

Water Services (Amendment) (No. 2) Bill 2022

Bill No. 81 of 2022

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Abstract

The Water Services (Amendment) (No. 2) Bill 2022 proposes to facilitate the separation of Irish Water from the Eirvia Group and further strengthen the imperative of public ownership of Irish Water. It will strengthen the oversight of Irish Water by providing a role for Comptroller and Auditor General (C&AG) with respect to Irish Water, where the C&AG and a commercial auditor will audit Irish Water's financial statements. Irish Water being subject to audit by the C&AG will also bring Irish Water within the remit of the Committee of Public Accounts.



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Summary

The [General Scheme](#) of the [Water Services \(Amendment\) \(No. 2\) Bill 2022](#) ('the Bill') was published on 27 April 2021.¹ The Bill was published on 16 August 2022 by the Minister for Housing, Local Government and Heritage, Darragh O'Brien.²

The Bill underwent pre-legislative scrutiny by the Joint Committee on Housing, Local Government and Heritage, and a meeting was held by the Joint Committee on 22 September.³ The [Report of the Joint Committee](#) was published in November 2021, and the report included three recommendations.⁴

A [Regulatory Impact Analysis](#) (RIA) was published on 27 April 2021.⁵

This Bill Digest provides a background to the Bill, its associated Regulatory Impact Analysis (RIA), and comments on the implementation of the recommendations made by the Joint Committee's Pre-legislative scrutiny report. The principal provisions of the Bill are explained, and some of the implications and implementation issues for the Bill are highlighted.

What the Bill does:

The Programme for Government⁶ committed to retaining Irish Water in public ownership as a national, standalone, regulated utility. The Water Services (Amendment) (No. 2) Bill 2022 gives effect to this commitment.

The Bill provides for:

- the separation of Irish Water from the Ervia Group
- amending legislation to facilitate this
- amending arrangements in relation to Irish Water's accountability to the Oireachtas
- connected matters

Why is primary legislation required?

The [Water Services Act 2013](#) is the primary legislation that established Irish Water as a subsidiary of Ervia (formerly Bord Gáis) and as a company under the Companies Acts with its own Constitution. Separating Irish Water from the Ervia Group can only be achieved by amending Irish Water's establishing legislation and its Constitution.

¹ '[General Scheme of Water Services Separation Bill 2021](#)', gov.ie, 27 April 2021

² '[Irish Water to become 'Uisce Éireann' as a standalone national authority for water services](#)', gov.ie, 12 July 2022

³ [Joint Committee on Housing, Local Government and Heritage debate - Tuesday, 28 Sep 2021](#). General Scheme of the Water Services Separation Bill 2021: Department of Housing, Local Government and Heritage

⁴ Joint Committee on Housing, Local Government and Heritage '[Report on Pre-Legislative Scrutiny of the General Scheme of the Water Services Separation Bill 2021](#)', November 2021

⁵ '[Regulatory Impact Analysis \(RIA\) - Water Services Separation Bill 2021](#)', gov.ie, 27 April 2021

⁶ [Programme for Government: Our Shared Future \(www.gov.ie\)](#)

Table of provisions

A summary of the Bill's provisions is included in Table below.

Table 1 Table of provisions of the Water Services (Amendment) (No. 2) Bill 2022.

Sections	Title	Effect
Part 1 – Preliminary and General		
1	Short title, collective citation and commencement	<p>Section 1 provides that (1) The Act may be cited as the Water Services (Amendment) (No. 2) Act 2022.</p> <p>(2) The Water Services Act 2007 to 2017 and this Act may be cited together as the <i>Water Services Acts 2007 to 2022</i>.</p> <p>(3) The Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.</p>
2	Definitions	<p>“Appointed day” means the day appointed by order under section 6(1);</p> <p>“enactment” has the same meaning as it has in the <i>Interpretation Act 2005</i></p> <p>“Minister” means the Minister for Housing, Local Government and Heritage;</p> <p>“No. 2 Act of 2013” means the Water Services (No. 2) Act 2013;</p> <p>“Principal Act” means the Water Services Act 2013.</p>
3	Expenses	<p>Section 3 provides that the expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.</p>
4	Repeals	<p>Section 4 provides that the following provisions are repealed:</p> <ul style="list-style-type: none"> - Sections 9(5), 13, 14, 17, 18, 24(2), 25(1), 25(3), 26(2), 28 and 31 of the Principal Act are repealed. - Sections 26(3) and 35(3) of the No. 2 Act of 2013 are repealed. - Section 15(1A) of the Gas Act 1976 is repealed. - Notwithstanding the repeal of sections 17 and 18 of the Principal Act, Uisce Éireann shall prepare

Sections	Title	Effect
		its accounts and report pursuant to those sections for the year ending on 31 December 2022.
Part 2 - Reorganisation of Uisce Éireann		
5	Change of name of Irish Water	<p>Section 5 provides that Irish Water shall only be known as Uisce Éireann. All official documents, including legislation, that reference ‘Irish Water’ shall be construed to mean Uisce Éireann. The Principal Act is also amended to provide for the substitution of “Uisce Éireann” for “the subsidiary” in each place where the phrase occurs in the Act.</p> <p>These provisions are amended as Uisce Éireann shall cease to be a subsidiary of Ervia. These amendments do not include section 4 of the Principal Act, which provides for the formation of Uisce Éireann as a private company.</p>
6	Appointed day	<p>Section 6 provides that the Minister for Housing, Local Government and Heritage shall choose a day to be the ‘appointed day’ for the purposes of the Bill. On this day, Uisce Éireann shall cease to be a subsidiary of Ervia, and the shares in Uisce Éireann issued to Ervia, the Minister and the Minister for Finance under section 5(4) of the Principal Act shall be cancelled.</p>
7	Amendment of section 2 of Principal Act	<p>Section 7 amends the Principal Act to provide for certain definitions.</p> <p>The definition of ‘the Board’ shall be the definition provided in section 6A(2) of the Principal Act.⁷</p> <p>‘Act of 2014’ means the Companies Act 2014;</p> <p>‘appointed day’ means the day appointed by order under section 6(1) of the Water Services (Amendment) (No. 2) Act 2022;</p> <p>‘chief executive officer’ has the meaning assigned to it by section 6B(1);</p> <p>‘director’ means a person appointed to the Board under section 6A(2);</p>

⁷ This provides that the Board shall consist of at least 5 and not more than 10 directors (including its chairperson and the chief executive officer), each of whom shall be appointed by the Minister, with the consent of the Minister for Public Expenditure and Reform.

Sections	Title	Effect
		<p>‘enactment’ has the same meaning as it has in the Interpretation Act 2005;⁸</p> <p>‘financial year’ shall be construed in accordance with section 17A.</p>
8	Amendment of section 4 of Principal Act	<p>Section 8 provides for further textual amendments to facilitate the separation of Uisce Éireann from Ervia. The section amends section 4 of the Principal Act, which provides for the formation of the Uisce Éireann as a subsidiary of Ervia. The amendments provide for:</p> <ul style="list-style-type: none"> (a) the substitution of “Ervia” for the “The Board”, and (b) the deletion of “(in this Act referred to as the ‘subsidiary’)", as Uisce Éireann will no longer be a subsidiary.
9	Amendment of section 5 of Principal Act	<p>Section 9 amends section 5 of the Principal Act. Section 5 provides for the name and share capital of the subsidiary. The section is amended to reflect that Uisce Éireann will no longer be a subsidiary of Ervia and is now a separate company, and that Uisce Éireann will only be referred to by its Irish language title.</p> <p>Section 9 of the Bill provides for the issuing of new shares by Uisce Éireann. New subsections (3A) to (3F) are inserted in section 5, providing that new shares in Uisce Éireann are issued:</p> <ul style="list-style-type: none"> • 1 share to the Minister for Housing, Local Government and Heritage; and • 99 shares to the Minister for Public Expenditure and Reform. <p>Provision is also included for Uisce Éireann to issue more shares to the Ministers from time to time. Comparable provisions in section 5(4), (5) and (6) are deleted.</p> <p>This section also provides that Uisce Éireann is the national authority for relevant water services functions under the Water Services Acts.</p>

⁸ “Enactment” means an Act or a statutory instrument or any portion of an Act or statutory instrument

Sections	Title	Effect
10	Amendment of section 6 of Principal Act	<p>Section 10 provides for the amendment of section 6 of the Principal Act, which relates to the Memorandum and articles of association of Uisce Éireann (which together are referred to as the constitution of a company). Section 10 provides that the constitution of Uisce Éireann will be consistent with the provisions of the Companies Act 2014 and the Water Services Act 2013.</p> <p>This section also provides that no alterations to the constitution will be valid without the prior approval of the Minister and the Minister for Public Expenditure and Reform.</p>
11	Insertion of sections 6A and 6B in Principal Act	<p>Section 11 inserts new sections into the Principal Act; sections 6A (providing for the Board of Uisce Éireann) and 6B (providing for the chief Executive Officer).</p> <p>The new section 6A, on the Board of Uisce Éireann, provides the following:⁹</p> <ul style="list-style-type: none"> • each director of Uisce Éireann standing appointed immediately before the appointed day shall cease to be a director of Uisce Éireann on the appointed day • Uisce Éireann shall have a board which shall consist of at least 5 and not more than 10 directors (including its chairperson and the chief executive officer), each of whom shall be appointed by the Minister, with the consent of the Minister for Public Expenditure and Reform. • The Minister shall appoint one of the directors of Uisce Éireann to be its chairperson • One director shall be nominated by the Irish Congress of Trade Unions (ICTU). ICTU shall, whenever so requested by the Minister, nominate no less than 2 candidates for appointment and supply the Minister with the reasons why the candidates are suitable for such appointment. • The Minister shall, in so far as is practicable, endeavour to ensure that there is an equitable balance between male and female directors.

⁹ All references to directors in this overview are to directors of Uisce Éireann.

Sections	Title	Effect
		<ul style="list-style-type: none"> • The Board may act subject to having a quorum of 3. • The directors may be paid an allowance for expenses. • A director (other than the chief executive officer) shall hold office for such period, not exceeding 5 years from the date of his or her appointment, as the Minister shall determine. • A director whose term of office expires by the passage of time shall be eligible for reappointment to the Board, provided he or she does not hold office for more than 2 terms of office, whether the terms are served consecutively or otherwise. • A director of Uisce Éireann may resign from office by giving notice to the Minister. <p>Section 6B on the <u>Chief Executive Officer</u> provides the following:</p> <ul style="list-style-type: none"> • The Board shall, with the consent of the Minister, appoint the chief executive officer of Uisce Éireann. • The chief executive officer shall <ul style="list-style-type: none"> (a) carry on, manage and control generally, the administration of Uisce Éireann, (b) advise the directors of Uisce Éireann in relation to the performance by Uisce Éireann of its functions. • The chief executive officer shall be an <i>ex officio</i> director of Uisce Éireann but he or she shall not be the chairperson. • The chief executive officer shall hold office under a written contract of service for such a term, and subject to such terms and conditions, as are specified in the contract, as may be determined by the Board. • The chief executive officer may, with the consent of the Minister, be removed from office by the Board for stated reasons. • The chief executive officer shall not hold any other office or occupy any other position in

Sections	Title	Effect
		<p>respect of which emoluments are payable, or carry on any business without the consent of the Board.</p> <ul style="list-style-type: none"> The person who stands appointed as chief executive officer of Uisce Éireann immediately before the appointed day shall continue to <ul style="list-style-type: none"> (a) hold that office upon and subject to the same terms and conditions; and (b) be an <i>ex officio</i> director of Uisce Éireann, for the remainder of his or her term of office.
12	Amendment of section 7 of Principal Act	<p>Section 12 amends section 7 of the Principal Act, which provides for the disqualification for office of a director. The new section (1A) provides for the removal of a director of the Board, by the Minister, for specified reasons, including incapacity through ill-health, misbehaviour, contravention of section 9(1) or the Minister believes their removal is necessary for the effective functioning of Uisce Éireann.</p>
13	Amendment of section 15 of Principal Act	<p>Section 13 amends section 15 of the 2013 Act, which provides for grants by the Minister. Section 13 removes references to Ervia's functions.</p>
14	Final accounts and final annual report of Uisce Éireann as subsidiary of Ervia	<p>Section 14 inserts a new section 16A into the Principal Act to deal with the final accounts and annual report of Uisce Éireann as a subsidiary of Ervia. Section 16 of the Principal Act relates to Uisce Éireann's capital commitments.</p> <p>Section 14 of the Bill provides that Uisce Éireann shall prepare its final accounts and final annual report as a subsidiary of Ervia, for the financial year commencing on 1 January 2023. This new section 16A is necessary where the appointed day is not 1 January 2023.</p> <p>This section also provides that Uisce Éireann shall submit these audited final accounts to the Minister within 2 months of the appointed day, and submit the final annual report to the Minister within 4 months after the appointed day.</p>

Sections	Title	Effect
15	Insertion of sections 17A to 17E in Principal Act	<p>Section 15 inserts new sections 17A, 17B, 17C, 17D and 17E into section 17 of the Principal Act. Section 17 of the 2013 Act deals with the accounts of Uisce Éireann. The following new sections are provided for:</p> <ul style="list-style-type: none"> • Section 17A - Financial year, provides for details of the financial year depending on the date of the appointed day; • Section 17B - Preparation and audit of statutory financial statements, provides for the audit of Uisce Éireann's accounts by the Comptroller and Auditor General; • Section 17C - Appointment of statutory auditor or firm, provides for the audit of Uisce Éireann's accounts by Uisce Éireann's commercial statutory auditor; • Section 17D - Annual report, provides for the preparation of Uisce Éireann's annual report; and <p>Section 17E - Presentation of financial statements and reports, provides for the presentation of Uisce Éireann's audited financial statements and annual report to the Minister prior to them being laid before the Houses of the Oireachtas.</p>
16	Accountability to Committee of Public Accounts	<p>Section 16 amends section 18 of the Principal Act, which provides for annual reports by Uisce Éireann. A new section 18AA is inserted, which relates to accountability to the Committee of Public Accounts.</p> <p>Part of the new section 18AA states:</p> <p>“In appearing before the Committee referred to in subsection (2), each nominated person¹⁰ shall appear as a person accountable to the Committee and not as an accounting officer.”</p> <p>Evidence shall be given by the nominated persons (the chairperson of the Board and the chief executive officer) “whenever required by the Committee”. Evidence shall be given on</p>

¹⁰ Subsection (1) provides that the chairperson of the Board and the chief executive officer shall be nominated persons for the purposes of this section.

Sections	Title	Effect
		<ul style="list-style-type: none"> • The regularity and propriety of recorded transactions • the economy and efficiency of Uisce Éireann • the systems, procedures and practices employed by Uisce Éireann for the purposes of evaluating the effectiveness of its operations, and • any matter affecting Uisce Éireann referred to in <ul style="list-style-type: none"> ○ any special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or ○ any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in any of paragraphs (a) to (c)) that is laid before Dáil Éireann.
17	Amendment of section 19 of Principal Act	Section 17 amends section 19 of the Principal Act, which provides for definitions for Part 3 of the Principal Act, which relates to the installation of water meters. Section 17 provides that in Part 3 of the Principal Act, 'metering authority' means Uisce Éireann." This removes references to Ervia's functions in this Part.
18	Amendment of section 20 of Principal Act	Section 18 amends section 20 of the Principal Act consequential to the amendment to section 19.
19	Amendment of section 21 of Principal Act	Section 19 amends section 21 of the Principal Act consequential to the amendment to section 19.
20	Amendment of section 23 of Principal Act	Section 20 amends section 23 of the Principal Act consequential to the amendment to section 19.
21	Amendment of section 26 of Principal Act	Section 21 amends section 26 of the Principal Act by removing references to Ervia's functions.
22	Amendment of section 32 of Principal Act	Section 22 amends section 32 of the Principal Act consequential to the amendment to section 19.
23	Transfer of members of staff to Uisce Éireann	Section 23 provides for the transfer of staff from Ervia to Uisce Éireann. A person to whom this section applies shall not be subject to terms and conditions that are less favourable than those that they were subject to before the appointed day.

Sections	Title	Effect
24	Transfer of rights and liabilities and preservation of contracts	Section 24 provides for the transfer of rights, liabilities, contracts, agreements and arrangements from Ervia to Uisce Éireann where they relate to Uisce Éireann.
25	Liability for loss occurring before appointed day	Section 25 provides that any legal proceedings taken against Ervia relating to Uisce Éireann, including claims in respect of loss or injury, shall be continued with the substitution in the claim or proceedings of Uisce Éireann for Ervia.
26	Transfer of records	<p>Section 26 provides for the transfer of records from Ervia to Uisce Éireann. Each record held by Ervia immediately before the appointed day that relates to Uisce Éireann or to the functions of Uisce Éireann, shall on the appointed day stand transferred to Uisce Éireann and shall, on and after that day, be the property of Uisce Éireann and be regarded as being held by Uisce Éireann.</p> <p>The Minister may make regulations in relation to the transfer of records under this section.</p>
Part 3 – Amendment of other Acts		
27	Amendment of Water Services Act 2007	Section 27 provides that the Water Services Act 2007 is amended to provide for the deletion of references to Bord Gáis Éireann (the name by which Ervia was previously known) and to substitute the Minister for Public Expenditure and Reform for the Minister for Finance.
28	Amendment of No. 2 Act of 2013	Section 28 provides that the Water Services (No. 2) Act 2013 is amended to provide for references to Uisce Éireann's Constitution instead of its memorandum of association and articles of association, and to provide for references to the appropriate Ministers.
29	Amendment of section 44 of Water Services Act 2017	Section 29 amends the Water Services Act 2017 to provide for the deletion of references to Ervia.
30	Miscellaneous amendments	Section 30 provides for amendments to enactments as listed in the Schedule.

Overview

Background

Irish Water was established in 2013¹¹ as a subsidiary of Bord Gáis through the [Water Services Act 2013](#), as part of the terms of the 2010 bailout programme.¹² Very rapidly after its establishment, Irish Water became the focus of largescale protests opposed to the imposition of water charges, the perceived risk of water privatisation and austerity measures generally.¹³ In this context, calls for the public ownership of Irish Water to be enshrined in law were made by various actors and these calls persist to the present.¹⁴

Government proposals for Irish Water to be separated from Eirvia and established as a stand-alone entity have been in place since 2018,¹⁵ and the current Programme for Government¹⁶ committed to retaining Irish Water in public ownership as a national, standalone, regulated utility. The Water Services (Amendment) (No. 2) Bill 2022 seeks to fulfil this commitment.

Key policy considerations

During the development of this Bill, two key points of consideration were identified during pre-legislative scrutiny,¹⁷ namely;

1. Appointment to the Board of Irish Water
2. Accountability to the Committee of Public Account

Appointment to the Board of Irish Water

In the general scheme of the Bill, the Committee queried the process by which Irish Water's CEO and board members would be appointed, whether this would be through the Public Appointments Service (PAS) or whether it will be at the discretion of the Minister to appoint outside of this

¹¹ [About Irish Water | About | Irish Water](#)

¹² [The Economic Adjustment Programme for Ireland \(europa.eu\)](#) – p.68

¹³ Hearne, R. (2015) [The Irish water war, austerity and the 'Risen people'](#). Maynooth University

¹⁴ Commentary includes:

- Article - Anon, [Greens call for public ownership of Irish Water to be enshrined in constitution \(irishexaminer.com\)](#) – 27 Oct 2014
- Article - McEnroe, J. [Coalition TDs back referendum to ensure Irish Water remains in public ownership \(irishexaminer.com\)](#) – 20 Jan 2016
- Press release – Soc Dems. - [New Dáil Motion to make Irish Water more accountable and to keep in public ownership - Social Democrats](#) – 19 Nov 2019
- Article – Miley, I. – [SIPTU calls for referendum on water privatisation \(rte.ie\)](#) – 22 Mar 2021
- [Nithe i dtosach suíonna - Commencement Matters – Seanad Éireann \(26th Seanad\) – Tuesday, 7 Dec 2021 – Houses of the Oireachtas](#) – Senator Róisín Garvey – 2021

¹⁵ [Irish Water – Tuesday, 24 Jul 2018 – Parliamentary Questions \(32nd Dáil\) – Houses of the Oireachtas](#)

¹⁶ [Programme for Government: Our Shared Future \(www.gov.ie\)](#)

¹⁷ [Joint Committee on Housing, Local Government and Heritage debate - Tuesday, 28 Sep 2021 \(oireachtas.ie\)](#)

process. Discussion in the Committee focused on whether appointment of the board through PAS would be a legal requirement or not, with the response being that, while not strictly a legal requirement, appointment of Irish Water's board and CEO would operate using the [Guidelines for Appointments to State Boards 2014](#). Thus, Irish Water will use the same process for nominating its board members as other state bodies such as Bord Na Móna, Coillte, ESB, etc.

Accountability to the Committee of Public Accounts

Public trust in Irish Water has been an issue since its inception¹⁸, and therefore calls for increased accountability have been ongoing.¹⁹ Examples of increasing Irish Water's accountability include the passing of the [Water Services Act 2014](#), which enshrines the legal requirement for a plebiscite if Irish Water were to be privatised, and the setting up of the [Water Advisory Board](#),²⁰ an independent body which

- 1) reports on how well Irish Water is performing and
- 2) seeks to increase public confidence in Irish Water.

Additionally, the 2017 Act set up the [Water Forum](#), a statutory body which acts as a mechanism to strengthen democratic input into decision making regarding water.

Nevertheless, during PLS concerns were expressed²¹ that the changes in Irish Water's organisational structure (i.e. from subsidiary to standalone company) might change the level of accountability Irish Water is subject to. To avoid this outcome, the Department stated that "*when Irish Water is called before the Committee of Public Accounts, the chairman may, with the chief executive and Irish Water's finance officer, attend that committee*".²² The Committee's recommendation was for the Bill to provide for the attendance of Irish Water's CEO and Chairperson as accountable persons before the Public Accounts Committee, and this has been acted upon (see section 16).

¹⁸ See commentary:

- Hearne, R. (2015) [The Irish water war, austerity and the 'Risen people'](#). Maynooth University
- Clinch, J. P., & Pender, A. (2019). 'You Don't Miss the Water'til the Well Runs Dry': Factors Influencing the Failure of Domestic Water Charges in Ireland. *The Economic and Social Review*, 50(2, Summer), 369-389.

¹⁹ See commentary:

- [PAC to review oversight and accountability mechanisms in Irish Water – 13 Jan 2014, 17.20 – Houses of the Oireachtas](#)
- [New Dáil Motion to make Irish Water more accountable and to keep in public ownership - Social Democrats](#)

²⁰ The WAB was established through the [Water Services Act 2017](#)

²¹ [Joint Committee on Housing, Local Government and Heritage debate - Tuesday, 28 Sep 2021 \(oireachtas.ie\)](#)

²² [Joint Committee on Housing, Local Government and Heritage debate - Tuesday, 28 Sep 2021 \(oireachtas.ie\)](#) – comment made by Ms Shirley Groake in response to a question by Deputy Eoin Ó Broin

Irish Water's future trajectory

In February 2021 the Minister for Housing, Local Government and Heritage published the policy document '[Irish Water – Towards A National, Publicly-Owned, Regulated, Water Services Utility](#)'. This sets out the expected next steps for Irish Water's transition into a "national, publicly-owned, regulated, water services utility", with key ambitions being:

1. Irish Water will separate from the Eirvia Group during 2023.
2. Day-to-day operation and delivery of water services, currently performed by Local Authorities under Service Level Agreements, will be integrated into Irish Water's own organisational structure on a phased basis.
3. Using an engagement process run by the Workplace Relations Commission (WRC) to identify a stable operational framework for the future delivery of water services.
4. This framework is to enable progress on the ongoing water sector transformation programme by:
 - i) Providing Irish Water with the necessary control of water services operations, and full accountability for same; the capacity to manage risk; and the capacity to communicate and negotiate with all water services workers on the change agenda;
 - ii) Addressing the concerns of workers in relation to the future deployment of current Local Authority water services staff through collective agreement with the workers; and
 - iii) Ensuring that Irish Water is not left without an appropriately skilled workforce to carry out its statutory functions.
5. The Local Government system will prepare for the gradual phasing out of the direct involvement of local authorities in the delivery of public water services.
6. Environmental regulation will continue to be performed by the Environmental Protection Agency (EPA), and economic regulation by the CRU.
7. Water services provision will continue to be faithful to, and consistent with, the requirements set out in the EU Water Framework Directive (2000/60/EC), and otherwise comply with EU law in all respects.

In June of 2022, the [Framework for Future of Water Services](#) (point 3, above) was published, which largely aligned with the previous policy document. The Framework confirmed that Irish Water would "*transition to a national water services authority*" by:

- A. Assuming responsibility for the management and direction of water services operation and activities.
- B. The **voluntary transfer**, of existing Local Authority water services staff to Irish Water as permanent employees between the present and 2026.
- C. The **identification of re-deployment** opportunities for water services staff not transferring to Irish Water to other areas within Local Authorities.
- D. The **recruitment** of water services staff directly by Irish Water to fill vacancies arising in water services.
- E. A **voluntary redundancy** scheme for Local Authority water service staff; and
- F. A **new Irish Water-Local Authority agreement**, replacing the existing Service Level Agreement arrangements, to ensure that Irish Water has full accountability for the delivery of water services and direct management of the water services staff who choose to remain

employed by their Local Authority under contract to Irish Water for the transitional period to the end of 2026.

The framework was well received by both unions and government, with both considering it a satisfactory outcome of the WRC engagement process.²³²⁴

Previous legislation related to the current Bill

Ireland

[Gas Act 1976](#)

[Water Services Act 2007](#)

[Water Services Act 2013](#)

[Water Services \(No. 2\) Act 2013](#)

[Water Services Act 2017](#)

European Union

None

Regulatory Impact Analysis (RIA)

An RIA on the impact of this Bill²⁵ was conducted in 2021. The RIA examined three scenarios in relation to the Water Services Bill:

1. No intervention
2. Separate of Irish Water from the Ervia Group with additional regulatory requirements
3. Separate of Irish Water from the Ervia Group with no additional regulatory requirements

Of these, the RIA identified scenario 2 as the preferred option, as this option was determined to offer increased accountability to the Oireachtas, which the RIA noted on multiple occasions was appropriate given the level of exchequer funding that Irish Water receives. Indeed, this increased accountability is the primary difference identified by the RIA between scenarios 2 & 3. This increased accountability will be provided for through the provision of a function for the Comptroller and Auditor General in the context of a dual auditing, role where the Comptroller and Auditor General and a commercial auditor will audit Irish Water's financial statements.

Implications and implementation issues

The Bill's [Explanatory Memo](#) notes the following in relation to the financial implications arising from the separation of Irish Water from Ervia:

“The costs arising from separation of Irish Water from the Ervia Group include once-off separation costs of €5m. The change in Irish Water's name to Uisce Éireann may result in

²³ [gov.ie - Minister O'Brien welcomes Framework for future of water services \(www.gov.ie\)](https://www.gov.ie/en/news/2022-03/minister-obrien-welcomes-framework-for-future-of-water-services/)

²⁴ [No compulsory transfers of staff to Irish Water | ICTU](#)

²⁵ [Regulatory Impact Analysis \(RIA\) - Water Services Separation Bill 2021 \(www.gov.ie\)](#)




additional costs being incurred by Uisce Éireann in branding across the organisation. It is intended that such costs will be kept to a minimum and the Department of Housing, Local Government and Heritage intends to engage with Irish Water on the approach to this matter as well as quantifying the costs involved. As Uisce Éireann (Irish Water) will take over Local Authority water services from 1 January 2023, it will be necessary to rebrand relevant Local Authority vehicles and premises with the Uisce Éireann logo at this time in any case.”²⁶

Pre-legislative scrutiny of the General Scheme of the Bill

The General Scheme of the Bill underwent pre-legislative scrutiny by the Joint Committee on Housing, Local Government and Heritage, and a meeting was held by the Joint Committee on 22 September.²⁷ The [Report of the Joint Committee](#) was published in November 2021, and it set out 3 recommendations.

The table below sets out the Joint Committee’s recommendations, and the extent to which they have been reflected in the Bill. The commentary reflects the feedback provided on the implementation of the recommendations by the Department of Housing, Local Government and Heritage.

Table 2 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

L&RS categorisation of the Department’s response in the Bill to the Committee’s key issue	Traffic light dashboard used in Table to highlight impact of the Committee’s PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

²⁶ [Water Services \(Amendment\) \(No. 2\) Bill 2022 Explanatory Memorandum](#), p 4.

²⁷ [Joint Committee on Housing, Local Government and Heritage debate - Tuesday, 28 Sep 2021](#). General Scheme of the Water Services Separation Bill 2021: Department of Housing, Local Government and Heritage

Table 3 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

Commentary as per Committee report. The Committee recommends:	Whether addressed (either in whole or in part) in the Bill
<p>The Committee recommends that the chairperson of the board of Irish Water be appointed through the Public Appointments Service to ensure the process is open, accessible, rigorous, and transparent.</p>	<div data-bbox="678 562 743 629"> </div> <p>The Bill (section 11) provides for the appointment of the Chairperson by the Minister for Housing, Local Government and Heritage with the consent of the Minister for Public Expenditure and Reform. The Chairperson of State Bodies are appointed in accordance with the Code of Practice for the Governance of State Bodies, its Annex on Gender Balance, Diversity and Inclusion, and the Guidelines on Appointments to State Boards.</p> <p>This recommendation is not specifically addressed in the Bill as the requirement for openness and transparency in the selection of appointees to State boards is set out in the Code and the Guidelines. The Department has indicated that the Minister will comment on the appointment of the Chairperson in his speech on the second stage of the Bill in the Dáil.</p>
<p>The Committee recommends that the proposed bill provide for the attendance of the Chief Executive and Chairperson of Irish Water as accountable persons for the purpose of attendance before the Public Accounts Committee.</p>	<div data-bbox="678 1408 743 1476"> </div> <p>The Bill (section 16) provides for the Chairperson and the Chief Executive to give evidence to the Public Accounts Committee. This recommendation is implemented in the Bill.</p>
<p>The Committee recommends that the Minister, when publishing the Water Services Separation Bill, sets out in an accompanying written statement an update on the ongoing negotiations between Irish Water, the Department and Trade Union representatives on the matter of the single water utility, including an update on legislation</p>	<div data-bbox="678 1697 743 1765"> </div> <p>Prior to the publication of the Bill, the Minister provided an update on the transformation process https://www.gov.ie/en/press-release/b5659-minister-obrien-welcomes-framework-for-future-of-water-services/#</p> <p>The Department has indicated that a further update on this process and the <i>Right to Water</i> will be provided by the Minister in his speech on the second</p>

Commentary as per Committee report. The Committee recommends:	Whether addressed (either in whole or in part) in the Bill
to enshrine the Right to Water in the Constitution and a timeline for holding such a referendum.	stage of the Bill in the Dáil on 15 September next.

Principal provisions of the Bill

Principal provisions

The Bill comprises 30 Sections, which are arranged in 3 parts and 1 Schedule.

Part 1 – Preliminary and General

Part 1 provides for certain standard provisions: short title; collective citation and commencement; definitions; expenses; and repeals.

This includes the definition of ‘appointed day’, which is a day appointed by the Minister on which Uisce Éireann shall cease to be a subsidiary of Ervia, and the shares in Uisce Éireann issued to Ervia, the Minister and the Minister for Finance under section 5(4) of the Principal Act shall be cancelled.

The ‘Principal Act’ refers to the [Water Services Act 2013](#).

The additional definitions in this section are set out in detail in the Table of Provisions (above).

Section 4 of the Bill repeals:

- Sections 9(5), 13, 14, 17, 18, 24(2), 25(1), 25(3), 26(2), 28 and 31 of the Principal Act.
- Sections 26(3) and 35(3) of the [Water Services \(No. 2\) Act 2013](#); and
- Section 15(1A) of the [Gas Act 1976](#).

These repeals remove Ervia’s functions relating to Irish Water.

Part 2 – Reorganisation of Uisce Éireann

Part 2 amends the Principal Act to provide for the reorganisation of Uisce Éireann.

Section 5 provides that Irish Water shall only be known as Uisce Éireann. All official documents, including legislation, that reference ‘Irish Water’ shall be construed to mean Uisce Éireann. The Principal Act is also amended to provide for the substitution of “Uisce Éireann” for “the subsidiary” in each place where the phrase occurs in the Act.

These provisions are amended as Uisce Éireann shall cease to be a subsidiary of Ervia. These amendments do not include section 4 of the Principal Act, which provides for the formation of Uisce Éireann as a private company.

Section 6 provides that the Minister for Housing, Local Government and Heritage shall choose a day to be the ‘appointed day’ for the purposes of the Bill. On this day, Uisce Éireann shall cease to be a subsidiary of Ervia, and the shares in Uisce Éireann issued to Ervia, the Minister and the Minister for Finance under section 5(4) of the Principal Act shall be cancelled.

Section 7 amends the Principal Act to provide for certain definitions.

The definition of ‘the Board’ shall be the definition provided in section 6A(2).²⁸

‘Act of 2014’ means the [Companies Act 2014](#);

‘appointed day’ means the day appointed by order under section 6(1) of the Water Services (Amendment) (No. 2) Act 2022;

‘chief executive officer’ has the meaning assigned to it by section 6B(1);

‘director’ means a person appointed to the Board under section 6A(2);

‘enactment’ has the same meaning as it has in the Interpretation Act 2005;²⁹

‘financial year’ shall be construed in accordance with section 17A.

Section 8 provides for further textual amendments to facilitate the separation of Uisce Éireann from Ervia. The section amends section 4 of the Principal Act, which provides for the formation of the Uisce Éireann as a subsidiary of Ervia. The amendments provide for:

- (a) the substitution of “Ervia” for the “The Board”, and
- (b) the deletion of “(in this Act referred to as the ‘subsidiary’)", as Uisce Éireann will no longer be a subsidiary.

Section 9 amends section 5 of the Principal Act. Section 5 provides for the name and share capital of the subsidiary. The section is amended to reflect that Uisce Éireann will no longer be a subsidiary of Ervia and is now a separate company, and that Uisce Éireann will only be referred to by its Irish language title.

The Minister for Housing, Local Government and Heritage is the majority-shareholding Minister for Ervia. Under the *unamended* section 5(4) of the Principal Act, one share in the company is issued to the Board, and, of the remaining shares in the company, half are issued to the Minister for the Environment, Community and Local Government and half are issued to the Minister for Finance.

Section 9 of the Bill provides the issuing of new shares by Uisce Éireann. New subsections (3A) to (3F) are inserted in section 5, providing that new shares in Uisce Éireann are issued:

- 1 share to the Minister for Housing, Local Government and Heritage; and
- 99 shares to the Minister for Public Expenditure and Reform.

The Joint Committee’s PLS Report indicated that this change was to “reflect the position in other State-owned Bodies”.³⁰

Provision is also included for Uisce Éireann to issue more shares to the Ministers from time to time. Comparable provisions in section 5(4), (5) and (6) are deleted.

This section also provides that Uisce Éireann is the national authority for relevant water services functions under the Water Services Acts.

²⁸ The Board shall consist of at least 5 and not more than 10 directors (including its chairperson and the chief executive officer), each of whom shall be appointed by the Minister, with the consent of the Minister for Public Expenditure and Reform.

²⁹ “Enactment” means an Act or a statutory instrument or any portion of an Act or statutory instrument

³⁰ Joint Committee on Housing, Local Government and Heritage ‘[Report on Pre-Legislative Scrutiny of the General Scheme of the Water Services Separation Bill 2021](#)’, November 2021, p 6.

Section 10 provides for the amendment of section 6 of Principal Act, which relates to the Memorandum and articles of association of Uisce Éireann (which together are referred to as the constitution of a company). Section 10 provides that the constitution of Uisce Éireann will be consistent with the provisions of the [Companies Act 2014](#); and the [Water Services Act 2013](#). The 2014 Act changed the way in which information was set out in a company's constitution,³¹ and this amendment reflects this change.

This section also provides that no alterations to the constitution will be valid without the prior approval of the Minister and the Minister for Public Expenditure and Reform.

Section 11 inserts new sections in the Principal Act; sections 6A (providing for the Board of Uisce Éireann) and 6B (providing for the chief Executive Officer).

The new section 6A, on the **Board of Uisce Éireann**, provides the following:³²

- **each director** of Uisce Éireann **standing appointed** immediately before the appointed day shall **cease to be a director** of Uisce Éireann on the appointed day
- Uisce Éireann shall have a board which shall consist of at least **5 and not more than 10 directors** (including its chairperson and the chief executive officer), each of whom shall be **appointed by the Minister**, with the consent of the Minister for Public Expenditure and Reform.
- The Minister shall appoint one of the directors of Uisce Éireann to be its chairperson
- One director shall be nominated by the **Irish Congress of Trade Unions (ICTU)**. ICTU shall, whenever so requested by the Minister, nominate no less than **2 candidates** for appointment and supply the Minister with the **reasons why** the candidates are suitable for such appointment.
- The Minister shall, in so far as is practicable, endeavour to ensure that there is an equitable **balance between male and female directors**.
- The Board may act subject to having a quorum of 3.
- The directors may be paid an allowance for expenses.
- A director (other than the chief executive officer) shall hold office for such period, not exceeding **5 years** from the date of his or her appointment, as the Minister shall determine.
- A director whose term of office expires by the passage of time shall be eligible for reappointment to the Board, provided he or she does not hold office for more than 2 terms of office, whether the terms are served consecutively or otherwise.
- A director of Uisce Éireann may resign from office by giving notice to the Minister.

Section 6B on the **Chief Executive Officer** provides the following:

³¹ Most of the regulations that would previously be stated in the memorandum and articles of association are now included within the provisions of the 2014 Act, removing the need for that information to be supplied in a company's constitution. Sch.1 of the 2014 Act sets out a model constitution.

³² All references to directors in this overview are to directors of Uisce Éireann.

- The Board shall, with the consent of the Minister, appoint the chief executive officer of Uisce Éireann.
- The chief executive officer shall
 - (a) carry on, manage and control generally, the administration of Uisce Éireann,
 - (b) advise the directors of Uisce Éireann in relation to the performance by Uisce Éireann of its functions.
- The chief executive officer shall be an *ex officio* director of Uisce Éireann but he or she shall not be the chairperson.
- The chief executive officer shall hold office **under a written contract** of service for such a term, and subject to such terms and conditions, as are specified in the contract, as may be determined by the Board.
- The chief executive officer may, with the consent of the Minister, **be removed** from office by the Board for stated reasons.
- The chief executive officer shall **not hold any other office** or occupy any other position in respect of which emoluments are payable, or carry on any business without the consent of the Board.
- The person who stands appointed as chief executive officer of Uisce Éireann immediately before the appointed day shall continue to
 - (a) hold that office upon and subject to the same terms and conditions; and
 - (b) be an *ex officio* director of Uisce Éireann, for the remainder of his or her term of office.

Section 12 amends section 7 of the Principal Act, which provides for the disqualification for office of a director. The new section (1A) provides for the removal of a director of the Board, by the Minister, for specified reasons, including incapacity through ill-health, misbehaviour, contravention of section 9(1) or the Minister believes their removal is necessary for the effective functioning of Uisce Éireann.

Section 13 amends section 15 of the Principal Act, which provides for grants by the Minister. Section 13 removes references to Ervia's functions in this section.

Section 14 inserts a new section 16A into the Principal Act to deal with the final accounts and annual report of Uisce Éireann as a subsidiary of Ervia. Section 16 of the 2013 Act relates to Uisce Éireann's capital commitments.

Section 14 of the Bill provides that Uisce Éireann shall prepare its final accounts and final annual report as a subsidiary of Ervia, for the financial year commencing on 1 January 2023. This new section 16A is necessary where the appointed day is not 1 January 2023.

This section also provides that Uisce Éireann shall submit these audited final accounts to the Minister within 2 months of the appointed day, and submit the final annual report to the Minister within 4 months after the appointed day.

Section 15 inserts new sections 17A, 17B, 17C, 17D and 17E into section 17 of the Principal Act. Section 17 of the Principal Act deals with the accounts of Uisce Éireann. The following new sections are provided for:

- Section 17A - **Financial year**, provides for details of the financial year depending on the date of the appointed day;
- Section 17B - **Preparation and audit of statutory financial statements**, provides for the audit of Uisce Éireann's accounts by the Comptroller and Auditor General;
- Section 17C - **Appointment of statutory auditor or firm**, provides for the audit of Uisce Éireann's accounts by Uisce Éireann's commercial statutory auditor;
- Section 17D - **Annual report**, provides for the preparation of Uisce Éireann's annual report; and
- Section 17E - **Presentation of financial statements and reports**, provides for the presentation of Uisce Éireann's audited financial statements and annual report to the Minister prior to them being laid before the Houses of the Oireachtas.³³

Section 16 amends section 18 of the Principal Act, which provides for annual reports by Uisce Éireann. A new section **18AA is inserted, which relates to accountability to the Committee of Public Accounts**. This is **one of the two key issues** addressed in the Joint Committee's PLS report. The Committee recommended "that the proposed bill provide for the attendance of the Chief Executive and Chairperson of Irish Water as accountable persons for the purpose of attendance before the Public Accounts Committee".

This is provided for in the new section 18AA, which states:

In appearing before the Committee referred to in subsection (2), each nominated person³⁴ shall appear as a person accountable to the Committee and not as an accounting officer.

Evidence shall be given by the nominated persons (the chairperson of the Board and the chief executive officer) "whenever required by the Committee". Evidence shall be given on

- the regularity and propriety of recorded transactions
- the economy and efficiency of Uisce Éireann
- the systems, procedures and practices employed by Uisce Éireann for the purposes of evaluating the effectiveness of its operations, and
- any matter affecting Uisce Éireann referred to in
 - any special report of the Comptroller and Auditor General under section 11(2) of the *Comptroller and Auditor General (Amendment) Act 1993*, or
 - any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in any of paragraphs (a) to (c)) that is laid before Dáil Éireann.

Section 17 amends section 19 of the Principal Act, which provides for definitions for Part 3 of the Principal Act, which relates to the installation of water meters. Section 17 provides that in Part 3 of the Principal Act, 'metering authority' means Uisce Éireann." This removes references to Ervia's functions in this Part. **Sections 18-20** are consequential to the amendment to section 19.

Sections 21 and 22 amend the Principal Act to remove references to Ervia's functions.

³³ [Water Services \(Amendment\) \(No. 2\) Bill 2022 Explanatory Memorandum](#), p 3.

³⁴ Subsection (1) provides that the chairperson of the Board and the chief executive officer shall be nominated persons for the purposes of this section.

Section 23 provides for the transfer of staff from Ervia to Uisce Éireann. A person to whom this section applies shall not be subject to terms and conditions that are less favourable than those that they were subject to before the appointed day.

Section 24 provides for the transfer of rights, liabilities, contracts, agreements and arrangements from Ervia to Uisce Éireann where they relate to Uisce Éireann.

Section 25 provides that any legal proceedings taken against Ervia relating to Uisce Éireann, including claims in respect of loss or injury, shall be continued with the substitution in the claim or proceedings of Uisce Éireann for Ervia.

Section 26 provides for the transfer of records from Ervia to Uisce Éireann. Each record held by Ervia immediately before the appointed day that relates to Uisce Éireann or to the functions of Uisce Éireann, shall on the appointed day stand transferred to Uisce Éireann and shall, on and after that day, be the property of Uisce Éireann and be regarded as being held by Uisce Éireann.

The Minister may make regulations in relation to the transfer of records under this section.

Part 3 – Amendment of other Acts

Section 27 provides that the [Water Services Act 2007](#) is amended to provide for the deletion of references to Bord Gáis Éireann (the name by which Ervia was previously known) and to substitute the Minister for Public Expenditure and Reform for the Minister for Finance.

Section 28 provides that the [Water Services \(No. 2\) Act 2013](#) is amended to provide for references to Uisce Éireann's Constitution instead of its memorandum of association and articles of association,³⁵ and to provide for references to the appropriate Ministers.

Section 29 amends the [Water Services Act 2017](#) to provide for the deletion of references to Ervia.

Section 30 provides for amendments to enactments as listed in the Schedule.

³⁵ See fn 31 above relating to section 10 of the Bill.

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