



Oifig an Aire  
Office of the Minister

6 April 2017.

Senator Pdraig O Ceidigh  
Chair of the Special Committee on the  
Future Funding of Domestic Water Services  
Leinster House

Dear Pdraig,

Before the Committee concludes deliberations on its draft report I wanted to set out my concerns about the direction in which the Committee is moving. Frankly, on the basis of the advice that has been provided to me, the Committee is moving further away from enabling Ireland to be compliant with our EU obligations. I have very many concerns around the new text but principally they relate to 3 key issues that relate to the requirements under the WFD of the principles of cost recovery and the polluter pays.

The first is that the language used tends towards an interpretation that only wilful waste is to be targeted, i.e. where a subjective intention to waste water would need to be proven, resulting in the absence of any contribution from households to cost recovery. This fundamentally calls into question the adequacy of the proposed arrangements, whereby excess usage is not included, in terms of cost recovery. Similarly, it does not in any way incentivise efficient water consumption in line with the polluter pays principle.

The deeply ambiguous wording (ref paragraph 4.5) to an “approach based on incentives and penalties” is very problematic also. Previous text that appeared to have been agreed in principle at the Committee included reference to a levy based system. The current text calls into question the practical recovery of costs in any meaningful way. Moreover, a system based on criminal penalties alone cannot be said to be aimed even in principle at recovering costs, or indeed considered to constitute in any sense a “water pricing policy” as envisaged by Article 9 of the Directive. Nor could a flat penalty system for wilful wastage be argued to discourage wastage by the households wasting water– any charge applicable above an agreed threshold must be on a volumetric basis otherwise households marginally above the threshold would be penalised to the same extent as households consuming at volumes well beyond. Paradoxically, a fine based system could have unintended consequences by creating fear of exposure to substantial fines by households who are in fact low users of water, such as the elderly. This would not arise with a volume related levy, which would be graduated and proportionate to household use.



Thirdly, the Committee's change of direction on metering over the course of its meetings this week is extremely worrying. I will not rehearse the many arguments that support the investment made to date in our metering programme. However, I must point out that the European Commission is on record as saying that metering must be the basis of charging for excessive use. The decision by the Committee to resile from its previous agreed text requiring all new dwellings and refurbishments to be installed with meters - at no cost to the Exchequer - clearly places us at odds with the Commission. Had the previous text remained in place at least half a million new homes would have had meters installed over the course of the next 20 years assuming a construction rate of 25,000 new homes per annum, building considerably on the penetration rate achieved so far. Not only does the new text drastically weaken our position in putting forward a coherent package to demonstrate compliance (in terms, for example of showing how any penalty based system for wilful wastage can operate without an objective means of measurement), it creates a clear inequity between households with and households without meters. Water authorities were always empowered under the Water Services Act, 2007 to install meters to tackle wilful waste and this approach must remain for good resource management reasons. Fair treatment is required between households with meters and without meters, in terms of application of "penalties" for wastage. Not to use meters on new build to ensure appropriate evidence of wastage by such households and to promote conservation is nonsensical.

I appreciate that the Committee has gone to great lengths to examine the Expert Commission report, and hear evidence from many stakeholders to inform the Committee's deliberations. I cannot imagine that the Committee members, behaving responsibly, would consciously seek to put forward a set of recommendations that would fail to achieve compliance with our EU obligations. Please do not take this letter as an attempt by me to in any way seek to interfere with the deliberations of the Committee. Rather, I am simply stating the onus on all of us to ensure that we produce a set of recommendations that the Oireachtas will then legislate on that allows us to meet our obligations. Given the seriousness of the issues at stake, the need for the report to provide the necessary foundation for subsequent legislation in a clear and unambiguous manner I would urge you to ensure that the final draft report is, before adoption, subject to rigorous and fully objective legal scrutiny by a European law expert.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Coveney', written in a cursive style.

Simon Coveney  
Minister for Housing, Planning, Community & Local Government