



AN BILLE UM SHEIRBHÍŚ UISCE, 2013 WATER SERVICES BILL 2013

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The Water Services Bill 2013 provides for the establishment of Irish Water/Uisce Éireann as a subsidiary of Bord Gáis Éireann (the Board) under the Companies Acts. The shareholding provisions in the Bill provide that the subsidiary will be fully owned by the State and that the Board will have operational control, subject to Ministerial consents in a number of areas.

The subsidiary company will be responsible for the installation of water meters for domestic households connected to a public water supply (this function is currently a water services function provided by the 34 water services authorities as designated by the Water Services Act 2007). The Bill provides the Board and the subsidiary with the authority to install meters in all domestic properties and provides any of the necessary powers, available to a water services authority under the 2007 Act, that are necessary to meet this objective. Such powers would include matters incidental to the metering programme such as the power to install pipes and the power to interrupt a water supply.

As the installation of water meters is related to the Government's commitments to introduce water charges for households based on usage, the Bill removes the statutory prohibition on such charges. The Bill also amends section 105 of the Water Services Act 2007 to provide the Board and its subsidiary with the power to charge households for water services. Section 105 has not been commenced and will not be commenced prior to the introduction of charges, which will not be before 1 January 2014. Irish Water/Uisce Éireann will be responsible for billing and collecting revenue from households when the Government introduces domestic charges. In this regard, the Bill provides the Board and the subsidiary with the necessary powers to obtain information from households in receipt of water services and other third parties for the purpose of creating a customer database.

The Bill also provides the Commission for Energy Regulation (the Commission) with a function to advise the Government in relation to the development of policy regarding the regulation of the provision of water services. The Bill provides that the Commission may do all things necessary in preparation for the performance of water regulatory functions. The Bill also provides that the Commission may undertake the necessary consultations with the Board and its subsidiary, water services authorities, or any other person.

PART 1 — PRELIMINARY AND GENERAL

Section 1

Short title and commencement

Subsection (1) is a standard provision concerning the title of the Bill.

Subsection (2) is a standard provision providing for a short title for the Bill and the commencement provisions.

Section 2

Definition

This is a standard section which defines the terms used in the Bill.

Section 3

Expenses

This is a standard provision enabling the expenses of the Minister to be paid out of moneys provided by the Oireachtas. It provides a general authority for the Minister, with the sanction of the Minister for Public Expenditure and Reform to expend money provided by the Oireachtas.

PART 2 — SUBSIDIARY COMPANY

Section 4

Formation of company

Section 4 provides that Bord Gáis Éireann shall establish a subsidiary company, under the Companies Acts, following consultation with the Minister for the Environment, Community and Local Government, the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform.

Section 5

Name and share capital of subsidiary

Subsection (1) sets out that the name of the company shall be “Uisce Éireann” in Irish and “Irish Water” in English.

Subsection (2) provides that the subsidiary company shall not be subject to paragraph (b) of subsection (1) of section 6 of the Companies Act. This provision requires a company to use the term “limited” or “teoranta” in Irish as the last word of the company name.

Subsection (3) provides that the share capital set out in the memorandum of association of the subsidiary company must be approved by the Minister for the Environment, Community and Local Government, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform.

Subsection (4) provides that one share in the company shall be provided to Bord Gáis Éireann and that 50% of the remaining shares shall be issued to the Minister for the Environment, Community and Local Government and 50% issued to the Minister for Finance. This is to ensure that the subsidiary remains in full State ownership.

Subsection (5) provides that the shares issued to the Minister for the Environment, Community and Local Government and to the Minister for Finance under subsection (4) are non-voting shares.

Subsection (6) provides that Bord Gáis Éireann may not dispose of the share issued to it without the consent of the Minister for the Environment, Community and Local Government and the Minister for Finance.

Section 6

Memorandum and articles of association of subsidiary

Subsection (1) sets out conditions in relation to the memorandum of association and provides that it must be approved by the Minister for the Environment, Community and Local Government, with the consent of the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform.

Subsection (2) sets out conditions in relation to the articles of association and provides that they must be approved by the Minister for the Environment, Community and Local Government, with the consent of the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform.

Subsection (3) provides that any amendment to the memorandum or articles of association shall not be valid or effectual unless the changes have been made with the prior approval of the Minister for the Environment, Community and Local Government, with the consent of the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform.

Section 7

Disqualification for office of director of subsidiary

This section provides for circumstances in which the director of the subsidiary will no longer be qualified and must cease to be a director.

Section 8

Membership of either House of Oireachtas or European Parliament

Subsection (1) provides that a director of the subsidiary shall cease to be a director when he/she is:

- (a) Nominated as a member of Seanad Éireann;
- (b) Elected as a member of either House of the Oireachtas or as a member of the European Parliament; or
- (c) Regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament.

Subsection (2) provides that a member of staff of the subsidiary shall cease to be a member of staff when he/she is:

- (a) Nominated as a member of Seanad Éireann;

- (b) Elected as a member of either House of the Oireachtas or to be a member of the European Parliament; or
- (c) Regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament.

Subsection (3) provides that a person who is entitled, under the Standing Orders of either House of the Oireachtas to sit therein, or who is a member of the European Parliament, shall be disqualified from being a director of the subsidiary or a member of staff of the subsidiary.

Subsection (4) provides that in this section, “Act of 1997” means the European Parliament Elections Act 1997.

Section 9

Disclosure of interests by directors of subsidiary

Subsection (1) places obligations on a director of the subsidiary when attending a meeting of directors. Such obligations shall apply when a meeting of directors is to discuss either:

- (a) An arrangement to which the subsidiary is party or a proposed such arrangement; or
- (b) A contract or other agreement with the subsidiary or a proposed such contract or other agreement.

Where a director present at a meeting has a material interest in the matter, he or she will be subject to the following conditions:

- (i) He/she shall disclose any information in relation to the fact that he/she has an interest and the nature of this interest to the other directors present;
- (ii) He/she shall not influence or seek to influence any decisions on the matter;
- (iii) He/she shall leave the meeting or part of the meeting where the matter is being discussed;
- (iv) He/she shall not take any part in the deliberation of the matter in question; and
- (v) He/she shall not vote on any decision relating to the matter.

Subsection (2) provides that the disclosure of any material interest shall be recorded in the minutes of the meeting and for as long as the subject matter is being dealt with, the director whom has made the disclosure shall not be considered part of the quorum for the meeting.

Subsection (3) provides for a situation where there is a question at a meeting of the directors as to whether a particular course of action, if pursued by a director, would constitute a failure by him or her to comply with the requirements of subsection (1). This question, subject to the provisions of subsection (4) may be determined by the chairperson of the meeting, whose decision shall be final. Where this issue arises, details shall be recorded in the minutes of the meeting.

Subsection (4) provides for a situation where the chairperson of the meeting is the director in respect of whom a question arises in respect of subsection (3). In such cases, the other directors of the subsidiary attending the meeting shall choose one of their number to

be the chairperson of the meeting for the purpose of determining the question concerned.

Subsection (5)(a) provides that where the Minister is satisfied that a director of the subsidiary is in breach of subsection (1), the Minister may direct the Board to remove the director from office and the Board must comply with this direction.

Subsection (5)(b) provides that where a person is removed from office under this section, he or she shall then be disqualified from being a director of the subsidiary.

Subsection (6) provides that section 194 of the Companies Act of 1963 shall not apply to the director of the subsidiary.

Section 10

Disclosure of interests by members of staff of subsidiary

Subsection (1) provides that where a member of staff of the subsidiary has a material interest in any contract or arrangement or proposed contract or arrangement, to which the subsidiary is a party, that person must:

- (a) disclose to the company his or her interest and the nature of the interest;
- (b) take no part in the negotiation of the contract or agreement or any deliberation by the subsidiary or members of the staff in relation to the contract or agreement; and
- (c) neither influence or seek to influence a decision to be made in relation to the matter nor make any recommendation in relation to the contract, agreement or arrangement.

Subsection (2) provides that subsection (1) shall not apply to contracts or proposed contracts of employment of members of the staff of the subsidiary with the subsidiary.

Subsection (3) provides that where a person contravenes this section, the subsidiary may make alterations to the person's terms and conditions of employment as it considers appropriate, including terminating the person's contract of employment.

Section 11

Disclosure of confidential information

Subsection (1) provides that a person may not disclose confidential information obtained by him or her while performing functions as a director, member of staff, consultant or adviser to the subsidiary unless authorised to do so. The provision also applies to a member of staff of a consultant or adviser.

Subsection (2) provides that subsection (1) does not prohibit the disclosure of confidential information to the Board.

Subsection (3) provides for a definition of "confidential information" for the purposes of this section and includes:

- (a) information expressed by the subsidiary to be confidential either as regards particular information or as regards information of a particular class or description; and
- (b) proposals of a commercial nature or any tenders submitted to the subsidiary.

Section 12

Borrowing by Board and subsidiary

Subsection (1)(a) provides that Bord Gáis Éireann may borrow money subject to the consent of the Minister for the Environment, Community and Local Government, the Minister for Communications, Energy and Natural Resources, the Minister for Finance, and the Minister for Public Expenditure and Reform. The Board may borrow money from such persons it considers appropriate and may borrow in another currency, other than the Euro.

Subsection (1)(b) provides that the subsidiary may borrow money subject to the consent of the Minister for the Environment, Community and Local Government, the Minister for Communications, Energy and Natural Resources, the Minister for Finance, and the Minister for Public Expenditure and Reform. The subsidiary may borrow money from such persons it considers appropriate and may borrow in another currency, other than the Euro.

Subsection (1)(c) provides that the aggregate borrowings of the Board and the subsidiary under this subsection shall not exceed €500,000,000.

Subsection (2) provides that money borrowed in currencies other than the Euro shall be deemed equivalent subject to the rate of exchange at the time of the borrowing.

Subsection (3) provides that the Board may lend money to the subsidiary out of money borrowed under subsection (1).

Subsection (4) provides that the borrowing limit applying to Bord Gáis Éireann under this section is additional to the limits set out in section 23 of the Gas Act 1976.

Section 13

Grants by Minister

Section 13 provides that the Minister for the Environment, Community and Local Government may, for the purposes of this Act, make grants out of moneys provided by the Oireachtas to the subsidiary, Bord Gáis Éireann or the Commission for Energy Regulation.

Section 14

Subsidiary's capital commitments

Section 14 provides that subsections (1) and (2) of section 21 of the Gas Act shall apply to the Board, such that the approval of Minister for the Environment, Community and Local Government and the Minister for Public Expenditure and Reform will be required for capital expenditure by the subsidiary above a level to be specified. This amount may be specified from time to time by the Minister for the Environment, Community and Local Government with the consent of the Minister for Public Expenditure and Reform.

Section 15

Accounts of subsidiary

Subsection (1) provides that the subsidiary shall keep all proper and usual accounts of all money received or expended by it in a form approved by the Minister for the Environment, Community and Local Government, with the consent of the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform. The subsidiary shall keep all special accounts in such form as the Minister for the Environment, Community and Local Government may direct with the consent of the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform.

Subsection (2) provides that accounts kept by the subsidiary shall be submitted for audit not later than six months after the end of the financial year. Immediately after the audit, a copy of the accounts, and any other accounts that the Minister, after consultation with the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform, may direct, shall be presented to the Minister for the Environment, Community and Local Government, who shall, as soon as possible arrange for copies of the accounts to be laid before the Oireachtas.

Subsection (3) provides that the subsidiary shall pay an auditor appointed under this section to audit the accounts, such fees as are approved by the Minister for the Environment, Community and Local Government, with the consent of the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform.

Section 16

Annual report of subsidiary

Section 16 provides that by 30 June each year, the subsidiary shall prepare and submit to the Minister for the Environment, Community and Local Government and the Minister for Communications, Energy and Natural Resources, a report on the performance of its activities in the area of water services in the preceding year. The Minister shall, as soon as possible after receiving the report, arrange for copies of the report to be laid before each House of the Oireachtas.

PART 3 — INSTALLATION OF WATER METERS

Section 17

Definition

Section 17 provides that “metering authority” in this Part of the Act means Bord Gáis Éireann or its subsidiary.

Section 18

Performance of certain functions by metering authorities

Subsection (1) provides that the functions of a water services authority in relation to the installation of water meters for dwellings may be carried out by a metering authority in addition to a water services authority.

Subsection (2) provides that the functions of a water services authority, other than those referred to in subsection (1) shall also be performable by a metering authority—

- (a) in the same manner they would be performable by a water services authority;
- (b) subject to the same consents and conditions that would apply if the functions were being carried out by a water services authority; and
- (c) only to the extent that their performance is necessary or expedient for the installation of water meters for dwellings as set out in subsection (1).

Subsection (3) provides that the functions set out in this section may be carried out by a water services authority, a metering authority, or jointly by both metering authorities.

Section 19

Installation of pipes

Subsection (1) provides that the provisions in section 41 of the Water Services Act relating to the installation of pipes shall apply to a metering authority, subject to the removal of a requirement to obtain the consent of a road authority, which applies when the water services authority is not the road authority (the 34 water services authorities are the 34 city and county councils who are also the road authorities).

Subsection (2) clarifies that the provisions of the Planning and Development Act applying to a metering authority by virtue of subsection (12) of section 31 of the Water Services Act 2007 shall also apply to a metering authority and that the installation of pipes shall be exempt from planning permission.

Section 20

Ownership of water meters

Subsection (1) provides that the ownership of water meters installed by the metering authorities will vest in the subsidiary company.

Subsection (2) provides that the subsidiary may not dispose of any property vested in it without the consent of the Minister for the Environment, Community and Local Government and the Minister for Public Expenditure and Reform.

Section 21

Immunity

Section 21 provides that the provisions of section 29 of the Water Services Act of 2007 shall apply to Bord Gáis Éireann and its subsidiary in the same way as it applies to a water services authority. This provides for the immunity of these bodies and their employees from prosecutions arising from carrying out their functions.

PART 4 — MISCELLANEOUS

Section 22

Performance of functions generally

This is a common provision and provides that the Board and the subsidiary shall have all of the powers that are necessary or expedient for the performance of its functions.

Section 23

Provision of information to Board and subsidiary

Subsection (1) provides that the subsidiary may request a relevant person to provide it with such information that it may require to perform its functions or that it could be expected to require if additional functions, the same or similar to those currently vested in a water services authority, were conferred on it.

Subsection (2) provides that Bord Gáis Éireann may request a relevant person to provide it with such information that it may require to perform its functions or that it could be expected to require if additional functions, the same or similar to those currently vested in a water services authority, were conferred on it.

Subsection (3) provides that a relevant person shall comply with a request under this section.

Subsection (4)(a) amends section 6 of the Water Services Act 2007 such that Bord Gáis Éireann and the subsidiary have the same powers to obtain information under that section as a water services authority.

Subsection (4)(b) amends section 7 of the Water Services Act 2007 such that Bord Gáis Éireann and the subsidiary have the same entitlement to obtain information on ownership as a water services authority.

Subsection (5) defines a relevant person for the purposes of this section.

Section 24

Performance of functions by Commission

Subsection (1) provides that the Commission for Energy Regulation may do all things necessary or expedient for the purpose of preparing for the performance of water regulatory functions under any future enactment.

Subsection (2)(a) provides that the Commission may advise the Government in relation to the development of policy regarding the regulation of the provision of water services.

Subsection (2)(b) provides that the Commission may consult with Bord Gáis Éireann, the subsidiary, water services authorities or any person prescribed by order by the Minister for the Environment, Community and Local Government, for the purposes of this section.

Subsection (3) defines “water regulatory functions” with respect to the provision of water services within the meaning of the Water Services Act 2007 and includes:

- (a) functions relating to setting charges for water services;
- (b) the specification of minimum standards of service for the provision of water services; and
- (c) the protection of the interests of a person in receipt of water services.

Section 25

Amendment of section 105 of Act of 2007

Subsection (1) provides that section 105 of the Water Services Act 2007 is amended to remove the prohibition on charging households for water services. Section 105 has not been commenced and will not be commenced prior to the introduction of charges, which will not be before 1 January 2014.

Subsection (2) provides that the functions of a water services authority relating to charging dwellings for water services are transferred from water services authorities to Bord Gáis Éireann and the subsidiary.

Subsection (3) provides that functions, other than the functions transferred to Bord Gáis Éireann and the subsidiary under subsection (3) shall in addition to being performable by a water services authority, be performable by Bord Gáis Éireann and the subsidiary:

- (a) in the same manner they would be performable by a water services authority;
- (b) subject to the same consents and conditions that would apply if the functions were being carried out by a water services authority; and
- (c) only to the extent that their performance is necessary or expedient for the performance of functions referred to in subsection (1).

Section 26

Amendment of Local Government (Financial Provisions) (No. 2) Act 1983

Section 26 provides for the amendment of section 4 of the Local Government (Financial Provisions) (No. 2) Act 1983, as amended by section 12 of the Local Government (Financial Provisions) Act 1997, to remove the statutory prohibition on water charges for households.

Section 27

Accounts of Board

Section 27 provides that section 15 of the Gas Act 1976 is amended such that Bord Gáis Éireann shall keep accounts of moneys received or expended by it in the performance of its functions. Such accounts will be in a form approved by the Minister for the Environment, Community and Local Government, with the consent of the Minister for Public Expenditure and Reform.

Section 28

Annual Report of Board

Section 28 provides that Bord Gáis Éireann must submit a report on its activities in the area of water services to the Minister for the Environment, Community and Local Government and the Minister for Communications, Energy and Natural Resources. The report shall be submitted no later than 30 June each year. The Minister shall as soon as possible after receiving the report, arrange for copies of the report to be laid before each House of the Oireachtas.

Section 29

Directions of Minister

Subsection (1) provides that the Minister for the Environment, Community and Local Government may give a direction in writing to Bord Gáis Éireann or its subsidiary in relation to the performance of their functions.

Subsection (2) provides that the Minister for the Environment, Community and Local Government may amend or revoke a direction under this section.

Subsection (3) provides that the Minister for the Environment, Community and Local Government shall first obtain the approval of the Minister for Communications, Energy and Natural Resources before issuing a direction under this section.

Subsection (4) provides that Bord Gáis Éireann must comply with a direction given to it under this section.

Subsection (5) provides that the subsidiary must comply with a direction given to it under this section.

Financial Implications

The legislation provides that the Minister for the Environment, Community and Local Government may make grants to Bord Gáis Éireann, the subsidiary company to be established under the legislation and the Commission for Energy Regulation. It is not expected that significant new additional Exchequer expenditure will be required arising from the legislation.

*Department of the Environment, Community and Local Government,
January, 2013*