



Tithe an Oireachtais

An Comhchoiste um Thithíocht, Rialtas Áitiúil agus Oidhreacht

Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim Ghinearálta an Bhille um
Chomhshaol Uisce (Astógálacha)

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Houses of the Oireachtas

Joint Committee on Housing, Local Government and Heritage

Report on Pre-Legislative Scrutiny of the General Scheme of the Water Environment (Abstractions)
Bill

January 2021

33/HLGH/1

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PREFACE

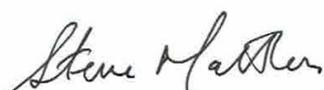
On 6 October 2020, the Minister for Housing, Local Government and Heritage, Mr Darragh O'Brien TD, referred the *General Scheme of the Water Environment (Abstractions) Bill* to the Joint Committee on Housing, Local Government and Heritage in accordance with Standing Orders for the purpose of pre-legislative scrutiny of the General Scheme.

The Committee agreed to undertake pre-legislative scrutiny of the General Scheme and provide recommendations on areas where it believes amendments are warranted. The approach taken by the Committee in reporting on the scrutiny of the General Scheme was not to examine each part of the General Scheme, rather to identify the most critical issues and to focus on these.

The General Scheme aims to provide for a registration, licensing and control regime for water abstractions. The proposed system of registration and licensing is to be administered by the Environmental Protection Agency. Under EU law, through the Water Framework Directive, Ireland is required to introduce such a system and has not yet fully done so.

The Committee has identified several issues and made recommendations on these issues which are explained in detail in the body of the Report. The Committee has made these recommendations in the hope that they will assist Minister O'Brien and Department officials in improving this important piece of legislation.

I would like to express my appreciation to all the witnesses for their contributions and to the members of the Committee for their work on this subject. I hope that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



Steven Matthews T. D
Chair of the Joint Committee

INTRODUCTION

In accordance with Standing Order 146A, the General Scheme of the *Water Environment (Abstractions) Bill* (the Bill) was referred to the Joint Committee on Housing, Local Government and Heritage (the Committee) on 6 October 2020. The Committee agreed at its meeting on 13 October 2020 to undertake pre-legislative scrutiny of the General Scheme.

The Committee conducted pre-legislative scrutiny of the General Scheme of the Bill at two meetings, and engaged with various stakeholders, detailed below. The Committee also received written submissions from a number of stakeholders, which are linked in Appendix 4.

Tuesday 20 October

Department of Housing, Local Government and Heritage:

- Mr Feargal Ó Coigligh, Assistant Secretary
- Ms Emer Connelly, Principal Officer, Water Policy

Thursday 5 November

Environmental Protection Agency:

- Ms Marie O'Connor, Programme Manager, Environmental Licensing
- Dr Eimear Cotter, Director, Office of Environmental Sustainability
- Ms Mary Gurrie, Programme Manager, Office of Evidence and Assessment
- Dr Matthew Craig, Senior Scientist, Office of Evidence and Assessment

Sustainable Water Network Ireland:

- Ms Sinead O'Brien
- Dr Elaine McGoff
- Mr John Kenny
- Dr Kieran Craven

BACKGROUND

The *Water Framework Directive*¹, which was adopted in 2000, requires EU Member States to take the necessary measures to achieve or maintain good ecological status in the water environment. The European Commission has initiated infringement proceedings against Ireland for failing to fully implement the Directive and has specifically cited the absence of controls over water abstractions.

Ireland's current legislative provisions relating to water abstractions are set out in the *Water Supplies Act 1942*² (as amended) and the *Local Government (Sanitary Services) Act 1964*³. However, these provisions deal with abstraction for the public water supply only by water services authorities, and do not incorporate regulations for private, commercial, or industrial abstractions. The Department for Housing, Local Government and Heritage (the Department) has advised that these are outdated and fall short of what is required in a modern context.

Preparation of provisions in the General Scheme

An initial draft of the General Scheme was published in August 2018 and was followed by a six-week public consultation process. The draft General Scheme was subsequently amended, reflecting responses to the consultation process and significant further work, and a revised General Scheme was approved by Government in December 2019. The Scheme was submitted to the Joint Committee on Housing, Planning and Local Government of the 32nd Dáil for pre-legislative scrutiny shortly thereafter, but the intervening General Election meant that pre-legislative scrutiny did not proceed at that time.

A further revised General Scheme, reflecting additional policy work undertaken in the interim, was approved by Government on 29 September 2020, and referred to this Committee on 6 October 2020.

The registration element has already been introduced by way of secondary legislation under the *European Union (Water Policy) (Abstractions Registration) Regulations 2018 (S.I No. 261 of 2018)*⁴. This was done in advance of the primary legislation in order to build up a nationwide picture of abstractions, enabling the Environmental Protection Agency (the EPA) to assess where particular water pressures as a result of abstraction might exist and, accordingly, better manage abstractions in areas of high risk in future. These regulations are being subsumed into the proposed primary legislation as set out in the General Scheme.

Principal features of the proposed regulatory regime

The General Scheme provides for a registration, licensing and control regime for water abstractions. The proposed provisions are to be administered by the EPA. The Bill will repeal the 1942 Act and part of the 1964 Act. These are to be replaced with a new standalone piece of primary legislation governing the regulation of water abstractions.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0060&from=EN>

² <http://www.irishstatutebook.ie/eli/1942/act/1/enacted/en/html>

³ <http://www.irishstatutebook.ie/eli/1964/act/29/enacted/en/html>

⁴ <http://www.irishstatutebook.ie/eli/2018/si/261/made/en/print>

The General Scheme proposes a risk-based, three-tier system of which the requirements will be graduated, and based on the amount of water being abstracted, as follows:

1. General Binding Rules issued by the EPA, in the form of guidelines, will apply to all abstractions. These rules will represent basic standards for undertaking water abstractions, such as ensuring that an abstraction does not result in pollution of the water environment and providing that leakage must be kept to a minimum;
2. Abstractions of 25 cubic metres or more per day will be required to register with the EPA via an online portal, free of charge (as is the case currently). 25 cubic metres of water is equal to 25,000 litres. This volume of water would fill 104 standard domestic wheelie bins;
3. Licensing will be required for abstractions of 250 to 1,999 cubic metres per day deemed by the EPA to be in an area at risk from abstraction, and for all abstractions of 2,000 cubic metres or more per day.

Under the proposed Bill existing registered abstractions cannot be refused a licence, but conditions and/or limits can be set. The Department advises that this element is to ensure the efficient and fair implementation of the new requirements.

In addition to providing for registration and licensing, the General Scheme updates the powers of a water services authority, in this case Irish Water, to take water for water supply in accordance with its functions. Provision is also made to protect public drinking water supplies in times of drought or for reasons of human health or safety.

Rationale for the proposed Bill

The *Water Framework Directive* obliges Member States to take measures to achieve or maintain good status in the water environment and to ensure that any deterioration in the status of waters is avoided. To achieve this objective in the context of the abstraction of water, the General Scheme provides that the EPA will undertake a cumulative and quantitative assessment of the environmental impact of existing abstractions on water status.

The Department has stated that the EPA will identify every water body that is at risk as a result of over-abstraction, and every abstraction that is affecting that water body shall be deemed a “*significant abstraction*”. The Department estimates that about 6% of water bodies at present are considered to be at risk from abstraction and note that it is important that such water bodies are protected from further deterioration and that steps are taken to improve their status.

Responsible management of water resources involves ensuring that river flows, lake and groundwater levels can sustain the aquatic environment, while also allowing the use of water for drinking water supply and other agricultural, commercial, industrial and recreational purposes.

The General Scheme also requires licensing of large-scale water abstractions, particularly for public water supplies. The proposed legislation would allow for the consideration and licensing of the proposed abstraction to supply water from the River Shannon to Dublin, where water supply is at critical levels, as well as servicing areas of the East and the Midlands along the route of the proposed pipeline.

The existing legislation governing the taking of water for public drinking water is of its time and does not take into account the requirements surrounding Environmental Impact Assessments or obligations under the *Water Framework Directive*. Appropriate governance and oversight are essential for proposed water abstractions.

The legislation is therefore being brought forward in order to:

- bring Ireland into compliance with the EU *Water Framework Directive* and respond to infringement proceedings initiated by the European Commission;
- modernise the regime for water abstractions which is outdated and limited in scope, being based on legislation enacted 1942 and 1964;
- modernise provisions for abstractions by Irish Water;
- ensure that an appropriate legal framework and consenting process is in place to facilitate consideration and determination of the Eastern and Midlands Water Supply Project to abstract water from the River Shannon, and for any other large scale water abstractions for public drinking water supplies or other purposes; and,
- give necessary environmental protections to water sources.

KEY ISSUES WITH THE PROPOSED LEGISLATION

In examining the General Scheme, the Committee has identified areas that are of particular interest and/or where further consideration should be provided. These areas are outlined as key issues within this report.

KEY ISSUE 1: THRESHOLDS

The Committee notes that under the General Scheme, all abstractions will be subject to guidelines in the form of general binding rules. The explanatory notes in the General Scheme advise that these general binding rules will be in the form of guidance and may cover issues such as leakage, measurement, entry of pollutants and any other measure the EPA considers appropriate to protect the water environment.

However, the Committee notes that all the abstractions under 25 cubic metres do not require regulation other than to abide by these general binding rules. The Committee notes that in the explanatory note under Head 5 of the General Scheme, the Department has stated that this approach mirrors that taken in Scotland and Wales, where a relatively small quantity of water is exempt from the requirement to be either registered or licensed. However, the Committee notes that in these jurisdictions, as well as in Northern Ireland, the equivalent threshold for the registration of abstractions is 10 cubic metres.

In response to the Committee's queries on the rationale for the threshold of 25 cubic metres, the Department advised that this threshold is in line with the threshold specified in the *Local Government (Water Pollution) Act 1977*⁵ and, following consultation with the EPA, it was considered to be an appropriate threshold at which to require registration. In this regard, the Department advised that, while it is generally accepted that small abstractions do not have a significant environmental impact, there is no generally-accepted scientifically optimal threshold for registration or licensing, and a judgement must be made in the particular circumstances based on the environmental conditions in an individual jurisdiction. The Department advised that the view taken for the General Scheme is that a lower threshold of 10 cubic metres would substantially increase administration, both on the EPA's part and for abstractors, without evidence of a demonstrable benefit to the environment.

In this regard, the Committee has concerns surrounding the appropriateness of basing the current proposed threshold of 25 cubic metres on legislation that was enacted a significant number of years before the Water Framework Directive came into effect.

In relation to the above, the Committee is aware that one of the primary objectives of the Directive is to prevent the deterioration of the status of surface waters and groundwater. In this regard, the Committee notes that, for the EPA to gain an understanding of the status of all bodies of water

⁵ <http://www.irishstatutebook.ie/eli/1977/act/1/enacted/en/html>

subject to abstraction, registration and licensing is essential in determining whether there is deterioration at any level.

In reviewing the General Scheme, the Committee notes that Head 10(1) provides that the EPA will conduct an Environmental Impact Assessment (EIA) in relation to existing abstractions on the register, meaning all existing abstractions over 25 cubic metres. However, Head 10(6) provides that the EPA will conduct an assessment on any *proposed* abstractions that it is notified about through a licensing application. This means that assessments will only be conducted on proposed abstractions over 250 cubic metres. The Committee has concerns about this, as it is not clear how the EPA will be able to determine if an existing abstraction of below 25 cubic metres is causing a deterioration if it is not registered and assessed. The Committee is also unclear as to how the EPA will be able to determine deterioration or otherwise, if proposed abstractions of below 250 cubic metres will not be subject to an assessment.

Representatives from the Sustainable Water Network Ireland (SWAN) also raised concerns about the proposed thresholds set out in the General Scheme. They advised the Committee that abstraction pressures are likely to increase with increased climate change and economic growth, including agricultural intensification, and highlighted the need to future-proof Ireland's water management. SWAN notes that the registration threshold proposed in the General Scheme is 150% higher than that in place in Northern Ireland and Scotland and noted that the proposed licensing threshold is 100 times higher than that in place in Northern Ireland, England, and Wales. SWAN acknowledges that there is a provision for licensing abstractions between 250 cubic metres and 2,000 cubic metres where the risk is deemed significant, but they voiced concerns that this risk assessment is lacking as it will not take into account a significant proportion of abstractions which will remain unaccounted for under the proposed Bill.

The Department has advised the Committee that the higher licensing thresholds proposed in the Scheme have been adopted on the recommendation of the EPA and represent a move to a risk-based approach rather than the more commonly used blanket licensing threshold system. The Committee notes that the licensing thresholds for Northern Ireland and Scotland are set at 20 cubic metres and 50 cubic metres respectively and have concerns regarding the significantly higher thresholds as proposed in the General Scheme.

In its submission to the Committee, Inland Fisheries Ireland (IFI) also raised concerns over the proposed thresholds in the Bill and advised that the threshold of 25 cubic metres per day may not afford sufficient protection to fisheries resources at all sites. They advise that an alternative approach based on percentiles or low flow levels may be more appropriate and noted that the system and thresholds currently in place in Scotland, a biogeographical region similar to Ireland, would be more precautionary from a resource management perspective. They also advised that any regulation of abstractions should thoroughly consider relevant requirements of fisheries and other relevant legislation with a particular focus on fish entrainment, passage, and migration.

Administrative Burden

The Committee also notes one aspect of the Department's rationale to propose 25 cubic metres at the threshold at which registration becomes a requirement is due to an expected substantial

increase in administration. The EPA in their engagement with the Committee also shared this concern, noting that the proposed approach aims to balance environmental protection while minimizing costs and administrative burden. However, the Committee notes that registration is free of charge via an online portal and the Department has described the process as not overly burdensome. The EPA also noted that the registration process is quite simple, entailing logging on to the online system, entering the details of the location, the volume being extracted and what it is used for, and the individual's contact details.

In summary, the Committee has concerns that the thresholds for registration and licensing may be inconsistent with the Water Framework Directive and the Environmental Impact Assessment Directive as they don't allow for the assessment of existing abstractions below 25 cubic metres or proposed abstractions below 250 cubic metres, under which the EPA will not be able to determine if deterioration is occurring at these levels.

The Committee is further concerned that the thresholds are inconsistent with the Directives as they appear to be relatively arbitrary, based solely on size and prevent EIAs for existing abstractions below 25 cubic metres and for proposed abstractions below 250 cubic metres.

Recommendations

The Committee notes that having lower thresholds for both registration and licensing will increase the understanding of abstraction pressures, at both local and national levels. The Committee further notes that registration of an abstraction is not onerous on either the abstractor or the EPA and is easily done.

The Committee recommends that:

- the threshold for registration be lowered to 10 cubic metres in line with those in similar biogeographical locations such as Northern Ireland, Scotland, and Wales. The Committee feels this would strike a fair balance between the interpretation of the Water Framework Directives requirements and a more practical regulatory system;
- the licensing thresholds proposed in the Bill be lowered from 2,000 cubic metres per day to 20 cubic metres per day in line with similar jurisdictions such as those in Northern Ireland, England and Wales.

KEY ISSUE 2: METERING AND MEASUREMENT

The Committee notes that under Head 5, the explanatory note states that -

“in relation to the measuring or estimating of a rate of abstraction, there is no obligation under this legislation to install a meter to precisely measure volume of flow. The EPA has already made guidelines available on its website to assist in estimating abstraction rates, based on abstraction volumes for different industries, and these will be periodically reviewed and updated as necessary”.

The Department advised the Committee that the estimation of abstractions is largely applicable to smaller abstractions as larger industrial abstractors would be able to measure volumetric daily totals precisely, while smaller abstractors may not have such equipment. In this regard the Department explained that the legislation is not intended to place a burden on such abstractors unless there is a proven benefit to doing so. The Department advised the Committee that the EPA has undertaken work in estimating volumes of abstraction applicable to particular activities, and that this information is available on the online registration portal via which. Abstractors can use this information to obtain an approximate abstraction volume if they do not have the means to measure a precise rate of abstraction.

The Department noted that if there was a requirement for complete accuracy, abstractors would be required to utilize meters on the flows, record the readings on those meters, and regularly report them to the regulatory authorities. This would involve capital and ongoing costs for abstractors as well as bureaucratic and administrative costs in monitoring that system. The Department advised, however, that real-time metering and reporting would be a requirement for larger licensed abstraction points, although it should be noted that this is not mentioned in the General Scheme.

In this regard the Committee notes that under Head 8, only abstractions that are deemed significant will require a license. Since there is no requirement in the General Scheme for the metering or precise measurement of abstractions, the Committee is concerned that abstractions under 2,000 cubic metres, which would otherwise be deemed significant, will not be identified. The Committee notes that with the availability of smart devices and new technology, the requirement to accurately measure abstractions should not be overly burdensome.

Recommendations

The Committee recommends that:

- consideration be given to the provision of a requirement and guidance to accurately measure and record abstractions that are required to have a licence
- consideration be given to the introduction and implementation of a more accurate system of measuring and recording abstractions of all sizes known to the EPA.

KEY ISSUE 3: PUBLIC PARTICIPATION

The Committee notes that the General Scheme does not contain a provision for public participation in the Environmental Impact Assessment process as described under Head 10, as distinct from the licensing processes outlined in Head 11 and Head 12. In this regard, the Committee notes that Head 10(1) appears to invoke the language of the *Environmental Impact Assessment Directive*⁶. Though it is not clear if it is the intention that this Head be in conformity with the *EIA Directive*, the Committee is concerned that - due to the lack of public consultation provisions within Head 10 - it is not in compliance with the *EIA Directive*.

The Committee also notes that the Court of Justice of the European Union (CJEU) has interpreted the *Water Framework Directive* as requiring Member States to ensure that there is unhindered public participation in relation to matters under the Directive, and as such is concerned that the lack of a public participation process under Head 10 does not appear to be compliant with the CJEU's interpretation of the *Water Framework Directive*. In this regard, the Committee notes that if the proposed legislation is to be successful, it is imperative that the Bill be amended so as not to fall foul of EU directives.

Recommendations

The Committee recommends that:

- the proposed Bill contain a provision to allow for public participation in Environmental Impact Assessments for all abstractions required to undergo assessment.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0052>

KEY ISSUE 4: EXISTING ABSTRACTIONS

The Committee notes that under Head 11 – *Licensing of Existing Abstractions* – there is no provision for the refusal of a licence for existing abstractions. The Department informed the Committee that the rationale behind this is that, if a person or entity has been abstracting water for a lengthy period, they will have an established right to abstract water and to remove this would likely lead to compensation claims. In this regard, the Department informed the Committee that although licences cannot be refused, conditions and/or limits can be set, and the Department explained that this is to ensure the efficient and fair implementation of the new requirements.

However, Head 11 deals with licence applications in respect of significant abstractions, and the Committee notes that a “*significant abstraction*” as defined in the Bill relates to an abstraction that

“...in effect alters a water body to such extent that it fails to meet the environmental objectives laid out for that water body in the River Basin Management Plan, or where it causes a defined European site to fail to meet a specific standard or objective”.

Significant abstractions therefore comprise those abstractions which have notable adverse effects on the environment, and the Committee has concerns as to how the proposed Bill will be compliant with the *Water Framework Directive* if existing abstractions which are detrimental to the environment cannot be refused a licence.

Although the Committee notes that under subsection 12 of Head 11 it is stated that “*a licence under this Head shall not be granted if the abstraction in question is not in compliance with the General Binding Rules issued by the Agency under Head 5*”, it stresses that these General Binding Rules are merely guidelines, and notes most importantly that under the explanatory note for subsection 8 it states “*a licence under this Head can only be granted*”.

The Committee is aware that under Article 11(3)(e) of the *Water Framework Directive*, Member States can permit exemption from controls over water abstractions which “*have no significant impact on water status*”. However, as referenced above in the definition of a significant abstraction, the Committee notes that Head 11 would appear to provide for a blanket ban on refusing licences for existing abstractions, even where the abstractions in question would be detrimental to the environment. SWAN also shared their concerns surrounding the proposed non-refusal for existing abstractions and pointed out that just because an activity has been in operation for a certain period of time the obligation to comply with the WFD is not exempted or reduced. SWAN recommended to the Committee that Head 11 be removed from the proposed Bill and replaced with an alternative section allowing for a 12-month transitional period. SWAN advised that this would provide existing abstractors with a fair opportunity to regularise their positions, and at the conclusion of that period existing abstractors and future entrants into the system would be subject to the same regulatory framework.

The Committee acknowledges that, under subhead 4 of Head 11, there is a provision for the EPA to impose conditions on the licence, which the Department states would protect the water environment. However, due to the position set out in Head 11 that “*a licence under this head cannot be refused*”, it would appear that, if an existing abstractor does not consent to the imposition of conditions, the only course open to the EPA is to grant the licence, even in circumstances where it

considers that the conditions are necessary to ensure the abstraction does not cause the relevant water body to fail to meet its environmental objectives.

The EPA advised the Committee that although there is no provision for refusing a licence to an existing abstractor, each licence will be bespoke to that abstraction and they will attempt to work conditions into the licence to ensure that there is no adverse environmental impact.

In summary, the Committee is concerned that in providing no mechanism to refuse a licence under Head 11, even where it concerns a significant abstraction which will, by definition, affect water quality, the General Scheme is in breach of the provisions of the *Water Framework Directive*.

Recommendations

The Committee recommends that:

- the provision in the proposed Bill that does not allow an existing abstractor to be refused a licence be removed;
- consideration be given to the provision of a 12-month period to allow for existing abstractions to apply for a license where required, and in doing so, subject such abstractions to the same requirements and conditions as those to be met by new abstractions.

KEY ISSUE 5: INDEFINITE LICENCES

The Committee notes that Head 12, subhead 17 specifies that “...a licence granted under this Head shall be of unspecified duration and shall remain valid unless or until that licence is reviewed, amended, revoked, suspended or surrendered.”

Similarly, Head 11, subhead 11 provides that ‘...a licence granted under this Head shall be of unspecified duration and shall remain valid unless or until that licence is amended, suspended or surrendered.’

In this regard, the Committee is aware that Article 11(3)(e) of the *Water Framework Directive* provides for controls in relation to abstractions to be periodically reviewed and updated where necessary. As a result, the Committee has concerns surrounding how exactly a licence under Head 12 could be revoked, and when or why it could be subject to review or suspension. Similarly, under Head 11, the Committee has concerns as to how a licence may be suspended if licences cannot be refused, as noted above. In this regard, the Committee is of the opinion that where a licence is issued for an indefinite duration, and without any clear mechanism to revoke such a licence, it is unlikely to be in conformity with the provisions of the *Water Framework Directive*.

In their engagement with the Committee, SWAN shared their concerns that the General Scheme makes no provision for the adjustment, suspension or revocation of licences for abstractions in the event that the environmental impact of the abstraction changes.

The EPA acknowledged the absence of a provision for revoking licenses in the General Scheme but advised that it is their understanding that a facility will be provided for this for new abstractions through secondary legislation.

The Committee notes that the above situation contrasts with that of the system in Northern Ireland, where the relevant authority can revoke a licence where it is satisfied that the revocation is necessary to protect the water environment from damage.

Recommendations

The Committee recommends that:

- provision be made for the inspection, application of remedial measures, adjustment, enforcement of remedial measures, suspension and revocation of licenses where the abstraction is not meeting the required conditions or abiding by the necessary regulations and guidelines, including those set out in the *Water Framework Directive*.

KEY ISSUE 6: ADDITIONAL RESOURCES

The Committee notes that, with the introduction of a significantly greater regulatory regime stemming from the proposed Bill, it is imperative that the EPA is adequately resourced to carry out the additional duties and functions required by the proposed Bill. The Committee queried the Department's resource requirements and the Department informed the Committee that with the introduction in 2018 of the *European Union (Water Policy) (Abstractions Registration) Regulations 2018 (S.I No. 261 of 2018)*, additional resources were secured for the EPA and advised that these would facilitate the enactment of the proposed legislation.

However, in their engagement with the Committee, the EPA advised that they have adequate resources in terms of their ability to adequately prepare and analyse the licensing and assessment regime, yet they noted a gap in the resources to adequately enforce the requirements that will follow from the issuing of primary and secondary licences.

The Committee is aware that as - is often happens with new legislation - there exists somewhat of a lag between the introduction of the legislation and the provision of resources needed to carry out the functions of that legislation, and in this regard the Committee wishes to emphasise the importance of having adequate resources in place.

Recommendations

The Committee recommends that:

- the Environmental Protection Agency is adequately resourced to effectively carry out the necessary functions stemming from the new regulatory regime, particularly in the area of inspection and enforcement.

KEY ISSUE 7: ENFORCEMENT AND PENALTIES

The Committee notes that, in the General Scheme at present, there is no provision or mechanism for the inspection or enforcement of the proposed General Binding Rules or any conditions surrounding licencing requirements. While the Committee acknowledges that the General Scheme does set out the penalties for non-compliance, it would be of significant benefit if greater clarity around the implementation of the enforcement and inspection of the regulations was provided for in the proposed Bill.

In their engagement with the Committee, the EPA noted that all abstractions were subject to the General Binding Rules irrespective of the thresholds and queried whose role it would be to monitor and enforce these rules. They further noted that in advance of issuing a licence, they would need to determine compliance with the General Binding Rules and as such would themselves welcome clarity on whose role it would be to enforce the General Binding Rules.

The EPA noted to the Committee that the enforcement procedures will largely be carried out via the licensing system and through the EPA's office of environmental enforcement using a risk-based approach.

Recommendations

The Committee recommends that:

- provision be made in the proposed Bill for an adequately resourced inspection and enforcement regime to underpin the new regulatory system;
- provision be made in the Bill for assessing compliance with the General Binding Rules.

KEY ISSUE 7: IMPACT ON FARMING

In its submission to the Committee, the Irish Farmers Association (IFA), raised a number of concerns for the sector arising from the proposed Bill, particularly in relation to the framework encompassing compensation. The IFA outlined its position to the Committee whereby fair and equitable compensation must be paid to farmers where water abstraction takes place on farmland and results in land sterilisation, crop loss, and disturbance.

The IFA notes that, under Head 17 of the General Scheme, a claim for compensation must be made within two years of the authorised abstractions commencing. In this regard, the IFA has concerns that this may result in a haphazard approach across different local authorities and may leave many compensation issues unresolved. They recommend that the two-year time limit be removed from the proposed Bill.

It also notes that under subsection 9 of Head 17, in order to claim compensation an applicant would need to demonstrate what they term 'proof of loss', which would rest on the individual farmer. The IFA points out that other agencies such as Gas Networks Ireland recognise from the outset that a loss exists and endeavour to address such losses through negotiations.

The IFA also recommends that where a proposed abstraction may impact an individual farmer or groups of farmers, that all those concerned be notified, and the potential impact of such an abstraction be disclosed.

A submission received from the Irish Creamery Milk Suppliers Association (ICMSA) advised the Committee that the requirement of licensing and further regulation on new abstraction points at farm scale would add to bureaucracy and expense on farmers with little benefit to the environment, and would add to business costs and undermine economic sustainability. The ICMSA expressed disappointment in a lack of detail in the General Scheme which affected their ability to understand the effects the proposed Bill may have on that sector. They pointed to a lack of environmental assessment criteria and guidelines on best practice for abstraction construction, or an outline of unacceptable conditions where licensing would be necessary but would be refused.

Recommendations

The Committee recommends that:

- the Department of Housing, Local Government and Heritage, together with the Department of Agriculture, Food and the Marine, engage with farming organisations to ensure adequate guidelines for agricultural licensees regarding best practice for abstraction are developed as the bill progresses;
- consideration be given to extending in the proposed Bill the timeline by which an affected party can apply for compensation resulting from an abstraction.

RECOMMENDATIONS

Recommendations

The Committee recommends that

1. The threshold for registration be lowered to 10 cubic metres in line with those in similar biogeographical location such as Northern Ireland, Scotland, and Wales. The Committee feels this would strike a fair balance between the interpretation of the Water Framework Directives requirements and a more practical regulatory system.
2. The licensing thresholds proposed in the Bill be lowered from 2,000 cubic metres per day to 20 cubic metres per day in line with similar jurisdictions such as those in Northern Ireland, England and Wales.
3. Consideration be given to the provision of a requirement and guidance to accurately measure and record abstractions that are required to have a licence.
4. Consideration be given to the introduction and implementation of a more accurate system of measuring and recording abstractions of all sizes known to the EPA.
5. The proposed Bill contain a provision to allow for public participation in Environmental Impact Assessments for all abstractions required to undergo assessment.
6. The provision in the proposed Bill that does not allow an existing abstractor to be refused a licence be removed.
7. Consideration be given to the provision of a 12-month period to allow for existing abstractions to apply for a license where required, and in doing so, subject such abstractions to the same requirements and conditions as those to be met by new abstractions.
8. Provision be made for the inspection, application of remedial measures, adjustment, enforcement of remedial measures, suspension and revocation of licenses where the abstraction is not meeting the required conditions or abiding by the necessary regulations and guidelines.
9. The Environmental Protection Agency is adequately resourced to effectively carry out the necessary functions stemming from the new regulatory regime, particularly in the area of inspection and enforcement.
10. Provision be made in the proposed Bill for an adequately resourced inspection and enforcement regime to underpin the new regulatory system.
11. Provision be made in the Bill for assessing compliance with the General Binding Rules.

12. The Department of Housing, Local Government and Heritage, together with the Department of Agriculture, Food and the Marine, engage with farming organisations to ensure adequate guidelines for agricultural licensees regarding best practice for abstraction are developed as the bill progresses.
13. Consideration be given to extending in the proposed Bill the timeline by which an affected party can apply for compensation resulting from an abstraction

APPENDIX 1: ORDERS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 95; SSO 71]

1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

- (a) legislation, policy, governance, expenditure and administration of—
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
- (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

- (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
- (b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

- (a) for the accountability of the relevant Minister or Minister of State, and
- (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

- (a) consents to such consideration, or
- (b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

- (a) the Committee Stage of a Bill,
- (b) Estimates for Public Services, or
- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
- (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
- (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 94; SSO 70]

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(2) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/Seanad;

(3) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under DSO 125(1) and SSO 108(1); and

(4) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a State body within the responsibility of a Government Department or
 - (c) the principal office-holder of a non-State body which is partly funded by the State,
- Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

c. Powers of Committees (as derived from Standing Orders) [DSO 96; SSO 72]

Unless the Dáil/Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

- (a) minutes of such evidence as was heard in public, and
- (b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil/Seanad;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

- (a) require any Government Department or other instrument-making authority concerned to—
 - (i) submit a memorandum to the Joint Committee explaining the statutory instrument, or
 - (ii) attend a meeting of the Joint Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Joint Committee, which may report thereon to the Dáil, and
- (b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Joint Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Joint Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Joint Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Joint Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Joint Committee in relation to the consideration of a report under DSO 197/SSO 168;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Joint Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil/Seanad; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under DSO 120(4)(a)/SSO 107(4)(a).

APPENDIX 2 – COMMITTEE MEMBERSHIP

Deputies: Francis Noel Duffy (GP)
Thomas Gould (SF)
Emer Higgins (FG)
Stephen Matthews (GP) - Chair
Paul McAuliffe (FF)
Jennifer Murnane O'Connor (FF)
Eoin Ó Broin (SF)
Cian O'Callaghan (SD)
Richard O'Donoghue (IND)

Senators: Victor Boyhan (IND)
John Cummins (FG)
Mary Fitzpatrick (FF)
Rebecca Moynihan (LP)
Mary Seery Kearney (FG)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 30 July 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 18 September 2020.

APPENDIX 3 – LIST OF WITNESSES

- ❖ **Department of Housing, Local Government and Heritage**
 - Mr Feargal Ó Coigligh, Assistant Secretary
 - Ms Emer Connelly, Principal Officer

- ❖ **Environmental Protection Agency**
 - Ms Marie O'Connor, Programme Manager, Environmental Licensing
 - Dr Eimear Cotter, Director, Office of Environmental Sustainability
 - Ms Mary Gurrie, Programme Manager, Office of Evidence and Assessment
 - Dr Matthew Craig, Senior Scientist, Office of Evidence and Assessment

- ❖ **Sustainable Water Network Ireland**
 - Ms Sinead O'Brien
 - Dr Elaine McGoff
 - Mr John Kenny
 - Dr Kieran Craven

APPENDIX 4 – LINKS TO MEETING TRANSCRIPTS

- ❖ [Meeting of Tuesday, 20 October 2020](#)
- ❖ [Meeting of Thursday, 5 November 2020](#)

APPENDIX 5 – LINKS TO SUBMISSIONS & OPENING STATEMENTS

Opening Statements

- ❖ [Ms Emer Connolly, Mr Feargal Ó Coigligh, Department of Housing, Local Government and Heritage](#)
- ❖ [Ms Eimear Cotter, Ms Marie O'Connor, Dr Matthew Craig, Ms Mary Gurrie, Environmental Protection Agency](#)
- ❖ [Ms Sinead O'Brien, Dr. Elaine McGoff, Mr John Kenny BL, Dr Kieran Craven, Sustainable Water Network Ireland](#)

Submissions

- ❖ [The Irish Farmers Association](#)
- ❖ [Inland Fisheries Ireland](#)
- ❖ [Irish Creamery Milk Suppliers Association](#)