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**AN BILLE UM RIALÁIL GÁIS, 2013  
GAS REGULATION BILL 2013**

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**EXPLANATORY MEMORANDUM**

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**Introduction**

The main provisions of the Bill are—

- (a) to provide for the restructuring of Bord Gáis Éireann (BGÉ) by the establishment of a gas networks subsidiary,
- (b) to provide for the sale of Bord Gáis Energy by providing for the establishment of an energy subsidiary,
- (c) to change the Ministerial ownership and control provisions for BGÉ, and
- (d) to provide for consequential amendments to existing gas legislation.

**Provisions of the Bill**

**PART 1**

**PRELIMINARY AND GENERAL  
(Sections 1 to 3)**

*Section 1* is a standard section, providing for the short title of the Bill, and commencement on enactment or by means of Ministerial Order (as appropriate) of its various provisions.

*Section 2* provides for definitions of certain Acts referred to in the Bill.

*Section 3* provides that any expenses incurred by the Minister in administering the Act shall be paid out of monies provided by the Oireachtas.

**PART 2**

**NETWORK COMPANY  
(Sections 4 to 19)**

*Section 4* provides for the formation of a networks subsidiary company and also provides that BGÉ cannot sell this business.

*Section 5* provides for the approval by the Minister for Communications, Energy and Natural Resources, with the consent

of the Minister for Public Expenditure and Reform, of the Memorandum and Articles of Association of the networks company.

*Section 6* provides for the appointment of the directors to the networks company. Such appointments will not be valid unless made with the prior approval of the Minister for Communications, Energy and Natural Resources having consulted with the Minister for Public Expenditure and Reform. Following the appointment of a majority-shareholding Minister such appointments will be subject to the approval of the majority-shareholding Minister.

*Sections 7-11* set out standard provisions concerning the disqualification of directors under specific situations, provisions regarding disclosure of interests by directors, a prohibition on members of the Oireachtas or members of the European Parliament acting as directors and a provision concerning the disclosure of confidential information by directors or employees of the networks company.

*Section 12* provides for the preparation by BGÉ and Gaslink of a network plan in respect of the networks company. The transfer plan will include assets, licences, rights and liabilities and staff considered by BGÉ to be part of the networks business.

*Section 13* provides that the Minister, with the consent of the Minister for Public Expenditure and Reform will have responsibility for approving the plan.

*Section 14* provides for a network transfer date to be set by the Minister. Notice of this date must be placed in the *Iris Oifigiúil*. The transfer date will be the date on which the transfer plan will take effect. Notification ensures that any third parties affected by the transfer plan are placed on notice of it.

*Section 15* provides that, with effect from the transfer date, the networks company becomes responsible for the ownership and operation of the networks system. This section provides certainty as to the exact point at which the networks company becomes responsible for the system.

*Section 16* provides that BGÉ and/or Gaslink may, up to one year after the transfer date, enter into a further agreement with the networks company for the transfer of additional assets, licences, rights and liabilities and staff to the networks company. It is principally intended to provide for flexibility in the event that, following the coming into effect of the transfer scheme, it is found that additional employees, assets etc. require to be transferred. Such an agreement regarding transfers must be approved by the Minister with the consent of the Minister for Public Expenditure and Reform.

*Section 17* provides legal certainty to BGÉ and the networks company that title to an asset can be provided by the issuing of a jointly agreed certificate.

*Section 18* provides that there is an entitlement to seek production of documents of title following the provisions of section 84 of the Land and Conveyancing Reform Act 2009, but tailored to specific circumstances of the transfer plan between BGÉ and its subsidiary.

*Section 19* provides for the production of an Annual Report and Accounts to provide that the activities of the networks company are separately identified within the BGÉ group's annual report and accounts.

## PART 3

### TRANSFER OF ENERGY BUSINESS TO ENERGY COMPANY (Sections 20 to 29)

*Section 20* makes provision for BGÉ to prepare a transfer plan in respect of the energy company. The transfer plan will include assets, contracts, rights and liabilities and staff considered by BGÉ to be part of the energy business. The Minister will ensure that no assets relating to the transmission or distribution systems will be included in the transfer plan.

*Sections 21* is a standard provision relating to the Memorandum and Articles of Association of the energy subsidiary to be regulated and it allows Ministerial oversight of the content of the Memo and Articles of Association. This oversight function will apply from the transfer date to the date of disposal of the energy subsidiary. The Memorandum and Articles of Association will be required to be not inconsistent with EU Gas Directive 2009/73/EC.

*Section 22* provides for the appointment of not less than 3 directors to the energy company whose appointment must be approved by the Minister for Communications, Energy and Natural Resources with the consent of the Minister for Public Expenditure and Reform, up until the disposal date of the energy company. Only employees of BGÉ shall be eligible for consideration and no remuneration will be paid to directors.

*Section 23* provides for the approval of the transfer plan by the Minister for Communications, Energy and Natural Resources with the consent of the Minister for Public Expenditure and Reform. The onus is on the Minister to ensure that he is satisfied that the plan provides only for the transfer of those assets and staff as are necessary in order to transfer the energy business.

*Section 24* provides for an energy company transfer date to be set by the Minister for Communications, Energy and Natural Resources. Notification of the transfer date will be made by means of a notice placed in *Iris Oifigiúil*. The decision on the transfer date will be made following the approval of the transfer plan. Notification ensures that any third parties affected by the transfer plan are put on notice of it.

*Section 25* provides that with effect from the transfer date the energy company becomes responsible for the assets, contracts, rights and liabilities transferred to it.

*Section 26* provides that BGÉ may, up to the date of disposal, enter into further agreements with the energy company for the transfer of additional assets, licences, rights and liabilities and staff to the energy company. This section is intended to provide for flexibility in the event that, following the coming into effect of the transfer scheme, it is found that additional employees, assets etc. require to be transferred. Such an agreement regarding transfers must be approved by Minister for Communications, Energy and Natural Resources with the consent of the Minister for Public Expenditure and Reform.

*Section 27* provides legal certainty to BGÉ and the energy company that title to an asset can be provided by the issuing of a jointly agreed certificate.

*Section 28* provides that there is an entitlement to seek production of documents of title following the provisions of section 84 of the

Land and Conveyancing Reform Act 2009, but tailored to specific circumstances of the transfer plan between BGÉ and the energy subsidiary.

*Section 29* provides for the disposal of Bord Gáis Energy by BGÉ, with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

#### PART 4

##### AMENDMENTS TO THE ACT OF 1976 (Sections 30 to 38)

*Section 30* provides for amendments to sections (2), (6), 7B(2), 7C, 7E, 7G, 8A, 13(3), 14, 20(3)(a), 23, 24, 29(1) and 38(1) of the Gas Act 1976.

These amendments will provide for the designation by Order of the Government of a majority-shareholding Minister in BGÉ. This is proposed on the basis that the current shareholding arrangements are not compliant with EU Gas Market Directive 2009/73/EC which requires significant restructuring of European gas transmission operators in line with one of three unbundling options. Unbundling is intended to create a level playing field for gas suppliers and enhance competition and transparency in the gas market by removing the ability or incentive for monopoly gas transmission companies to discriminate in favour of related gas suppliers.

In determining the optimum unbundling model for Bord Gáis Éireann (BGÉ) in line with the Directive, the Independent Transmission Operator (ITO) option was initially adopted with a view to retaining both the Bord Gáis Energy and networks businesses within State ownership. Under the Directive, the only unbundling option which allows for the sale of the Bord Gáis energy business and the retention of the networks business in State ownership is the full ownership unbundling option, which Ireland is obliged to transpose and implement.

The Full Ownership Unbundling requirements of Gas Directive 2009/73/EC mean that as shareholders in other State energy companies which are active in power generation or electricity and gas supply, such as ESB or Bord na Mona, neither the Minister for Communications, Energy and Natural Resources nor the Minister for Public Expenditure and Reform may retain a decisive decision-making role in relation to the Bord Gáis Éireann network business.

However, the consenting provisions throughout the Bill ensure that the current role of each Minister on the corporate governance and policy framework will be maintained while also ensuring that legal obligations under the Directive are met.

*Section 31* amends section 8 of the Gas Act 1976 to provide that BGÉ, post the sale of the energy business, will have no function as regards gas supply to final customers. The amendment also provides that BGÉ as a fully unbundled transmission system operator may not engage in the supply business in compliance with Directive 2009/73/EC.

*Section 32* provides for an amendment to section 9 of the Gas Act 1976. It provides that additional functions relating to BGÉ's functions may be conferred by the majority-shareholding Minister by Order of the Government.

*Section 33* provides for an amendment to section 11 of the Gas Act 1976. It provides for directives by the majority-shareholding Minister concerning the financial objectives of the Board and directions as to profits. Such directions may be given by the majority-shareholding Minister, having consulted with the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform and any other relevant Minister. The Board is required to comply with such directions.

*Section 34* provides for amendments to section 15 of the Gas Act 1976 regarding the keeping of accounts, auditing, payment of auditor fees and the provision of information regarding accounts. The majority-shareholding Minister is the lead Minister in this regard.

*Section 35* provides for the amendment of section 16 of the Gas Act 1976. The proposed amendments provide for the appointment of staff and the payment of remuneration and expenses to staff. The salary and expenses of the CEO of BGÉ will be subject to the approval of the majority-shareholding Minister (given where the Minister is not the Minister for Finance, with the approval of the Minister for Finance), after consultation with the Minister for Communications, Energy and Natural Resources and the Minister for Public Expenditure and Reform and any other Minister that the majority-shareholding Minister considers should be consulted. It also provides that the Board must take into account Government guidelines or policy concerning pay and conditions of employment. The Board is obliged to comply with any directives in regard to pay and conditions.

*Section 36* provides for an amendment to section 18 of the Gas Act 1976. This provision relates to superannuation of employees of BGÉ. The provision is amended to take account of the proposed role of the majority-shareholding Minister. It also provides a revised definition of “officers and servants” of the Board as it applies to section 18 to include employees of Gaslink, employees of the energy subsidiary up to the disposal date and employees of the network subsidiary to be established under the Gas Regulation Bill 2013.

*Section 37* provides for the amendment of section 21 of the Gas Act 1976. This provision relates to capital commitments and the level of such commitments that may be entered into by BGÉ. Capital commitments will require the consent of the majority-shareholding Minister, following consultation. The consent of the majority-shareholding Minister will be required with regard to the construction of gas pipelines unless the majority-shareholding Minister formally advises the Board of BGÉ that such consent is not required. Subsection (5) provides that the majority-shareholding Minister, in deciding whether or not to give his consent to pipeline construction, must have regard to a number of criteria. These criteria are the requirements of Gas Directive 2009/73/EC, whether the CER has approved the construction and energy policy objectives.

*Section 38* provides for amendments to the First Schedule to the Gas Act 1976 which concerns appointments to the Board of BGÉ. It is proposed that the Schedule be revised to take account of the unbundling rules under Gas Directive 2009/73/EC as regards the categories of persons that may not be appointed and the requirement to delegate the lead role as regards appointments, Board fees and pensions and allowances to Board members, to the “majority-shareholding” Minister.

## PART 5

### MISCELLANEOUS (Sections 39 to 44)

*Section 39* provides that on the commencement of this section, the majority shareholding in BGÉ held by the Minister for Public Expenditure and Reform shall be transferred to the majority-shareholding Minister.

*Section 40* provides that following the appointment of a majority-shareholding Minister, references to the Minister in sections 5, 6 and 9(5)(a) shall be read as references to the majority-shareholding Minister.

*Section 41* provides for an amendment to section 2 of the Gas (Amendment) Act 1987 by removing references to gas supply from BGÉ's functions.

*Section 42* provides for an amendment to section 17 of the Gas (Amendment) Act 2000. It provides that BGÉ may engage in any business provided that such business activity does not contravene Gas Directive 2009/72/EC.

*Section 43* is a technical amendment.

*Section 44* amends section 16 of the Water Services Act 2013 to dis-apply, as regards Irish Water, the proposed legal requirements on BGE in this Bill, regarding the approval of capital commitments by the majority-shareholding Minister. In the case of Irish Water, the subsidiary may only enter into capital commitments following the consent of the Minister for Communications, Energy and Natural Resources given with the approval of the Minister for Public Expenditure and Reform.

### SCHEDULES 1 TO 4

There are four Schedules to the Bill. Schedule 1 sets out what will happen in respect of those assets, rights and liabilities specified in the transfer plan for the networks company on the transfer date. Schedule 2 sets out what will happen for the employees specified in the transfer plan for the networks company on the transfer date. Schedule 3 and Schedule 4 provide similar arrangements in regard to the transfer plan for the energy company.

#### **Exchequer and Financial Implications**

The Programme for Government committed to a sale of State assets in order to fund investments for jobs and growth. The EU/IMF/ECB Memorandum of Understanding also contained a commitment to undertake a programme of state asset disposals. On 21st February 2013 the Government agreed, inter alia, to sell the energy business of Bord Gáis Éireann. The sale process for Bord Gáis Energy was formally launched on 3 May 2013 and the sale transaction process is now underway.

No Exchequer costs are expected to arise from the sale of Bord Gáis's energy business or from the reorganisation of BGÉ.

*An Roinn Cumarsáide, Fuinnimh agus Acmhainní Nádurtha  
Department of Communications, Energy and Natural Resources,  
July, 2013.*