



Tithe an
Oireachtais
Houses of the
Oireachtas

An Comhchoiste um Thithíocht, Rialtas Áitiúil agus Oidhreach

Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim
Ghinearálta an Bhille um Sheirbhísí Uisce a Scaradh, 2021

Samhain 2021

Joint Committee on Housing, Local Government and Heritage

Report on Pre-Legislative Scrutiny of the General
Scheme of the Water Services Separation Bill 2021

Table of Contents

PREFACE	3
INTRODUCTION	4
BACKGROUND	5
PROGRAMME FOR GOVERNMENT.....	5
BACKGROUND	5
POLICY CONSIDERATIONS.....	6
IRISH WATER TRANSFORMATION PROCESS.....	6
KEY ISSUES WITH THE PROPOSED LEGISLATION	7
KEY ISSUE 1: APPOINTMENT TO THE BOARD	7
RECOMMENDATIONS.....	8
KEY ISSUE 2: ACCOUNTABILITY TO COMMITTEE OF PUBLIC ACCOUNTS	8
RECOMMENDATIONS.....	9
RECOMMENDATIONS	9
RECOMMENDATIONS.....	9
APPENDIX 1: ORDERS OF REFERENCE	10
a. FUNCTIONS OF THE COMMITTEE – DERIVED FROM STANDING ORDERS [DSO 95; SSO 71]	10
b. SCOPE AND CONTEXT OF ACTIVITIES OF COMMITTEES (AS DERIVED FROM STANDING ORDERS) [DSO 94; SSO 70]	12
c. POWERS OF COMMITTEES (AS DERIVED FROM STANDING ORDERS) [DSO 96; SSO 72]	12
APPENDIX 2: COMMITTEE MEMBERSHIP	15
DEPUTIES	15
SENATORS.....	16
APPENDIX 3: LIST OF WITNESSES	17
APPENDIX 4: LINKS TO MEETING TRANSCRIPTS	17
APPENDIX 5: LINKS TO SUBMISSIONS & OPENING STATEMENTS	17
OPENING STATEMENTS	17

PREFACE



The Committee welcomes the introduction of the proposed Water Services Separation Bill 2021, which will provide for the separation of Irish Water from the Ervia Group along with additional regulatory requirements.

The proposed Bill will fulfil the Programme for Government commitment to retain Irish Water as a national, publicly-owned, standalone regulated utility and will facilitate an improved water services strategy. It will also provide for additional regulatory requirements for Irish Water in terms of its accountability and auditing regime, resulting in a heightened level of transparency and accountability for Irish Water.

I would like to thank the officials from the Department and the Committee Members for their contribution to the scrutiny of the proposed legislation. I hope that this report will inform the legislative process and I look forward to further engagement on the matter as it progresses through the Houses.

A handwritten signature in cursive script that reads "Steven Matthews".

Steven Matthews TD,
Cathaoirleach,
Joint Committee on Housing, Local Government and Heritage,
10 November 2021

INTRODUCTION

In accordance with *Standing Order 173*¹ the *General Scheme of Water Services Separation Bill 2021*² (the General Scheme) was referred to the Joint Committee on Housing, Local Government and Heritage (the Committee) on 27 April 2021. The Committee agreed at its meeting of 4 May 2021 to undertake pre-legislative scrutiny of the General Scheme.

The Committee conducted pre-legislative scrutiny at one meeting and engaged with officials from the Department, detailed below.

Tuesday, 28 September 2021

Department of Housing, Local Government and Heritage

- Mr. Feargal Ó Coigligh, Assistant Secretary, Water Division
- Ms Shirley Groarke, Principal Officer
- Ms Karen Flynn, Assistant Principal, Water Services Governance

¹ https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/standingOrders/dail/2021/2021-01-27_consolidated-dail-eireann-standing-orders-january-2021_en.pdf

² <https://www.gov.ie/en/publication/fb18c-general-scheme-of-water-services-separation-bill-2021/>

BACKGROUND

PROGRAMME FOR GOVERNMENT

The Programme for Government³ commits to retaining Irish Water in public ownership as a national, standalone, regulated utility. This commitment is proposed to be given effect through the *Water Services Separation Bill 2021* and the policy outlined in the Policy Paper on Irish Water, *Irish Water – Towards A National, Publicly-Owned, Regulated, Water Services Utility*⁴ recently agreed by Government.

The Government has approved the priority drafting of the *Water Services Separation Bill 2021* and has approved the publication of the *General Scheme of the Water Services Separation Bill 2021*⁵ and its circulation to the Joint Oireachtas Committee for pre-legislative scrutiny.

BACKGROUND

The Minister for Housing, Local Government and Heritage is the majority-shareholding Minister for Ervia, a commercial semi-state body. Ervia has responsibility for the delivery of strategic national infrastructure in the areas of gas and water. Ervia has a single unitary board which is responsible for the two principal subsidiaries, Irish Water and Gas Networks Ireland (GNI), both of which have executive boards.

In February 2021, the Government approved the publication of the Policy Paper, *Irish Water – Towards a National, Publicly-Owned, Regulated, Water Services Utility* setting out the Government's views and expectations on the next phase of the transformation of the water sector which will see the public water system being fully integrated within the organisation structure of Irish Water.

Separately, the Minister for Environment, Climate and Communications is developing legislation to facilitate the integration of Ervia and Gas Networks Ireland following the separation of Irish Water.

³ <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

⁴ <https://www.gov.ie/en/press-release/adf08-minister-obrien-publishes-policy-paper-on-future-of-irish-water/>

⁵ <https://www.gov.ie/en/publication/fb18c-general-scheme-of-water-services-separation-bill-2021/>

POLICY CONSIDERATIONS

The General Scheme provides amendments to the *Water Services Acts 2007 to 2017* so as to facilitate the separation of Irish Water from the Ervia Group.

The policy paper committed that the forthcoming legislation would facilitate the separation of Irish Water from the Ervia Group and would further strengthen the imperative of public ownership of Irish Water. The General Scheme provides this through:

- The more straightforward Ministerial share ownership arrangements and,
- The more straightforward appointment process for the Ministerial appointed Board of Irish Water

Following enactment of the legislation Irish Water will no longer be a subsidiary and Irish Water's shares will be vested in the Minister for Housing, Local Government and Heritage and the Minister for Public Expenditure and Reform. Previously the Minister for Housing, Local Government and Heritage along with the Minister for Finance held the shares – the opportunity is being taken now to change the ownership to reflect the position in other State-owned Bodies.

A role will be provided for the Comptroller and Auditor General, C&AG, with respect to Irish Water – in the context of a dual auditing role, where the C&AG and a commercial auditor will audit Irish Water's financial statements. Irish Water being subject to audit by the C&AG will also bring Irish Water within the remit of the Committee of Public Accounts.

The General Scheme provides for the transfer from Ervia to Irish Water of staff, rights and liabilities, contracts and records.

IRISH WATER TRANSFORMATION PROCESS

The General Scheme does not contain provisions relation to the parallel Irish Water transformation process involving the transfer of local authority staff to Irish Water, but the passage of the Bill will be informed by issues which emerge from that process during the course of the year.

KEY ISSUES WITH THE PROPOSED LEGISLATION

In examining the General Scheme, the Committee has identified areas that are of particular interest and/or where further consideration should be provided. In scrutinising the General Scheme, the Committee largely focussed on two areas of the General Scheme:

As such, these two elements of the General Scheme form the basis of the key issues discussed below.

KEY ISSUE 1: APPOINTMENT TO THE BOARD

The Committee notes that Head 6 of the General Scheme provides for the establishment and appointment of the Board of Irish Water, including the appointment of the chair of the board and the appointment of a chief executive.

In discussing this head with representatives from the Department, the Committee queried the method by which the chair of the board will be appointed, whether this would be through the Public Appointments Service or whether it will be at the discretion of the Minister to appoint outside of this process.

Responding to this the Department advised that the guidelines on appointments to State boards would apply and noted that there are exemptions to the PAS process contained in the guidelines. In this regard the Committee notes that the guidelines state that *'putting in place a system for appointments to State Boards that is open, accessible, rigorous and transparent will yield additional applications from accomplished, experienced and qualified individuals who wish to make a commitment to public service that might not have previously been identified as available for appointment to State Boards'*⁶. In this regard the Committee suggests that the chair of the board be selected through the Public Appointments Service.

6

https://www.publicjobs.ie/restapi/documents/Guidelines_on_Appointments_to_State_Boards_Jan2015.pdf

RECOMMENDATIONS

1. The Committee recommends that the chairperson of the board of Irish Water be appointed through the Public Appointments Service to ensure the process is open, accessible, rigorous, and transparent.

KEY ISSUE 2: ACCOUNTABILITY TO COMMITTEE OF PUBLIC ACCOUNTS

The Committee notes that Head 9 of the General Scheme provides for the nomination by the Chairperson of Irish Water of a person to appear before the Public Accounts Committee. In discussing this aspect of the General Scheme, the Committee queried why Irish Water will not have its own accounting officer for the purposes of presenting to the Public Accounts Committee. Responding to this the Department advised that due to the structure of Irish Water under the Companies Acts there is no provision for an accounting officer but noted that the Comptroller and Auditor General will have a dual audit function in relation to its oversight. In this regard the Department explained that Irish Water will provide its unaudited accounts both to the Comptroller and Auditor General and to the statutory auditor at the same time.

In response to queries on who would present to the Public Accounts Committee, officials from the Department noted that head 9 of the General Scheme may be reworded to refer to the Chief Executive rather than a person nominated by the Chairperson, as is currently provided for. They further noted that the Chairperson, along with the Chief Executive and Irish Waters finance officer may attend before the Public Accounts Committee when called, and that this would be examined further during the drafting process.

While the Committee welcomes the proposed dual auditing function in relation to the oversight of Irish Water, it suggests that it would be of greater benefit for Oireachtas oversight if the Chief Executive and the Chairperson of Irish Water were to attend before the Public Accounts Committee when required.

RECOMMENDATIONS

2. The Committee recommends that the proposed bill provide for the attendance of the Chief Executive and Chairperson of Irish Water as accountable persons for the purpose of attendance before the Public Accounts Committee.

RECOMMENDATIONS

RECOMMENDATIONS

1. The Committee recommends that the chairperson of the board of Irish Water be appointed through the Public Appointments Service to ensure the process is open, accessible, rigorous, and transparent.
2. The Committee recommends that the proposed bill provide for the attendance of the Chief Executive and Chairperson of Irish Water as accountable persons for the purpose of attendance before the Public Accounts Committee.
3. The Committee recommends that the Minister, when publishing the Water Services Separation Bill, sets out in an accompanying written statement an update on the ongoing negotiations between Irish Water, the Department and Trade Union representatives on the matter of the single water utility, including an update on legislation to enshrine the Right to Water in the Constitution and a timeline for holding such a referendum.

APPENDIX 1: ORDERS OF REFERENCE

a. FUNCTIONS OF THE COMMITTEE – DERIVED FROM STANDING ORDERS [DSO 95; SSO 71]

1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

- (a) legislation, policy, governance, expenditure and administration of—
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
- (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

- (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
- (b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

- (a) for the accountability of the relevant Minister or Minister of State, and
- (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

- (a) consents to such consideration, or
- (b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

- (a) the Committee Stage of a Bill,

- (b) Estimates for Public Services, or
- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
- (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
- (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof,

within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

b. SCOPE AND CONTEXT OF ACTIVITIES OF COMMITTEES (AS DERIVED FROM STANDING ORDERS) [DSO 94; SSO 70]

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(2) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/Seanad;

(3) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under DSO 125(1) and SSO 108(1); and

(4) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (a) a member of the Government or a Minister of State, or
- (b) the principal office-holder of a State body within the responsibility of a Government Department or
- (c) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

c. POWERS OF COMMITTEES (AS DERIVED FROM STANDING ORDERS) [DSO 96; SSO 72]

Unless the Dáil/Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

- (a) minutes of such evidence as was heard in public, and

- (b) such evidence in writing as the Committee thinks fit;
- (2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil/Seanad;
- (3) power to draft recommendations for legislative change and for new legislation;
- (4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—
- (a) require any Government Department or other instrument-making authority concerned to—
 - (i) submit a memorandum to the Joint Committee explaining the statutory instrument, or
 - (ii) attend a meeting of the Joint Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Joint Committee, which may report thereon to the Dáil, and
 - (b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;
- (5) power to require that a member of the Government or Minister of State shall attend before the Joint Committee to discuss—
- (a) policy, or
 - (b) proposed primary or secondary legislation (prior to such legislation being published),
- for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Joint Committee to enable him or her to discuss such policy or proposed legislation;
- (6) power to require that a member of the Government or Minister of State shall attend before the Joint Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Joint Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;
- (7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Joint Committee in relation to the consideration of a report under DSO 197/SSO 168;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Joint Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil/Seanad; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under DSO 120(4)(a)/SSO 107(4)(a).

APPENDIX 2: COMMITTEE MEMBERSHIP

DEPUTIES



Francis Noel Duffy
Green Party



Joe Flaherty
Fianna Fáil



Thomas Gould
Sinn Féin



Emer Higgins
Fine Gael



Steven Matthews
Cathaoirleach
Green Party



Paul McAuliffe
Leas-Cathaoirleach
Fianna Fáil



Cian O'Callaghan
Social Democrats



Richard O'Donoghue
Independent



Eoin Ó Broin
Sinn Féin

SENATORS



Victor Boyhan
Independent



John Cummins
Fine Gael



Mary Fitzpatrick
Fianna Fáil



Rebecca Moynihan
Labour



Mary Seery Kearney
Fine Gael

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 30 July 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 18 September 2020.
3. The Dáil Committee of Selection nominated Deputy Joe Flaherty to replace Deputy Jennifer Murnane O'Connor on 2 February 2021.

APPENDIX 3: LIST OF WITNESSES

Department of Housing, Local Government and Heritage

- Mr. Feargal Ó Coigligh, Assistant Secretary, Water Division
- Ms Shirley Groarke, Principal Officer
- Ms Karen Flynn, Assistant Principal, Water Services Governance

APPENDIX 4: LINKS TO MEETING TRANSCRIPTS

- [Tuesday, 28 September 2021](#)

APPENDIX 5: LINKS TO SUBMISSIONS & OPENING STATEMENTS

OPENING STATEMENTS

- [Mr. Feargal Ó Coigligh, Assistant Secretary, Water Division, Department of Housing Local Government and Heritage](#)

Houses of the Oireachtas

Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

Connect with us



Download our App

