

**Presentation to the Joint Oireachtas Committee on Housing, Local Government and Heritage**  
**Pre-Legislative Scrutiny of the General Scheme of the Water Services Separation Bill 2021**  
**Opening Statement**

**Introduction**

I would like to thank the Chair and committee members for offering us the opportunity to talk to them about the general scheme of the Water Services Separation Bill 2021, which was approved by Government on 20 April for publication and priority drafting.

As the Chair indicated, I am joined by Shirley Groarke and Karen Flynn, who have responsibility within the Department for the governance of Irish Water. We are happy to answer any questions that committee members may wish to pose.

I might just provide some background on the policy basis and guide members through some of the key elements of the general scheme.

**Background**

The Minister for Housing, Local Government and Heritage is the majority-shareholding Minister for Ervia, formerly Bord Gáis Éireann, 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.

The Government has decided that the establishment of two separate State companies to operate the gas network and develop our water services provides the optimal solution to meet the future challenges of de-carbonising our energy supply and modernising our water services.

The purpose of the General Scheme of the Water Services Separation Bill is to provide for the separation of Irish Water from the Ervia Group. The Department of Environment, Climate and Communications is separately working on drafting legislation to integrate Ervia with Gas Networks Ireland.

**Programme for Government**

The *Programme for Government: Our Shared Future* commits to *Retaining Irish Water in public ownership as a national, standalone, regulated utility*. This commitment is being given effect to through this proposed Water Services Separation Bill and the policy outlined in the Policy Paper, *Irish Water - Towards a national, publicly-owned, regulated, water services utility*. That policy paper outlines the Government's views and expectations on the next phase of the transformation of the water sector and which will see the public water system being fully integrated within the organisation structure of Irish Water. The Paper explains in detail the rationale behind the four key concepts which support the future evolution of Irish Water – that it is publicly owned, a national utility, a standalone utility and a regulated utility.

## **Policy Considerations**

In 2013, Irish Water was established as a subsidiary of Ervia with shares vested in the Minister, the Minister for Finance and Ervia. Irish Water was established as a company under the Companies Acts with its own Constitution. The primary legislation governing the establishment of Irish Water is the Water Services Act 2013 and the Water Services (No. 2) Act 2013 with other Water Services Acts being also relevant in particular the Water Services Act 2014. That Act prevents a current or future Government from initiating any legislative proposals that would seek to transfer Irish Water from public ownership, unless such proposals are first approved by a majority vote of the Irish people in a national plebiscite.

## **Main Provisions of the Bill**

Members of the Committee may wish to note that the General Scheme effects the changes by making a number of amendments to the Water Services Acts 2007 to 2017.

The General Scheme gives effect to the Programme for Government commitment of retaining Irish Water in public ownership as a national, standalone, regulated utility. The General Scheme provides for the separation of Irish Water from the Ervia Group and related matters.

The General Scheme contains 14 Heads which I will now summarise.

Heads 1 to 4 are standard provisions relating to the citation and commencement, interpretation, amendments and repeals to the Water Services Acts 2007 to 2017 to facilitate the separation of Irish Water from the Ervia Group. These amendments ensure that Irish Water is retained as a national, standalone, regulated utility and that Irish Water will no longer be a subsidiary of Ervia.

Head 5 amends section 5 of the Water Services Act 2013 so as to provide that all shares in Irish Water are vested in the Ministers only and the Ministers will hold all the rights associated with those shares thereby providing that Irish Water is publicly owned and no longer part of the Ervia Group. This Head provides that Ervia will no longer hold shares in Irish Water, and it also provides for a change in the ownership of Irish Water shares from the Minister for Finance to the Minister for Public Expenditure and Reform so as to reflect the position in other State-owned bodies. The Minister for Housing, Local Government and Heritage along with the Minister for Public Expenditure and Reform will be the named Ministers holding Irish Water's shares.

Head 6 amends section 6 of the Water Services Act 2013 so as to provide for the Board of Irish Water and its Chief Executive to be prescribed in primary legislation rather than in Irish Water's Constitution and this approach reflects similar provisions in other State-owned bodies. The provision of such governance arrangements in primary legislation will enhance transparency and accountability. The appointment of the current Board of Irish Water is prescribed in Irish Water's Constitution with certain provisions relating to its Directors prescribed in the Water Services Act 2013. Following separation, the Irish Water Board will consist of no more than 9 Directors including a Chairperson appointed by the Minister with the consent of the Minister for Public Expenditure and Reform. The appointment of the current Managing Director of Irish Water is prescribed in Irish Water's Constitution and this

position is being retitled as Chief Executive Officer. It is proposed to appoint a new Chief Executive Officer in advance of separation such that that person will become the new Chief Executive Officer of Irish Water on commencement of the legislation.

Heads 7 to 9 provide for the revised accountability and auditing arrangements such that Irish Water will be subject to a dual audit by both the Comptroller and Auditor General and its statutory auditor under the Companies Acts. The dual role arises due to the provisions of the Companies legislation, Irish Water's governing legislation and the Comptroller and Auditor General's legislation. It also provides that Irish Water will be accountable to the Committee of Public Accounts.

Heads 10 to 13 provide for the transfer, from Ervia to Irish Water of those staff, rights and liabilities, contracts and records which relate to functions of Irish Water. These Heads do not provide for the transfer of local authority staff to Irish Water. There are already existing provisions in the Water Services (No. 2) Act 2013 relating to the transfer of such staff to Irish Water. The General Scheme is not providing for the transformation process as outlined in the recently published Policy Paper, however the draft General Scheme will be informed by issues emerging from that transformation process in order to ensure that Irish Water is retained in public ownership as a national, standalone, regulated utility.

Head 14 is a standard provision relating to consequential amendments to other legislation. Such legislation will be further examined in consultation with other Departments and the Office of the Parliamentary Counsel.

Further legislative amendments of a consequential or technical nature will be agreed between the Minister and the Attorney General for inclusion in the Water Services Separation Bill during the course of legal drafting.

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