

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM THITHÍOCHT, PLEANÁIL, POBAL AGUS RIALTAS ÁITIÚIL

## JOINT COMMITTEE ON HOUSING, PLANNING, COMMUNITY AND LOCAL GOVERNMENT

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*Déardaoin, 4 Bealtaine 2017*

*Thursday, 4 May 2017*

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The Joint Committee met at 9 a.m.

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### MEMBERS PRESENT:

Deputy Ruth Coppinger,	Senator Victor Boyhan,
Deputy Barry Cowen,	Deputy Paudie Coffey,
Deputy Mattie McGrath,	Senator Grace O'Sullivan.
Deputy Eoin Ó Broin,	
Deputy Fergus O'Dowd,	

In attendance: Deputies Colm Brophy, Joan Collins and Thomas Pringle.

DEPUTY MARIA BAILEY IN THE CHAIR.

## **Business of Committee**

**Chairman:** At the request of the broadcasting and recording services, members are requested to ensure that for the duration of the meeting their mobile phones are turned off completely or switched to airplane, safe or flight mode, depending on their device. It is not sufficient for members to put their phones on silent mode as this will maintain a level of interference with the broadcasting system. Apologies have been received from Deputy Pat Casey, who has to attend a funeral, and Senator Jennifer Murnane O'Connor. Senator Victor Boyhan is running a little bit late but will be here shortly.

I propose we go into private session to deal with housekeeping matters. Is that agreed? Agreed.

*The joint committee went into private session at 9.08 a.m. and resumed in public session at 9.20 a.m.*

### **Thirty-fifth Amendment of the Constitution (Water in Public Ownership) (No. 2) Bill 2016: Discussion**

**Chairman:** I remind members that there will be two sessions today. I welcome to our first session Deputy Joan Collins, Mr. Séamas Ó Tuathail and Ms Treasa Brannick O'Cillín. At today's meeting we are considering Deputy Collins's Bill on water in public ownership. The Bill was referred to this committee for consideration and today's meeting will involve detailed scrutiny of the Bill. Mr. Ó Tuathail has indicated that he wishes to present in Irish. Translation is available for members if required.

Before we begin I draw the attention of the witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I call Deputy Collins to make her opening statement.

**Deputy Joan Collins:** I thank the committee for inviting Mr. Séamas Ó Tuathail, Ms. Treasa Brannick O'Cillín and me to appear before it today to begin the pre-committee scrutiny of the Thirty-fifth Amendment of the Constitution (Water in Public Ownership) (No. 2) Bill 2016 and the proposed constitutional amendment contained therein. This proposed constitutional amendment seeks to address significant concerns which have been strongly expressed by the public about the possible privatisation of public water services. The public have indicated their strong desire to have the public water supply protected from privatisation. This issue has been reflected as a matter of public importance in the report of the expert commission on domestic public water services which recommends constitutional protection from privatisation. The

Joint Committee on the Future Funding of Domestic Water Services has also recommended that water should remain in public ownership and that a constitutional referendum should be held on that question.

It has been recognised by both the expert commission and the Joint Committee on the Future Funding of Domestic Water Services that the appropriate means of addressing this issue is through our Constitution, as the people's document. Constitutional protection can ensure that responsibility for the protection, management and maintenance of the public water system remains the responsibility of Government and that this key public resource remains in public ownership into the future. This also ensures the public interest can remain at the heart of decision-making into the future.

Providing constitutional protection also prevents the threat of a Government being strong-armed by an external authority or otherwise into transferring key assets and responsibilities to private interests. It essentially puts it off the table and ensures the public water system and access to it is secure and protected into the future on behalf of the people.

The proposed amendment is designed to clarify and copper-fasten State ownership of the public water system as distinct from privately owned and operated water systems in the form of group water schemes and private wells and boreholes. These privately owned water systems are not in public ownership.

The proposed amendment is also designed to clarify and copper-fasten the Government's responsibilities in terms of protecting, managing and maintaining the public water system in the public interest. Greater levels of protection and accountability into the future will be achieved through the proposed amendment.

**Mr. Séamas Ó Tuathail:** Gabhaim buíochas leis an gCathaoirleach agus le baill den choiste as cuireadh a thabhairt dom bheith i láthair leis an mBille um an gCúigiú Leasú is Tríocha ar an mBunreacht (Uisce faoi Úinéireacht Phoiblí) (Uimh. 2) 2016 a phlé mar aon leis an leasú bunreachtúil a mholtar ann. An bunrud atá san éisteacht seo ná ceistiú a dhéanamh maidir le téacs an Bhille a mholann an leasú seo.

Tá sé i gceist go gcuirfí an leasú isteach in Airteagal 28.4 den Bhunreacht. Baineann Airteagal 28 le Rialtas na hÉireann. Is dréacht-leasú é seo. Caithfidh muintir na hÉireann vótáil air. Is togra reifrinn é agus caithfidh muintir na hÉireann glacadh leis nó é a dhiúltú. Má ghlactar leis beidh sé i dtéacs an Bhunreacht amach anseo. Is é an leagan Gaeilge den Bhunreacht an téacs údarásach de agus is téacs tánaisteach an leagan i mBéarla. Tá idirdhealú idir sin, mar shampla, agus reachtaíocht a ritear sa Dáil. De réir Airteagal 25 den Bhunreacht, má ritear reacht i dteanga den dá theanga oifigiúil - Béarla nó Gaeilge - is sa teanga sin ina dtuigtear an tAcht go príomha nuair a chuireann an tUachtarán lámh leis. Sa chás seo táimid ag plé le togra reifrinn maidir le Airteagal 28 den Bhunreacht.

Léifidh mé amach an rud atá i gceist ar mhaithe le soiléireacht. Níl aon rud eile i gceist thar an togra seo. Tuigim go bhfuil mé ag plé le Bille ar an Dara Chéim agus gurb í an chéad Chéim eile ná Céim an Choiste. An obair is mó atá le déanamh agamsa ná é a chur ina luí ar an gcoiste nach bhfuil aon rud cearr, ar chor ar bith, leis an téacs atá molta le cur isteach in Airteagal 28. Deir sé:

Beidh an Rialtas go léir le chéile freagrach as an gcóras uisce poiblí a chosaint, a bhainistí agus a chothabháil. Cuirfidh an Rialtas in áirithe, ar mhaithe le leas an phobail, gur faoi

úinéireacht poiblí agus faoi bhainistí poiblí a fhanfaidh an acmhainn sin.

Sin uilig atá san rud seo ach tá an-chuid ráite ann mar tugann sé sin cosaint ar leibhéal bunreachtúil amach anseo do chóras poiblí uisce na hÉireann. Abair go nglactar leis an togra seo ag pobal na hÉireann. Is í muintir na hÉireann atá ceannasach de réir an Bhunreacht. Má ghlactar leis, ní féidir le haon Acht de chuid an Rialtais ina dhiadh sin baint den méid atá i gceist sa Bhunreacht. Bheadh sé ann mar Airteagal 28.4.3° den Bhunreacht.

Tá leagan i Sacs-Bhéarla ann freisin:

The Government shall be collectively responsible for the protection, management and maintenance of the public water system. The Government shall ensure in the public interest that this resource remains in public ownership and management.

Abair nach nglactar leis an togra seo ag pobal na hÉireann. Má dhiúltaítear dó, sin deireadh leis agus níl aon cheist eile faoi.

Má ghlactar leis i reifreann, sa gcás go n-éiríonn leis teacht tríd an Dáil agus tríd an Seanad, níl gá do shíniú an Uachtaráin. Is eisceacht é an togra reifrinn mar is iad pobal ceannasach na hÉireann atá i gceannas ar an mBunreacht. Is Bunreacht é do mhuintir na hÉireann agus, mar sin, ní gá síniú an Uachtaráin a bheith leis. Má ritear an Bille, is iad pobal na hÉireann a dhaingníonn an Bille agus ní Uachtarán na hÉireann. Nuair a ritheann an Dáil Bille, is é Uachtarán na hÉireann a dhaingníonn é agus síniú á chur leis. Níl Bille ar bith a ritheann an Dáil agus an Seanad ina dlí sa tír seo mura síníonn an tUachtarán é. Déarfainn go dtuigeann na daoine anseo é sin. Mar an gcéanna, ní ghlactar le togra reifrinn ar bith go dtí go vótálann muintir na hÉireann le mórán simplí ina leith. Sin an rud atá i gceist anseo.

Tá na téarmaí an-soiléir. Tá dhá abairt ann agus tá sé fíorshoiléir cad atá i gceist. Dá nglactar leis, beidh deis ag an Oireachtas ina dhiaidh sin reachtaíocht a chur tríd an Dáil agus tríd an Seanad chun é a bheith sínithe ag an Uachtarán le haon socrú eile is gá a dhéanamh i leith an airteagal sin den Bhunreacht. Tá cur síos déanta agam ar chuid de na ceisteanna a d'éireodh faoin rud seo. Mar shampla, an gcuireann sé seo isteach ar aon úinéireacht phríobháideach ar uisce nó na group water schemes mar a thugtar orthu i mBéarla? Ar ndóigh, ní chuireann. Sa mhéad is go bhfuil aon cheist ann amach anseo maidir leis an alt sin sa Bhunreacht, má ghlactar leis, is ag an gCúirt Uachtarach faoi Airteagal 34 den Bhunreacht a réiteofar an cheist. Níl mé ag iarraidh ar an gcoiste seo glacadh leis seo go ró-éasca ach feictear domsa go bhfuil na téarmaí seo fíorshoiléir agus gur ar an Rialtas atá an fhreagracht- comhfhreagracht an Rialtais - cúrsaí uisce poiblí agus dáileadh an uisce sin a chosaint agus a chur chun tosaigh, is cuma cé na hathruithe a tharlódh amach anseo.

De réir mar a fheictear domsa é, beidh gá i gcónaí le dáileadh uisce poiblí sna catharacha, sna bailte agus faoin tuath. Tá an chuid is mó de ghrúpscéimeanna uisce príobháideach. Sa mhéad is go bhfuil siad ag tarraingt ar uisce a d'fhéadfaí a rá a bheadh poiblí faoin alt seo, tá idirdheighilt ann. Tá córas ann go mbeidh lámh príobháideach agus lámh poiblí leis. Tá seantaithe ag na cúirteanna ar an idirdhealú sin a dhéanamh. Ní fheicim go bhfuil máchail nó locht ar bith le sonrú ar an rud seo.

Tréaslaím an Teachta Collins agus Treasa Brannick O'Cillín, a bhí ag obair ar an alt seo freisin, as alt chomh soiléir leis a mholadh don Oireachtas. Ní dóigh liom gur féidir liom an scéal a chur níos faide ná sin. Má tá ceist ar bith ag ball ar bith den choiste, beidh mé lánsásta tabhairt faoi. Tá mé buíoch den Chathaoirleach agus na baill eile as éisteacht liom an fhad sin.

**Chairman:** I thank Mr. Ó Tuathail. I invite anyone who has questions to contribute. I call

Deputy Fergus O'Dowd.

**Deputy Fergus O'Dowd:** Cuirim fáilte roimh an Uasal Ó Tuathail go háirithe. Is seanchara liom é. Bhíomar ag troid le chéile ar an taobh céanna san Ard-Chúirt blianta ó shin. Fáiltím roimh an prionsabal atá anseo. Ní raibh aon dabht agam riamh gurb é seo an treo ceart, ach cad a thiteann amach i dtíortha eile? An bhfuil aon bhunreacht eile a bhfuil cuid mar seo ann? What is the precedent in other countries? How did they deal with this issue? I fully support the principle of public ownership and always have supported it. I never varied in that regard. I am just wondering what this was benchmarked against.

Tá ceist eile agam. Má éiríonn leis an reifreann, dúirt an tUasal Ó Tuathail go mbeidh an dualgas ar an Dáil na rudaí a bhaineann le toradh an reifrinn a chur i ndlíthe nua. Rud bunúsach ná an ról a bheidh ag Uisce Éireann nó an comhlacht a bheadh i gceannas ar an uisce poiblí. Cén difríocht a dhéanfadh an reifreann don chomhlacht sin, go háirithe, agus don cheist idir Uisce Éireann agus Ervia? For clarity, if this referendum is passed, what implications, if any, will it have for the company called Irish Water, specifically and particularly in terms of its relationship with the company called Ervia, which is the holding company for Irish Water? One of the problems I have always had, which relates to the intention behind setting up Irish Water, was that it would be a stand-alone entity and would not and could not be subject to the influence of Bord Gáis, as it was initially, or Ervia, as it became. I lost that argument in the debate with my political colleagues but it is one that concerns me. Is there any implication for Ervia or the separation of Irish Water? Would it better for Irish Water to be totally separate from its holding company in terms of the responsibility and accountability it will have under the Constitution? While Ervia is a semi-State company, it is a commercial company. I have concerns in that regard. Má tá aon fhreagra ar an gcuid sin de, bheinn sásta.

**Chairman:** I will take a couple of questions first. I call Deputy Ó Broin.

**Deputy Eoin Ó Broin:** I thank Deputy Collins, Mr. Ó Tuathail and Ms Brannick O'Cillín for both the legislation and the presentations. Before I ask my questions, I wish to put two general comments on the record. The first is that it is significant that the single largest issue on which the expert commission received submissions of interest was, as Deputy Collins has outlined, the issue of the need for a referendum to protect the public ownership of the water and water services. That is testament to how significant an issue this is among the public. There were many things that those of us who sat through the 11 or 12 weeks of the hearings of the Joint Committee on the Future Funding of Domestic Water Services did not agree on, but it is also significant that this was one of the issues, in terms of the core principle behind this Bill, on which we ended up reaching agreement. We wanted to see such a constitutional protection, whatever the eventual wording.

The other point is that water is different. Sometimes this gets lost in the public debate. It is not like other so-called utilities. Unlike fossil fuels that can be replaced by renewable energies etc., water is not replaceable. Water is an increasingly finite resource and we are seeing in other parts of the world how the failure to manage this strategic asset adequately in the public interest is causing social, economic and cultural problems. This is one of the most compelling arguments why this particular public resource needs to be retained in public ownership.

We received a briefing document from the Department. It does not have an awful lot to say about the legislation but it raises a number of possible concerns. I would be interested to hear the responses of Mr. Ó Tuathail and Ms Brannick O'Cillín to those concerns from a legal point of view. The Department seems to be suggesting that there could be so-called unintended con-

sequences if the wording of a constitutional amendment is not drafted carefully. That is, that somehow assets which currently are private assets - privately owned boreholes, wells or group water schemes - could somehow be dragged into the definition of the public system. What are the witnesses' views on it? Do they think that there is currently any legal confusion about what is a public asset and what is a private asset? If we were to pass this text into the Constitution by way of referendum, do they think it would allow assets which are today clearly private assets to be incorporated into the public system against the wishes of the owners of these assets?

The other issue that came up in the Joint Committee on the Future Funding of Domestic Water Services is this business of whether the State could sell decommissioned assets of the water system. As we know, we have far too many water treatment plants. Many of them are old and in a state of disrepair. Irish Water has a plan to replace them and build new ones. We will then have many of these facilities which will no longer be in use and therefore decommissioned and not part of the water system. Is there anything in this text which would prevent Irish Water or any other public utility from selling those decommissioned assets once they are no longer part of the system? Those are my questions. Depending on how others proceed, I may come back with more.

**Deputy Barry Cowen:** Similar to Deputy Ó Broin, I also have queries relating to the effect any such amendment would have on rural water schemes, group water schemes and privately owned wells. The other issue relates to ongoing public private partnerships on the design, build and maintenance of schemes throughout the country. As of now, I think there are 115 schemes for approximately 230 sites throughout the country. What impact, if any, would it have on those? Would the State still be able to participate in those schemes?

What assurance can be given that the management and oversight of the Irish Water entity will not shift from the Oireachtas to the Judiciary? Is it wise to have the utility, as it is constituted, named in the Constitution?

**Chairman:** As there are no further questions, I call Mr. Ó Tuathail.

**Mr. Séamas Ó Tuathail:** Chuir an Teachta O'Dowd ar a laghad trí cheist tábhachtacha faoi na rudaí seo. Chuir sé ceist faoin gcomhlacht Ervia. Is pearsa reachtúil comhlacht ar bith sa tír seo. Is daoine daonna - an chuid eile den daonra timpeall na tíre - ar fad atá anseo. Dá mbeadh bainisteoir stiúrtha chomhlachta i láthair an choiste seo, bheadh sé ag caint ar son an pearsa reachtúil. Is ionann iad i súile an dlí. Má éiríonn leis an togra atá le cur sa reifreann sa mhéad sin, tá Ervia ar aon dul liomsa nó le haon duine eile. Sa mhéad is go bhfuil Ervia ag plé le sócmhainní poiblí, uisce, píobáin agus mar sin de, cathfidh an comhlacht sin glacadh leis go bhfuil seilbh poiblí ar an uisce reatha. Ní fheicim go bhfuil aon fíordheacracht nó go bhfuil aon deacracht ar leith ansin.

D'fhéadfadh socruithe a theacht aníos amach anseo. D'ardaigh an Teachta Cowen an cheist sin freisin. D'fhéadfadh socruithe teacht amach anseo. An cheist a bheadh ann ná cad é an cothromóid idir poiblí agus príobháideach. Tá an obair sin ar siúl i gcónaí sna public private partnerships a luadh. Tá an idirdhealú sin ann. Bíonn an earnáil phoiblí agus an earnáil príobháideach ag obair le chéile ar na motorbhealaigh, mar shampla, nó ar dhroichid. Tá sampla amháin i mBaile Átha Cliath de dhroichead a tógadh mar sin, an East Link bridge. Ní raibh aon fhadhb ann faoi riamh agus, i ndeireadh an lae, tháinig sé ar ais i seilbh poiblí, cé gur lean, faraor, Comhairle Cathrach Bhaile Átha Cliath leis na táillí a ghearradh. Is faoi scáth an Bhunreachta a oibríonn an córas poiblí agus an córas príobháideach sa tír seo. Mar sin, níl aon fhadhb leis sin.

D'ardaigh an Teachta O'Dowd ceist maidir le gá le reachtaíocht. De ghnáth, nuair atá airteagal nua á chur isteach sa mBunreacht, tá reachtaíocht ag freagairt leis. Mar shampla, tagann cuid mhaith den reachtaíocht sa tír seo ón mBruiséil. Pléitear leis mar ionstraim reachtúil go minic. Ní théann sé isteach sa Dáil, ar éigean. Maidir le ceist ar bith mar sin, bheadh reachtaíocht ann dar liomsa ag leanúint an thogra reifrinn seo. Dá mbeadh gearán go raibh an reachtaíocht mí-bhunreachtúil toisc é a bheith ró-chúng nó ró-leathan, sin ceist bhunreachtúil agus téann daoine isteach sa chúirt. Ní tharlaíonn sé sin ró-mhinic. Sa chiall sin, ó tharla go bhfuilimid ag plé le leasú bunreachtúil, táimid ag plé le reachtaíocht ina dhiaidh sin agus, má tá fadhb ar bith, pléifear leis sa chúirt.

Deputy Cowen asked whether we will be mired and have to go to the courts about everything. Critical issues arise at times and the courts decide them. Then there is a precedent that governs any other issues that arise in that particular area. This constitutional amendment, if accepted by the people, is no different from any other constitutional requirement except that it safeguards the public water supply in the public interest. As I understand it, that is its main function and it is set out in the text. The responsibility primarily lies with the Government. The Government, as we know, generates the Bills that come into the Dáil and Seanad. Therefore, the Government is in the best position of all, in the constitutional shadow, to protect the asset once this particular amendment goes into the Constitution, assuming it does. I would have no trouble with that.

Public private partnerships have operated under the Constitution as it stands, with the requirement of the protection of private property. I would not envisage that an extra layer or dimension, if one likes, of protection for public water supply would be any different in terms of its playing out in subsequent legislation or litigation. I can only respond in general terms given that there is no particular example coming along the road. When an issue arises in the courts and there is great uncertainty as to which way the courts will decide it, it is notorious that Article 35 in the Constitution gives that job ultimately to the Supreme Court. We have a new Court of Appeal, but under the Constitution, the Supreme Court is still the deciding body for issues that go to the courts. Often, in fairness to the courts, when an issue is decided in principle in one area, it assists in other areas in terms of clarity. I hope Deputy Cowen can accept that rather vague explanation.

I have nothing further to add.

**Chairman:** Deputy Ó Broin-----

**Mr. Séamas Ó Tuathail:** Of course. I agree with the tone of Deputy Ó Broin's questions. I do not see any difficulty in distinguishing between private and public ownership of water supplies. There was a question on what would happen to decommissioned assets. When State companies have assets that are decommissioned, they are usually sold by the State company, such as Bord na Móna for example. They can be sold, but they are sold subject to the requirements of Bord na Móna in its semi-State personality. If there is any issue around public or private in that situation, Bord na Móna makes a decision which anybody can challenge. The most famous challenge ever to Bord na Móna was about who owned the cutaway bogland. That is now becoming very important because of the suggestion that we can have a huge lake in the midlands, drawn from the Shannon, to supply Dublin with water. We have an underground aquifer on the Dublin-Kildare border that has been there since the ice age. The experts say it can supply Dublin's domestic and commercial needs for 25 years but we might not want to tap it. In respect of the cutaway bogland, the decision was that Bord na Móna's statutory remit from the Oireachtas was to cut, save and sell the turf. The Oireachtas did not, however, give it

ownership of the cutaway. That was a famous case near Athlone many years ago. That is still the law. The position of these public bodies that have existed and served the people and the country very well in difficult times is not affected in any way by the passage of this referendum, which specifically deals with the public water supply.

**Chairman:** I believe Deputy O'Dowd asked one further question. He asked if there were examples of other countries that had used-----

**Mr. Séamas Ó Tuathail:** Bhí ceist eile faoi sin. Mar shampla, má fheictear ar na Stáit Aontaithe, tá 50 stát ann. Tá fíor-cheisteanna faoi uisce in áiteanna ar nós Colorado, California agus áiteanna mar sin. Ní hionann stát amháin agus stát eile sna Stáit Aontaithe. Ní féidir aon teagasc ginearálta a fháil ó na Stáit Aontaithe.

Má fheictear ar an Eoraip, ní bheadh cur amach agamsa ar úinéireacht uisce i gcás na hEorpa mar a bhíonn. Nílím ag iarraidh a bheith ag magadh faoi seo, ach an t-aon rud go bhfuil surplus againn de sa tír seo ná báisteach. Tá neart surpluses ag an Eoraip maidir le trátaí, fíon nó mar sin de. Ní fadhb an bháisteach sa tír seo. Sa chéad áit, baineann an togra seo le cúrsaí na tíre seo. Tá sé bunaithe ar thuiscint mhuintir na hÉireann agus ar riachtanais mhuintir na hÉireann. Níl aon locht ar sin.

**Deputy Fergus O'Dowd:** Cuirfidh mé ceist chun é a mionmhíniú más féidir liom. Ó thaobh an historical reference, an bhfuil aon tír ann ina bhfuil an cheist sin sáite isteach ina bunreacht? Sin í an cheist atá ann. Tuigim an fáth go bhfuilimid ag déanamh é seo. It is a purely technical question é sin ach, maidir leis na focail atá Mr. Ó Tuathail ag úsáid, an é sin an ghnáth-----

**Mr. Séamas Ó Tuathail:** Níl survey mar sin déanta agam. Níl an t-eolas sin agam ach tá mé sásta tabhairt faoi.

**Deputy Fergus O'Dowd:** Just chun é a chinntiú-----

**Mr. Séamas Ó Tuathail:** Tuigim. Is ceist fíor-----

**Deputy Fergus O'Dowd:** Tá rud amháin eile. Chun dul ar ais ar chuid den chéad ceist faoi Ervia, tá Uisce Éireann ann agus tá sé i gceannas ar an gcóras poiblí, ach tá bord eile agus comhlacht eile ag déanamh reachtaireacht ar Uisce Éireann. Is é mo thuairim féin go mbeadh sé níos fearr dá mbeadh Uisce Éireann amháin i gceannas ar an gcóras agus gan aon bhaint a bheith ag Ervia ar an cheist ar chor ar bith. Níl aon gá dó bheith ann. Tá cumhacht ag bord Ervia daoine a chur ar bhord Uisce Éireann. Ní dóigh liom gur rud maith é sin, cé go bhfuil na daoine an-mhaith ar fad. Nílím ag cur aon mhilleán orthu. Ó thaobh an chóras poiblí agus an dualgas poiblí de, measaim go mbeadh sé níos fearr nach mbeadh aon bhaint ag Ervia leis.

**Mr. Séamas Ó Tuathail:** Tuigim duit ach is ceist í sin nach mbaineann leis an leasú bunreachtúil. Sin an chéad rud is chóir a rá faoi. Is ceist í sin gur féidir a réiteach sa saol mar atá sé ó thaobh comhlachtaí agus feidhmeanna na gcomhlachtaí seo. Go bhfios dom, bheadh ceart agus cead ag an Oireachtas na rudaí sin a chur ina gceart, de réir mar is dúil don Oireachtas é a dhéanamh.

**Deputy Fergus O'Dowd:** Go raibh maith agat.

**Senator Grace O'Sullivan:** It is great that Deputy Collins has brought this Bill forward because it keeps the water issue on the agenda. Whereas most people wish the water issue

would go away because of the discussions over recent months, for me it is something that should remain on the agenda forever. There is one aspect which I feel is a potential weakness and I wonder if the Bill could be strengthened. That is in relation to the ecosystems services. We talk about the public good but we are not talking about the ecological aspect of water. Mr. Ó Tuathail spoke about water distribution but not about water in terms of supply, wastewater collection and the services around that. Would there be or could there be an opportunity to strengthen the Bill a little beyond the public good?

**Mr. Séamas Ó Tuathail:** Ultimately I would see that as a matter for Committee Stage in the Dáil where an amendment could be proposed and debated. As it stands, what is in the proposed amendment is the headline situation. That aspect, in so far as I understand it, could possibly be accommodated in legislation independent of the amendment. Another possibility would be if the Dáil were to decide to add something in this regard on Committee Stage. As it stands, the essential element and principle is adumbrated in the amendment as proposed. While I am not in any way against such a proposal, I would certainly have to think about it for much longer before I could say yes to it. That is my point of view at the moment.

**Senator Grace O’Sullivan:** I thank Mr. Ó Tuathail.

**Senator Paudie Coffey:** I thank all the contributors so far and I commend Deputy Collins on her Bill. We have to acknowledge that there is concern in the public regarding the public ownership of water. That has been reflected through the Deputy’s Bill, but also through the expert commission and indeed our own work on the Joint Committee on the Future Funding of Domestic Water Services.

Like Deputy Ó Broin, I have some concerns regarding assets that are already in public ownership. For example, speaking in layman’s language, I am aware in County Waterford that Waterford County Council has a number of old wastewater treatment plants that are no longer in use. They are being decommissioned because new treatment plants have been installed. They are obviously on pieces of land and they are now part of the overall water infrastructure. How would Irish Water or the State dispose of those when they are no longer of use? Will this amendment to the Constitution tie their hands so that they could not dispose of them? I know Mr. Ó Tuathail has tried to address that issue through his Bord na Móna response but, from what I heard, that was more or less about a product of the land, the turf or the briquettes, rather than about the land or infrastructure itself. These are the technicalities that cause the complexity. I am only giving one example and I would like to hear Mr. Ó Tuathail’s view on that.

**Deputy Eoin Ó Broin:** I just wanted to follow up on Mr. Ó Tuathail’s answer to that because it ties in with Senator Coffey’s question. The first sentence of the amendment talks about the public water system. The word “system” here is very important. Let us say there is an asset that is part of the system today but in the future is decommissioned and is no longer part of the system, as outlined by Senator Coffey. As the asset is no longer in the system, it is no longer covered by the amendment and there would be nothing to prevent Irish Water or another State agency from selling it on. That is my reading of the situation, which I ask Mr. Ó Tuathail to confirm.

I will be unfair to Mr. Ó Tuathail by asking for a “Yes” or “No” answer to my next question, which I acknowledge is difficult for a senior and eminent legal professional to say. The Department included in its response to us the following line: “unintended consequences that could impinge on individuals’ [constitutional] rights to private property”. I ask Mr Ó Tuathail to state, as clearly as possible, whether he believes there is anything in the Bill put forward by

Deputy Joan Collins that would have unintended consequences that could impinge the constitutional right of individuals to private property. I want to know because that aspect will be one of the main discussion points when the Minister and his officials attend here for the next session.

**Mr. Séamas Ó Tuathail:** I shall reply to the questions posed by Senator Coffey and Deputy Ó Broin.

Senator Coffey raised the issue of obsolescence, as I understand it. One can ask oneself the following question using any semi-State company. What happens to Córas Iompair Éireann's buses when they are no longer fit for purpose and have for reasons of public safety been taken off the road? Personally, I do not know what happens to them but, clearly, that would be a matter for the relevant State authority to decide and to get rid of. I have mentioned that in some part of my presentation in which I stated that from the basis of first principles, if an asset relating to the public water system has become obsolete then it is no longer being used and cannot be considered to be part of the public water system. Clearly, there would be a disposal way of doing it.

I can recall a period when Iarnród Éireann had a lot of obsolete railways. There was a controversy years later about how it disposed of the sleepers and rails. I have lost sight of the controversy since and it is long gone as an issue. There were issues about the matter. I understand they were issues of accounting for Iarnród Éireann at the time, which was the responsible body. If something becomes obsolete and is no longer of use in the public water system then clearly, like any properly managed asset, it should be disposed of. There will be plenty of people willing to take that up.

In response to Deputy Ó Broin's question, I do not see any public-private issue arising from the proposed amendment. If anybody has an issue, the legislation passed on foot of the amendment coming into place in the Constitution would either deal with the issue or it would become a matter for the court and the court would then deal with that issue. The Deputy must remember that the proposed amendment refers to Article 28. It does not apply to the private property article in the Constitution, which makes private property sacrosanct. A constitution, when amended, must read as a whole. One must read the entire Constitution and decide what is meant. If there is an apparent conflict the courts come along and balance the Constitution and state what is the real meaning. That is the specific function of the Supreme Court. That aspect has operated successfully over the years in different contexts, with which I have no difficulty.

Deputy Ó Broin mentioned the provision in the amendment that states: "The Government shall be collectively responsible for the protection, management and maintenance of the public water system." The Government, on any of these issues, would have the best advice available to it via the Attorney General as to what should be done with something that has become obsolete or is no longer of use. Let us say a new development arose for the distribution of water. We know that there is a leakage of over 40% in the public water supply, which is being addressed. If some issue arose that required the Government to take a view in light of the proposed amendment, assuming it is accepted, then the Government has the best advice available to it via the Office of the Attorney General, if required, and then the Dáil, Seanad and the President can legislate.

**Chairman:** Do members have further questions? No. Does Deputy Collins wish to make a final comment?

**Deputy Joan Collins:** Yes. Clearly, we are talking about the public water system. We are not talking about group water schemes, boreholes or private water systems, which are con-

stituted differently. If the Government perceives a problem in its own situation in respect of the public-private aspect, the Department should tell members where the problems arise and explain them. The Department has not clarified why it has raised the clause of unintended consequences. Its explanation should form part of the next debate on this matter. If a question has arisen then the Department should identify the problems. They have not done so because I do not believe problems exist. The proposed 35th amendment of the Constitution simply ensures the resource remains in public ownership and that the Government is responsible for its maintenance and management. Therefore, it is important that the amendment is passed.

Water is a huge concern globally, particularly in terms of the role played by big private companies. Water is the new oil and will be a scarce resource in the future. It is important that the people of Ireland have an opportunity to vote in a referendum to keep their water resources in public ownership. Many people throughout the world will appreciate the State taking such an action. I call on the committee to take this matter on board.

**Chairman:** On behalf of the committee, I thank Deputy Collins for bringing the Private Members' Bill to us. I thank Mr. Séamus Ó Tuathail and Ms Treasa Brannick O'Cillín for attending this morning and making themselves available to inform us about the details of the amendment.

The Minister is scheduled to come here at 10.30 a.m. I propose that we suspend for half an hour and resume shortly after 10.30 a.m. Is that agreed? Agreed.

*Sitting suspended at 10.07 a.m. and resumed at 10.40 a.m.*

**Chairman:** We will begin the second session. I welcome the Minister for Housing, Planning, Community and Local Government, Deputy Simon Coveney and his officials to the meeting.

Before we begin I draw the attention of the witnesses to the to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I call on the Minister, Deputy Coveney to make his opening statement.

**Minister for Housing, Planning, Community and Local Government (Deputy Simon Coveney):** I thank the Chairman and members of 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. First, 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. That is my understanding from Deputy Collins's Bill.

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. The Water Services Act 2013 places a clear prohibition on the shareholders of Irish Water, that is, 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 taking place: first, both Houses of the Oireachtas would have to pass a resolution approving such a proposal; second, a majority of voters in a plebiscite would have to give their approval to the proposal; and third, the Minister would then have to initiate legislation to privatise Irish Water or alienate any share held by the Government. In other words a triple lock was put in place in legislation to try to reassure people on this issue.

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 34 water services authorities towards a single utility approach was to achieve economies of scale, greater efficiency and more effective long-term strategic planning, which I am glad to say is all happening now.

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 and I have outlined what those protections were.

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 privatisation, people continue to have genuine concerns and I accept that. The Government respects and acknowledges these concerns and the efforts made by the authors of the Bill to address them. Indeed, it was in this context that I asked my officials to meet Deputy Joan 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.

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 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, namely, the Constitution. 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 a workable proposal that provides the necessary certainty in respect of 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 on Committee Stage.

Among the issues to be considered in drafting a constitutional amendment are wording challenges arising as a result of the range of categories of infrastructural ownership, achieving a balance between principles reflected in the Constitution and the more detailed policy to be reflected in legislation and addressing the risk of unintended consequences. The last is probably the biggest concern that I have, to be honest, but we can talk through these issues further. Issues around the wording of any amendment 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 and water infrastructure located on privately-owned land. There are also issues to be considered in the context of the potential for unintended consequences that could impinge on individuals' rights to private property, which are strongly protected in the Constitution. My officials are working with the Office of the Attorney General on the issues arising in order to provide advice to me, the Government and this committee, as this Bill progresses through the Oireachtas. I will possibly be bringing forward amendments to address some of the issues I have outlined.

I recognise where we have come to in terms of the water debates. I also recognise the recommendations that have been made by both the expert commission and the Joint Committee on the Future Funding of Domestic Water Services. This was one of the issues on which there was not a lot of division or contention at the aforementioned committee. I hope that people will accept that there is a willingness to try to be helpful here. That said, I also want to ensure that, in our efforts to put this issue to bed in terms of the concerns around privatisation of our water infrastructure, we do not do something that will prevent the normal functioning and management of Irish Water as a single utility in the context of its efforts to provide safe, efficient and well-run services. I refer here to the infrastructure that needs to be put in place, as well as to the treatment of drinking water and wastewater. I want to ensure that we do not, in some way, freeze Irish Water in its ability to be able to create partnerships and be innovative in its approach to the work it must do. I am also concerned that we do not create unintended consequences for water infrastructure that is currently privately owned through group water schemes and other water infrastructure like, for example, the extensive network of septic tanks and wastewater

treatment facilities, many of which are privately owned and operated.

I am anxious to be helpful. I think I know what people are looking for here but we can tease that out further. People want more than reassurance in legislation that could potentially be changed by a future Government with a majority. They want constitutional protection and a permanency in terms of policy in this area regarding maintaining public ownership of core public water infrastructure and the company or, more correctly, the State entity that manages that. That is where I am coming from. If we can tease through the issues while also being willing to take sensible and good legal advice, particularly from the Attorney General's office, then we should be able to work together to get a good outcome.

**Deputy Eoin Ó Broin:** I thank the Minister. I will start by saying that I found the presentation we got from the Department and the Minister's opening statement very disappointing because they do not say an awful lot more than what was said on Second Stage. In fact, the bulk of what the Minister has stated was said during the Second Stage debate in November, almost six months ago. The purpose of this meeting, as I understand it, is for us to engage in detailed scrutiny of the actual legislation but the one thing the Minister did not talk about was the legislation. I am genuinely not trying to score a political point here but that was the whole purpose of us inviting the Minister to appear. If I remember correctly, during the Second Stage debate one of the Minister's final comments was that he would provide the expertise of his officials to the committee to tease this out by way of pre-legislative scrutiny. What we are seeking to do today is to get into the detail of this. I am hoping that in the course of our question-and-answer sessions we will start to deal with the actual legislation, which is what we are here to deal with.

On page 6 of the more detailed submission prepared by departmental officials, the two sets of general concerns that the Department has with this Bill are outlined. The submission says that the wording of any constitutional amendment seeking to enshrine public ownership of the public water system "may" be problematic, given various issues. Do the officials believe or does the Department have legal advice to say that Deputy Joan Collins' Bill is problematic? Is it or is it not problematic? It could be that the Department does not have advice from the Attorney General on that and the Minister cannot tell us now. Is it problematic or not, based on the legal advice or the policy expertise that the Minister has available to him?

The aforementioned document goes on to say that seeking to enshrine such property in public ownership through a constitutional referendum could have unintended consequences and could impinge on individuals' constitutional rights. Again, this committee wants to know if, on the basis of the legal advice that the Minister has on this legislation and the policy expertise available to him, this Bill would rather than could have unintended consequences. That is what we are trying to grapple with here.

I am also concerned that, on foot of his remarks, the Minister seems to think that there may be a confusion between publicly and privately-owned assets. We already have constitutional protection for private assets and this Bill seeks to provide constitutional protection for publicly-owned assets. Is it the Minister's fear that if this referendum were to pass, assets which today are privately owned under law could somehow be dragged into the public system against the will or the legal rights and entitlements of the owners? If that is what the Minister believes, I ask him to explain how he thinks that could happen - given the constitutional protection for private assets - and to provide concrete examples. We had senior counsel here this morning and we asked them if they believed that there could be any impingement on the rights of private asset owners as a result of this legislation and they said "No", categorically.

At the end of his opening statement, the Minister raised the issue of partnerships, which is not referred to in the documents supplied to the committee by the Department. Obviously, we are dealing with design, build and operate models for the delivery, for example, of water treatment plants and other such public private partnerships. Whatever our individual policy views, it is an important issue that the Minister raises. We again asked senior counsel this morning if, for example, this referendum on the constitutional amendment was to be passed and enacted, whether it would in any way affect the current operation of design, build and operate treatment plants. The senior counsel categorically has said “No”.

I believe it was Deputy Cowen who asked would it or could it affect the ability of a service provider - whether it is Irish Water or some other entity - acting on behalf of the State to enter into such arrangements in the future. My understanding of the answer is that it would not. The issue is that there needs to be clear public ownership and governance of the water system. I do not want to know if the Minister has a general fear but is there something specific he is being advised about? If so, can he give us the detail if it is contrary to what we have already got?

I take it from the last paragraph of the Minister’s presentation that he does not have the Attorney General’s advice on Deputy Joan Collins’s Bill at this stage. The Minister should confirm whether he has that advice. If and when he does have it, however, the committee would like to know. We understand that he cannot share the legal advice but on previous occasions he has given the committee a detailed oral summary of that advice. If he does not have the advice at this stage, will he give a commitment to provide it to us at a later stage?

**Senator Victor Boyhan:** I thank the Minister for coming before the committee and acknowledge the work involved. There are 38 signatories to this Bill, which is interesting. I took the time to consult the Official Report of Wednesday, 9 November 2016, including the deliberations on what the Minister had to say, as well as what Deputy Joan Collins and other colleagues said. That is more or less what we have heard again here today. I accept exactly what Deputy Ó Broin has said. The Minister’s response is more or less the same thing as was said back on 9 November 2016 - in some cases it is exactly word for word. That is the reality of it.

While I am open to correction, this is effectively about copper-fastening the ownership of water services. In her statement, Deputy Joan Collins spoke about retaining Irish Water in public ownership and stressed the need for public management of the utility. I would totally disagree with her on that point. I do not think we should get hung up on Irish Water’s day-to-day operations.

I reiterate that this Bill in no way seeks to abolish Irish Water, despite the personal or political views of all the signatories. I met someone outside the gates of Leinster House earlier today who was talking about the abolition of Irish Water. I told him members would be talking here today but there is no question in Deputy Collins’s proposal concerning the abolition of Irish Water. The Deputy has advocated strongly against Irish Water but in this Bill there is no proposal to abolish the company. That interesting and important point is worth making.

Why should we all get hung up on the public management of a structure? A range of public utility services are contracted out to the private sector. If it is the best way to do it and is value for money it should be pursued. We should not get hung up on a political dogma or view that we have trotted out time after time that somehow State agencies or the State itself should be doing everything. It is about value for the customer and the public generally. We are really interested in having a top-quality service, not in the consistency of a political message.

The Minister has clearly set out the issues. We all know the technicalities involved in having a constitutional amendment. We should forget about the cost of having a constitutional referendum because while that is a consideration, it is not the most important one. As regards the wording, what are we trying to achieve? Let us not get hung up on the process. I do not think anyone is against copper-fastening the ownership of Irish Water as a service and a public asset. We need to separate those two.

I understand that the Minister cannot share the Attorney General's advice with the committee at this point, but clearly he has an idea where all of this is hopefully going. We are meant to be scrutinising legislation, so it would be helpful to know that view. Can the Minister flag any concerns, such as the unintended consequences? Can that be teased out? Clearly, this has been coming down the tracks for many months and the Minister's officials and others have been advising him. There are legal and technical issues involved. I would like to hear what the Minister has to say about these key issues.

In the Dáil debate, Deputy Wallace stated "Like most people in Ireland, I do not think the water service should be privatised, but, sadly, unless we get rid of Irish Water, it might as well be privatised because that is where we are." I do not know what that is all about. We want a top-quality service for the public. We should not get hung up on ownership. Some people have set a political position whereby they want to get rid of Irish Water, so they throw everything at it but it does not wash with me. It does not make for good policy, not to mention good politics.

The Minister has outlined that in 2014 the Government had introduced further safeguards in respect of the Water Services Act 2014. While I am happy about it, I would like it to be teased out. The Minister referred to the triple-lock system and that eventually there would have to be a plebiscite, and he could not alienate his shares other than to another Minister or a part of Government. Because the whole thing is so complex, people need to understand the certainty of the triple-lock system. There has been a huge debate over this but people on all sides are trying to clarify it and keep it all simple.

Everyone, including the Minister, now agrees that Irish Water is an asset that needs to be safeguarded by the public. How can we keep that simple and assure people that it will happen? If there was a change of government in future with a vast majority, there would be some comfort in that it could not change or be unwound in some way. There is the issue of protecting it. I will leave it at that but there are critical issues involved. As the wording of a referendum is a complex issue, how does that process work itself out?

**Deputy Ruth Coppinger:** I obviously support the Bill and happily signed it. There has been huge concern in the opposition to water charges that the final intention was to privatise water. It is not an idle concern; it is an obvious one. It happened with bin services that once charges were introduced, the services were eventually privatised. When we had these debates in the Dáil it was said that nobody in the House wanted to privatise water but I do not believe that. Many Deputies would not have a fundamental or principled opposition to water being privatised and that is why people want a constitutional provision to prevent any political party from doing that in future.

In fact it is backed up by what Senator Boyhan just said in his contribution. He said that we should not get hung up on political dogma about things being State-run or privately run; it is about value for the customer. I do not want to be a customer for water, however. I just want to have water that is paid for through central taxation. I do not want to become a customer and get a bill. Those words were used by Senator Boyhan. He was basically saying that he would

not have a principled opposition to water being privatised but that is why people want to see a referendum. As we will be having other referendums, there should not be a problem in incorporating a referendum on this matter.

As regards the Minister's concerns, everybody is asking the same thing. We need to hear a bit more detail about these concerns and why it could be problematic. One issue being raised is that because of the diversity of water structures - approximately 15% of people are in group water schemes - it is being presented that such people would have a problem if it went into public ownership. I would like to talk to some of those group water schemes to see if that is the case. That was stated in one of the documents. I think that a lot of those group water schemes should be brought into public ownership. There is a basis for doing that and it could protect people from facing exorbitant fees and costs in the future.

It seems that every time we want to have change - be it in housing, compulsory purchase orders for land or anything else - it is cited time and again that the constitutional right to private property could be impinged upon. This argument is now being posed again in respect of water. We seriously need to change that article in the Constitution and to downgrade the right to private property because it would seem that we cannot protect the common good otherwise, or at least it is always cited that way.

We have had countless presentations here on housing. That is deliberately overused by parties that do not wish to see any constitutional change or public ownership being advanced and enhanced. It is incumbent on the Minister to give us the legal advice or to indicate what impediments he believes there might be to proceeding with this. There is huge public support for it. We were all led to believe that when it was agreed at the Joint Committee on the Future Funding of Domestic Water Services, it would be taken as read that it would be enacted.

**Deputy Fergus O'Dowd:** I welcome the Minister. From a theoretical point of view, this is the first time I have participated when it is not a Minister but a Member who is introducing the legislation. That is unusual and welcome. In fairness, this is the proper process for the people who have introduced the legislation. The Minister made it clear that he is listening. He or his officials have met with the proposers of the legislation. I do not know if I am the only person who has seen it but he states in his official submission, "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 on bringing forward some amendments to address some of the issues I have outlined." The Minister is being reasonable. He is listening, is in touch with the Attorney General and he is working on the wording. If he came here and said the opposite, such as that he did not agree with a certain line and that he proposes this, that or the other, people would make the charge that he was interfering with the due process or was not giving due weight to the analysis of the issue. The Minister has been clear that he will refer back to us on Committee Stage. He is not opposing the legislation. As I understand it, nobody opposes the principle.

I have some questions, although I do not expect the Minister to be able to answer them immediately. I have a concern about Ervia, which is the holding company for Irish Water. I introduced the original legislation in the first instance and the express intention at the time was that Irish Water, after its initial support from Bord Gáis, would be a stand-alone, separate company. That is not the case. I argued strongly and trenchantly for that view, although it did not prevail with the political people involved in the decision-making at the time. It was a bad decision to have it as part of Ervia. I would like it to become a separate company. I realise that the latter is not an issue for the Bill we are discussing. As Mr. Ó Tuathail said, it is a matter for the Dáil, not

a referendum. However, it is exceptionally clear to me that Irish Water should have no hand, act or involvement with Ervia.

On my next question, many of these assets are very important and valuable. Irish Water will have to raise funds and it will have to go to the private sector to get them. It might be the case that a piece of infrastructure could be provided by a private company. This happens at present, whereby a company might design, build and operate, DBO, water infrastructure. Irish Water would work with it on that. Are there any implications for that process or would it be neutral in its impact? The officials can correct me if I am wrong but I understand that the supply of water to a significant part of Limerick city was built and is operated by a private company. It is efficiently run and well managed. It operates under the direction of Irish Water and does what it is told. Would there be any issues in that regard?

My main point is about the principle of public ownership. I introduced the initial legislation. I debated the issue of public ownership with the Department and it was to be included in the legislation. When the legislation was presented to me, however, it was not included. I was very concerned about that and people were right to be concerned about it being in public ownership. This referendum is essential for that reason. At the same time, I wish to know the implications, if any, for the future operation of Irish Water, particularly in respect of design, build and operate, DBO, mechanisms and investment. There are many legitimate funds, such as teachers' pension funds and so forth, that are seeking investment in infrastructure such as water. That is a good thing if it is not exploitative investment. It is long-term, low-interest investment in a solid and unique structure.

**Deputy Simon Coveney:** I will try to respond. First, I cannot give members information I do not have. We shared the briefing we sent to the Office of the Attorney General with the committee. It is the same briefing, so we have been transparent about what we are doing. We are in consultation with the Attorney General's office in terms of getting advice - the type of advice the member appears to have received from a senior counsel this morning. I do not know who it was. I presume it is a good senior counsel but I must ensure that I take my lead from the legal advice that is available to the Government. As this process moves on, we will continue to take advice from the Attorney General on what we are doing. Changing the Constitution is a big deal. If one gets it wrong, it is difficult to correct. It is not like legislation, because there must be another referendum. We have seen in other areas where there have been unintended consequence and legal actions, both at home and abroad, to test the Constitution and its consistency with other legislative obligations and so forth.

The current position is that we have sent the briefing document the committee has seen to the Attorney General's office. We are asking her to provide advice on how best to proceed. I have made it clear to her that we want to try to do this. It is not a blocking exercise. We want to get it right. That is how we are proceeding. I will happily return to the committee to have the type of discussion mentioned when we have that advice. I cannot publish the advice but I can talk it through in respect of some of the issues that are being raised.

As to whether it is problematic, there are issues here on which I must obtain legal clarity in so far as that is possible. Until I have that, I cannot give the committee a definitive answer as to whether it is or is not problematic. There are issues here on which we have to be reassured. If we cannot get that reassurance, we will have to change the wording to ensure we are covered in the areas where there is concern. That is my point. We can potentially make that change on Committee Stage or Report Stage, but we would be better off doing it on Committee Stage rather than leaving it to the last Stage of the process.

It would probably be useful, during pre-legislative scrutiny, for the committee to speak to some of the stakeholders who have issues in this regard. Deputy Coppinger raised the matter of group water schemes. It would be helpful if the committee invited representatives from the National Federation of Group Water Schemes to appear before it. The federation has indicated concerns to the Department about this issue. Again, its members are trying to get their heads around what the State is proposing to put into the Constitution and how it will affect them. There are group water schemes all over the country that have been managed and paid for over many years. Some of them are working very successfully, others are under a little pressure. We must be supportive of those groups, as is clear in the Oireachtas water committee's recommendations. It is a different issue to suggest that we will simply take all of it into public ownership without suggesting how that would even work or who would take charge of it. I am sure many group water schemes would have a problem with that because they are running their own operations, and very successfully in many cases.

Senator Boyhan referred to the normal daily running and work of Irish Water. We must allow this single utility entity, which has had a difficult introduction, to get on with the work it must do. In regard to privatisation of the water system, or concerns around that issue, when local authorities were in charge of the water system there was a lot more privatisation going on in terms of treatment plants. Local authorities did not have the capacity to put in place large water treatment facilities and so they contracted people in the private sector to build and operate them, many of which are working successfully. Irish Water has now taken over that responsibility. It is also building facilities because it has the capacity, not only in terms of economies of scale around financing but also economies of knowledge in terms of the teams it has, to run its own treatment plants. We need to be careful in what we are trying to do that we do not prevent Irish Water creating partnerships with the private sector that make sense in terms of innovation and new methods of treating water.

In regard to the existing network of water treatment plants, some are owned and managed by Irish Water - I recently opened some of them - and some are operated on a contract PPP basis and they are working well. We need to understand the consequences of the wording being put into the Constitution for those relationships and those day-to-day practical operations.

I get the sense from Deputy Ó Broin - Deputy Coppinger has a slightly different perspective on this and I respect that - that what he seeks is that there would be public ownership of the responsibility around delivery of water. Deputy Collins's Bill proposes that the Government would bear responsibility for the protection, management and maintenance of the public water system. My concern is around the definition of the public water system. We need clarity on that in terms of what we are proposing to put into the Constitution. Whether we need to provide that definition in legislation is one of the issues on which we need advice from the Attorney General's Office. This is about ensuring that the diversity of the current system can be managed within all of that diversity mix.

I do not want to get into the political debate around whether there was an agenda for privatisation. I have been involved in much of that discussion at various stages and there has never been any plan of which I am aware to privatise Irish Water or the Irish water system; rather there was a plan to introduce a much more efficient and cost-effective way of delivering water, with a conservation-based approach and a utility-based approach to providing water. Just as there has never been any attempt to privatise the gas network, there was never an intention to privatise the water network or its management.

We need to be cautious around changing the Constitution through a referendum. We need

to learn lessons from the past and we need to try to get it right. From my perspective, I would encourage the committee to invite in some of the people who may consider that they might be directly impacted by what is being proposed. It would be important to get their perspective on that in terms of the practicalities of how the system runs today and any potential concerns of an impact of the kind we are proposing to make. We will continue to provide information. When I get more definitive advice from the Attorney General, I, or my officials - whichever is easier - will happily come back before the committee to discuss the consequences of that with a view to trying to improving the wording proposed. That is what the stage process is. Normally, a Government brings forward legislation of this type. If this was Government legislation members would rightly ask me about the legal advice on it because legislation does not get produced without legal advice. I am being asked to respond to Deputy Collins's legislation, it being used as the basis for what we are seeking to do. I am happy to do that but I will not be bounced into something that I regard as not having been fully legally tested and so on. I am afraid people will have to be patient. When I get the response from the Attorney General I can discuss it with the committee without publishing it and provide some suggestions in terms of how we can improve the wording, if that is necessary. If it not necessary, we can proceed without too many changes. I do not want to doubt the aforementioned senior counsel but it is the Government that will be blamed if we get this wrong, not Deputy Collins, with respect. The Government has a responsibility to ensure this is tested appropriately from a legal perspective so that we can get on and fulfil the recommendations of the Oireachtas committee on water and fulfil the aspirations of everybody here.

**Deputy Joan Collins:** I welcome the opportunity to debate this Bill. It is important there is clarity around the issues concerned. The 1948 Universal Declaration of Human Rights did not include water because it was not envisaged 70 years ago that private companies would be set up to run water services. In 2010, 122 countries agreed that water sanitation is a fundamental human right. That was a very important declaration after two decades of people raising the issue. In contrast, in 2012 the European Commission issued a letter stating:

Privatisation of public companies contributes to the reduction of public debt, as well as to the reduction of subsidies, other transfers or state guarantees to state-owned enterprises. It also has the potential of increasing the efficiency of companies and, by extension, the competitiveness of the economy as a whole, while attracting foreign direct investment.

The Commission believes that [the privatisation of public utilities, including water supply firms] can deliver benefits to the society when carefully made.

As long as the European Commission believes that water provision would be privatised the potential exists for that to happen. Also, there is the potential that a strong arm of a troika would force countries into privatisation of their water services. I take on board the Minister's point that the Government, and the parties to it, do not want to privatise Irish water services. That may be the case now but it may not remain so into the future, which is the concern of the public. The only way we can protect water services provision is to provide in Article 28 of the Constitution that public ownership of it be the responsibility of the Government of the day.

I wonder if some people have read the Bill. It is very simple. It provides that the Government shall be collectively responsible for the protection, management and maintenance of the public water system and that it shall ensure, in the public interest, that this resource remains in public ownership and management. It does not mention what entity shall do that. There has been nothing concrete forthcoming from the Department regarding group water schemes, private wells and so on. The senior counsel, Séamus Ó Tuathail, who participated in this morn-

ing's session of the meeting, has vast experience in terms of public-private ownership legislation and law and so on. I would like to make a few points for the record. Private wells are protected under private ownership. Group water schemes are set up as private companies. To become a public company they have to apply to the local authority and go through a particular process. Therefore, they are protected and it is clear that they are not part of the public water system, under which they receive subsidies. The only aspect of group water systems governed through regulations is the requirement introduced by the European Union that governments must ensure public water systems reach a certain standard, are of good quality and well delivered. There is no impact on group water schemes, bore holes and so forth.

It is a pity that a few individuals were not present this morning when it emerged that obsolete assets were not part of the public water system and could be sold off to raise revenue. If the Department is concerned that group water schemes are not private and may be public, it should inform them of that concern. It is clear from the structure and operation of group water schemes that they are private and separate from the public water system. This issue needs to be clarified because it is used to muddy the waters when we hear about unintended consequences.

The Department and Irish Water should draw up an inventory of assets owned by local authorities. I understand the local authorities are checking what assets they have. It is only a matter of providing a record for the Government to ensure it is aware of what assets are in public ownership. I ask for a response on that issue. The Department should indicate whether it has concerns in that regard and if there are no such concerns, it should make a clear statement that there is no problem. That would allow us to move on because the waters are being muddied in this area.

**Chairman:** The Minister has stated he will clarify the issues the Deputy has raised when he receives legal advice.

**Deputy Simon Coveney:** We are not attempting to muddy the waters. While I take the Deputy's point on the setting up of group water schemes as private companies, drinking water is being provided for the public through these systems.

**Deputy Joan Collins:** It is regulated by-----

**Deputy Simon Coveney:** It may be regulated, but the issue is that the Government should be collectively responsible for the protection, management and maintenance of the public water system. If group water schemes are part of the system that is providing water for the public, we need to be able to define it. That is all I am saying. I am not arguing that group water schemes are in public control. However, the question as to whether they are part of the public water system needs to be clarified. If, in the past, Cork County Council relied on a private company to build and operate a wastewater treatment plant in Youghal, Cobh or elsewhere and the plant is still being run under a 20-year contract as part of a public private partnership, it is in private ownership and being run privately while being paid for by the State through a local authority. Such a facility is clearly not in public ownership, even though it is very much contributing to the public water system. These are the issues we must nail down. Interestingly, Irish Water is, by and large, opting to build and operate its own water treatment facilities, as opposed to engaging in public private partnerships. However, it will partner with private companies in availing of engineering expertise, specialisation and so on.

To reiterate an earlier point made, we are not undermining normal, sensible efficiency operations around wastewater and drinking water. I take the point that overall responsibility for

the operation needs to rest with the State, through government, something Deputy Joan Collins is also trying to achieve.

I am glad to note a change in the language used on the issue of water services. It is encouraging to hear the words “hugging the Government” being used.

**Deputy Eoin Ó Broin:** We all need a big hug once in a while.

**Deputy Simon Coveney:** I do not want to make light of this important issue. There has been much debate and many marches and disagreements on concerns about the privatisation of public water systems. Putting this issue to bed is part of the overall settling of the water issue. While the Fine Gael Party and the Government accept that there are also genuine issues which need to be teased out and finalised before we settle on a wording and commit to changing the Constitution in a way that is consistent with this wording, if we were to get this wrong, we would kick off a new series of problems linked with water. In this case, the issue would be ownership. I do not believe anyone intends to have such a scenario, not least the author and promoter of the legislation. It may well be the case that the wording is correct, but I want to ensure the legal advice available to me is consistent with what the Deputy heard from her senior counsel this morning. We should be able to do this relatively quickly.

**Deputy Thomas Pringle:** I welcome the Minister’s comment that local authorities were not able to manage and operate water systems in the past. Government policy at the time was that local authorities had to enter into design, build and operate contracts to provide infrastructure. It was not that they were incapable of providing infrastructure but that they had no choice other than to follow Government policy. It was made clear by previous Governments that if local authorities wanted to take the conventional route, they would not be given the funding needed to provide the infrastructure they required. I make this point to correct the record. The Minister outlined the position in Cork where I understand a design, build and operate contract was used.

**Deputy Simon Coveney:** The case I cited in Cork was not intended as a specific example. I picked two towns at random because I do not know the specific detail. I am not referring to specific design and build contracts or any specific case in Cork because I am not familiar with the facts. The only wastewater treatment facility with which I am familiar in Cork is one which I opened in Cork Harbour a few weeks ago. It is a €90 million wastewater treatment facility which will be owned, operated and managed by Irish Water. I do not wish to give the impression that I am giving examples, although I could do so, if members wish me to do so. I did not refer to towns in Cork with the intention of using them as specific examples.

**Deputy Thomas Pringle:** The point I am making is that in the case of design, build and operate contracts local authorities and, more recently, Irish Water retain ownership of the site and infrastructure and the private entity provides the finance and designs, builds and operates the facility. Ultimately, ownership remains in the hands of Irish Water and, previously, the local authorities. The issue the Minister raised in terms of a conflict of ownership of the infrastructure does not arise because ownership is retained by Irish Water.

**Deputy Simon Coveney:** I take the Deputy’s point.

**Deputy Thomas Pringle:** That is not an unforeseen consequence because the issue does not arise.

On group water schemes, there is a clear distinction made between public and private water

infrastructure. As Deputy Joan Collins stated, a group water scheme must submit an application to a local authority for approval before it can operate. It must be distinguishable in terms of its ownership, in other words, it must be a co-operative, trust or company. The distinction between a public and a private water system is already made in law.

On regulation, the European Commission, in a case related to water quality, accepted and recognised this distinction and determined that Ireland had a regulatory role in group water schemes because they provided water for their members. The Commission required Ireland to set regulations for the quality of water provided by group water schemes. If it is the Minister's argument that the wording of the proposed constitutional amendment could have the unintended consequence of breaking down this distinction, it must be the case that it has already been broken down because there is a clearly accepted distinction made between public and private assets. The wording of the amendment would not interfere with it.

**Deputy Simon Coveney:** I do not disagree with that but the issue is whether the wording, as proposed, deals with it comprehensively. The Deputies do not need to convince me - I need to be convinced from a legal perspective that the wording we are using does what we want it to do. I am not giving excuses but asking legitimate questions to which I need answers from the Office of the Attorney General. This will either confirm that the wording proposed is right or allow us to amend or improve it. If there are fundamental problems we can find a way of addressing them. I need to provide reassurance to Deputies that we can support what they want to do, following the receipt of legal advice to Government and consistent with the recommendations of the committee on water. It is important the wording is not likely to be challenged, meaning we have to come back here to deal with unintended consequences or to have a second referendum to correct a mistake we should be seeing now.

I take the point that in the design, build and operate contracts being put in place the ownership remains in State hands, whether in the case of Irish Water or local authorities. Some temporary plans have been put in place, however, by developers linked to new projects and I have been told that some issues need to be addressed in this regard. If the Constitution refers to a public water system there needs to be a definition of what that is, either in the Constitution itself or in law, so that there is clarity and we can prevent unforeseen consequences.

**Deputy Thomas Pringle:** The Department has raised unforeseen consequences so we are trying to assist it in its decision-making process, as well as the Attorney General by providing additional information to her. It is important to stress the distinctions and perhaps the Minister will pass on this morning's submission from senior counsel to the committee to the Attorney General. It might help inform her decision making around potential conflicts between public and private ownership.

**Deputy Eoin Ó Broin:** I reassure the Minister that any of us proposing changes to the Constitution is fully aware of how serious a proposition that is. We take the Constitution, and proposals to change it, as seriously as the Government does. The Minister is right to say there have been occasions where bad decisions were made, often when decisions were rushed as a result of political considerations, such as one case with which we are dealing at the moment. Many good changes to the Constitution have, however, been made, some of which were proposed by the Government and were supported by many of us, such as the insertion of the rights of the child, which is very valuable.

I am, however, really frustrated as it is not as if this issue has landed on the Minister's desk in the past week. We passed Second Stage of this legislation six months ago and an expert group

stated five months ago that this was probably a good idea. Even before the water committee finalised its report we knew there was a consensus among parties for some kind of constitutional referendum on the final wording. I am frustrated because nothing we are doing in this committee is of any value to the pre-legislative scrutiny process. I accept that the Minister cannot give us answers he does not have, but that is the problem. We were meant to be hearing the legal advice to Deputy Collins, who helped draft the Bill, and some concrete information from the Minister or his officials. Instead, we are getting the same doubts the Minister was expressing six months ago. These are significant issues and we should be considering them but we are having a circular conversation which is not allowing us to progress. The same would be the case if we were to invite representatives of group water schemes. I am more than happy to do so but they will want to know if passing this wording would impinge on their constitutional rights to private property. We have one senior counsel who has an opinion on that which we could share with them, but ultimately it will depend on the legal advice from the Attorney General. Inviting the group water schemes or any other stakeholder to appear before the committee prior to some indication of the Attorney General's advice will involve another circular conversation.

I am at a loss. I am not trying to be awkward and the Minister is correct to raise all these issues but he raised them six months ago and we are having the same conversation today. There is no point in my going back over the arguments because his answer will be that, while something may be significant, we cannot progress until he has the legal advice from the Attorney General. In that case, what is the point of pre-legislative scrutiny? What is the point in having the Minister here if he cannot answer any of the questions?

Maybe there is one question the Minister can answer, although he obviously cannot answer all the questions relating to Deputy Collins's Bill, which is the subject of today's discussion. Has the Minister or have his officials seen any advice which suggests that, under the current legal situation, there is confusion between the ownership of assets in private wells, bore holes and group water schemes and those in the public system, owned by the State and currently managed by Irish Water? The implication that our wording may impinge on categories of ownership of water services infrastructure suggests there is some uncertainty as to whether something is a private asset or a public asset. Have there been any previous legal advices on this? The Minister mentioned new projects and I assume he is referring to new water infrastructure developments but there is a legal process for taking a group water scheme into the public system, just as there is a process for taking private water infrastructure developments into the public system. It is known as "taking in charge" and Irish Water now has a mechanism for doing this, as have local authorities. In all these cases there is a clear legal process for incorporating a private asset into the public system. I am not confused as to what is public or private but is the Department confused?

The Minister always tells us there are genuine concerns but repeating the point, on the basis of no legal advice whatsoever, that Deputy Collins's Bill may cause difficulties with public ownership or group water schemes, and may have unintended consequences and muddy the waters. That might not be the Minister's intention but people in group water schemes might think it is a problem. Before the Minister would have received the legal advice on whether this was or was not a problem, he would have created such a level of doubt as to cause significant concern. The briefing note from the Department should say that something may or may not be a problem until the legal advice is received. Likewise, it should say it may or may not have unintended consequences but it simply states that it may create problems. My worry is that the Minister does not want this legislation and is hoping to delay it, which would be a tragedy. If he says he will have the legal advice shortly I will take him at his word and I hope we can come

back for another discussion. Until we have that advice, however, there is no point in talking to anybody else at this stage.

**Deputy Colm Brophy:** I am not a permanent member of the committee so I appreciate the opportunity to contribute. I want to make it clear where I stand on this. I believe, 100%, that Irish Water should be in public ownership but I come from an ideological viewpoint on this proposal, and it is nothing to do with the fact the legislation is proposed by Deputy Joan Collins. The people put their trust in us to pass legislation they want. I mean no disrespect to any senior counsel or to the Attorney General but I have a fear of inserting into the Constitution small individual lines to satisfy a political desire, whether it is something with which I agree or fundamentally disagree, to transfer responsibility from where it should always lie, that is, the Oireachtas and its Members, to a small group in the Judiciary to arbitrate, at some point in the future, on some case that cannot be foreseen by anybody in this room relating to the idea that the Government shall be collectively responsible for the protection, management and maintenance of the public water system and shall ensure, in the public interest, that this remains the case.

I began my political involvement when I was very young in the 1980s and I have seen where we can end up when, with the best of intentions, people insert lines in the Constitution to copy-perfasten something they believe in and end up with exactly the opposite to what they thought they were doing. The Minister's caution is well placed. The triple-lock mechanism in place at present, ironically, is probably an even greater protection. At the end of the day, if a constitutional amendment is passed, one can go back to the people and ask them to vote again. There is built into the triple-lock a provision that requires consultation through a vote of the public on any Oireachtas decision. My worry is not the wording or the proposal *per se* but the solution to what we want to achieve, which is to ensure that without the consent of the people and the Oireachtas, the water of this country cannot end up in private hands, is not best served by using this process.

**Senator Grace O'Sullivan:** I fully support the initiative of Deputy Collins to bring this legislation forward. I spoke to her earlier and said it could be strengthened through amendment. I echo the frustration raised by Deputy Ó Broin. This issue has been on the agenda for a long time and I am afraid the Minister will test the public's patience if he does not deliver a response to the Attorney General's advice. When will we get that? We have been talking around here for at least an hour and we have not got much further. We all recognise that we have to be cautious but when we will be given this information? I am frustrated-----

**Deputy Simon Coveney:** The Senator will get it when it is ready.

**Senator Grace O'Sullivan:** Can the Minister be more specific? We have been given no specifics whatsoever. I will walk out of here with no answers to any of the questions raised other than we have to wait for the Attorney General's advice. I would like to push the Minister for a date.

**Chairman:** We have a list of stakeholders, which includes legal experts and academics. I will discuss the list with members at our next meeting and ask if they want to bring them in as well.

**Deputy Barry Cowen:** It is a pity we do not have the Attorney General's opinion. It is strange because she was exercised by the water committee's recommendations before it had come to a conclusion, yet she is not in a position to comment on this Bill, which Deputy Collins brought before the Dáil many months ago. It is incumbent on the Minister to ensure this is

not delayed much further and to ensure adequate scrutiny because he cannot contribute to the scrutiny of the Bill without advice from the Attorney General. This meeting, therefore, does not serve much purpose. I take on board his recommendation regarding other stakeholders such as the representative bodies for group water schemes and so forth contributing to this process. It would be fair and appropriate to give them that opportunity and I would welcome that.

**Deputy Simon Coveney:** I can only give the committee the benefit of the Attorney General's advice when I have it. The reason I interacted a lot with the Attorney General in the context of the water committee's recommendation is I was anxious that the final report would make recommendations that were legally sound. I had an obligation to do that as the Minister who will have to put the legislation together on the back of those recommendations. We are going through the same process here. The Bill was introduced by Deputy Collins and sponsored by others. I said that I would be helpful in the process of trying to get it right. We are only at the pre-legislative scrutiny stage. We cannot even change it at this stage; we can only make recommendations on the back of the pre-legislative scrutiny.

**Deputy Eoin Ó Broin:** The problem is we cannot even scrutinise it at this stage.

**Deputy Simon Coveney:** There is an obligation on the committee to scrutinise it as well. We sometimes get this from Deputy Ó Broin, where he tries to create a political narrative out of a process, which is what is under way. There is no effort by us to delay. If he is asking me for advice on this process, which I have offered to give - he can proceed without it if he wants-----

**Deputy Eoin Ó Broin:** I want the Minister's advice. Our problem today is we are not getting it six months after he promised it.

**Deputy Simon Coveney:** I promised I would help the process. We have had consultation with Deputy Collins. Following that consultation, we indicated that we would make the briefing note we had put together for the Attorney General available to the committee. If the Deputy wants to muddy the waters with group water schemes in the context of that briefing, he can. I have not done that. I have provided the briefing to the committee to provide transparency in respect of what we are asking of the Attorney General. If the Deputy wants to turn that into a political issue that muddies the waters outside the committee, that is a matter for him but I will not do that. To turn the terminology in a briefing note that I have sent to the Attorney General primarily, but that I have also provided to him to show what we have asked of her, into a political suggestion that we are trying to muddy the waters is not only inaccurate but it is also probably unfair. We have given the committee clarity in respect of what I have asked of the Attorney General and as soon we receive a comprehensive response from her office, I will be in a position to give more clarity. However, I have to operate on the timeline of getting good advice rather than the timeline of responding to political pressure. Amending the Constitution on the back of political pressure and timelines generated by that has proven to be a mistake in the past. We are talking about a matter of weeks, not months into the future. My understanding is this comes down to the definition of the "public water system" and whether that relates to the system that delivers water to the public or public ownership versus private ownership, which is the interpretation that Deputy Ó Broin is putting on it. The word "system" may be more encompassing than that because private assets provide water to the public and one of the issues we need to consider is whether they are defined as the "public water system".

The answer to Senator Grace O'Sullivan's question is I will happily provide information to the committee as soon as I have it. I will make it clear to the Attorney General's office that parties are anxious to move this process on and I will seek a response from her. A constitutional

change is much more significant than the special water committee's report and recommendations, which we are acting on, and any legislative change we make. Once we change the Constitution, we cannot change it again without another referendum. We should take a few weeks to get this right. If that causes a little frustration and impatience on the part of the committee, I am sorry but I would rather have the legal advice we need to progress the Bill. We will then tease through these issues on Committee and Report Stages. Although I do not think we need to have everything perfect at pre-legislative scrutiny stage, it would be good to nail down some of the concerns expressed and receive Government legal advice on them. That is what I am looking for.

**Chairman:** So that members are clear, there is no rush. We have scheduled dates in the coming weeks to deal with Deputy Joan Collins' Bill. We are not going to be prevented from moving forward.

**Deputy Eoin Ó Broin:** I have a comment to make and one final question to ask. I might get an answer to it. It is not a matter of weeks but almost six months since the Bill was debated. It is my understanding it has to proceed through Committee and Report Stages and into the Seanad. It will then be brought back to us. If we did not have the current delay, there would still be sufficient time to scrutinise everything. The source of my frustration is not that the Minister wants to receive legal advice which I also want but the fact that we have spent six months in getting to this point, yet we cannot have a substantive discussion because of the absence of that advice. Will the Minister tell us the date on which he asked the Attorney General to comment on Deputy Joan Collins's Bill? Will he tell us why, if Mr. Ryan is right, the advice given to him on earlier drafts of the report of the water committee did not include some commentary from the Attorney General on the suggestion that we consider holding a constitutional referendum?

**Deputy Simon Coveney:** First, it is not the Attorney General's job to decide on policy. Policy considerations are matters for us.

**Deputy Eoin Ó Broin:** That was not the question.

**Deputy Simon Coveney:** I am sorry; if the Deputy waits, he will get an answer.

**Deputy Eoin Ó Broin:** After an hour.

**Deputy Simon Coveney:** The Deputy can deliberately ask for answers which he knows are not available, or he can listen to what is available to us. We sent a briefing note to the Attorney General's office a number of weeks ago. I understand it was made very clear during the deliberations of the water committee that the holding of a referendum to change the Constitution to reassure people on public ownership of water infrastructure was a policy decision that was supported. Its actual implementation and the detail were thought to be matters for this committee and we were going to use Deputy Joan Collins' Bill as the basis. Now we need to go through a detailed process of scrutiny and receiving advice to make sure we get the legislative proposals right. We are going to go through the various stages. We are only in the first stage. We on the Government side agreed that we would try to be helpful. We have had discussions and briefing sessions with Deputy Joan Collins, as I committed to do. We have also shared our correspondence with the Attorney General's office, which is almost unheard of, in asking the Attorney General to give us advice. That was done in an effort to be helpful, as I said I would be. We have been doing what I agreed to do five or six months ago. However, we do not yet have an outcome to that process and I am afraid people will have to show a little patience. We will have it in the coming weeks.

**Chairman:** I will let Deputy Joan Collins wrap up.

**Deputy Joan Collins:** For the purposes of clarification, I welcomed the Minister's invitation to meet officials of the Department. We met once, at which point he was sending the information to the Attorney General for feedback. I respect the fact that there is a process and that we have to try to get this right. At the same time, however, we should try to move things on. I certainly do not want to attend another meeting without having the clarity we are seeking. At least we could then start moving towards Committee Stage. I hope we will hold a referendum in order that the people can make a decision on the matter.

**Chairman:** I thank the Deputy. Does the Minister want to say a few words to wrap up?

**Deputy Simon Coveney:** As I said, although this is not my legislation, I do have an obligation to make sure we get it right, particularly given the construction of the Dáil and the Seanad. That is why the Government is providing both advice and legal expertise. I hope we will not have a situation where I will be appealing to other parties not to support legislation on Report Stage on the back of the Attorney General's advice. That is the conversation we have been forced to have, for example, on the legislation dealing with rental changes and so on. I want to be in a position to support this legislation. That is why at an early stage, at pre-legislative scrutiny stage or before Committee Stage, I hope we will have clarity on the changes of wording needed in order that we can move on quickly. Despite the frustration of some committee members, I am not in a position to provide that clarity today, but we are anxious to follow through on the commitment we made and I think I have done so. I am afraid I am not operating to the Deputies' timeline but to that of the Attorney General's office. There has been no shortage of demands on her office in the past six months in a series of areas, not least water services. The matter is with her office. This is legislation into which the Government needs to have an input. We have agreed to use Deputy Joan Collins' Bill as the basis. We could have introduced a separate Bill, but she asked us not to do so and I supported the adoption of that approach. If I was introducing my own legislation and we were at pre-legislative scrutiny stage, I still would not have the advice. We would not be introducing legislation this early. I am afraid we are just going to have to work through the process.

**Chairman:** I thank everyone for attending and our previous session this morning. I thank the Minister and his officials, Mr. Ryan and Ms Graham. At next week's meeting the committee will discuss whether a further meeting is required with stakeholders and the stakeholders with whom members would like to engage.

The joint committee adjourned at 12.10 p.m. until 9.30 a.m. on Wednesday, 10 May 2017.