

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM MAOINIÚ AR SHEIRBHÍSÍ UISCE TÍ SA TODHCHAÍ

## JOINT COMMITTEE ON FUTURE FUNDING OF DOMESTIC WATER SERVICES

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*Dé Máirt, 13 Nollaig 2016*

*Tuesday, 13 December 2016*

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The Joint Committee met at 1.30 p.m.

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### MEMBERS PRESENT:

Deputy Colm Brophy,	Senator Lorraine Clifford-Lee,
Deputy Mary Butler,	Senator Paudie Coffey,
Deputy Barry Cowen,	Senator Grace O'Sullivan.
Deputy Jim Daly,	
Deputy Alan Farrell,	
Deputy Noel Grealish,	
Deputy Seamus Healy,	
Deputy Martin Heydon,	
Deputy John Lahart,	
Deputy Paul Murphy,	
Deputy Jonathan O'Brien,	
Deputy Kate O'Connell,	
Deputy Willie O'Dea,	
Deputy Jan O'Sullivan,	
Deputy Thomas Pringle,	

SENATOR PÁDRAIG Ó CÉIDIGH IN THE CHAIR.

## Business of Committee

**Chairman:** Tá fáilte roimh chuile dhuine anseo. Tá mé an-bhuíoch gur tháinig siad. Tá súil agam go mbeidh sraith chruinnithe an-mhaith agus an-deimhneach againn. Tá mé dáiríre faoi sin. Tá mé ag súil go láidir le tuairimí agus tacaíocht chuile dhuine anseo. Ní bheidh sé seo uilig as Gaeilge. Beidh sé as Béarla, fiú is go bhfuil mé níos compordaí ag labhairt Gaeilge. I am more comfortable speaking Irish. I am one of those people who grew up speaking Irish and had to learn English. I think I have met most, if not all, of you and we have had some conversation. I appreciate that and I very much look forward to working with you. I look forward to this being a positive series of sessions that will be result-orientated.

We are in public session and the meeting is being broadcast live on television. At the request of the broadcasting and recording services, members are requested to ensure that for the duration of the meeting their mobile phones are turned off completely or switched to aeroplane, safe or flight mode depending on the device. It is not sufficient for members to put their phones on silent mode as this will maintain the level of interference with the broadcasting system.

In accordance with the standard procedures agreed by the Committee on Procedure and Privileges for paperless committees, all documentation for the meeting has been circulated to members on the document database.

I now propose to go into private session.

*The joint committee went into private session at 1.37 p.m. and resumed in public session at 3.10 p.m.*

## Report of the Expert Commission on the Funding of Domestic Public Water Services in Ireland: Mr. Kevin Duffy

**Chairman:** I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to so do, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. I also wish to advise Mr. Duffy that his opening statement will be published on the committee's website following this meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. At the request of the broadcasting and recording services, members, witnesses and people in the Visitors' Gallery are asked to ensure that for the duration of the meeting their mobile phones are turned off completely or switched to airplane, safe or flight mode, depending on the device.

I welcome Mr. Kevin Duffy, Chairman of the Expert Commission on Domestic Public Water Services, and invite him to make his opening statement.

**Mr. Kevin Duffy:** I thank the Chairman and the committee for this opportunity to present the report of the Expert Commission on the Funding of Domestic Public Water Services for its consideration. The commission was established on 29 June 2016 by the then Minister for Environment, Community and Local Government in circumstances that are well known to the committee. Its terms of reference are set out at paragraph 1.1 of the report and its membership is set out at paragraph 1.2. As will be seen, the commission comprised national and international experts in the different aspects of public water policy, including technical, economic, administrative and legal expertise. It was required to present its report to this committee by the end of November 2016. Secretarial and research support was provided to the commission by the Institute of Public Administration. The report now before the committee was unanimously adopted by the commission at its final meeting on 29 November 2016.

With regard to the approach taken by the commission, it reviewed a wide range of reports, papers and research materials, with which it was provided, relating to the topics under consideration. It considered comparative data on international experience but also relied on the knowledge and experience of its own members in dealing with matters of public water policy. As was required under its terms of reference, the commission sought submissions from interested parties. The public consultation engaged in by the commission proved to be a valuable process and enabled the commission to obtain the views of a broad range of groups, political parties and individuals. The list of parties from whom submissions were received or with whom the commission met is provided at Appendix 12 of the report. The commission has taken full account of the views put forward by those who made submissions in its analysis of the existing system of funding public water services and in formulating recommendations for a new funding model.

With regard to water consumption in Ireland, accurate data on water consumption has only recently become available in Ireland. This indicates that consumption levels are below those previously estimated. The average consumption per person per day is estimated at 111 litres when outliers are excluded and 123 litres when outliers are included. The data presented to the commission indicates that 7% of households use six times more water than the average. I draw the attention of members to Appendix 14 of the report, which is a letter from the European Commission. The committee will note in that letter that the Commission referred to Ireland as having an extraordinarily high level of water consumption and set the figure at 142 cu. m *per capita*. I gather - I am open to correction by those who know more about these matters - that a cubic metre is 1,000 litres. That indicates that the Commission's view of water consumption in Ireland, which was based on 2011 data, was way off the mark. That is an important point to emphasise, in the overall context and having regard to what the Commission stated in the letter. It is important that it be contextualised in that regard. I should say that when we received the letter from the Commission the figures that are in the report were checked and double-checked and the Commission is happy to stand over those figures.

With regard to charging arrangements in other jurisdictions, which is dealt with at paragraph 2.4 of the report, it is noted by the Commission that until the recent introduction of a tariff structure for domestic consumption, Ireland was unique in Europe in not having any direct charge on users of domestic water services. Reflecting the general categories of tariff structures available, the OECD, in 2010, notes that domestic water pricing typically derives from a combination of the following components. It could be a one-time connection fee to gain access to the service. It could be a recurrent fixed charge, sometimes known as a standing charge or flat fee, that can be uniform across customers or linked to some customer characteristic. For example, the factors that may be taken into account in determining the charge include the size of the water pipe or meter flow capacity, property values and the number of water-using appliances, but fixed

charges do not reflect consumption. If a metering system is in place, a volumetric rate, when multiplied by the volume of water consumed in a charging period, gives rise to the volumetric charge for that period. The rate can be the same for any level of consumption, it can increase in steps with volumes consumed - often referred to as increasing block tariffs, IBT - or it can decrease in steps with volumes consumed - decreasing block tariffs. In some circumstances, a minimum charge is paid for each period, regardless of consumption. The report sets out in more detail, as I am sure members will have seen, the charging systems that apply in various selected other countries

Financing infrastructure is dealt with in detail in the report. The Commission has noted there is an investment target of €5.5 billion up to 2021 to bring water services to an acceptable level, and it is quite likely that significant ongoing investment will be required beyond 2021. A total capital requirement of €13 billion was identified by Irish Water in 2015 as the minimum to meet good infrastructure and service standards.

The PricewaterhouseCoopers report of 2011 that recommended the establishment of a single utility for water services envisaged that Irish Water would become self-financing, perhaps as early as 2018, and could potentially achieve a borrowing capacity of €2.9 billion by 2030, stating also that “a key factor in evaluating the merits of the new operating model is the possibility that the borrowings of Irish Water could be outside the General Government Balance”. Indeed, it was recognised that a significant component of the strategy to establish Irish Water was that it would be classified as a market corporation under EUROSTAT rules. However, the EUROSTAT decision of July 2015 that Irish Water is a non-market entity controlled by government and should therefore be classified within the government sector, clearly impacted on that strategy, including the strategy for borrowing to fund infrastructure.

The Commission has also been informed that the New Economy and Recovery Authority, NewEra, has prepared a report for Government on funding options for Irish Water, examining matters such as the financial cost of external borrowing versus the provision of funds from central government sources. This report was not available to the expert commission at the time of reporting but, of course, is essential to a complete and accurate assessment of financing options.

I will turn to the issues arising in the consultation process. As members will note, in Chapter 3 of the report a summary is given of the main issues which arose during the consultation process. There was, as was to be expected, a wide spectrum of views expressed on the principal issues coming within the Commission’s terms of reference, particularly on the issue of how public water services should be paid for. They ranged from those who strongly advocated the principle that water should be paid for so as to emphasise its value and as a means of conservation, to those who expressed opposition, in many cases trenchant opposition, to any form of charges for domestic water, claiming that the service is already paid for through taxation.

The most commonly expressed concern to emerge from the consultation process related to the possibility of Irish Water being privatised at some time in the future. Many of those who opposed water charges and metering focused their opposition on what they regarded as the commodification of water and the potential that this creates for the eventual sale of the water utility. This concern was not confined to those opposed to water charges but was also expressed by some groups which were generally supportive of charges.

There was general support for the establishment of a central authority to manage and deliver public water services. However, some respondents expressed the view that the reputation of Irish Water had been irreparably damaged by such matters as the excessive spending on

consultancy and public relations, and that a new or different type of body could achieve more public support. The regulatory role of the Commission for Energy Regulation was generally supported, although it emerged that the exact role of the regulator could be clarified.

A number of respondents addressed the need for more targeted conservation policies focused on such matters as tax rebates or grants for the purchase of efficient water fixtures, more emphasis on education and outreach programmes promoting conservation, implementation of new building standards and public campaigns directed at creating greater awareness of the need for conservation.

A further issue of contention that arose in the consultation process related to the State's obligations under Article 9 of Directive 2000/60/EC, otherwise known as the Water Framework Directive. Some respondents submitted that Ireland continues to benefit from a derogation from the requirement of paragraph 1 of that Article and referred the Commission to professional legal advice to that effect. Others submitted that by operation of that directive Ireland has no choice but to implement a system of household charges for domestic water services. That is a matter I will return to in this summary.

The view was also expressed that the decision to introduce water charges was imposed as part of the EU-IMF programme of financial support to Ireland and not as a natural part of the domestic socio-political process. Many submissions also expressed frustration that there has been little consistency in policy direction on water charges over several decades, which has resulted in a lack of trust in Government decisions on this issue. As such, there was concern that any proposed new policy directions will not be seen as credible or reflecting the views of Irish citizens. There was also some mistrust of the independence of the expert commission, including concerns that the establishment of the commission was merely a box-ticking exercise for already settled Government policy. In this context, some expressed the view that the terms of reference of the commission had already precluded certain outcomes. Those are views to which I do not subscribe. I hope it will be evident from the report that is before the committee that the commission did not subscribe to those views.

Chapter 4 of the report discusses the commission's findings and analysis based on the research undertaken and its consideration of the submissions received. Based on the evidence available to it, and having regard to the expert knowledge and experience of its members, the commission concluded that the ideal funding model should provide adequate and secure funding for the operational and capital costs of supplying treated water; be affordable and not place an undue financial burden on those who can least afford to pay; help to support the conservation of water and support a clean environment; be practical in terms of its implementation; and ensure optimal allocation and usage of water. However, the commission also concluded that when assessing the optimal method for funding domestic water services, it is also important to consider country-specific factors and context, including the relevant weighting that should be attached to these various criteria. Regarding water usage in Ireland, the commission reached the following conclusions, based on its analysis of relevant data: Ireland has an abundance of renewable water resources leading to a high level of water availability; local water scarcity occurs nonetheless, especially in certain urban environments which is driven by high levels of leakage and growth in water demand; there is no evidence to indicate that Ireland has particularly high levels of domestic water consumption; Ireland has a relatively fragmented distribution network and the majority of this infrastructure is in serious need of upgrade and investment; there are ongoing incidents of contamination of drinking water supply in certain parts of the country; a lack of adequate contingency supplies of water in cities and ongoing problems with untreated

sewage entering rivers, lakes and the sea; and while renewable sources of water may be plentiful and average domestic consumption is not excessive, the infrastructural deficit is leading to problems and currently represents an unacceptable level of risk to the population.

I will speak on the existing charging frameworks, by which I mean the system in place prior to suspension. Traditionally water services in Ireland have been paid for through general taxation. This system has the merit of simplicity and is progressive to the extent that the taxation system is progressive and is complemented by social welfare supports. However, it does not address the issue of water conservation and funding for water infrastructure could be - and many will say has been - crowded out by demands from other parts of the system. A number of independent reviews, both in Ireland and internationally, have come to the conclusion that a volumetric charging system based on metering, supported by a well-targeted affordability system, represents the approach that is most in line with best practice and best meets the criteria described above. The original charging plan approved by the Commission for Energy Regulation was also generally consistent with established practice in a number of other jurisdictions. However, in addition to the criteria referred to earlier the commission was satisfied that in considering the suitability of a charging structure, due account must be had to the context of water charging, including the degree to which it attracts public acceptability. On that point, the commission adopted the reasoning contained in the Indecon report on local government financing 2005, which noted that “making recommendations which are correct in principle but which are not capable of being implemented does a disservice to the need to reform the system of local government funding” and “changes also have to take account of political constraints and the overall acceptability of options to the community.”

I will turn now to the recommendations which are set out in detail at chapter 5 of the report. These recommendations are not intended to be overly prescriptive, but rather to set out a number of principles upon which a revised arrangement for financing domestic water services could be based. Given the extent to which many groups and individuals who made submissions to the commission are genuinely concerned at the possibility of Irish Water passing from public ownership, and the extent to which that issue overshadowed debate on water charging policy, the Commission considered it appropriate to address this matter in its recommendations, which it does at paragraphs 5.1.1 to 5.1.4 of the report.

On funding, the principal recommendation is that the cost of providing all citizens with sufficient clean water to meet their normal domestic and personal needs should be met by the Exchequer out of taxation. Excessive or wasteful use of water should not be charged against taxation but should be paid for by the user. The commission did not consider it possible - we did not have the data available to us - to determine the level of usage that would be necessary to meet the normal domestic and personal needs of citizens. Rather, if this principle is accepted, the Commission for Energy Regulation should be assigned that task, which should be undertaken as part of an open and transparent process involving the public water forum.

In the overall context of the proposals, it is important to note that the practical effect of the expert commission's recommendations is that the State will be a customer of Irish Water and the Exchequer will pay for the volume of water supplied to meet the normal domestic and personal needs of citizens at tariffs approved by the Commission for Energy Regulation as a normal commercial transaction. If accepted and implemented, this proposal will ensure that the revenue that Irish Water had anticipated receiving from households would be receivable from the Exchequer. Hence, the overall income available to Irish Water would not be diminished and the company should have a guaranteed income stream from charges levied for normal

consumption. In addition, it will have some income from charges levied on households for excessive usage.

On metering, the commission noted that considerable benefits have accrued from the installation of meters, including in the provision of valuable data in detecting leaks and managing the system. At this juncture, I should note that the information to which I referred on the issue of consumption, which demonstrated that we use considerably less water than was anticipated, was identified as a result of metering. This information probably would not have been available in the absence of metering.

The question of whether the metering programme should be continued is not within the commission's terms of reference. However, if it is decided to proceed with the programme, consideration should be given to an approach that is more aligned with the recommendations in the report, such as district metering. The report addresses this issue in some detail.

The commission has also made a number of other recommendations, which are set out in detail in paragraphs 5.5 to 5.8, inclusive. These can be summarised as follows. The commission has made recommendations directed at improving public confidence in Irish Water through greater public engagement and transparency. It has also made recommendations directed at enhancing the role and effectiveness of the regulator. It is recommended that a much more proactive approach be taken to promoting water conservation through educational and information campaigns. Measures should also be considered that are directed at requiring the installation of water conserving fittings in new buildings and an extension of the building energy rating schemes to incorporate water conservation. The commission recommended that equity with the proposed arrangements for consumers on public water supplies must be maintained for those who are not served by public supplies. The commission recommends that this be reviewed when the allowances for consumers on public supplies are determined and that equity for group schemes and private wells be maintained through additional subsidy or other means. The commission further recommended that the necessary measures should be put in place to give effect to the commitment contained in the confidence and supply agreement that those who have paid their water bills to date will not be treated less favourably than those who have not.

Returning to the issue of compliance with obligations under European law, at paragraph 5.9 of the report, the commission addresses the significant and potentially difficult question of compliance with the State's obligations under directive 2000/60/EC establishing a framework for Community action in the field of water policy, known as the water framework directive. The expert commission wrote to the European Commission on 19 October 2016 inviting it to make a submission on the matter under consideration. By letter dated 24 November 2016, the European Commission responded to this invitation. Its letter restated similar points previously made to the expert commission. A copy of the European Commission's reply is appended to the report for the benefit of members.

As will be noted, the Commission received submissions from a number of interested parties in which the question of whether a particular type of funding regime is required to comply with the directive was addressed. However, for reasons stated in the report, the expert commission cannot purport to offer any definitive opinion on that question. It is, however, satisfied that the recommendations contained in the report provide for the full recovery by Irish Water of the cost of providing water services to households, thus ensuring proper funding of the water utility, and provides for investment in infrastructure. Furthermore, the approach recommended provides incentives for domestic users to use water resources efficiently and respects the polluter pays principle. In that context, if the recommendations are accepted, charges will be retained in re-

spect of excessive or wasteful uses of water. On that basis, it was the considered and unanimous opinion of the expert commission that it can cogently be argued that the recommendations, if implemented, will achieve the objective pursued by article 9 of the directive. This wording was carefully chosen because, as I am sure members are aware, European directives are binding on member states as to the purpose to be achieved, while the method and form for doing so is left to member states. This is provided for at article 288 of the Treaty on the Functioning of the European Union, otherwise known as the Lisbon treaty. The considered and unanimous opinion of the expert commission is that it a cogent argument can be made that the proposals in the report meet the objective of the directive. If careful consideration is given to the letter from the European Commission, it will be noted that it sets out what the Commission regards as the purpose or objective of the directive.

I wish to place on record the expert commission's appreciation of the excellent support services it received from the Institute of Public Administration, which enabled us to complete our work with a day to spare. On behalf of the expert commission, I commend the report to the joint committee and wish members well in their deliberations.

**Chairman:** Gabhaim buíochas leis an Uasal Ó Dufaigh. Táimid an-bhuíoch dó as ucht an chur i láthair a thug sé don choiste seo. I thank Mr. Duffy for his assistance to the joint committee. I expect that we will request his further assistance as the committee's work proceeds. We may well invite him to appear again to offer us his views and direction as we progress through our significant workload.

**Mr. Kevin Duffy:** I thank the Chairman and members.

**Chairman:** Labhróidh mé beagáinín i nGaeilge. Níl le déanamh agam ach buíochas a ghlacadh le chuile dhuine as ucht an cruinniú a bhí againn. Bhí cruinniú an-mhaith againn. I thank everybody for their commitment, focus and professionalism in helping me steer this committee in the serious work we have to do. I wish members and their families a happy, joyful and peaceful Christmas.

The joint committee adjourned at 3.50 p.m. until 2 p.m. on Thursday, 12 January 2017.