledge the independent role and functions of the Water Advisory Body (the WAB), as set out in Part 7 of the Water Services Act 2017. The WAB includes an employee from both the CRU and the EPA, along with a representative of the Water Forum and two other ministerial appointees. The CRU and the EPA agree to cooperate with each other in a manner that best promotes the performance by the WAB of its functions. The Bodies recognise the potential for separate memoranda of understanding under that legislation.

In acknowledging each other's respective statutory responsibilities, functions and duties, both the CRU and the EPA will endeavour to liaise closely, and particularly in relation to the areas set out below:

a) Decarbonisation

The CRU and EPA will support each other and share information as appropriate as it relates to the decarbonisation of the Irish economy. This may include undertaking collaborative research, supporting public engagement through communication and understanding, and policy advice.

b) Safety Case Assessment

The CRU will consult with the EPA as part of the assessment of safety cases and safety case revisions for designated petroleum activities where the facility is also subject to regulation by the EPA.

c) *Audit and Inspections/Investigations*

The CRU will inform the EPA of upcoming audits and inspections/investigations for petroleum undertakings and operators where the facility is also subject to regulation by the EPA.

In relation to designated petroleum activities or contractors which are subject to Radiological Protection authorisations issued by the EPA, offshore inspections will be conducted by EPA when possible.

Opportunities for the CRU to accompany the EPA on audits and inspections of Irish Water drinking water and wastewater treatment plants, as well as offshore inspections, will be identified and availed of, where possible.

d) *Communication*

The CRU and the EPA agree to maintain a close relationship based on co-operation and consultation. Meetings between the CRU and the EPA will be held at least annually or more frequently as requested by either party. The meetings will be hosted and chaired in rotation by the CRU and the EPA.

Where through the course of its activities, the CRU becomes aware of a matter which is relevant to the functions of the EPA, it will inform the EPA. Similarly, where the EPA becomes aware of a matter which is relevant to the functions of the CRU, it will inform the CRU.

e) *Sharing of Information*

Insofar as is possible, and only where it is relevant, the CRU and EPA will share information relating to their respective responsibilities. This will include information regarding Irish Water's performance in the provision of water and waste water services to its customers and relevant energy related matters (e.g. smart metering) as appropriate.

In order to facilitate the purposes of this MoU the Bodies will provide each other with as full and open access as is possible to all information necessary or expedient. These exchanges may be subject to restrictions or requirements such as those relating to confidentiality, data protection or freedom of information requirements. The CRU and the EPA accept that it is for the body providing the information to state what, if any, restriction there is to be on its usage and that each body will treat the information it receives in accordance with any such restriction.

f) *Collaborative Research*

Where considered relevant and useful to their respective roles and responsibilities, the CRU and the EPA may agree to collaborate on supporting specific research activities, to include as may be decided, co-funding of such work. Proposals for areas of potential collaboration

may be brought for discussion to the annual review meeting referenced in clause 3(d), or as otherwise may be agreed by the respective appointed representatives.

g) General Consultation/Liaison Arrangements

The CRU and the EPA will consult with each other when either is engaged in producing guidelines or procedural documentation which is relevant to the implementation of their respective statutory functions. In developing such guidelines or procedural documentation efforts will be made through consultation to align the work of both Bodies to the greatest extent possible. Where consultation or interaction is required or mutually beneficial in the circumstances, responses will be submitted where possible within the scheduled timescale in order to allow for the orderly progression of the project/document in question.

Where requested by the EPA, and if within the general scope of the CRU's functions and in accordance with legal requirements on the disclosure and sharing of information held by the CRU, the CRU will provide assistance to the EPA on relevant technical matters.

Nominated points of contact will be identified in both Bodies, who will be responsible for managing communications in each of the above identified areas for co-operation and communication.

4. Review of Memorandum of Understanding

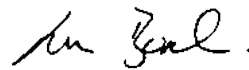
It is envisaged that the CRU and EPA representatives will review this MoU at least every three years from the date of its signing, or otherwise as requested by a party to the MoU, to monitor its relevance, effectiveness, operation, and, in particular, the cooperative measures and consultation established in the areas of shared or overlapping responsibility.

This MoU is effective from the date of signing by the CRU and the EPA. This MoU is not legally binding on the Bodies but rather is an expression of individual and collective commitment to work together in order to realise the shared objectives expressed herein.

We agree to sign this MoU by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of our intention to enter into this MoU as if signed manuscript signature.



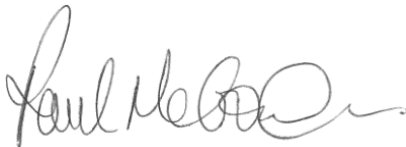
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