

Minister's Statement
Joint Committee on Housing, Planning,
Community & Local Government
Scrutiny of the Thirty Fifth Amendment of the Constitution
(Water in Public Ownership) (No. 2) Bill 2016

Thank you, Chair.

I wish to thank the Committee for the invitation to be here today to participate in its consideration and scrutiny of the Thirty Fifth Amendment of the Constitution (Water in Public Ownership) (No. 2) Bill 2016, which seeks to provide constitutional protection for the public ownership of the public water system.

Members will be aware that the Bill before us passed through Second Stage in the Dáil in November. At that time a good debate took place with Members on all sides of the House contributing.

That debate reinforced the fact that all of us share a common view on the State owning this vital public service. Not once have I heard a dissenting voice in the Oireachtas on this issue.

There are a number of features of the water sector in Ireland that are relevant when considering the Bill. Firstly, the nature of our topography and population dispersal means that we have an extensive number of small, mainly surface water sources, rather than single large aquifers which can be the case in other countries. In addition, the evolution of water services in rural areas has largely been dependent on private or group water investment. Thus the public water utility, Irish Water, is not the exclusive provider of water services, but does provide drinking water to 83% of the population and waste water services to 64% of the population.

Water policy is seeking to ensure the appropriate stewardship of all of the nation's water resources and that all citizens have access to quality drinking water, across a sector that has multiple stakeholders and varying ownership and delivery structures. That being said, the majority of citizens receive water services from Irish Water, the State's public water utility, and the concerns raised regarding potential privatisation of water services are focused on Irish Water.

It may be useful if I set out both the current legislative safeguards to prohibit the privatisation of Irish Water, as well as the current status of work, from my Department's perspective, on proposals for a constitutional amendment.

Firstly, the **Water Services Act 2013** places a clear prohibition on the shareholders of Irish Water – the Minister for Housing, Planning, Community and Local Government; the Minister for Finance; and the board of Ervia – from alienating their shares in the utility.

Subsequently, in 2014, the Government introduced a further safeguard through **the Water Services Act 2014**. Arising from the Act, were a situation ever to arise where any privatisation or part-privatisation of Irish Water was to be contemplated, through alienation of any share in Irish Water to anyone other than another Minister, this could not occur without three specific actions:

- firstly, both Houses of the Oireachtas would have to pass a resolution approving such a proposal;
- secondly, a majority of voters in a plebiscite would have to give their approval to the proposal; and

- thirdly, the Minister would then have to initiate legislation to privatise Irish Water or alienate any share held by the Government.

A key principle in addressing the fragmentation within the system and bringing delivery and strategic planning into a single water utility was that this would be a public utility - a State body in public ownership. The objective of moving from a system of water services delivery by thirty-four water services authorities towards a single utility approach was to achieve economies of scale, greater efficiency and more effective long-term strategic planning.

The strong policy intent of the State has always been to maintain public water services in public ownership. This was already reflected in the Water Services Act 2007, and, in transferring functions from local authorities to Irish Water in 2013, the protections in that Act against what is termed “alienation of public water assets” were carried forward into the new arrangements.

Concerns that the reform process, initiated in 2011, might lead to the future privatisation of water services, persisted. Recognising these concerns, the previous Government twice legislated on the issue of public ownership of water services to give further protections as I have outlined.

Existing legislation, therefore, already provides a statutory prohibition on the privatisation of Irish Water and sets out a range of steps that would need to be taken in the event that the statutory prohibition involved was to be removed. However, despite these legislative barriers to privatization people continue to have genuine concerns. I and the Government respect and acknowledge those concerns and the effort made by the authors of the Bill to address them. Indeed, it was in this context that I asked my officials to meet with Deputy Collins and her team to develop a shared understanding of the specific operation of the existing prohibitions and the issues that would need to be carefully considered in further future arrangements.

Constitutional amendment

The possibility of a constitutional amendment to protect public ownership of water infrastructure has been considered previously. The provisions on the plebiscite, reflected in the 2014 legislation, were brought forward as an alternative to a constitutional provision in the light of concerns at the time regarding potential unintended consequences of such a provision. They also reflected the fact that the operation of State structures is usually described in legislation approved by the Oireachtas rather than in the fundamental legal document of the State.

However, in the intervening period, Opposition deputies published four similar Bills proposing a Constitutional amendment to enshrine public ownership of the water system in the Constitution. Resulting from this, I stated during the Second Stage debate last November in the Dáil that I am open to considering workable proposals that provide the necessary certainty in relation to the future public ownership of Irish Water.

I also indicated that due to the complexity of issues involved in any potential Constitutional protection, I reserved my position to propose a Government amendment to the wording, at committee stage.

Among the issues to be considered in drafting a Constitutional amendment are wording challenges arising due to the range of categories of infrastructural ownership; achieving balance between principles reflected in the Constitution and the more detailed policy to be reflected in legislation; and addressing the risk of unintended consequences.

Issues around the wording of any amendment also arise from the plurality of water infrastructure ownership categories. These include:

- private bore holes;
- private group water schemes;

- private group schemes that are sourcing water from the public network; or
- water infrastructure located on privately-owned land.

There are also issues to be considered around the potential for unintended consequences that could impinge on individuals' rights to private property.

My officials are working with the Office of the Attorney General on the issues arising, in order to provide advice to me and the Government, as this Bill progresses through the Oireachtas, and possibly bringing forward some amendments to address some of the issues I have outlined.

Thank you Chair – I look forward to the discussion with members on the issues.