

DÁIL ÉIREANN

AN COMHCHOISTE UM THITHÍOCHT, RIALTAS ÁITIÚIL AGUS OIDHREACTH

JOINT COMMITTEE ON HOUSING, LOCAL GOVERNMENT AND HERITAGE

Dé Máirt, 20 Deireadh Fómhair 2020

Tuesday, 20 October 2020

Tháinig an Comhchoiste le chéile ag 11 a.m.

The Joint Committee met at 11 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Francis Noel Duffy,	Victor Boyhan,
Thomas Gould,	John Cummins,
Emer Higgins,	Mary Fitzpatrick,
Paul McAuliffe,	Mary Seery Kearney.
Jennifer Murnane O'Connor,	
Cian O'Callaghan,	
Richard O'Donoghue,	
Eoin Ó Broin.	

Teachta / Deputy Steven Matthews sa Chathaoir / in the Chair.

General Scheme of the Water Environment (Abstractions) Bill 2020: Discussion

Chairman: We will now deal with item No. 6 on our agenda, that is the pre-legislative scrutiny of the Water Environment (Abstractions) Bill 2020. We are joined by Mr. Feargal Ó Coigligh, assistant secretary, and by Ms Emer Connolly, principal officer, at the Department of Housing, Planning and Local Government. Members have received a copy of the opening statement, the general scheme of the Bill and an information note. I welcome the officials from the Department. Once they have made their opening statement I will invite members to ask questions.

Before we begin, I wish to draw attention to the fact that by virtue of section 17(2)(I) of the Defamation Act 2009, witnesses 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 do so, 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 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. The opening statement submitted to the committee will be published on the committee's web page after this meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I now invite the witnesses to make their opening statement on behalf of the Department.

Mr. Feargal Ó Coigligh: I thank the Chairman. My colleague, Ms Emer Connolly, will read the opening statement. Another colleague who was most closely involved in drafting the Bill was due to attend today but she is self-isolating as a precaution. I am a poor substitute but I will try, along with Ms Connolly, to answer as many questions as possible.

Ms Emer Connolly: I thank the committee for its invitation to attend today to discuss the general scheme of the water environment abstractions Bill which was approved by the Government on 29 September 2020. This is important legislation that will give effect to Ireland's obligations under European law and put appropriate protections in place with regard to the abstraction of water from our rivers, lakes, streams and groundwater sources.

The water framework directive which was adopted in 2000 requires EU member states to take the necessary measures to achieve and maintain good ecological status in the water environment. Among the obligations the directive places on us is the requirement to have a system of registration and control over the abstraction of water. Existing provisions dealing with water abstractions date from 1942 and obviously predate the introducing of the directive. At present Ireland is not fully compliant with the directive and this forms part of an infringement action brought by the European Commission against Ireland. The Department is committed to addressing this through this legislation.

The general scheme proposes a three-tiered registration licensing system for the abstraction of water, with the Environmental Protection Agency, EPA, responsible for establishing and maintaining a database of registrations and licensing. At the lowest level all abstracters will be required to abide by a set of general binding principles issued by the EPA in the form of guidelines. These will relate to water conservation and public health issues such as ensuring pollut-

ants do not enter the water, minimising leakage, as well as technical matters such as measuring or estimating the volume of water abstracted. Abstractions of 25 cu. m or more per day will require registration with the EPA. This is already happening by way of regulations introduced in 2018 and those provisions will be restated in this new Bill. By way of comparison, a well for a private house would extract up to 1 cu. m per day.

The highest tier of control will be licensing. This will apply to all abstractions of 2,000 cu. m per day or more and also those abstractions of between 250 cu. m and 1,999 cu. m per day deemed by the EPA to be significant. A significant abstraction is one that causes the water body in question to be at risk or potentially at risk from over abstraction resulting in its failing to achieve its environmental objectives or placing it at risk of failing to do so. The most recent published information from the EPA indicates around 6% of water bodies in Ireland are potentially at environmental risk due to abstraction pressures.

As well as fulfilling our obligations under the water framework directive, the Bill is also required in order to license large-scale water abstractions, particularly for public water supplies. The legislation is key to enabling the planned eastern and midlands region water supply project, which is intended to supply water to Dublin where water supply is at critical levels, as well as areas of the east and midlands. It will ensure that an appropriate legal framework and consenting process is in place to facilitate consideration and determination of this project.

The legislation is intended to be graduated and proportionate. Small scale abstractions do not generally pose a risk to the water environment. Accordingly, there are no obligations placed on small-scale abstractors other than abiding by general binding rules. Only larger abstractions and those posing a risk will have to apply for a licence.

Throughout the development of this draft general scheme, there has been detailed engagement with other Departments and a range of stakeholders. The Department has worked closely with the Environmental Protection Agency, which will oversee and implement the new requirements. There have also been close contacts with large-scale water abstractors, including Irish Water, the ESB and Waterways Ireland, in developing these proposals.

We have endeavoured to achieve a balance in the legislation between the necessary environmental protections and the need to minimise the administrative burden placed on abstractors, some of which may have been freely abstracting water for many years. The Department has aimed to place proportionality at the heart of the measures and the general scheme offers a measured and fair way to protect our water environment and implement the necessary controls over the abstraction of water.

We welcome the views of the committee on these proposals, which we will consider and report back to the Minister. I am happy to answer any questions members might have.

Chairman: I thank Ms Connolly. We have agreed an order for questions and Fianna Fáil is first. Do Senator Fitzpatrick and Deputy McAuliffe wish to share time?

Senator Mary Fitzpatrick: We can share time.

Chairman: Members have five minutes to ask questions and hear answers.

Senator Mary Fitzpatrick: I thank the witnesses for the presentation. I thank Mr. Ó Coighligh for taking the hot seat and promise that I will not turn up the temperature too high.

The legislation is important and I am delighted that the Department has brought it to us. It is important in terms of our compliance with European law and, more important, the protection of our water supply.

I note the opening statement indicates the Department has consulted widely with the various stakeholders and, most important, the Environmental Protection Agency, Irish Water, the ESB and Waterways Ireland. What about small water extractors? How have people who have their own water supply been engaged in this process? Have they been formally engaged with? If not, then what is the proposal to ensure they are consulted? I appreciate that the Department is dealing with individuals but ask the witnesses to talk about how that has happened or how the Department proposes to conduct that.

When and if this legislation is passed, how will its functioning be reported to the general public? How will the information, such as the licensing and registrations, be made available? How will the operation of the process be transparent? What scope, if any, will there be in the future for amending the operation of the process?

Deputy Paul McAuliffe: We may be talking about abstraction but water is not an abstract topic in the city of Dublin where the water supply has reached a critical level. The Bill is a very necessary instrument that will allow us to secure supply for the city.

A regulatory regime has been outlined in the legislation and I am interested in hearing the Department's view on how quickly the regime can be put together. Although it also deals with the European Union's directives, one of the principal bases for this is increasing supply to the eastern seaboard, particularly to the capital city. What sort of consultation has been done with the developer of the project, given that they are most likely to be the first large scale project to use the legislative base?

Mr. Feargal Ó Coigligh: I thank Senator Fitzpatrick and Deputy McAuliffe for their questions.

On the first question about abstractions, hundreds of thousands of people around the country have domestic wells to abstract water. They are not directly affected by the Bill insofar as there is no requirement for households using that level of water to register. As the threshold is above 25 cu. m per day it will not bring in domestic water users but may include a number of smaller enterprises such as large dairy farmers, large hotels and some SME businesses that might use a fair bit of water.

The Irish Business Employers Confederation, IBEC, and the Irish Farmers Association, IFA, all have responded to the public consultation as well as environmental non-governmental organisations, NGOs, on what levels the controls should have an impact. There will not be a direct impact on the vast majority of private people or very small consumers. There is a provision for general binding rules, which just say that anybody abstracting water cannot or should not pollute and should watch the leakage but that should happen anyway. I do not see a very wide number of people being impacted. It is the larger abstractors of water that we are wishing to engage such as the IFA, NGOs, IBEC, the Department of Enterprise, Trade and Employment, etc. and they have engaged. There are further options to engage as we continue the legislative process. We will consider any views that the committee has or views that arise as we progress the legislation.

On the transparent operation of the licensing regime, the Environmental Protection Agency,

EPA, will be the regulatory authority in this respect. As with all regulatory functions carried out by the EPA, it is very good with producing annual reports on everything that it does, in terms of transparency, registrations and identifying issues that might need to be addressed. There are provisions that allow elements of the regime to be amended by regulation. We, as a Department, keep very close contact with the EPA in that regard. I hope I have answered the question.

Senator Mary Fitzpatrick: I thank Mr. Ó Coigligh.

Mr. Feargal Ó Coigligh: On the Dublin supply, the Bill is very important to facilitate the application for the abstraction of water from the Shannon river for the Dublin region and the region in between, the midlands and eastern region. The process will be undertaken by Irish Water in terms of developing the proposals that would be consented to. The abstraction licence is a consent matter for the EPA and a planning matter for An Bord Pleanála and there are further controls. A project of this scale, under the public spending code, requires checkpoints to be agreed by the Government. Projects worth over €100 million, under the new public spending code, must go to Government at particular points through the planning process.

Chairman: We are just out of time, Mr. Ó Coigligh, and I am pretty sure that other Deputies and Senators will raise the Dublin supply.

Deputy Paul McAuliffe: I ask that Mr. Ó Coigligh is allowed to answer my question on the timeline for the regulatory framework to be put in place.

Mr. Feargal Ó Coigligh: We are working in parallel with the regulations. We have employed a former official of the Department to draft the regulations. As soon as the Bill goes through we would hope that the regulations could be introduced and the Bill commenced very quickly.

Chairman: Sinn Féin is next and I call Deputy Ó Broin.

Deputy Eoin Ó Broin: I thank the witnesses for the presentation and replies. I wish to make a couple of introductory comments. As per normal, I have a long list of technical questions and if I do not get through them in five minutes then I hope to be allowed to ask a second round of questions or submit them in writing.

It is important for the committee to understand that it is almost 20 years since the Water Framework Directive placed an obligation on the State to have this kind of an abstraction regime. I wish to make it clear to members that we are currently subject to enforcement proceedings by the Commission on our failure to do that. That is not a criticism of the officials; it is just part of the background to this issue. I have a genuine concern that what is being proposed in these heads is the absolute minimum the Department and Government think will get us through those legal requirements. I am genuinely surprised at the thresholds, so many of my questions relate to them.

Head 5 refers to general binding rules, but they are not rules in real terms. They are simply self-regulations. There is no mechanism for inspection or enforcement, so while the EPA will publish the rules, no one will know whether anyone complies with them because there is no mechanism to inspect and enforce. Head 5 also states that the threshold of 25 cu. m does not require anything other than abiding by these self-regulations. Just so committee members are clear on how much water that is, it is the equivalent daily usage of 225 people. That is quite a lot of water, even for a small SME, to have no regulatory cover whatsoever. While the Department mentions in its explanatory note that it is trying to mirror what is happening in Scotland

and the North of Ireland, they have a much lower threshold of 10 cu. m, which is the daily household usage of 90 people. What is the rationale for not going for the 10 cu. m used in the North?

I also have a concern about head 7, which states that the Minister will be involved in effecting potential registration agreements. Why is that the case? Why is the Minister given that role, on foot of a report from the EPA? Most other forms of permission we deal with, such as planning permission, are decided by independent bodies rather than a political figure.

Head 8 relates to significant abstractions. Again, for the information of committee members, 2,000 cu. m is the equivalent daily usage of 18,000 people. That is the only point at which one needs a licence. Anybody who is extracting any less than the equivalent usage of 18,000 people per day will not need to have a licence. I do not understand the rationale for that. What are the equivalent thresholds in Scotland and the North of Ireland and why have we diverted from those?

As regards head 10, it seems there is no public participation in the licence grant process. Correct me if I am wrong but it does not seem to be listed here. That would suggest we have big legal problems with our adherence to both the habitat and environmental impact assessments. If there is no clear public participation in that licensing process, can Mr. Ó Coighligh explain the outlines for that? I might stop there. If I have more time I will come back in, either in this round or the second round.

Chairman: The Deputy can get more answers in the second round.

Mr. Feargal Ó Coighligh: I will try to answer the Deputy's questions as best I can. He said it has been quite some time since the directive came into force. As in many cases with legislation, there is an existing regime regarding abstraction of water. Sometimes it is felt that that is sufficient and it becomes apparent over time that it is not. That is why this may not have been a priority at the beginning, because there was an existing law in relation to the abstraction of water. Nonetheless, as jurisprudence has developed and the implementation of the environmental directives has tightened up, it has become clear that the Irish legislative framework was not sufficient.

There is absolutely a debate around thresholds. That was one of the significant areas of discussion in the consultations the Department received. Environmental NGOs wished to see a lower threshold, while others wished to see it maintained or increased. We looked to other jurisdictions. As the Deputy mentioned, 10 cu. m is the threshold in the North and in Scotland. We stuck with the 25 cu. m threshold as that was, in effect, the existing threshold under the current legislation. We have the benefit of experience in that, in terms of the environmental issues facing Ireland, we are not under pressure with abstractions. As Ms Connolly pointed out in her opening statement, the EPA reckons that around 6% of water bodies are under some pressure. It is not as significant an environmental pressure as in other areas, and therefore we need to make sure our level of control is appropriate to the issue which arises. Under the general scheme, the Environmental Protection Agency, EPA, is to be given the power to recommend that the level be adjusted, if it considers it appropriate. There is also provision in the Bill for the Minister to introduce regulations, to be agreed by the Houses of the Oireachtas, which would allow that threshold to be lowered. This issue can be looked at again in the future if the EPA recommends it. The EPA acts as the environmental expert and advises Government in this area.

With regard to general binding rules, the set of rules is indeed softer. It can be thought of

as a stepped-up system of general principles by which we hope to abide. It specifies the point at which we want people to register so that we can be aware of the existence of their abstraction points, the point at which they may need to be licensed, whether the EPA consider the abstraction to be significant, and the point at which licensing is absolutely required. It is a tiered system.

Chairman: We are out of time on this question. We may come back to it.

Mr. Feargal Ó Coigligh: That is okay. We might come back to some of the other questions.

Senator John Cummins: I thank Mr. Ó Coigligh and Ms Connolly. I will focus on the second paragraph of head 7 which reads “Two or more abstraction points drawing water from the same body of surface water or groundwater and which join to form a combined abstraction shall be considered to be a single abstraction”. In responding to Senator Fitzpatrick, Mr. Ó Coigligh said that this would not affect the hundreds of thousands of people who draw water for their domestic supply. How is it determined that it is the same body of water from which water is drawn? If neighbours in the same area were drawing from the same surface water or groundwater supply, could they be considered to exceed the threshold and therefore have to register? I am conscious of what was said in the opening remarks with regard to balance, proportionality and the avoidance of administrative burden. I am trying to ascertain the situation in that regard.

I welcome the point on which Mr. Ó Coigligh was elaborating when he ran out of time. He suggested that the threshold could potentially be lowered. Such a change would obviously be subject to the approval of the Oireachtas. This is very important. Will Mr. Ó Coigligh elaborate on that point?

Mr. Feargal Ó Coigligh: With regard to cumulative impacts, there is a principle that is very well known in environmental law and which affects matters such as environmental impact assessments, which is that it is not enough to look at an individual project and that one must look at how it might impact on the environment in combination with other projects. This gives the EPA the option to consider cumulative impacts. The EPA is more qualified to answer than I am but I suspect that, in most cases, relatively low levels of abstraction will not be a problem in most areas. In some areas, such as the Dublin region which is obviously very important, in the absence of a major new supply, Irish Water will be looking at options for additional groundwater abstraction points. In major urban areas, it may have to be considered whether the groundwater supply would be under stress if additional abstractions points were introduced. I suspect this will not affect abstractions at the lower level.

Senator John Cummins: Mr. Ó Coigligh suspects it will not affect abstractions at the lower level.

Mr. Feargal Ó Coigligh: Yes.

Senator John Cummins: I appreciate what he has said with regard to urban areas but I am concerned about rural areas. The population of a village and those who live on its outskirts may draw from the same body of water. When these abstractions are combined, they may exceed the threshold of 25 cu. m. Under the draft Bill, the onus is then on one of these people to register on behalf of all of them. Given what Mr. Ó Coigligh said earlier about avoiding an administrative burden, is the issue addressed under head 7 or will it need further consideration?

Mr. Feargal Ó Coigligh: I do not think that in reality it would be an additional burden, but we can certainly look at it. Perhaps Ms Connolly has a view on the matter.

Ms Emer Connolly: If there is a drain on a particular body of water, the Environmental Protection Agency, EPA, would be made aware of it. If a licence is required for that particular area, it would come to light that there is pressure on that particular body of water, in which case the licence would not be granted.

Senator John Cummins: In which case, the households would all have to register.

Mr. Feargal Ó Coigligh: We will double check that. I do not suspect there would be an impact on households, because as, Deputy Ó Broin mentioned, one is talking about 1,000 l per day, compared to the registration threshold of 25 cu. m per day, and the actual licensing threshold is many times that figure.

Senator John Cummins: I am more concerned about the 25 cu. m threshold and the registration aspect of it, rather than the licensing. It will not be a licensing issue, but is it potentially a registration issue and administrative burden in that regard? It is an issue that should be considered.

Mr. Feargal Ó Coigligh: I do not think it will be, but we will have a look at it.

Ms Emer Connolly: If a household is concerned, the water will be going back into the watercourse in due course, so it will not have a significant impact.

Deputy Richard O'Donoghue: I thank the witnesses for their presentation. One of the first things stated today was the importance of Dublin. Dublin may be important as the capital, but Limerick is equally important, especially when one is talking about the Shannon and abstractions from it. My questions relate to the 25 cu. m threshold previously mentioned and the issue raised by Senator Cummins. There are many schemes in rural areas. A cluster of smaller schemes may be set up under one scheme, and those schemes have not yet been taken over by the local authorities. What is the registration point for such schemes, which could include ten, 15 or even 20 houses?

Deputy Ó Broin also stated that 25 cu. m of water is equal to the usage of 220 people. However, it is not equal to the usage of many cattle in a rural area, when one has to supply different amounts of water to the cattle, depending on the time of year.

Another question I have concerns the point of registration for local authorities, such as fire stations. How does one monitor the water usage of a fire station or a fire service training centre? I do not think one can. What is the regulation in that area within the current framework?

Mr. Feargal Ó Coigligh: On group schemes, any body or person who abstracts water above the threshold will have to register or obtain a licence. That is the case, regardless. However, I am not sure that there is any pressure from the rural group scheme sector not to be included within the provisions of the Bill, so it will not be a particular issue for it.

On fire stations, I do not think the use of water for fighting fires, for example, would be considered an abstraction within the provisions of the Bill. On how training centres abstract water, it would depend on whether they are coming off a private or public water supply. If they are coming off a public water supply, they are coming off a public water supply; if they have their own well, which reaches the limits, they would be obliged to register. It has not been brought to our attention as a particular issue, but if there is an issue there, we will look at it. What was the third issue the Deputy raised?

Deputy Richard O'Donoghue: The response covered the issues I raised, but I have another question. In the context of a farming community that has a number of its own wells, how can it be recorded whether it is above or below the threshold?

Mr. Feargal Ó Coigligh: There is an obligation on all those who come within the scheme of the Bill to register where that is relevant. For example, several dairy farmers are registered. The EPA estimates that approximately 750 of the 18,000 dairy farms in the country come within the scheme of the Bill. We have figures for registrations which have been introduced by-----

Deputy Richard O'Donoghue: On that point, in order to get an accurate picture, it should be noted that many farmers have a well and are part of a scheme. Most of them have dual water sources - they have a well and are on a local authority scheme.

Mr. Feargal Ó Coigligh: If a farmer is on a scheme for domestic or other use, it is a matter for the scheme to register. If a farmer has a separate extraction point that comes within the point of registration or licensing, the farmer would have to register and-or get a licence at that point.

Deputy Richard O'Donoghue: I have no problem giving water to Dublin, but what is in it for County Limerick and the other areas from which the water is being extracted? I do not like everything coming to Dublin, which will benefit from water from the Shannon. What is in it for local authorities in Limerick and elsewhere?

Deputy Eoin Ó Broin: Let us not forget the good people of Fermanagh, from where the water originates before it gets to Limerick.

Mr. Feargal Ó Coigligh: Irish Water will be the promoter of the project. It is important to note that the project was initiated as a concept by Dublin City Council as a Dublin water supply issue but is now an eastern and midlands region supply project. It will benefit the whole region between Limerick and Dublin.

Deputy Richard O'Donoghue: We could charge them per litre.

Chairman: The water framework directive requires us to have a licensing and regulation system in place. That is a good thing because we can see from the documentation there is a lack of accuracy and knowledge in terms of how much water is currently being extracted. We have data from some local authorities but much of it is out of date and has not been followed up on. It surprises me to hear that only 6% of water bodies are under pressure, although, admittedly, that figure just relates to extraction. All our water bodies are currently under pressure, including groundwaters, lakes and rivers. Water quality is deteriorating, as is demonstrated year after year in EPA surveys. It is really important that we get an accurate figure for how much is being extracted before we can suggest that only 6% of water bodies are under pressure from extraction. The more water we draw off, the more environmental impact it will have.

When water is drawn from a source, it must go back through some sort of treatment. Much of the time, it is probably not treated before going back into the water body. Does the extraction also take account of the discharge of the water in whatever format it goes back into the water system? It is very important to have accurate measurement.

It is suggested in the legislation that we will use a model similar to that in usage in Scotland. A figure of 10 cu. m was set as the threshold for notifiable there, but the Bill proposes a figure of 25 cu. m. What is the rationale behind that? Our water supplies are under significant pressure. Why is a higher threshold proposed in that regard?

Head No. 5 states it is not necessary to measure extraction as it can be estimated. What are the difficulties with measuring extraction? I ask Mr. Ó Coighligh to give an example of an extraction that would be difficult to measure and for which estimation would be a better method.

Mr. Feargal Ó Coighligh: In terms of the data and water bodies that are under pressure, we take figures from the EPA on what it considers to be the water bodies under pressure. The Chairman is correct that the main pressure on Irish water in the environment is not extraction. Far more pressure relates to the nutrient load going into the waters. That is a much more pressing problem. We take the figures estimated by the EPA. The committee may seek to hear evidence from the EPA. That is where we get our figures.

On the 25 cu. m threshold for registration, that is the figure used under the existing legislation. Arguments were made to raise the threshold, primarily by environmental NGOs, and to maintain it, primarily by the farming, agricultural, business and small business sectors. We felt the best option was to maintain the threshold, and then allow the EPA, as the environmental experts, to monitor the system and make recommendations on whether it would be appropriate to lower the threshold in the future. That was the rationale we adopted. It does not deal with the issue of discharge. If water, for example, is abstracted for a golf course, it will be used on the grass, while in agriculture it will be used for irrigation, and domestically it will go through the wastewater system, whether that is a private standalone system or the public system. In that context, it is important to have an appropriate control.

Regarding the issue of measurement versus estimation, this concerns getting the appropriate control. It is possible to take an abstraction point, measure the flow, generally know how much water is being used, and then it will be possible to say where that threshold is. If there is a desire to be completely accurate, that would require people to put meters on the flows, record the readings on those meters and then regularly report those meter flows to the regulatory authorities. Capital and ongoing costs will be involved, as well as a bureaucratic and administrative cost in monitoring all of that. It is a judgment call as to what it is appropriate to do.

Chairman: It is possible to have a series of 24 cu. m abstractions that do not need to be notified. The cumulative effect of that could be quite significant. Regarding being onerous in recording the use or abstraction of water, we have been careless with our water resources for far too long and that is why we find ourselves in a situation where there is extreme pressure on our water sources and our water quality. We should look at that situation as part of this legislation to see if 25 cu. m is acceptable, given that it is 10 cu. m in other jurisdictions with similar hydrological cycles.

I thank Mr. Ó Coighligh. I call Deputy Cian O'Callaghan.

Deputy Cian O'Callaghan: Regarding the issue of thresholds and the approach taken in this legislation, we have heard that we are looking at a higher threshold than there is in Northern Ireland and Scotland. In respect of standards in other European Union countries, how do the points for registration and licensing compare in respect of thresholds? I would also like the witnesses to comment on the lack of mechanisms concerning inspections and enforcement, and develop the rationale as to why there are not stronger provisions in this regard. I also ask the witnesses to touch on how this legislation will impact on large water extractors who need a licence. What kind of conditions would be envisaged in issuing licences?

Mr. Feargal Ó Coighligh: Members have pointed out that we cited Scotland as an example. That is in the context of the overall tiered system of general binding rules, registrations and li-

censing. I am not sure that system is necessarily comparable with other European jurisdictions. We will, however, have a look at that and see what information we do have regarding comparisons. Other European jurisdictions might not have that exact three tier system.

Deputy Cian O’Callaghan: To clarify, Mr. Ó Coighligh is not aware of any other country which is proposing the threshold level that we are proposing. Are there no examples to base that on? Is it the case that we are only aware of other countries with lower thresholds?

Mr. Feargal Ó Coighligh: I am just citing Northern Ireland and Scotland. We will come back with information regarding other jurisdictions but they may have completely different types of arrangements.

Deputy Cian O’Callaghan: Based on our knowledge at the moment, it seems there is no one else looking at similar levels.

Mr. Feargal Ó Coighligh: There are different systems which would not be comparable. We will come back to the Deputy with additional information in that regard.

Deputy Cian O’Callaghan: My point is that the only comparable systems of which we are aware have lower thresholds. That is the current situation.

Mr. Feargal Ó Coighligh: The two jurisdictions we most closely looked at were Northern Ireland and Scotland and it is absolutely the case that they have a lower threshold.

In regard to enforcement, the general scheme of the Bill sets out the penalties for non-compliance, which would be typical in this type of legislation. Head 27 provides for offences and penalties. If the Deputy has any additional ideas in that regard, we can certainly look at them.

Will the Deputy remind me of this third question?

Deputy Cian O’Callaghan: My question concerned the larger numbers of people who would have a licence and the sorts of conditions that are envisioned to be attached to those licences.

Mr. Feargal Ó Coighligh: That would be a matter for the EPA. They will probably relate to total flows, total abstraction limits, whether the points of abstraction can be different for groundwater versus river abstraction and controls that might be brought in at periods of stress, such as environmental stress when there are draughts. There would be a range of controls which the EPA could increase as required.

Chairman: I thank Deputy O’Callaghan for keeping well within his time. We will now proceed to the second round of questions and answers, returning first to Senator Fitzpatrick.

Senator Mary Fitzpatrick: I thank the Chairman. The legislation is good in that it seeks to implement compliance with European law, namely, the water framework directive, ensure protection of our water supply and potentially create the facility for an application to be made for increased water supply to the Dublin area. However, my concern is that the provisions in the Bill must be meaningful and, in this regard, I have specific questions regarding heads 5, 7 and 9.

Head 5 sets out what we will incorporate in the general binding rules but the point is that those rules will be guidelines. When we talk about a threshold of 10 cu. m versus 25 cu. m, for example, it must be a meaningful provision. We need to include in the guidelines the facility to have an accurate recording of the water being abstracted, the quality of that water and the

measurement of it. I listened to what was said earlier about there being a bureaucracy and administration around this issue, but the technology has moved on and there are smart metering devices and software that allow for real-time reporting. If we are serious about protecting and managing our water supplies, we need to make that level of investment. Water is a finite natural resource and we cannot manage it in an outdated administrative environment.

I have similar concerns about how meaningful the provisions under head 7 will be. They deal with the introduction of an offence of abstracting water where it is not done legitimately. If this head is to have any meaning, we must ensure that what is being abstracted is measured, and that goes back to the strengthening of the guidelines under head 5 and making them more requirements than guidelines. If head 7 is going to define an offence, what will be the penalty for that offence, how will it be prosecuted and who will prosecute it?

Finally, head 9 includes a reference to how an abstraction will be deemed significant. How will we define what is a significant abstraction if there is not a requirement, under the general rules set out in head 5, that all abstractions be measured, reported and detailed?

Deputy Paul McAuliffe: The issue I wish to raise was touched on by Deputy O'Donoghue. Head 19 refers to the fire services. The 1981 Act allows for abstraction of water for the extinguishing of a fire or the protection of a person or property in the case of fire. Dublin Fire Brigade, which is probably the largest fire service in the country, would be using water primarily for extinguishing fires but there would be training too. There should be some level of consultation with it about the type of water that it uses because it is a guardian of water, as much as anybody else is, but we have to be realistic about how we would separate training, or whether the Department would accept an amendment which would broaden that term.

Mr. Feargal Ó Coigligh: Regarding heads 5, 7 and 9, the general binding rules, Deputy Cian O'Callaghan asked what kind of conditions will be placed on a licensed facility by the EPA. Real-time metering and reporting would absolutely be required for those larger licensed abstraction points. With regard to people who are required to register, which is a smaller level, what is the balance of burden that one wishes to place, even with technology? There is a tension regarding the argument that the registration system should be brought down to the lowest level possible between those who want it lower and those who do not want it lower because of possible burdens or legal obligations. There is a balance in what one provides for. We will certainly look at the general binding rules, which we are doing some work on at the moment, and at what is appropriate to contain within those.

Senator Mary Fitzpatrick: If there are multiple abstractions, they can cumulatively be quite significant. With regard to the technology, smart devices are being put in people's three-bedroom semi-detached homes to measure the water. Some large extractions of water will be legitimate, worthy and valid. Others will be abusive. If we are not measuring it, we cannot determine one from the other. It is important, if we progress this, that we make it a requirement to have smart metering on every abstraction.

Mr. Feargal Ó Coigligh: We note the point.

Regarding the fire service, we will consult our colleagues in the side of the Department that deals with it, and if we need to consult further about the issue, we will do so.

Deputy Eoin Ó Broin: It would be a mistake for us to associate the contents of this Bill with the proposed Shannon to Dublin pipeline, which is a project that many of us are criti-

cal and sceptical of partly because the purpose of this legislation is to try to properly manage our water supply everywhere. If we do not get this right, small farmers, small businesses and householders in rural and urban Ireland will lose out. I would almost separate out the Shannon pipeline, which is the reason the Government is prioritising this, but it is not why we are looking at this. This is about maintaining our water supply. If one does not know how much water one is taking out of a given location at any one time, one does not know if one is heading towards a drought or some other problem, which is what this is really about.

The officials say it is not a significant environmental problem, but we know that 32% of our water sources are at risk of being in breach of the water framework directive. We do not know how many of those potential breaches relate to abstraction. Where do the officials get the 6% figure and is it based on solid evidence? I go back to the previous question about the 250 cu. m and the 2,000 cu. m. To reassure Deputy Richard O'Donoghue, 2,000 cu. m would provide for about 7,000 cattle. That is the level at which one would require a licence, from my understanding of the data. Why did we choose the 250 cu. m and 2,000 cu. m and how do they compare with equivalent thresholds in, for example, the North and Scotland?

Head 10 is about public participation. Does this put us in breach of the habitats and environmental impact assessments directives?

With regard to registrations, my understanding is that in the North it is done with an online portal. One logs on and puts in one's details. What information do the officials have about the way in which registration works in the North?

Is it the case that existing abstractors cannot be refused either a registration or a licence? Is there any mechanism to refuse existing abstractors even, for example, where they might be doing abstraction that is harmful to the water supply or, broadly speaking, to the environment?

Mr. Ó Coighligh says 25 cu. m is based on existing practice, but that is a piece of legislation from 1977, which is 20 years before the water framework directive so surely it makes no sense to base a piece of legislation that comes in 20 years after the water framework directive on something that is now 40 years old.

Do we know how much of the abstractions, as a percentage of the overall abstractions, will be covered by this regime? I understand there was a detailed public consultation in 2018 but the Department never published the list of submissions or the submissions themselves. Will Mr. Ó Coighligh undertake to do that on the Department's website in the coming period?

Mr. Feargal Ó Coighligh: There are a lot of questions there. I hope I did not say that the issue was not significant. What I tried to suggest, if I did not say it, is in terms of the environmental pressures on water in the Irish environment, there are many more significant issues.

In terms of coming to an appropriate level to have registration and then licensing, there is an evidential base either way, which would allow one either to stay where one is, or to relax it or decrease it. I do not think we have an evidential base to suggest that the issue of abstraction at that level is of such significance as to require registration. However, as I said, we are open to further views on that. The EPA is the expert in the field and can guide us in the future.

Registration is not hugely burdensome. There are 1,583 abstractions registered with the EPA at the moment. That was brought in by regulations introduced in 2018 as a stopgap measure to begin the process. It is a pretty light touch and that is on purpose. If the Deputy wants to add additional measures to that it is possible, and then it becomes a lesser licence. It is a matter

for the Oireachtas to decide on the right level of burden that it wants to introduce.

In terms of the limits chosen for the licensing regime, we work closely with the EPA to try to gauge what would be an appropriate limit and I suspect that is where those figures come from.

Deputy Eoin Ó Broin: What about the refusals?

Mr. Feargal Ó Coigligh: The rationale behind that is that if a person or entity has been abstracting water for a long number of years they will have an established right under law to abstract water and to take that away after many years of abstraction is likely to lead to compensation.

Deputy Eoin Ó Broin: Is that even if the EPA were to suggest that it was putting us in conflict with the terms of the water framework directive?

Mr. Feargal Ó Coigligh: That is the reason the provisions allow for conditionality but not refusal.

Deputy Eoin Ó Broin: What about the question on public participation in the licences?

Mr. Feargal Ó Coigligh: That is something similar in that there is public participation under head 11, which is for new licences, not under head 10, which is for existing licences. I think that is correct.

Deputy Eoin Ó Broin: Is the Attorney General happy with that and that we will not come into conflict with any of our legal obligations under the environmental impact assessment directive or the water framework directive?

Mr. Feargal Ó Coigligh: The Attorney General has been advising us in the development of the legislation and will continue to do so as it goes through the drafting process. That is a point we would be happy to raise with the Attorney General.

Deputy Eoin Ó Broin: Two questions were not answered. The 25 cu. m threshold is based on the 1977 legislation. Is Mr. Ó Coigligh saying the Department is solely relying on the EPA to advise on the levels? That means if the EPA were to say the data are not sufficient or the levels should be higher the Department would respond. Will the Department publish the list and the content of the submissions made in 2018?

Mr. Feargal Ó Coigligh: The Deputy put down a parliamentary question which sparked us to say that we should have those submissions up. We will put them up in the coming days.

Regarding the 25 cu. m issue, we are not necessarily reliant on the EPA, but we have spoken to the agency. That is the rationale behind public consultation. We are listening to many voices. Some wish to see it reduced and some do not, so there is a call to be made.

Senator John Cummins: I have a further question relating to the 6% that Deputy Ó Broin mentioned. Do we have any information on the volumes involved in that 6% that are at risk of abstraction pressure?

Mr. Feargal Ó Coigligh: We do not have any detail here, but we can ask the EPA to give some additional information on the 6% and how that arises. I understand it is spread geographically as well. We can ask the EPA to provide some additional information to the committee.

Senator John Cummins: It would be helpful to have an idea of where that 6% is identified

in the country and the volumes we are discussing. Are they far in excess of the thresholds we are talking about here in terms of licensing? Are they fitting in the gap between the 250 cu. m to 199 cu. m, and exactly where? I would appreciate if Mr. Ó Coigligh could get that information and furnish it to the committee.

Mr. Feargal Ó Coigligh: Yes.

Senator Victor Boyhan: First, I thank the witnesses for their presentations. They are very welcome. Sitting on both this committee and the agriculture committee, I can appreciate the great importance of what they are saying today. Certainly, it is something I will bring to the other committee when we meet this evening. The Water Framework Directive requires us to have a system of registration and a monitoring of the system. We acknowledge that this must be in place and I acknowledge the importance of the rich resource of water. However, there are two or three matters on which I seek further clarification. Do the rural group water schemes fall within this?

Second, we are aware of the 25 cu. m threshold. Somebody mentioned small water extractors earlier. There are many small farmers who may have wells or be in a group water scheme. Some of them may have a number of wells because where some were not successful they have bored a second and third well. Then there is the net cumulative effect of all that extraction. How does one monitor that?

I am also conscious of the importance of water in the horticulture industry. I am familiar with a number of people who draw water from rivers. That has other potential problems, but they screen that water and regularly test it because they do not know how it might be contaminated up the line or down the line and the impact of that on the crops. In north County Dublin there is an enormous amount of glasshouse production and salad production in the horticulture sector. In Wicklow and other places there is the forestry sector. It draws water and uses different sources and mechanisms for doing so. Of course, every farmer is drawing large amounts of water from a number of sources.

I am interested to hear about how the rural group water schemes interplay in all this. More important, I wish to hear about the Department's engagement with, and feedback from, the Irish Farmers Association, IFA, and the Irish Creamery Milk Suppliers Association, ICMSA. Perhaps Mr. Ó Coigligh will give some points or headings on that. Clearly, they would be very exercised about this. Mr. Ó Coigligh might give us a flavour of the responses he has had from those two organisations.

Mr. Feargal Ó Coigligh: Regarding rural group water schemes, any entity that abstracts water will come within the remit of the scheme. There are no particular exemptions. If a scheme is further than the registration threshold, which it undoubtedly would be, it requires licensing. That is the case. Similarly with farmers, if they breached the abstraction limits of 25 cu. m, they would be obliged to register.

On the issue of the cumulative effects, the registration and licensing system is required to give us more information. There is a paucity of information about the impact of abstractions. As I stated earlier, 6% is what the EPA considers. As we introduce and develop the system, there will be an increased amount of information. That will then inform the EPA as to how to judge cumulative effects. If it gets additional information about a water volume that might be under stress, then that will bring to its attention whether particular abstraction points add to pressure. It is part of building a picture and we do not have the full picture at the moment.

With regard to abstraction for horticulture, similarly, if they reach their thresholds, they must register and obtain a licence. It is important to note that producers also have obligations under food safety standards in terms of the production of safe products. There would be separate health and food safety rules for producing food. The water quality for crop irrigation is absolutely crucial and it must be ensured that the water is not contaminated in a way that would affect food production. It is similar to public water supplies where the EPA is responsible for environmental monitoring and ensuring that local authorities, Irish Water and others adhere to environmental limits. The HSE also has a role in ensuring that water is safe from a public health point of view. Accordingly, boil water notices will issue where the HSE considers water is unsafe. There is a dual role. Similarly for food producers, they have dual obligations to meet.

On the IFA and the ICMSA, I do not have a breakdown between the two submissions. I know, however, that the farming sector was anxious to avoid the threshold limits being reduced, for example, from 25 cu. m to a lower limit. They would have made those points clear in their submissions. While there is a different emphasis between the two, I cannot quote them exactly. We will put the submissions on the Department's website, as promised to Deputy Ó Broin.

Chairman: We know leakage is part and parcel of every water system throughout the world, with significant losses occurring through it. I do not know if 25% or 30% is best practice on leakage. Is there a requirement in this Bill for licensed, notified or temporary extractors to manage leakage to a certain level? Many have raised the issue of it being a finite resource and that overabstraction can have negative impacts on other users of the same water body, groundwater or surface water.

Is it the abstractor or the EPA that deems an extraction to be temporary and notifiable? For example, if I want to temporarily extract 24 cu. m or 25 cu. m of water, as it is temporary, can I deem that I do not have to notify it? There are many developments and temporary structures, for example, in this building that started off as temporary but ended up as being permanent. Where does the notification for that take place?

There is the case of significant abstractions which could have an environmental impact on a Natura, habitats directive or birds directive site. It would be quite difficult if we have a number of temporary abstractions and a number of unnotified abstractions, the cumulative impact of which may be what is having the impact on the Natura site and not the licensed site. That will be quite difficult and will require careful consideration. If it is significant and likely to have an impact on a Natura site, this is an appropriate assessment - a full environmental impact assessment. Will that be capable of looking at all the unnotified abstractions on that water body as well? It seems quite an onerous environmental impact assessment to take because of the geographical spread of a water body.

Mr. Feargal Ó Coighligh: We know that our leakage rates in the public water supply are much higher than in other countries. The Minister obtained significant additional funding this year for Irish Water, and much of that has gone into a leakage-reduction programme. The general scheme provides general binding rules requiring everyone, including suppliers that are registered and licensed, to keep leakage to a minimum. There are guidelines on measuring or estimating leakage. The reduction of leakage is core.

I will ask Ms Connolly to respond on the issue of temporary abstractions. On the broader principle of how we know the impact, it is the cumulative. I hope that with this legislation, as we develop the information over several years, it will help inform all players of impacts.

Ms Emer Connolly: Unfortunately, my colleague would have been able to answer in more detail. Temporary abstractions are likely in two scenarios. One is very defined and limited, for example, boreholes or a scientific examination of something very small and specific. The other would be if there is a drought or some kind of crisis that requires much more abstraction for a particular reason. Any temporary abstraction must take account of the scale of the water body, the quality, the impact etc. The regulations will go into more details on those. It is anticipated that they will set out the criteria for temporary abstractions and what the impact will be. I cannot give much more detail, but I can come back on it.

Chairman: I thank Ms Connolly.

Deputy Cian O’Callaghan: The witnesses have said that the 250 cu. m and 2,000 cu. m thresholds are based on advice from the Environmental Protection Agency. What is the rationale for that EPA advice in drafting this legislation?

Mr. Feargal Ó Coigligh: We would have engaged very closely with the EPA officials on all aspects of the Bill. We had many meetings with them teasing through many detailed points. That would have been part of the discussion. We could probably get the Deputy additional information. We will come back to the committee on the rationale for those thresholds.

Deputy Cian O’Callaghan: That would be great. I ask for that to include other European Union examples.

Chairman: We can now go to a third round of questions.

Deputy Eoin Ó Broin: Do we know the number of abstractions and the volume of water abstracted? If we know those, what percentage of the number and of the volume of water will be covered by the registration and the licensing regime?

I have a concern over the cumulative impact. As far as I understand it, it is not possible to assess, particularly if there is a significant impact, the cumulative impact of those abstractions under 250 cu. m because it is not recorded. There might be ten or 20 abstractions of less than 250 cu. m. How do we assess whether it is significant and its impact on the water table?

I think both of us forgot about a question I asked earlier about the role of the Minister in granting licences and applying conditions on registrations. Can Mr. Ó Coigligh explain why we are involving a Minister rather than an independent body such as the EPA-----

Chairman: Will Deputy Ó Broin explain which head he is referring to?

Deputy Eoin Ó Broin: It is two heads, the first being head No. 7 and I believe the other is head No. 11 or No. 12, which is the granting of licences.

Will the Department give the committee an update on the European Commission’s enforcement procedures against the State with regard to breaches of the water framework directive, including this section, and if there has been any discussion with the Commission on the contents of the Bill?

I also have two related follow-up questions on the last exchange we had. It is my understanding that Directive 2014/52/EU is very clear that where an environmental impact assessment is being carried out public consultation has to take place. If we are not allowing that public consultation on the grant of a licence for an existing abstractor, it seems pretty clear to me that we are in breach of that directive. Again, if the officials cannot answer that perhaps

it could be raised with the Attorney General. Likewise, I understand that if an abstraction is impacting on a Natura 2000 designated site then the abstraction must cease immediately and appropriate assessment, which is a formal technical procedure, has to be carried out before a decision is made. There is no provision in the heads of the Bill for that. Will the Department also comment on that please?

Mr. Feargal Ó Coigligh: There are a number of points there. On what we know, we know we have 1,583 abstractions registered at the moment. Of those, 1,032 relate to drinking water. I do not have the total volumetric figures that relate to that so I cannot assist the Deputy on his calculations in that regard. We can seek the additional information and come back to the committee on that.

On cumulative impacts, the richer the information we get, on top of the information the EPA will already have on Ireland's water bodies, the more helpful it will be.

The Deputy referred to head No. 7.

Deputy Eoin Ó Broin: That was in relation to the report going from the EPA to the Minister, and on consideration of that the Minister can apply conditions to the registration. It seems to me that there is an established principle in planning law that we do not allow the Minister to be involved. That is given to the planning authorities or the boards. Why would we involve a Minister in very detailed decisions around these matters when it should be left to the independent authorities, which I presume in this instance is the EPA?

Mr. Feargal Ó Coigligh: One of the issues is, for example, in relation to temporary abstractions that may be at a point of-----

Deputy Eoin Ó Broin: This relates to registrations, not for temporary abstractions. It is head No. 7, on the register of abstractions, and subsections (17) and (18).

Mr. Feargal Ó Coigligh: Yes. This is the issue on the registration thresholds that are established. They are established by the legislation so it would be appropriate for the EPA to advise the Minister as to whether those limits should be changed by way of an order. The power would be invested in the Minister by way of an order.

Deputy Eoin Ó Broin: I do not want to be a pest here but my understanding is that this is a different issue. This is not about changing the threshold, it is about applying conditions in certain individual cases. Perhaps I am reading the head wrong. If I am reading subsections (17) and (18) right, is it appropriate for the Minister to have any role in the application of conditions, even on recommendation from the EPA?

Mr. Feargal Ó Coigligh: I think there is. It states in "particular circumstances". For example, if the EPA said "No, the 25 cu. m limit is fine but there are particular areas of interest of karst limestone, where it should be reduced", then this would be a particular circumstance where the abstraction would be reduced, or a maybe in times of drought and so on.

Deputy Eoin Ó Broin: My question is, both in terms of the registrations and the licences, is it appropriate for the Minister to have any role in the granting of, or in the application of conditions on, individual registrations?

Mr. Feargal Ó Coigligh: It is not in relation to individual registrations. It is the regulations in particular circumstances rather than individual registration applications.

On the appropriate assessment, we are very alive to our obligations on the environmental impact assessment, and appropriate assessment, because the State has had a difficulty trying to get that right. It is a tortuous area of law. That will have been to the fore of the mind of the Attorney General to make sure that we are in compliance with that.

Deputy Eoin Ó Broin: Is Mr. Ó Coighligh suggesting there could be Government amendments on Report Stage of the Bill?

Mr. Feargal Ó Coighligh: I did not suggest we had a difficulty with it but I said we would raise it with the Attorney General to see if there were any issues we have not covered.

Chairman: I will bring in Deputy Murnane O'Connor and Senator Fitzpatrick if they would like to share this slot.

Senator Jennifer Murnane O'Connor: I thank the witnesses for attending today. Our main concern today is the issue of water quality for the people of Ireland. We would have seen the significance of this issue with the floods in Cork today. We must be aware of how precious our water quality is. I read in the report that the most recent published information from the Environmental Protection Agency indicates that 6% of water bodies in Ireland are potentially at environmental risk due to abstraction pressures. One of the witnesses probably referred to this earlier and I apologise for arriving late.

I also want to ask about the public consultation element, which has already been raised. I understand there will be some public consultation. One of the witnesses might respond on that element. From my perspective of dealing with my local authority, it is important in the context of these abstractions that we find the right balance. I would welcome answers to those two questions. I will ask more questions later but most of the questions I have appear to have been answered. Deputy Ó Broin asked two of the questions I intended to ask.

Mr. Feargal Ó Coighligh: We had a fair bit of discussion on the 6% aspect. That is what the EPA estimates it to be to the best of its knowledge. A question was asked on what is the basis of that. We said we would come back to the committee with additional information on where that information comes from and how it has-----

Senator Jennifer Murnane O'Connor: Come to that assumption.

Mr. Feargal Ó Coighligh: Yes. There are plenty of studies behind it but we will come back to the committee on that. Generally, we said that when the abstractions Bill comes into force and we get more knowledge about the types of abstractions and the quantity of water being abstracted nationwide, our knowledge base will improve and that will help with the implementation of the legislation.

On public consultation, is the Deputy referring to the general scheme of the Bill?

Senator Jennifer Murnane O'Connor: Yes, on the general scheme of it.

Mr. Feargal Ó Coighligh: The general scheme was sent for publication in the summer of 2018 and we received 28 submissions.

Senator Jennifer Murnane O'Connor: That was all that came in, was it?

Mr. Feargal Ó Coighligh: They would often have been from significant interest groups on behalf of the agricultural sector, business and environmental non-governmental organisations,

those three areas. As we promised Deputy Ó Broin, we will get those published on the website in the next day or two.

Senator Jennifer Murnane O'Connor: I thank Mr. Ó Coigligh.

Senator Mary Fitzpatrick: I thank Mr. Ó Coigligh and Ms Connolly for coming in today. It would be helpful if we could get written memos on the rationale the Department has used for the setting of the thresholds and how those thresholds compare internationally beyond just Northern Ireland and Scotland.

Mr. Feargal Ó Coigligh: Yes.

Senator Mary Fitzpatrick: On the issue of metering, I hate to bang on about a subject but it is a critically important intervention. A point that has been made a number of times today is that the EPA does not have sufficiently accurate data. This legislation is an attempt to remedy that and to put us on a more secure footing where we would have a better understanding and real-time data going forward to manage our water resource. When Mr. Ó Coigligh is coming back to the committee on other aspects, I ask that he respond in writing with a memo on the proposal for metering, micro metering and, most critically, the publishing of data from those meters. I do not want to revisit the Irish Water debacle and the matter of the 500,000 water meters in domestic homes but if the State does not ensure a meter is put on every abstraction it will be a bit difficult to understand the logic.

What are the proposed timelines and next steps for this legislation in terms of bringing it to the Seanad, the Dáil and bringing it back to the committee? It would be helpful to know that.

Mr. Feargal Ó Coigligh: We will come back to the Senator on that. There are a number of questions on which we need to come back to the committee and we can also come back to it on the issue of metering. If there is a general desire across all parties in the House to introduce metering, it is certainly a matter we can examine.

Regarding the legislation, we have the general scheme here today so we will take any further comments from the committee on board. In parallel with that, we are continuing the detailed legal drafting with the Office of the Attorney General to tease out some of the remaining questions. That will take a number of months to complete. We will then go back again to the Government to formally introduce the Bill to the House. This drafting will take a number of months.

Senator Mary Fitzpatrick: In the new year.

Mr. Feargal Ó Coigligh: We are anxious to see it move as quickly as possible. There is a lot of legislation in the Office of the Attorney General so we would hope for early in the new year.

Chairman: I will come back in on this round again. My point follows from what was mentioned by Deputy Ó Broin mentioned early. Head 13(1)(e), which relates to “the case of a licence issued under head 13”, proposes to provide for “consideration of the effect of the abstraction” on a number of listed categories, including human health, soil, land and the water environment. Head 13(1)(f) proposes to provide “in the case of a licence issued under Head 12, [for] the carrying out of an environmental impact assessment” but it appears that all the parts of head 13(1)(e) involve environmental impact assessment without not naming it as an environmental impact assessment. If an abstraction point is already there, was granted previously

and has been running for quite some time, must someone retrospectively go back and apply an environmental impact to that or would it come under something along the lines of a substitute consent that one would have in planning? Can Mr. Ó Coigligh comment on that?

Mr. Feargal Ó Coigligh: We must go back and look at the directive, which requires prior authorisation. That means giving an authorisation to an abstraction before it happens. There are obligations in the directive that relate to giving consent prior to something happening so that is different from something that already exists. That is why there are different rules. In terms of the issues that are considered, while there might be an overlap between environmental impact assessment and the kind of issues under which the existing licences would be viewed, environmental impact assessment has its own very particular legal framework that must be met. That is why they would be distinguished.

Chairman: Under head 12 - “Licensing of abstractions commencing after the prescribed date” - an environmental impact assessment is required.

Mr. Feargal Ó Coigligh: If they are at the significant level-----

Chairman: Okay, so a licensable abstraction over the 2,000-----

Mr. Feargal Ó Coigligh: Yes.

Chairman: Will a licence issued under head 13 - “Regulations on the licensing of abstractions” - apply to an abstraction that is already in place and, therefore, is not subject to an environmental impact assessment under the correct name for that but is subject to consideration of its effect under a number of characteristics of environmental impact assessment? Current abstractions prior to the commencement of this legislation will be subject to some sort of environmental impact assessment, but it will not be called-----

Mr. Feargal Ó Coigligh: Not in the formal legalistic way of the directive.

Chairman: I thank Mr. Ó Coigligh for his clarification.

Deputy Eoin Ó Broin: I have two questions and two comments. Once a licence is issued, what is the mechanism for assessing at a later point whether the terms of the licence are being breached or the environmental conditions or the stability of the water table have changed and, therefore, subsequently amending or even revoking a licence? I refer to what is often called responsive licensing rather than the initial granting of the licence.

I presume there have been conversations with the EPA about what additional resourcing this will require because it is clearly a significant step beyond the existing informal regulatory regime. We have had issues with this previously. Members of the committee from the last Dáil will know that we have often given bodies like, for example, the Residential Tenancies Board, RTB, significant powers but then there is a lag of 12 months before they get the resources they need because public sector recruitment or approval from Government takes some time. Do we know how many additional resources the EPA will need to comply with the regime as it is outlined and what is the position with regard to such resources?

I wish to make a number of comments that are more for the committee’s benefit than the Department’s. I want to see this legislation introduced. We should have done it a long time ago and we need it for good environmental management. However, I am less convinced now that it is legally compliant with key EU legislation. Perhaps the committee could consider in private

session seeking legal advice from the Office of Parliamentary Legal Advisers on its compatibility with EU law and whether there are conflicts between parts of the heads and a number of EU directives. We did that previously with Land Development Agency Bill and it proved very helpful.

Deputy O’Callaghan asked a good question relating to other EU jurisdictions. If the Department does not have the information sought, it might be worthwhile for the committee to consider asking the Library and Research Service of the Oireachtas to prepare a scoping paper looking at other EU jurisdictions, the thresholds they have, the kinds of licensing regimes in operation and so forth. It seems on the basis of Mr. Ó Coigligh’s answer on timelines that we have a little bit of time to work on this. I am torn because the principle of the Bill is really important but I am concerned about aspects of it and believe that this committee must look into those further.

Mr. Feargal Ó Coigligh: We are talking about an enduring licence so it would be a matter for the EPA to determine its role. Rather than having a fixed renewal period, it is a more open provision *vis-à-vis* the repeal or review of licences. That is set out under one of the Bill’s heads. Such a provision would be available to the EPA if it sees that difficulties are arising. That head may need to be fleshed out further before we get to the final Bill.

Due to the fact that we were introducing the registration system ahead of time, we actually got additional resources for the EPA which are already in place and which will facilitate the enactment of the legislation. It is actually very unusual but this time around it is the legislation itself rather than the provision of resources which has been slow, I am happy to report.

Chairman: To return to Natura sites and EU directives, the explanatory note under Head 13 which relates to Heads 11 and 12 refers to “conditions to be attached to a licence; for reporting and monitoring; and for conditions where an abstraction is necessary in the national public interest but is affecting the achievement of the environmental objectives of the water body.”. We are talking here about a conflict between an overriding public interest and requirements under EU to protect Natura sites. The note provides an example of circumstances where this could arise, namely where there is a need to provide for a public water supply or for electricity generation. In some cases an abstraction can be permitted if it is deemed to be of sufficient public interest even if it will have a negative impact on a Natura site. Is that correct?

Mr. Feargal Ó Coigligh: It should be noted that EU directives, including the Water Framework Directive, usually have provision for exemptions. Regarding Natura sites for example, the directive allows projects which may impact on a site to go ahead for “imperative reasons of overriding public interest”, known as IROPI. In fact, possibly one of the first pre-project IROPI processes was carried out in relation to a water supply in Sligo at Lough Talt. Public health issues arose and the only resolution for same was a new plant which could have impacted negatively on the Natura site. The project went through the IROPI process to facilitate that. EU directives usually facilitate those kinds of outcomes *in extremis*. That is a temporary solution and it is hoped that a permanent solution will allow the plant to be taken out of action and the site will not be negatively impacted in the long term. The directives allow these kinds of exemptions under limited circumstances.

Chairman: Then the objective is always to pursue mitigation measures that will bring it back to compliance, is that the case?

Mr. Feargal Ó Coigligh: That is usually part of the process. Usually the promoter of the

project is obliged to put forward mitigation or compensatory measures.

Deputy Eoin Ó Broin: I had a question on the current enforcement procedures by the European Commission under the water framework directive. Will Mr. Ó Coigligh update the committee and tell us if there was any consultation with the Commission on the general scheme of the Bill to ensure that we did not introduce legislation that then fell foul of the Commission and further exacerbated that enforcement action?

Mr. Feargal Ó Coigligh: On this infringement action, we replied some time ago. There has been further correspondence from the Commission but we keep in contact with it more generally. We sent the general scheme to the Commission but the Commission does not consider that it is its job to give green lights to member states to say things are fine. They will note the information and say thank you but it is up to us to ensure that we get it right.

Deputy Jennifer Murnane O'Connor: I am just reading from the opening statement:

The legislation is intended to be graduated and proportionate. Small-scale abstractions do not generally pose a risk to the water environment and accordingly, there are no obligations placed on small-scale abstractors, other than abiding by General Binding Rules. Only larger abstractions and those posing a risk will have to apply for a licence.

Will Mr. Ó Coigligh explain the risk for the smaller abstractors, whereby they do not have to apply?

Mr. Feargal Ó Coigligh: There are hundreds of thousands of private wells in the country. It is not considered that the quantity of water extracted by an individual is of significance to require registration under the water framework directive. The question is-----

Deputy Jennifer Murnane O'Connor: How does the Department define what is smaller?

Mr. Feargal Ó Coigligh: Exactly, there has been much debate about what is appropriate. That question is debatable and there are different views on it. The legislation has come with a particular threshold and a mechanism to allow that to be amended if the EPA recommends that to the Minister.

Deputy Jennifer Murnane O'Connor: That is the most confusing part of it and it is where the Department will have to achieve balance to get it right. As Mr. Ó Coigligh said, it is about everyone working together.

Chairman: On Brexit and cross-Border water bodies and extractions, have we allowed for provision in terms of the environmental impacts of abstractions over the Border? If it is done on a river basin management level, will it pose difficulties?

Mr. Feargal Ó Coigligh: When the UK leaves the EU, it will leave the obligations under the water framework directive. Equivalent environmental compliance is part of the negotiation at the moment. The programme for Government states that we will need to engage with Northern Ireland in environmental co-operation, including water quality, in the context of Brexit. It is very much an issue that we will need to consider. I met my counterpart in Northern Ireland last year to discuss these issues. It will be an issue for ongoing debate. I understand the UK is also a member of the UNECE, the United Nations Economic Commission for Europe, which has an environmental impact assessment, EIA, obligation in transboundary EIA impacts, for example, which bind both countries. There are still existing international frameworks which the UK is supposed to abide by.

Deputy Eoin Ó Broin: I thank Mr. Ó Coighligh for saying that he will publish the submissions. That will be very helpful. Does he know how many submissions were received? Was there a mechanism for weighting them? Some of us may sift through them all and see where recommendations were accepted or rejected in the general scheme. What was the process for sifting through the submissions to decide on key issues such as the thresholds, public submissions for licences on existing abstractions and so on?

Mr. Feargal Ó Coighligh: We received 28 submissions that were grouped into the three main groups of environmental NGOs, the agricultural sector and business. I am not sure there was a scientific approach to weighting how one view was of stronger importance than another but we gave them consideration. There were four or five discreet issues and we gave them consideration. Obviously the Minister and the Government, in terms of signing off the general scheme, will also have given those issues consideration and we will have them online for people to see.

Chairman: I thank Mr. Ó Coighligh and Ms Connolly for their very helpful engagement. I thank them for their submissions and answering all of our questions.

It is clear from the questions of the members and their attendance that we are all concerned about the water supply and its management. Water is a very finite precious resource and a basic human need so we need to take care of it as best as we possibly can. The regulation and licensing of water abstraction is welcome. The committee will require further responses to written submissions and we will continue the pre-legislative scrutiny process.

The meeting is adjourned until Tuesday, 3 November 2020 at 10.20 a.m., when we will meet in private session using Microsoft Teams. The next meeting in public session will be held on that date at 11 a.m.

The joint committee adjourned at 12.50 p.m. until 10.20 a.m. on Tuesday, 3 November 2020.