



Comhshaol, Pobal agus Rialtas Áitiúil  
Environment, Community and Local Government

To: Directors of Planning Services, City and County Councils

CC: Chief Executives, City and County Councils,  
An Bord Pleanála.

5 November, 2014

Circular Letter PL 5/2014

**Re: Matters related to the Taking in Charge of Residential Developments**

A Chara,

I am directed by Mr. Alan Kelly, T.D., Minister for the Environment, Community and Local Government to refer to section 180 of the Planning and Development Act 2000 which places certain legal obligations on planning authorities in relation to the taking in charge of residential developments.

**Purpose of this Circular**

This circular letter clarifies the position as regards local authority procedures concerning the taking in charge of existing residential estates that are connected to public water supply and/or wastewater collection systems followed by the transfer of water services infrastructural assets in agreement with Irish Water.

It adds to the previous policy guidance issued by the Department under Circular Letter PD 1/08 in relation to taking in charge policy and which was incorporated into the guidelines for planning authorities on sustainable urban development issued by the Minister in May 2009. **Circular Letter PL 21/2013**, Transfer of water service functions to Irish Water: planning issues, also refers.

It should also be noted that procedures for the transfer from local authorities to Irish Water of water and waste-water infrastructure located in residential estates which have been taken in charge by planning authorities is set out in the Water Services (No. 2) Act 2013, and work is underway to advance the transfer of such infrastructure by Ministerial Orders commencing later this year. This matter was the subject of a separate communication from the Department to local authorities recently.

**Circular PD 1/08**

The following summarises the most relevant provisions of this circular:

- In relation to those requests for taking in charge estates currently on hand where the planning permission has expired, planning authorities should as soon as possible, if they have not already done so, assess the condition of such estates.

- New requests for the taking in charge of estates must be promptly assessed and then dealt with in accordance with the following:
  - *Estates satisfactorily completed:* Where an estate is completed in accordance with the terms and conditions of the planning permission, it should be taken in charge without delay on foot of a request to do so, but not later than 6 months from the date of the request.
  - *Priority list for estates not completed satisfactorily:* A priority list should be drawn up of requests from residents for the taking in charge of uncompleted estates, taking into account such factors as the date of application, the condition of the estate and the length of time it has been left unfinished.
- New requests for the taking in charge of unfinished estates should be added to the priority list, as appropriate.

In relation to unfinished estates, Circular PD1/08 highlighted that all unfinished estates which are the subject of a request to be taken in charge should be kept on the priority list referred to above, including estates where it may be possible to have the estate completed at the expense of the developer, through enforcement action or calling in the development bond so that these estates remain on the priority list for remedial works by the planning authority in the event that enforcement action or calling in the bond fails. When the estate is brought to a standard which is satisfactory to the planning authority and is in accordance with the permission granted, it should be taken in charge promptly.

Circular PD1/08 also highlighted that in accordance with section 180(2) of the Planning and Development Act 2000 as amended, unfinished estates should be taken in charge where the majority of residents so request and that where enforcement action or calling in the bond is not possible, or has been unsuccessful, strategies should be put in place to get the estate up to an appropriate standard.

As stated above, a priority list should be maintained of all such estates and remedial works carried out in accordance with that order of priority. Where Irish Water becomes responsible for water infrastructure in estates that have been taken in charge and Irish Water is of the view that there is a service critical issue which may impact upon public health, it will prioritise such estates for remediation works.

In **Circular Letter PL 21/13** planning authorities were advised that pending further legislation and guidelines, they should in the first instance consult with Irish Water on any proposal to take in charge water services infrastructure which would ultimately be transferred to Irish Water under section 12 of the Water Services (No. 2) Act 2013.

**Position regarding taking in charge of water services infrastructure**

Section 180(4)(c) of the Planning and Development Act provides that -

*"A planning authority that is not a water services authority within the meaning of section 2 of the Act of 2007 shall not take in charge any sewers, watermains or service connections under paragraph (a)(i) or (b)(i), but shall request the relevant water services authority to do so."*

The reference to “water services authorities” in section 180(4)(c) should not be read as a reference to Irish Water. Water services authorities are defined in the Water Services Act 2007 as a County Council or a City Council as defined in the Local Government Act 2001.

While the powers and functions relating to the provision of water services (with certain limited exceptions) have transferred to Irish Water from local authorities 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, planning authorities which were water services authorities before the establishment of Irish Water remain water services authorities.

In this regard, it should be noted that the text in section 180(4)(c) of the Planning and Development Act was primarily intended to clarify that Town Councils (which were planning authorities but not water services authorities) were not mandated to take in charge water services infrastructure, but should instead request City/ County Councils to do so.

It may be further noted that Section 7 of the Water Services (No.2) Act 2013 provides that:-

*“References to a water services authority or relevant water services authority in—*

*(a) the Act of 2007 or in any instrument made under that Act, or*

*(b) any other enactment (other than the Act of 2013) or instrument under any other enactment,*

*in so far as they relate to any function transferred by this Act, shall on and after the transfer day, be construed as references to Irish Water.”*

**This does not change the position in respect of a Planning Authority’s taking in charge functions.**

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*”.

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.

#### **Co-operation Between Local/ Planning Authorities and Irish Water**

There is presently a considerable backlog of residential estates to be taken in charge and this will take time to be implemented.

In drawing up the priority list of estates to be taken in charge, the planning authority should consult with Irish Water with a view to accelerating the taking in charge process for estates that are in a reasonably good condition.

Thereafter, the planning authority should focus on agreeing arrangements for the taking in charge of developments that have more significant difficulties with water services infrastructure subject to the

provisions below, with the planning authority and Irish Water agreeing how basic interventions might be carried out to provide minimum service levels.

After the taking in charge process has been completed and the water services infrastructure has been transferred to Irish Water, deficiencies not materially affecting service levels/improving service levels will be carried out by Irish Water in the normal way for the benefit of its customers.

With regard to water services infrastructure and the inter-related roles of local/ planning authorities and Irish Water, it is therefore very important, as Circular Letter PL 21/13 provided, that planning authorities initiating the taking in charge process, do so in consultation with Irish Water, with the key personnel working together to identify and resolve any issues that might arise in ensuring that the water services assets to be taken in charge by the planning authority are fit for purpose.

For example, enforcement action by the planning authority, coupled with the application of resources from planning securities such as bonds and cash deposits, could result in the preparation of a site resolution plan by the developer and/or a receiver. In such scenario, the site resolution plan could include proposals for rectifying defects in water services network type infrastructure such as watermains and sewers in order to get the water services assets into a condition that, when implemented, would be regarded by the planning authority as being satisfactory with regard to compliance with the terms of the relevant planning permission, and ultimately with a view to enabling the taking in charge and subsequent onward transfer of its water services assets to Irish Water.

Where such site resolution plans above include water services elements, it is important that there is (a) a written agreement between the planning authority and Irish Water on the plan, and that within that written agreement there is (b) an equitable approach in relation to funding from sources such as the planning security and developer/receiver, for remedial works to water services to ensure integrity of assets and acceptable service levels to future Irish Water customers when the estate is taken in charge.

If no resources from planning securities such as bonds or cash deposits are available and enforcement action has failed or would be highly unlikely to secure the actions necessary to rectify defects, the planning authority and Irish Water should consult one another on the best course of action to adopt, including the sharing of remediation costs between Irish Water and the planning authority with regard to their respective liabilities.

For the avoidance of doubt, the above means that remediation costs in relation to water services will be addressed by Irish Water and remediation costs for roads, footpaths, public lighting and open space will be addressed by the relevant local/ planning authority.

Planning authorities should therefore continue to use the statutory powers available to them to take residential estates, including water services infrastructure, in charge in the usual way, working in concert with Irish Water, **except in relation to those particular estates containing “developer provided water services infrastructure”**, which are dealt with separately below.

Accordingly -

- where an estate (not containing developer provided water services infrastructure) is completed to the satisfaction of the planning authority in accordance with the planning permission, planning authorities should, on request, proceed to take the estate in charge including the relevant water services infrastructure;

- where an estate (not containing developer provided water services infrastructure) is not completed to the satisfaction of the planning authority in accordance with the planning permission, but where enforcement action is no longer possible, or has failed in securing the proper completion of the estate by the developer, the planning authority should, when requested to do so by the majority of the owners, also proceed to take the estate in charge including the relevant water services infrastructure, working with Irish Water on the best course of action to adopt, including the sharing of remediation costs as outlined above;
- pursuant to section 180(2A) and (4)(b), planning authorities should continue to take in charge, at their discretion, some or all of the facilities in an estate.

In these cases the Minister will, as soon as practicable after being informed by the planning authority that the estate has been taken in charge, make an order transferring the water services infrastructure to Irish Water under Section 12 of the Water Services (No.2) Act.

Planning authorities and Irish Water should continue to work closely together, in particular expediting the taking in charge of developments containing water and or waste water assets which have been completed in accordance with the permission and which are directly connected to the existing public system.

Planning authorities must take any actions necessary, where developments containing water and or waste water assets which have not been completed in accordance with the permission, to enable funds from planning securities such as bonds and cash deposits to be accessed for remediation works to be carried out.

Local/ planning authorities and Irish Water will together and under the overall guidance of the Department, develop technical standards and co-ordination mechanisms to assist in enhancing the clarity, efficacy and smoothness of the overall taking in charge process of existing estates, which may be issued as a supplement to this circular or as memoranda of understanding from time to time.

#### **Developer Provided Water Services Infrastructure**

Irish Water recently wrote to local authorities in relation to the taking in charge of a particular category of residential estates, specifically estates that are served by infrastructure such as wells, water treatment plants and wastewater treatment plants and associated pumping stations that were provided by developers as part of housing developments. Such infrastructure is stand alone and is not connected to public water and sewerage networks for which Irish Water is now responsible.

For convenience, such infrastructure is described as developer provided water services infrastructure.

The Department recognises that the taking in charge of estates containing developer provided water services infrastructure will need to be considered separately, as in many cases the infrastructure serving the estates may require upgrading and remediation. Work is underway to put in place a strategy, including funding options, for addressing deficiencies on these estates.

In 2013 the Department, in conjunction with the Water Services Transition Office, sought information from each local authority on the number of such residential developments that are located within their functional area and this has given a better understanding of the extent of these developments nationally.

The Department is now proposing to have a more detailed technical examination of a representative sample of these developments carried out in a number of these local authorities to get a clearer view on:

- the types of infrastructure that are in place;
- the condition of such infrastructure; and
- the scale of works and investment costs that might be required for remediation of any defects or problems, including prospects for successful enforcement action.

This exercise will have a number of objectives including identifying alternative optimal solutions for problems and also developing indicative cost estimates for any works that might be required. This will allow the development of a national strategy to address problems in residential estates with developer-provided infrastructure to be put in place.

A separate communication has issued from Water Services Policy Section of this Department to relevant local authorities on this matter.

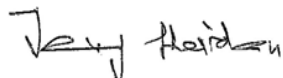
**Further amendments to section 180 of the Planning and Development Act 2000**

A new Planning and Development Bill is currently in preparation, in which section 180 will be updated to improve and streamline the taking in charge process.

The Department is engaging with the City and County Managers Association (Planning and Land Use Committee), Irish Water and other relevant stakeholders in the context of preparing for this new legislation, which it is intended will update the taking in charge process to both address legacy issues and take account of the proposed connections policy driven approach of Irish Water.

In the meantime, as the taking in charge of residential developments by planning authorities has stagnated for a while, the Minister is anxious that renewed efforts are made in this regard generally and that the revised arrangements outlined in this circular are implemented by planning authorities as quickly as possible.

The co-operation of local/ planning authorities in implementing this circular letter is therefore requested. If there are any queries in relation to the content of the circular letter, they may be addressed to the undersigned or to Mr Niall Cussen, Principal Adviser (Planning).



---

Terry Sheridan,  
Principal Officer,  
Planning Section.