



**An Bille um an nGníomhaireacht Athbhreithnithe
Comhlachtaí Poiblí, 2016**

Public Bodies Review Agency Bill 2016

*Meabhrán Mínitheach agus Airgeadais
Explanatory and Financial Memorandum*



**AN BILLE UM AN nGNÍOMHAIREACHT ATHBHREITHNITHE
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PUBLIC BODIES REVIEW AGENCY BILL 2016**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

There are in the region of 250 public bodies in existence, each of which was established by, or under, statute.

Our legislature does not routinely review the operation and effectiveness of legislation following its enactment. As a consequence, once a public body has been established under legislation, little or no consideration is given 10 or 20 years later as to whether the remit of that public body is as valid today as it was on the day its founding legislation was enacted, or whether the public body needs a fresh remit and guidance on a new direction, or indeed whether the organisation has served its purpose and needs to be either merged or dissolved.

While public bodies rightly differ in very many respects from private sector businesses, there is much that the public sector can learn from the experiences of the private sector. To take just one example of this, businesses which do not innovate and evolve eventually die. Public bodies are not at risk of overtly failing in this way as the prevailing culture within the public service does not allow this to occur. There is a need to imbue the public sector with a culture of dynamism and self-improvement.

The proposals contained in this Bill are just one step along that journey for the public sector.

Purpose of the Bill

The purpose of this Bill is to establish an organisation which will be charged with reviewing within seven yearly intervals, the effectiveness of public bodies with a view to ensuring that their statutory remit remains of relevance and that each public body continues to discharge its functions in the most effective way possible, delivering tangible benefits for Irish society.

Provisions of the Bill

This Bill contains 43 sections and is divided into 9 Parts and also has one Schedule.

Part 1 of the Bill addresses preliminary issues.

Section 1 of the Bill sets out the short title by which the Act will be known.

Section 2 addresses the commencement of the legislation and it provides that, once enacted, the Act will come into force by way of a ministerial order – by the Minister for Public Expenditure and Reform. It provides

that different sections of the Bill may be set to come into force on different dates.

Section 3 requires the Minister to conduct a review of the operation of this legislation every five years and to report on the findings made during that review.

Section 4 provides that this legislation will lapse at the end of 2031 unless it is continued in operation by a motion of each House of the Oireachtas.

Section 5 defines eight terms which are used in this Bill.

Section 6 provides that the term “public body” means those bodies which are listed in the Schedule. The Schedule lists 140 public bodies which will be reviewed by the Public Bodies Review Agency. *Section 6* also makes provision for the designation of other entities as public bodies.

Section 7 empowers the Minister for Public Expenditure and Reform to make regulations associated with this Bill.

Part 2 of the Bill addresses the establishment of the Public Bodies Review Agency.

Section 8 of the Bill provides for the establishment of the Public Bodies Review Agency (referred to as “the Agency”) as a body corporate which may sue and be sued in its corporate name and acquire, hold and dispose of land or an interest in land and any other property. It also provides for the Agency to have a corporate seal.

Section 9 sets out the objects of the Agency which are to review the role and effectiveness of public bodies so as to ensure that they continue to be fit for purpose, that they adopt a culture of continuous improvement and contribute to society in a positive and meaningful way.

Section 10 states that the Agency is required to further the objects which are set out in *section 9*. *Section 10(2)* states that primary function of the Agency is to conduct reviews of public bodies and assess their effectiveness and prepare reports on its findings. Such reviews may be carried out at the request of the Minister for Public Expenditure and Reform, or at the request of the Minister with responsibility for a particular public body, or at the request of the head of the relevant public body. Such reviews may also be carried out by the Public Bodies Review Agency on its own initiative. Where it carries out a review, *section 10(3)* provides that in any ensuing report, the Agency may make recommendations regarding the future role or existence of the public body in question. Under *section 10(4)*, each public body will be reviewed at least once every seven years.

Section 11 sets out the secondary functions of the Agency and those functions include carrying out an assessment of service standards relating to each public body which have been set by the line Minister, advising on the implementation of recommendations, advising on re-structuring or re-direction being undertaken by public bodies, and to provide consulting services to government bodies in other countries.

Section 12(1) provides that where the Agency carries out a review of a public body under *section 10*, it must submit a copy of the report to: the Minister for Public Expenditure and Reform, to the relevant line Minister, and also to the public body which is the subject of the review. It must also lay copies of the report before each House of the Oireachtas, and must arrange for the report to be published on the internet. Under *section 12(2)*, the Minister for Public Expenditure and Reform and the relevant line Minister are required to issue a joint response within 90 days in which they detail the actions that will be taken to implement the recommendations contained in the report. Where the Ministers propose to take no action,

they must explain the reasons for inaction. Under *section 12(3)*, a report of the Agency which has been laid before the Houses of the Oireachtas under *section 12* must be considered by the Committee on Finance, Public Expenditure and Reform and Taoiseach.

Section 13(1) states that the Agency may require a public body to provide it with any information that the Agency needs in order to discharge its functions under this Act. *Section 13(2)* states that an authorised person may request to interview any person working for a relevant public body, or any other person whom he or she believes may have information which is likely to be of assistance to the Agency. Under *section 13(3)* an authorised person may make a formal requirement of a person to provide information. *Section 13(4)* empowers the Agency to carry out “exit interviews” with senior ranking officials who leave the employment of a public body. *Section 13(5)* provides that the Agency may engage a third party to assist it in discharging its functions.

Section 14 enables the Agency to appoint authorised persons to assist it in discharging the functions which are referred to in *sections 10* and *11*. Authorised persons are required to carry, and produce upon request, an authorisation and a form of identification. The powers of an authorised person are set out in *section 14(3)*.

Section 15 states that where the Agency provides services to government bodies in other jurisdictions, the Agency may charge for those services.

Part 3 deals with the appointment and composition of the Board of the Agency.

Section 16(1) provides that there will be 11 members on the Board of the Agency. Under *section 16(2)*, members of the Board are required to have experience and expertise in relation to matters connected with the functions of the Agency. *Section 16(3)* details the specific expertise which are required of the members of the Board. *Section 16(4)* sets out the circumstances in which a person will be disqualified from becoming a member of the Board. *Sections 16(5) to (9)* deal with the duration of Board membership. Provision has been made for the replacing of Board membership on a phased basis. *Section 16(10)* requires the Minister to strive for gender balance on the Board.

Section 17 indicates the role of the Board.

Section 18 details the circumstances in which a member of the Board may be removed from office.

Section 19 indicates the procedure to be followed where a member of the Board wishes to resign. This section also indicates how a casual vacancy on the Board is to be filled.

Section 20(1) sets out the circumstances in which all members of the Board may be removed. Where the Minister forms the opinion that the Board is not performing its functions, *section 20(2)* empowers the Minister to appoint a person to conduct an independent review of any matter giving rise to that opinion.

Section 21 sets out the procedures which will be applicable to meetings of the Board.

Section 22 enables the Board to establish committees to assist and advise the Board in the performance of its functions.

Section 23 provides for the remuneration of members of the Agency’s Board.

Part 4 deals with the appointment and role of the chief executive officer (CEO) of the Agency.

Section 24 enables the Board to appoint a CEO provided that the person being appointed had been selected pursuant to the Public Service Management (Recruitment and Appointments) Act 2004. The CEO shall hold office for an initial period of five years, renewable only once for a further period of up to five years.

Section 25 sets out the functions of the CEO – the principal function being to execute policy decisions of the Board and then to effectively manage the day to day administration of the Agency. The CEO is accountable to the Board of the Agency.

Section 26 provides, subject to the consent of the Chair of the Board, for the delegation of the functions of the CEO to named employees.

Section 27 states that the CEO of the Agency and each member of its Board is accountable to the Committee of Public Accounts.

Section 28 states that the CEO of the Agency is accountable to other committees of the Houses of the Oireachtas.

Part 5 deals with the appointment of employees and advisers.

Section 29 provides for the appointment of persons as employees of the Agency.

Section 30 addresses the pension arrangements which are required to be put in place for employees of the Agency.

Section 31 enables the Agency to appoint advisers.

Part 6 provides for the accountability and funding of the Agency.

Section 32 empowers the Minister for Public Expenditure and Reform to issue directions to the Agency.

Section 33 enables the Minister for Public Expenditure and Reform, with the agreement of the Minister for Finance to advance monies to the Agency.

Section 34 requires that the Agency present to the Minister for Public Expenditure and Reform the Agency's code of governance for final approval.

Section 35 requires that the Agency keep proper books of account. There is also a requirement that the accounts of the Agency be approved by the Board and then be submitted to the Comptroller and Auditor General for auditing.

Section 36 provides that subject to the approval of the Minister for Public Expenditure and Reform, the Agency may accept gifts of money, land or other property provided that the conditions would not be inconsistent with the Agency's functions or obligations.

Section 37 requires the Agency to prepare an annual report.

Part 7 addresses the required standards of conduct as well as related matters.

Section 38 states that a member of the Board of the Agency, a member of staff, the CEO and other persons engaged by the Agency, are required to maintain proper standards of integrity, carry out their duties in accordance with international best practice, as well as having concern for the public interest.

Section 39 requires that the Agency issue codes of conduct for the guidance of committee members, employees, and advisers.

Section 40 provides for the non-disclosure of confidential information.

Section 41 sets out the circumstances in which a member of the Board of the Agency or a member of a committee of the Board of the Agency ceases to hold office.

Part 8 addresses the setting of service standards for public bodies.

Section 42 provides that each line Minister must devise the service standards that are required to be met by each public body within his or her remit. The service standards must be submitted to the Cabinet for final approval.

Part 9 deals with offences and penalties.

Section 43 makes it an offence for a person to fail to comply with the request of an authorised person which is made under *section 13(3)* which relates to the provision of information or documentation upon request. *Section 43* also makes it an offence for a person to obstruct an authorised person in the performance of his or her duties. It is also an offence for a person to refuse to comply with a formal requirement of an authorised person or to give information to the authorised person that he or she knows to be false or misleading. A person who commits an offence under this section is liable, on summary conviction, to a class A fine (currently set at €5,000) or to up to 12 months in jail. More significant penalties can be imposed in cases prosecuted on indictment.

The *Schedule* lists 140 public bodies which will be reviewed by the Public Bodies Review Agency. The *Schedule* is linked to *section 6* which provides that the term “public body” means those bodies which are listed in the *Schedule*.

Senator Pádraig Ó Céidigh
Nollaig, 2016.

- Models in other countries**
- Sunset Commission in Texas
 - The Victorian Public Sector Commission (Australia)
 - Public Sector Commission (Western Australia)
 - Office of the Auditor General of Canada

- Existing Irish models**
- National Oversight and Audit Commission which oversees local government, with a focus on:
- value for money
 - best practice
 - integration of national and local policy
 - Efficiency review in 2010 identified areas with €51.1m annual savings.

Proposed new agency will not overlap with the remit of existing agencies and will be complimentary to the Office of the Comptroller & Auditor General whose role is to ensure that public funds and resources are used in accordance with the law, managed to good effect and properly accounted for.

Public Bodies Review Agency

Purpose

Independently evaluates the relevance & effectiveness of state/semi-state bodies over next 7 years and beyond.

The Agency will be tasked with ensuring that public sector bodies are continually reviewed in order to ensure that their statutory remit remains relevant and that its remit is adapted where necessary.

- Remit of the Agency**
- Primary Functions (based on section 10 of Bill)
- > Review of role and remit of body
 - > Assess effectiveness
 - > Make recommendations
 - > Report on findings
- Secondary Functions:
- > Monitor compliance with service standards
 - > Provide advice to public body/bodies
 - > Provide consultancy services to governments in other jurisdictions

Work Methodology

The Agency will review the effectiveness of state/semi-state bodies at least once every 7 years, by reference to international best practice.

Governance

Minister for Public Expenditure & Reform

PBRA Board

11 member board inc. chairperson.
Term 5 year duration

CEO + Management + Audit teams

Accountable to the Minister, the PAC & other Oireachtas Committees