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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

ICELAND

DRAFT AMENDMENT TO THE CONSTITUTION OF THE REPUBLIC OF ICELAND NO. 33/1944, AS AMENDED (NATURAL RESOURCES OF ICELAND)

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151st Parliamentary Session 2020–2021.
Parliamentary Document

Constitutional Bill

for the amendment of the Constititution of the Republic of Iceland, no. 33/1944, as amended (natural resources of Iceland).

Proponents:

Article 1
The following new Article is added to the Act, as follows:
The natural resources of Iceland belong to the Icelandic nation. They shall be utilised in a self-sustaining manner for the benefit of all the people of Iceland. The State provides controls and supervision of the treatment and utilisation of the natural resources.
Natural resources and rights to land to which private ownership rights do not apply belong to the nation. No-one can acquire these assets or any rights pertaining thereto for private ownership or permanent use. The holders of legislative and executive power have authority over these with the nation's mandate.
Granting of authorisations for the utilisation of natural resources and land rights that are owned by the nation or the Icelandic State shall be grounded in law and care shall be taken to ensure equality and transparency. Laws shall be established that provide for the collection of fees for authorisations for commercial exploitation.

Article 2
The present Act shall enter into force forthwith.

M e m o r a n d u m .
1. Introduction.
All political parties that make up the current Parliament have since the beginning of 2018 worked together towards the revision of the Constitution. This is conducted in accordance with a plan that the Prime Minister proposed at the outset, cf. the agreement between the parties that form the government, wherein it is stated that the general revision of the Constitution will be continued with co-operation between the political parties and the participation of the people of Iceland. According to the plan, the general revision shall be completed in two electoral terms. During the current electoral term, the following subjects have been addressed: National ownership of natural resources, protection of the environment and nature, referendums at the initiative of voters, assignment of powers for the promotion of international co-operation, Chapter II of the Constitution regarding the President of the Republic and the exercise of the executive power, provisions regarding the Icelandic language and finally provisions regarding ways in which the Constitution shall be amended. The idea behind this arrangement for revision has been that it would be most likely to be successful if the leaders of the political parties were directly involved with processing the material that has been created in recent years with the aim of formulating joint proposals for the amendment of the Constitution. Much emphasis has been placed on consulting the public. Proposals have been published, as soon as they are submitted, in the government's consultancy portal and it has been endeavoured to process suggestions, an extensive survey on Icelanders‘ view of the Constitution has been conducted and a deliberative poll was instigated to address selected matters that are new in public policy formulation in Iceland. Experts in the field of constitutional law have also been consulted with regard to the further implementation of proposals.
This Bill regarding the natural resources of Iceland has a long history. In the preceding decades, there have been many discussions about the inclusion of a specific provision regarding natural resources in the Constitution of the Republic of Iceland. The general public has repeatedly shown support for such intentions, such as in the advisory referendum in the autumn of 2012 and the poll conducted by the Social Science Research Institute in the summer of 2019, see Chapter 2

for more detailed information. Several Constitutional Law Bills have been proposed in Parliament wherein it is assumed that a natural resources provision will be included in the Constitution, and it may be said that the formulation of such a provision has been in the works more or less continuously since 1998. This Bill is based on a bill which the Constitution Committee submitted to the Prime Minister in July of 2016 (cf. the Bill from Sigurður Ingi Jóhannsson, Parliamentary Document 1577, Case no. 841 in the 145th Parliamentary session, 2015–2016). However, very minor material alterations have been made to the text of the Bill and it has been endeavoured to make it simpler and to avoid repetitions. Chapter 5 of the Memorandum contains a comparison of the text of the Bill proposed herein and previous proposals.

The Bill is part of updating and improving the Constitution because it does not address some of the most important current issues. It is of vital importance that natural resources are addressed in the Constitution and that it includes certain principles which the government and the legislative power must abide by when formulating rules and providing supervision with regard to the utilisation of natural resources. The Bill addresses the natural resources of Iceland in general, with an emphasis on sustainable utilisation for the benefit of the Icelandic people, and also focuses specifically on natural resources over which the state has authority. The preparation of the Bill has been based on the assumption that the natural resources provision would establish clear boundaries for the legislative power regarding the utilisation and disposal of natural resources that are under the authority of the State, and the rights pertaining thereto. It shall be laid down that natural resources and land rights that are not subject to private property laws shall be owned by the nation, and it shall be provided that fees shall be charged for commercial exploitation of resources over which the state has authority. The Bill shall also ensure that the sale or permanent assignation of natural resources owned by the nation is prohibited and thereby prevent any expectations that utilisation rights will lead to permanent ownership.

The content of the provision of the Bill is in three parts. The provision of paragraph 1 regards the natural resources of Iceland in general and therein are established principal concerns that shall be the basis for their utilisation. Furthermore, the State is assigned the role of supervising the utilisation of natural resources. Paragraph 2 addresses natural resources and land rights that are in the ownership of the nation, and the legal implications that arise from declaring that the nation shall be the owner of common assets. There is also a provision regarding the State's role of authority with regard to national ownership. The provision of paragraph 3 addresses the granting of authorisations for the utilisation of natural resources and land rights that are owned by the nation or by the state, and it is provided that there are basic conditions that must be met for the granting of such authorisation.

2. Reason for and necessity of the legislation.

The first ideas regarding a specific natural resources provision in the Constitution of the Republic of Iceland surfaced in the 1960s and it may be said that the matter has been on the agenda ever since the Constitution Committee under the chairmanship of Dr. Gunnar Thoroddsen proposed such a provision in the constitutional law bill of 1983. The causes for this can be traced to the particular extent of natural resources in Iceland and their economic importance. Most of the foundations of Icelandic export sectors are based on these resources: the fishing industry, the energy-intensive industry and, in recent years, the tourism sector as well. The manner in which the utilisation of natural resources is arranged is therefore of great importance for future economic development in Iceland and there is much at stake, as opinions have been very divided regarding the management of natural resources and the treatment of natural resources owned by and under the custody of the State.

In general, the management of utilisation of natural resources is fraught with difficulty. There are numerous examples of negative consequences resulting from inadequate management of natural resources. In this regard it is sufficient to refer to the mismanagement that until recently defined the utilisation of fish stocks and the resulting loss for communities worldwide (see for instance the 2009 report from the World Bank and the Food and Agriculture Organisation of the United Nations (FAO), "The Sunken Billions"). In this context, Iceland was no exception. It is important that states assume responsibility for ensuring the necessary management of the

utilisation of natural resources in order to prevent negative consequences from inadequate management of natural resources.
There is no general consensus on what should be considered good management of natural resources. From the point of view of society, it is important that society's long-term interests and the short-term interests of those who utilise the natural resources are in harmony. Overexploitation must be prevented and allowance made for different interests so that greater interests are not sacrificed for lesser interests in the utilisation of resources that serve a multi-faceted role or that can be utilised in different manners. It is also necessary to take into consideration the interests of future generations and ensure sustainable utilisation of the resources.
Many constitutions, especially recent ones or recently amended ones, include provisions on natural resources. As regards constitutions of neighbouring states, it is most relevant to refer to Paragraph 1 of Article 112 of the Norwegian Constitution, wherein it is stated that natural resources shall be utilised with long-term and general interests in mind and in such a manner as not to infringe on the rights of future generations.
Recent years have seen ever-increasing demands for the inclusion of a natural resource provision in the Icelandic Constitution. In the poll conducted in 2019 by the Social Science Research Institute of the University of Iceland, 90% of respondends were of the opinion that it was somewhat important or very important that a provision regarding natural resources was added to the Constitution. In the advisory referendum, held on 20 October 2012, 74% of participants, based on valid votes (83% if blank and invalid responses are not taken into account, see *Hagtíðindi* 2013:1), declared that they were in favour of natural resources not in private ownership being made the property of the nation.

3. Principal text of the Bill.

A. General provision regarding the utilisation of natural resources.

Paragraph 1 of Article 1 of the Bill contains a general discussion of Icelandic natural resources. Therein the connection between the nation and the country's resources is given special attention. According to the provision, the natural resources belong to the Icelandic nation, but that wording does not refer to property rights but to the idea that the natural resources of Iceland are assets from which the entire nation benefits greatly, and in that sense they are joint assets of the Icelandic people. They can nonetheless be subject to property rights, in which case they may be owned by private bodies, the State, municipalities, or the entire nation, cf. Paragraph 2 of said Article and more detailed discussion in the following Chapter.
In the 2nd sentence of Paragraph 1, two principal policy targets are indicated that shall be the basis for all utilisation of natural resources irrespective of ownership. On one hand, utilisation shall be sustainable, and this requirement is part of nature conservation and in accordance with the fundamental concerns of the protection of the environment and nature, cf. the Constitutional Law Bill regarding environmental protection which is submitted concomitantly with this Bill. The concept of sustainable development was defined in the so-called Brundtland report of 1987 as development that satisfies current needs without impairing the possibilities of future generations to satisfy their needs. This entails among other things that there shall be no excessive demand on that which nature yields or on individual natural resources, and that renewable resources are utilised in such manner as to be able to regenerate. The provision of Paragraph 1 entails that utilisation of natural resources shall be sustainable in the sense described herein.
On the other hand, utilisation of natural resources shall be for the benefit of all the people of Iceland. This policy target entails that the general aim shall be that utilisation of natural resources is macroeconomically efficient. Furthermore, this policy target has particular significance with regard to natural resources and land rights owned by the nation and the State, as discussed in more detail at a later stage of the memorandum.
According to the 3rd sentence of said paragraph, it is expected that the state will, based on legislation, be responsible for providing controls and supervision of the treatment and utilisation of the natural resources, which includes control of adherence to the aforesaid policy targets. Legislation has not been enacted regarding all the resources to which the provision may apply, and until now it has not been deemed necessary to manage the utilisation of all resources through specific rules. To such extent as the utilisation of resources is managed through law, the provision

confers upon the legislative power an obligation to ensure as far as possible that the utilisation is compatible with the policy targets.

B. Resources and land rights owned by the nation.

Paragraph 2 of Article 1 of the Bill contains a provision that natural resources and land rights that are not subject to private property laws shall be owned by the nation, and furthermore there is a desctiption of the characteristics of national ownership. The concept of national ownership has significance relating to property rights and therefore it is assumed that a special form of property rights will be established alongside the traditional private property rights pertaining to individuals and legal entities protected under Article 72 of the Constitution. Natural resources and land rights to which private property rights do not apply are herein declared the property of the nation.

Both individuals and legal entities can be holders of private property rights, and this includes the State and municipalities. One example of property to which private property rights apply and which are the property of the State is State-owned land. The State's certificate of title with regard to State-owned land is of the same nature as that of any other land owner, irrespective of whether that owner is an individual or a legal entity, unless a distinction is made by law.

There can be two reasons behind cases where private property rights do not apply to natural resources. On one hand, it may be because they have no defined owner, examples of which can be sunlight and wind energy. On the other hand, the reason can be that the relevant resources or land rights have been made the property of the State by special legislation on the grounds that these assets previously had no owner. One example of such assets is public land, cf. the Act on public lands and the determination of the boundaries of private land, public land and upland ranges, no. 58/1998, and another is the resources obtainable from the sea bed, cf. the Act on the Icelandic State's property rights to the resources of the sea bed, no. 73/1990.

In the 2nd sentence of Paragraph 2, there is a description of the characteristics of national property rights. It should be noted that no-one can acquire assets that are considered the property of the nation or any rights pertaining to them as ownership or for permanent utilisation, and thereby prevent other parties from obtaining direct property rights to them, e.g. by tradition. This means that it is not permitted to sell these resources or land rights, and for the same reason these assets cannot be mortgaged. Furthermore, utilisation permits must have a time limit or be cancellable. These matters are discussed in more detail at a later stage of the memorandum.

According to the 3rd sentence of Paragraph 2, the holders of legislative and executive power have authority over resources and land rights owned by the nation, with the nation's mandate, which means, among other things, that the holders of those powers have the right to dispose of the assets within the limits imposed by the Article in the Parliamentary Bill.

The principal resources to which the provisions of paragraph 2 would apply are the following:

Public land.

Land and any land rights and benefits from public lands to which private property rights do no apply, cf. Article 2 of the Act on public lands and the determination of the boundaries of private land, public land and upland ranges, no. 58/1998 (the Public Lands Act). This includes the right to hunt mammals and birds on public lands according to the Act on the protection, preservation and hunting of wild birds and wild mammals no. 64/1994 (the Hunting Act), cf. however the special rule in Paragraph 1 of Article 8 of the Act on the right of the public to hunt on upland ranges and common land outside land belonging to farms. This also includes in some cases the freshwater fishing rights that usually come with real estate that is adjacent to the relevant fishing lake or river according to Paragraph 2 of Article 5 of the Act on salmon and trout fishing no. 61/2006 (the Salmon and Trout Fishing Act), cf. however also the special rule in Article 7 of the Act on the right to hunt on upland ranges on public lands.

Subsoil assets on public lands, cf. Article 3 of the Act on the survey and utilisation of ground resources, no. 57/1998 (the Natural Resources Act) and rights to surface water on public lands, cf. Article 2 of the Water Act no. 15/1923.

Resources obtainable from the sea bed.

Resources on, in or under the seabed outside fishing zones belonging to privately owned land and extending out as far as the boundaries of the territorial waters of Iceland as a sovereign state,

cf. Article 1 of the Act on the Icelandic State's property rights to the resources of the sea bed, no. 73/1990 (the Sea Bed Act).

Hydrocarbon.
Hydrocarbon outside fishing zones belonging to privately owned land inside the territorial waters, economic zone and continental shelf of Iceland, cf. Paragraph 1 of Article 3 of the Act on prospecting, exploration and production of hydrocarbons, no. 13/2001 (the Hydrocarbons Act).

Exploitable marine stock in Icelandic fishing waters.
Exploitable marine stock in Icelandic waters according to Article 1 of the Fisheries Management Act no. 116/2006 (the Fisheries Management Act) is the joint property of the Icelandic nation.

This provision would also apply to *maritime waters and the sea outside fishing zones belonging to privately owned land* and all the maritime biota which Iceland has the right to utilise as a sovereign state and to control to such extent as these rights do not apply to the resources of the sea bed in the sense of the Sea Bed Act and the Hydrocarbon Act and exploitable marine stock in the sense of the Fisheries Management Act.
In addition to the aforesaid, it is inevitable that more resources will be addressed, some of which will be subject to specific instructions in laws pertaining to utilisation. An example is limitations to the utilisation of forests belonging to and under the care of the State, cf. the Forest and forestry Act no. 33/2019; grazing rights (the right to herd sheep on upland ranges), cf. more detailed instructions in Article 7 of the Act on matters regarding upland ranges, sheep recovering activities etc. no. 6/1986; the picking of berries, mushrooms, Iceland moss and herbs on public land and vegetation and shellfish on their shores, cf. Article 27 of the Nature Conservation Act no. 60/2013; radio frequencies, cf. Article 7 of the Electronic Communications Act no. 81/2003; tides, wind and sunlight discussed in the Electricity Act no. 65/2003, cf. item 11 of Article 3 of said Act, but on the other hand no policy has been formulated in laws regarding authority over and arrangement of the utilisation of these energy sources in the same manner as is the case e.g. for earth resources, cf. the Natural Resources Act. In this regard, it must be mentioned that sunlight, like other natural phenomena, such as the atmosphere, are not subject to the control of individual states and are generally associated with the common interests of all mankind. Everyone has access to such natural resources with such limitations as are derived from rules that most belong to the field of environmental law. The same is true for wind energy. Finally, it should be noted that Iceland is party to the United Nations Convention on Biological Diversity, which has as one of its goals the equitable and just division of profit from the utilisation of genetic resources. On the basis of the Convention, a special booking was approved in 2010 on this subject and regarding access to genetic resources, the so-called Nagoya-booking, which came into effect on 12 October 2014. Iceland has not yet become a party to this booking but other Nordic countries have signed and ratified it.
It should be affirmed that the aforesaid list is not exhaustive in any regard although attempts are made to describe the major resources and land rights that would come under the relevant provision if it would become law. It is also proper to stress the presentation of having a negative definition as grounds so that resources and land rights that are not demonstrably subject to private property rights shall be regarded as the property of the nation in its understanding.

C. Granting of utilisation permits.
The provision of Paragraph 3 of Article 1 addresses the matter of authorisation for the utilisation of resources and land rights that are owned by the nation or the Icelandic State. It must be kept in mind that according to applicable law there is no requirement that authorisation must be obtained for all resource utilisation. The provisions of Paragraph 3 only apply in cases where utilisation is subject to special authorisation.
In paragraph 3, it is required that the granting of authorisations for utilisation are grounded in law, which means that the law must include principal conditions for the granting of such authorisations and also the views on which the decision shall be based. It is already derived from the principle of equality in Article 65 of the Constitution that equality must be ensured in the issuing of

authorisations for utilisation of assets in joint ownership. Still it is stated in the provision that equality and transparency shall be ensured in the granting of authorisations.
The provision also states that by law it shall be required that a fee shall be charged for authorisations for commercial exploitation of the natural resources and land rights under the authority of the State. The legislator is thereby obligated to require the charging of fees for such utilisation. An example of commercial exploitation is commercial fishing and the harnessing of water power and geothermal energy for the production of electricity for profit. The legislator is given the task of deciding the arrangement of fee collection, such as whether fees shall be defined by law or determined by agreements. The legislator is also granted leeway to determine the amount of the fees when they are defined by law. In the assessment thereof the legislator is nevertheless bound by the policy targets according to Paragraph 1 regarding sustainable utilisation for the benefit of the nation. This also applies to the government when it is entrusted with the task of negotiating agreements regarding the utilisation of natural resources or land rights owned by the nation or the State.

4. Previous proposals for a natural resources provision in the Constitution.
As previously noted, there is nothing new about the idea of adding a provision regarding ownership of natural resources to the Constitution of the Republic of Iceland. In recent decades a number of proposals have been made in this regard but these have not been implemented. Following is an account of the principal such proposals.

A. The parliamentary bill proposed by Dr. Gunnar Thoroddsen in 1983.
In the parliamentary bill proposed by Dr. Gunnar Thoroddsen, who at the time was the Prime Minister and Chairman of the Constitution Committee in 1978–1983, regarding constitutional law in 1983 (see Parliamentary Document no. 537, case no. 243 of the 105th Parliamentary session 1982–1983) it was stated that a new article on natural resources should be added that went as follows:
"The natural resources of the country shall be the property of the Icelandic people in perpetuity.
The resources of the sea and sea bed within Icelandic jurisdiction are the property of the nation. Ownership of other natural resources shall be defined by law."
The wording "property of the Icelandic people in perpetuity" was basically borrowed from Article 4 of the Law on the Þingvellir National Park no. 59/1928 (currently Article 1 of Act no. 47/2004), wherein was stated: "the land which has been declared protected shall be under the protection of Parliament and the property of the Icelandic people in perpetuity. It may never be sold or mortgaged."
The notes on the Bill included the following:
"It is declared that the resources from the ocean and ocean bed around Iceland are the property of the nation. Also that the natural resources of the country shall be the property of the Icelandic people in perpetuity. It is therefore declared that it is not permitted to assign ownership thereof to foreign parties. With regard to individual resources, such as the right to utilise water bodies and to harness water for energy production, rights to thermal energy and mining rights, it is assumed that control thereof will be addressed in legislation. It is not specified by this Article whether or to what extent such natural resources shall be the property of the State. This shall be determined by the Parliament."

B. Proposal from the Resource Committee for 2000.
On 2 June 1998 Parliament approved a resolution to the effect that a Resource Committee should be elected. The Committee was made up of nine people and had the task of discussing resources that were or might belong to the nation, such as all valuables from the sea and the sea bed within the economic zone as well as common land, upland ranges and other uninhabited land outside grazing land, underground mines, energy from running water and geothermal energy. The Resource Committee submitted a report in the year 2000 (Resource Committee: An advisory opinion with accompanying documents. The Prime Minister's office, September 2000) wherein is the following proposal for a constitutional provision regarding natural resources:
"Natural resources and land rights to which private ownership rights do not apply belong to the nation, as further decided by law. The holders of legislative and executive power are the

custodians and guardians of these resources and rights, and have the right to dispose of them with the nation's mandate.
Natural resources and land rights owned by the nation may not be sold or given to individuals or legal entities for permanent ownership. However, they may be given authorisation for the use or utilisation of these resources and rights for a fee, provided that such authorisation is of limited duration or can be altered at suitable notice as further defined by law. Such authorisation is protected as indirect property rights.
Natural resources and land rights owned by the nation shall be utilised in as efficient a manner as possible and on the basis of sustainable development, and the resulting gain shall be used to protect the resources, investigate and maintain them, and to benefit the nation in other ways."
Explanatory notes to this provision include the following:
"In Paragraph 1 it is declared that the natural resources and rights not subject to private property rights are the property of the nation, and the holders of legislative and executive power, i.e. Parliament and the government, are the custodians and guardinas thereof, and furthermore can dispose of them with the nation's mandate. Paragraph 2
Due to the fact that the situation and perspective can change as time passes it is not assumed that natural resources and land rights owned by the nation will be defined in the Constitution as such, but that this will be done in legislation. It is nonetheless assumed that land, land rights, resources and assets on public land, which have not been subject to private property rights, will become the property of the nation, cf. Act no. 58/1998 on public land and Act no. 57/1998 on research regarding utilisation of subsoil assets. The same applies to exploitable marine stock in Icelandic waters, cf. Act no. 38/1990 on fisheries management, and resources on, in or under the seabed , outside fishing zones belonging to privately owned land and extending out as far as the boundaries of the territorial waters of Iceland as a sovereign state, cf. Act no. 73/1990 on the Icelandic State's property rights to the resources of the sea bed [...]
Paragraph 2 states that natural resources and land rights that are the property of the nation may not be sold or permanently assigned to other parties. It is nonetheless assumed that the government has the power to grant to other parties authorisation for the use or utilisation of such property if certain conditions are met and with due consideration of the targets stated in paragraph 3. Authorisation for use or utilisation in paragraph 2 applies to authorisation for use or utilisation that requires special permission so that parties other than the authorised parties cannot have this right to utilisation. This means that the rights of the public, such as the right of access to and passage through land, is not included in this concept. It is provided at the end of paragraph 2, to remove all doubt, that authorisation for use or utilisation is protected under Article 72 of the Constitution as indirect property rights such as traditional rental, utilisation and easement rights."

C. The Bill proposed by Geir H. Haarde and Jón Sigurðsson in 2007.
In 2007, the chairmen of the parties that at the time made up the government coalition, Prime Minister Geir H. Haarde and Jón Sigurðsson, the Minister of Industry and Commerce, submitted a bill on the ownership and utilisation of resources (Parliamentary document no. 1064, Case no. 683 in the 133rd Parliamentary session, 2006–2007). The memorandum accompanying the Bill states: "According to the Government's policy statement of 23 May 2003, a provision to the effect that marine resources are the joint property of the Icelandic nation shall be added to the Constitution of the Republic. At the beginning of the year 2005, a committee was appointed for the task of revising the Constitution of the Republic of Iceland (the Constitution Committee). According to the Committee's intermediate report of February [2007], no final proposals have been formulated regarding the material and presentation of the constitutional provision regarding resources. The report does however state that an agreement has not been reached regarding the proposed constitutional provision that was presented in the Resource Committee's report in 2000. Different views had also emerged regarding whether the Resource Committee's proposal entailed an alteration or confirmation of the current legal situation. It is therefore clear that under the present circumstances, the Constitution Committee will not produce a proposal that satisfies the government's aforesaid policy statement regarding constitutional amendments. The chairmen of the government parties have therefore arranged for the creation of a special constitutional amendment bill addressing this matter." The Bill from the chairmen of the government parties allowed for the insertion of a new article in the Constitution, Article 79, that goes as follows:

"The natural resources of Iceland shall be the property of the nation, but with due consideration of the rights of individuals and legal entities in accordance with Article 72. They must be utilised for the benefit of the nation, as decided in more detail by law. This shall not be an impediment for private parties being granted authorisations for the use or utilisation of these resources in accordance with the law."

In the memorandum accompanying the Bill it was stated among other things that:

"In accordance with the government's policy statement, the Bill is to some extent modelled on the 1st sentence of Article 1 of Act no. 116/2006, the Fisheries Management Act, wherein it is stated that exploitable marine stock in Icelandic waters is the joint property of the Icelandic nation." [...]

The purpose of the concept "property of the nation" is to emphasise that it is in the collective interest of all Icelanders that the utilisation of resources both aquatic and terrestrial is conducted in a sensible manner. [...] The wording "property of the nation" does not, however, imply some kind of private property rights enjoyed by the Icelandic State or the nation. [...]

There is also, in the 2nd sentence of said Article, a policy statement to the effect that resources shall be utilised for the benefit of the nation. It is then left to the legislator to expand further upon how this shall be achieved in as efficient and sensible a manner as possible.

In the 3rd sentence of said Article it is stated that the policy statements of the 1st and 2nd sentences do not prevent the granting of authorisations to private parties for the use or utilisation of resources. [...] As stated in the general notes, such authorisations do not lead to individual parties being granted irrevocable authority over them [...] even if they may enjoy protection as indirect property rights."

D. The Bill submitted by Jóhanna Sigurðardóttir et al. in 2009.

In the bill submitted by Prime Minister Jóhanna Sigurðardóttir, Finance Minister Steingrímur J. Sigfússon and others in 2009 (Parliamentary Document no. 648, case no. 385 of the 136th Parliamentary session 2008–2009) allowance was made for a new constitutional provision, Article 79, on natural resources and the environment, that went as follows:

"Natural resources that are not subject to private property rights are the property of the nation. The State is their custodian and guardian and has the right to dispose of them, and monitors their utilisation with the nation's mandate as further decided by law.

All natural resources shall be utilised in as efficient a manner as possible on the basis of sustainable development, for the benefit of the nation and future generations. Natural resources owned by the nation may not be sold or given to anyone for permanent ownership.

Everyone has a right to an environment that promotes good health and where biodiversity is maintained as further decided by law. The right of the public to be informed about the condition of the environment and the effects that developments have on it, and the opportunity to participate in the formulation of decisions that have an impact on the environment, shall be ensured by law."

In the notes on the Article it was stated that its purpose was to aim for the establishment of a defined type of State ownership that would have a certain special status compared to other state property, and that it was ensured among other things that such natural resources would never by given away on a permanent basis. This was based on the Resource Committee's definition of the concept of national ownership, i.e. that this was a special type of ownership that existed in parallel with traditional private property rights granted to individuals and legal entities. This would entail that the State would by law be assigned the special property rights to natural resources on the grounds that no other legal entity or individual could prove that they had property rights over them.

E. The proposal from the Committee for Constitutional Law in 2011.

In 2010, Parliament voted to appoint a special Committee for Constitutional Law, the tasks of which would include arranging a national assembly to discuss constitutional matters and to prepare the work of the planned Constitutional Amendment Assembly. In the 2011 report from the Committee for Constitutional Law (see discussion in volume 1, pages 74–78) it is stated that in the Committee's assessment a clear demand was presented in the Constitutional Amendment Assembly, which took place a few months earlier, to the effect that the matter of the natural resources of Iceland would be addressed in the Constitution. Natural resources, whether aerial, terrestrial or marine, should be defined as "the property of the nation". The Committee therefore

proposed that the Constitution should include a special provision regarding the natural resources of Iceland and the ownership and utilisation thereof, and the Committee's proposal went as follows:

"The natural resources of Iceland are the property of the nation and they shall be utiliSed in a sustainable manner for the benefit of all the people of Iceland. The State monitors the treatment and utilisation of resources by the nation's mandate and has the authority to collect fees for authoriSations which are granted for utilisation. AuthoriSations for the utilisation of natural resources that are not subject to private property rights shall in no event result in private parties obtaining property rights or irrevocable authority over them.

The notes to the proposal include the following:

"The concept "natural resource" is herein used in a broad sense and includes any kind of benefit that may be obtained from the ground, biota, water, air, sunlight etc. [...] "Property of the nation" does not refer to State ownership nor to a special form of ownership but to the idea that the natural resources of Iceland are assets which can be of great benefit for the entire nation and therefore are the joint property of the Icelandic people or the property of the nation. Resources that are the property of the nation can be subject to property rights of private parties, the property of the State or possibly they have no owner. What is the property of the nation, however, is unassignable and indivisible, irrespective of rights enjoyed by private parties that currently exist or that may be created by legislation. [...]"

F. Bill of the Constitutional Assembly from 2011.

In 2011, Parliament appointed an advisory Constitutional Assembly after the Supreme Court ruled that the elections for the Constitutional Amendment Assembly were invalid. The Constitutional Assembly was given the task of formulating proposals for the amendment of the Constitution of the Constititution of the Republic of Iceland, no. 33/1944, in the form of a Constitutional Law Parliamentary Bill, and the Assembly was active from April to July 2011.

The Bill from the Constitutional Assembly (Constitutional Assembly 2011. Constitutional Law Parliamentary Bill with explanatory notes) included the following proposal for a provision of Article 34 of the Constitution regarding natural resources:

"Natural resources of Iceland that are not privately owned are the joint property of the nation in perpetuity. No-one can acquire these resources or any rights pertaining thereto for private ownership or permanent use, and they may not be sold or mortgaged at any time.

Among resources owned by the nation are natural assets such as exploitable stock and other marine and sea bed resources within Icelandic jurisdiction, and sources that can be the subject of water rights and power development rights, geothermal rights and mining rights. It can be provided by law that resources below a specified depth measured from the earth's surface shall be the property of the nation.

Utilisation of resources shall be done with a view to ensuring sustainable development and promoting the public interest.

The government, and the parties utilising the resources, are responsible for protecting them. The government can, on the basis of law, grant authorisation for the use or utilisation of resources or other defined public assets, for full payment of a fee and for a specified, suitable period of time. Such authorisation shall be granted on equivalent terms and shall never result in property rights or irrevocable authority over the resources."

In the explanatory notes to Article 34 it was stated that a long-standing tradition was being followed with the use of the concept of national ownership and wording from the Þingvellir Act of 1928 was used, in the spirit of Dr. Gunnar Thoroddsen, cf. his proposal previously cited, in order to explain that property belonging to the nation was property that could never be given away for private ownership or permanent utilisation, and therefore could never be sold or mortgaged.

G. The Bill from the majority of the Constitutional and Supervisory Committee of 2012–2013

The Bill from the Constitutional Committee was submitted to Parliament in July of 2011 and it was discussed there during the following parliamentary terms. Consequently the majority of the Constitutional and Supervisory Committee submitted a Constitutional Law Bill regarding the Constitution of the Republic of Iceland, based on the proposal from the Constitutional Committee. A follow-up committee report from 2013 included an altered proposal for a natural resource

provision (Parliamentary Document no. 1111, Case no. 415 in the 141st Parliamentary session, 2012–2013):

"Natural resources of Iceland that are not subject to private property rights are the joint property of the nation in perpetuity. No-one can acquire them or any rights pertaining thereto for private ownership or permanent use, and they may not be sold or mortgaged at any time. The holders of legislative and executive power are the custodians and guardians of these resources and rights, and have the right to dispose of them with the nation's mandate.

It is not permitted, whether directly or indirectly, to permanently assign to other parties any rights to geothermal sources, water sources that can be developed for energy production and groundwater, or mining rights, that are the property of the State or companies that are entirely owned by the State. The same applies to rights to water, geothermal sources and minerals on State-owned land, excluding minimal rights for domestic and farming purposes.

National ownership, according to Paragraph 1, extends to exploitable stock and other marine resources within Icelandic jurisdiction, resources on, in or under the sea bed outside fishing zones belonging to privately owned land and extending out as far as the boundaries of the territorial waters of Iceland as a sovereign state, water resources with due consideration of statutory rights of other parties for the utilisation and disposal thereof, and resources and natural assets on public land. The legislator can decide to declare more resources and natural assets the property of the nation, provided they are not subject to private property rights. On private land, the rights of owners as regards resources under the surface of the ground is limited to normal utilisation for real estate. It can be provided by law that resources below a specified depth measured from the earth's surface shall be the property of the nation.

Utilisation of resources shall be done with a view to ensuring sustainable development and promoting the public interest.

The government, and the parties utilising the resources, are responsible for protecting them. The government can, on the basis of law, grant authorisation for the use or utilisation of resources or other defined public assets, in return for the payment of a suitable fee and for a specified, suitable period of time. Such authorisation shall be granted on equivalent terms and shall never result in property rights or irrevocable authority being granted."

In the follow-up committee report's chapter on the objective of the article it was stated as follows:

"In Paragraph 1, it is provided that natural resources that are not subject to private property rights shall be the property of the nation, and furthermore the meaning of national ownership is defined. The aim with this provision is to establish a special kind of property right in additiion to traditional private property rights enjoyed by individuals and legal entities. The objective of inserting into the Constitution a provision on national ownership of natural resources is to create constitutional protection for this particular kind of property right and to prevent that the right of the nation to benefit from its joint resources will be regarded as inferior to the rights management of private property rights. [...] It is proper to state that this provision does not have an impact on such indirect property rights that may be constituted by utilisation rights or rights to exploitation that may already have been established with regard to resources that are the property of the nation."

In the explanatory notes to Paragraph 1 it was stated that the concept of national ownership was used in the same sense as in the Resource Committee's report of 2000. National ownership rights entailed that there were property rights that existed in parallel with the traditional private property rights enjoyed by individuals and legal entities, i.e. the Icelandic nation's property rights to natural resources that were not already subject to private property rights. The concept therefore constituted a new kind of property rights distinct from traditional private property rights. This new kind of property right included in principle the same authorisations that were considered to be included in the State's sovereign rights, but with the difference that by declaring certain natural resources the property of the nation, other parties were prevented from acquiring direct property rights to them, such as by tradition. The provision affirmed that no-one could acquire the resources or rights pertaining thereto for private ownership or permanent use, and that they could never be sold or mortgaged.

H. The Bill of Sigurður Ingi Jóhannsson, 2016.

Sigurður Ingi Jóhannsson, who was Prime Minister at the time, submitted a bill in the autumn of 2016 that resulted from the activities of the Constitution Committee which was appointed in 2013

(Parliamentary Document no. 1577, Case no. 841 in the 145th Parliamentary session, 2015–2016). Therein it was proposed, among other things, that a resources provision should be added to the Constitution and that this provision should read as follows:
"The natural resources of Iceland belong to the Icelandic nation. They shall be utilised in a self-sustaining manner for the benefit of all the people of Iceland. The State provides controls and supervision of the treatment and utilisation of the natural resources with the nation's mandate.
Natural resources and rights to land to which private ownership rights do not apply belong to the nation. No-one can acquire these assets or any rights pertaining thereto for private ownership or permanent use and they may never be sold or mortgaged. The holders of legislative and executive power have authority over these and have the right to dispose of them with the nation's mandate.
Normally a suitable fee shall be charged for authorisation to utilise natural resources and land rights that are the property of the Icelandic State or the nation. The granting of authorisations for utilisation shall be based in law and equality and transparency shall be ensured. Such authorisations can never result in permanent ownership or irrevocable authority over natural resources or land rights that are the property of the nation."

The text of the Bill here under discussion is based on the resources provision from the Bill submitted by Sigurður Ingi, although the text has been simplified to such extent as is possible. Minor material changes have been made, as described in the following Chapter.

5. Comparison to previous proposals

In this Chapter, the resources provision suggested herein is compared to previous suggestions (cf. Chapter 4 above).

A. Scope of proposals.

The proposals compared here are of differing scopes. Some of the provisions concern *the natural resources of Iceland in general* whereas others only concern *resources that are the property of the nation,* i.e. the resources that are the joint property of the nation. The Bill proposed herein addresses both the natural resources of Iceland, cf. Paragraph 1 of Article 1, and resources that are the property of the nation, cf. paragraphs 2 and 3. The same applies to the 2016 Bill proposed by Sigurður Ingi Jóhannsson. This Bill therefore has a wider scope than various older proposals.

B. Principal concerns in resource utilisation.

All the proposals, except for that from Dr. Gunnar Thoroddsen of 1983, address resource utilisation and provide for the principal concerns on which it shall be based. It shall nonetheless be kept in mind that due to the different scopes of the proposals, the instructions regarding resource utilisation in some of them only apply to resources that have been declared the property of the nation. All the proposals stipulate that resource utilisation shall *serve the public interest* and in most of them *sustainability* is referred to as a principal concern. This also applies to the present Bill, cf. Paragraph 1 of Article 1, and these policy targets apply to all resource utilisation irrespective of ownership. In some of the older proposals, reference is also made to the interests of future generations, cf. the Bill from Jóhanna Sigurðardóttir et al. of 2009 and the environment provision in the Bill from the Constitutional Assembly of 2011 and the Bill from the majority of the Constitutional and Supervisory Committee of 2013. This is not the case in this Bill, because it is considered that the consideration for future generations is built into the concept of sustainable development, see Chapter 3 A for more detailed information.

C. Supervision of resource utilisation.

Several proposals stipulate that the government has a duty to monitor resource utilisation or an obligation to protect the resources, but due to the different scopes of the proposals this obligation only applies to resources that are the property of the nation in some of them, see the Bill from Jóhanna Sigurðardóttir et al., the proposal from the Constitutional Assembly, and the Bill from the majority of the Constitutional and Supervisory Committee. In the present Bill, there is in Paragraph 1 of Article 1 a stipulation *that the state has an obligation to monitor and supervise the treatment and utilisation of the natural resources of Iceland* but as stated earlier, this stipulation applies to resources in general and not only those that are the property of the nation.

D. The connection between the nation and the resources, and the concept of national ownership.
All the proposals for a resources provision in the Constitution that have been submitted in recent decades aim at defining the connection between the nation and the country's resources. Most use the concept of *national ownership* to describe this connection, but the concept does not have the same meaning in all the proposals.
In the Bill from Geir H. Haarde and Jón Sigurðsson of 2007 and the 2011 proposal from the Committee for Constitutional Law, the concept of national ownership does not refer to a nation's ownership but it is explained to mean that the natural resources of Iceland are assets which the entire nation has a strong interest in and in that sense are joint property. The concept is not explained in the Bill from Dr. Gunnar Thoroddsen.
In all the other Bills, the concept of national ownership is used to mean property rights, i.e. a assets of which the nation is the joint owner. In this manner it is proposed that a new kind of property right is established to exist in parallel with traditional private property rights which are protected under Article 72 of the Constitution. This also applies to the present Bill. Further information on this can be found in Chapter 3 B and the notes on Paragraph 2 of Article 1.
As previously noted, the present Bill not only addresses resources that are the property of the nation but also the natural resources of Iceland in general. In Paragraph 1 of Article 1, the connection between the nation and resources in general is described with the wording that the natural resources of Iceland *belong* to the Icelandic nation. This wording does not refer to property rights like the concept of national ownership inPparagraph 2 but is a reference to the natural resources of Iceland being assets in which the entire nation has a great interest, and in that sense they are jointly owned valuables. It may therefore be said that the connection described in Paragraph 1 is of the same nature as the connection described in the Bill from Geir H. Haarde and Jón Sigurðsson and the proposal from the Committee for Constitutional Law with the wording property of the nation.

E. Definition of property owned by the nation.
In most of the proposals where the concept of property owned by the nation is used in the sense of property rights, it is stipulated that resources *that are not subject to private property rights* are the property of the nation. This can be seen, for example, in the Bill from Jóhanna Sigurðardóttir et al., the Bill from the majority of the Constitutional and Supervisory Committee and the Bill from Sigurður Ingi Jóhannsson. The same approach is taken in the present Bill.
In the Bill from the Constitutional Assembly, resources that are the property of the nation are defined in another manner, as therein it is assumed that resources *that are not privately property* are the property of the nation. In the Icelandic language, the word *private property* means property belonging to an individual, not to a state, municipality or cooperative society (Dictionary of the Icelandic language published by Edda, Reykjavík 2002). The word is used in the same sense in Icelandic legal language. The definition of resources owned by the nation in accordance with the proposal from the Constitutional Assembly was therefore based on who was the owner of the assets, not on the nature of the rights that applied to the assets. This definition would, among other things, mean that all resources on State-owned land and land owned by municipalities would be declared the property of the nation. This has not been the policy of other bills promoting national ownership of resources and is not compatible with the objectives of the present Bill.
According to the present Bill, it is not only *resources* that are the property of the nation but the same applies to *land rights.* This is also the case in the proposal from the Resource Committee of 2000 and in the Bill from Sigurður Ingi Jóhannsson. The concept of land rights is clarified in the notes on Paragraph 2 of Article 1 below. The Article in the Parliamentary Bill is therefore more detailed than some of the previous proposals, as it clearly addresses terrestrial and marine areas to remove uncertainty about whether the concept of resources applies to them.
The approach in the proposal from the Constitutional Assembly and the Bill from the majority of the Constitutional and Supervisory Committee was to include in the resources provision itself a list of various resources that would be considered the property of the nation. This is not the approach taken in the present Bill, as such a list could hardly be made exhaustive. Instead, it is explained in the memorandum what the concept of national ownership applies to. It is emphasised that this concept is open to interpretation and that it also extends to resources that have not yet been utilised on a great scale in Iceland, such as wind energy and solar power.

F. The legal effects of declaring resources and land rights the property of the nation.
The effects of declaring resources and land rights the property of the nation are basically the same according to all the proposals that are based on the concept that national ownership is a special form of ownership. Thus all the proposals contain provisions that aim at ensuring that assets that are the property of the nation remain the property of the nation. In many of them, the wording is to the effect that natural resources that are the property of the nation *may not be sold or given away for permanent ownership* whereas in some of them it is *that no-one can acquire property that belongs to the nation or rights pertaining to them for ownership or permanent utilisation.* The latter wording is used in the present Bill. There is no basic distinction between the meaning of these sentences. In the Bill proposed by the Constitutional Assembly and the Bill from the majority of the Constitutional and Supervisory Committee the two are joined and it is stipulated that no-one may acquire the resources, or rights pertaining to them, for ownership or permanent use and that they may never be sold or mortgaged.
In the preparation of the present Bill, it has been endeavoured to keep the text of the Bill simple and to avoid repetitions. The instructions in the Bill regarding that *no-one may acquire the resources for ownership or permanent use* entail that property that belongs to the nation may not be sold nor mortgaged and that property rights to them cannot be established by tradition. Furthermore, utilisation permits must have a time limit or be cancellable.

G. Authority over resources and land rights that are the property of the nation.
In the present Bill, it is stipulated that the holders of legislative and executive power shall have *authority over resources and land rights that are the property of the nation with the nation's mandate.* Many previous proposals include a comparable provision, see the proposal from the Resource Committee, the Bill from Jóhanna Sigurðardóttir et al., the Bill from the majority of the Constitutional and Supervisory Committee and the Bill from Sigurður Ingi Jóhannsson. The wording nonetheless varies somewhat, as in the first three the words *custody, guardianship and disposal rights* are used, whereas the Bill from Sigurður Ingi Jóhannsson uses the words *authority and disposal rights.* In accordance with the policy of the present Bill, to simplify the text of the Bill to the extent possible, the word *authority* is only used in this context and it is considered to imply governance, such as for the disposal of the resources within the limits established by the provision of the Bill. It is proper to reiterate that Paragraph 1 stipulates that the State has an obligation to monitor utilisation of resources in general.

H. Authorisation for the utilisation of resources that are the property of the nation or of the sSate shall be grounded in law.
In most of the proposals, it is specified that the government can grant authorisations for the utilisation of resources over which the state has authority and usually the conditions that must be met are also specified. This is addressed in Paragraph 3 of the present Bill. It should be emphasised that the scope of this paragraph is wider that that of corresponding provisions in most of the older proposals. That is because it applies not only to resources and land rights that are the property of the nation, but also when such assets are the property of the State, for instance when they are located on State-owned land. The same conditions must therefore be met to obtain authorisation for utilisation of assets that are the property of the nation as for assets that are the property of the State. In most of the older proposals, this aspect is only discussed in connection with resources that are the property of the nation.
The proposals usually state that the granting of authorisations for utilisation shall be grounded in law, which means that the legislator is given the task of establishing rules and defining the criteria that shall be the basis for the government's decisions regarding the granting of authorisations for the utilisation of jointly owned assets. This prevents the holders of the executive power to have complete governance over these interests. The same approach is taken in the present Bill. It is furthermore stated therein that *equality and transparancy* shall be ensured in the granting of authorisations for utilisation. A reference to equality can also be found in the proposal from the Constitutional Assembly and the Bill from the majority of the Constitutional and Supervisory Committee, but in the Bill from Sigurður Ingi Jóhannsson, as in the present Bill, it is required that both equality and transparancy shall be ensured.

I. Conditions required for the granting of authorisations for utilisation.

The principal conditions that according to most of the proposals are required for authorisations for the utilisation of jointly owned assets are, first, that the authorisations shall be of limited duration and, second, that a fee shall be charged for them, cf. the proposals from the Resource Committee and the Committee for Constitutional Law, the Bill from the Constitutional Assembly, the Bill from the majority of the Constitutional and Supervisory Committee, the Bill from Sigurður Ingi Jóhannsson, and the present Bill. The elaboration of this aspect, however, varies between proposals.

As regards the limited duration, it is stated in the proposal from the Resource Committee that it is required that *authorisation for utilisation shall be temporary or alterable with suitable notice, as further defined by law.* In the proposal from the Committee for Constitutional Law and the Bill from the majority of the Constitutional and Supervisory Committee it is stipulated that authorisations for utilisations may be granted for *specified, suitable periods of time.* Also included is a reservation about property rights, i.e. it is affirmed that such authorisations never result in property rights or irrevocable authority over the resources. The proposal from the Committee for Constitutional Law does not specifically state that authorisations for utilisation shall be of temporary duration, but it does contain a reservation about property rights corresponding to that in the proposal from the Committee for Constitutional Law. This is also the case in the Bill from Sigurður Ingi Jóhannsson, wherein it is stated that *authorisations for utilisation never result in permanent property rights or irrevocable authority over natural resources or land rights that are the property of the nation.* In the present Bill, Paragraph 3 does not state that authorisations for utilisation shall be of limited duration. The reason for this is that the provision of Paragraph 2, wherein it is stipulated than *no-one can acquire assets that are the property of the nation or rights pertaining to them for ownership or permanent use,* entails that authorisations for the utilisation of property that belongs to the nation must always be either of temporary duration or cancellable. This also entails that authorisations for utilisation cannot lead to permanent property rights or irrevocable authority over these jointly owned assets.

It is proper to point out that the wording of the proposal from the Committee for Constitutional Law and the Bill from the majority of the Constitutional and Supervisory Committee *that authorisations for utilisations may be granted for specified, suitable periods of time* must be understood to mean that utilisation permits that are of indeterminate duration but cancellable would not be compatible with this provision. This item excludes the proposals from the present Bill, and that from Sigurður Ingi Jóhannsson and the proposal from the Resource Committee of 2000.

The wording differs between proposals wherein it is stipulated that a fee shall be charged for authorisations to utilise resources that are the property of the nation. In the proposal from the Resource Committee, it is simply stated that authorisations for the utilisation of resources and rights that are the property of the nation may be granted *for a fee*. The Committee for Constitutional Law proposed a provision wherein it is stated that the State can *charge a fee* for authorisations to utilise resources. In the proposal from the Committee for Constitutional Law, it is stated that authorisations for utilisation may be granted for *a full fee* whereas in the Bill from the majority of the Constitutional and Supervisory Committee, the wording was altered to *for a suitable fee.* In the Bill from Sigurður Ingi Jóhannsson the following was stated: *Normally a suitable fee shall be charged for authorisation to utilise natural resources and land rights that are the property of the Icelandic state or the nation.*

A considerable amount of criticism was directed towards the wording in the proposal from the Committee for Constitutional Law concerning that authorisations for utilisation can be granted *for a full fee*. It is stated in the memorandum accompanying the Bill from the Committee for Constitutional Law that the wording of the private property provision in the Constitution was used for reference, and therein the wording full fee is used to mean compensation for expropriation, i.e. when property is taken from its owner on the basis of law, for the public interest. Commenters pointed out that it was not clear what the instructions regarding full fee in relation to the granting of authorisations for utilisation entailed, and that the same views could not apply in this regard as when full price is required as compensation for expropriation. As previoously noted, the wording was altered in the course of the treatment by the majority of the Constitutional and Supervisory Committee and in its Bill a *suitable fee* is stipulated.

Discussion about charging fees for the use of resources that are the property of the nation in recent years has shown that allowance must be made for the possibility of some utilisation taking place without a fee being charged. Examples of this are societal projects conducted by public entities, such as water and heating supply plants, where profit is directed to society in the form of service. The same could apply in more cases, e.g. with regard to experimental projects or where there is uncertainty regarding profitability. This was addressed in the Bill from Sigurður Ingi Jóhannsson with the wording *usually a suitable fee shall be charged,* which entails that charging fees is the general rule but that exceptions may be made to that rule.
The Bill proposed here departs from all previous proposals where the collection of fees is mentioned in that it is restricted to authorisations for commercial exploitation. In this manner, it is more clearly defined when the charging of fees is appropriate, and according to the proposal it is mandatory in those cases. There are no specific instructions regarding the amount of fees for authorisations for utilisation, and the legislator has the task of determining the amount of fees when they are mandated by law. The legislator is nonetheless bound by the policy target of Paragraph 1 to the effect that the utilisation of resources shall be for the benefit of all the people of Iceland. This means that there is a condition that when the nation is the owner of the assets it shall enjoy reasonable profit from its property. This policy target remains relevant when the government is given the task of negotiating a fee for authorisations for utilisation.

6. Consultation

A draft constitutional law bill for the amendment of the Constitution (the natural resources of Iceland) was published in the government's consultancy portal on 10 May 2019 and a time limit was given for the submission of comments until 30 June of the same year (cf. S-128/2019).
Comments were received from a total of 19 individuals and 7 legal entities. The topics of the comments can be divided into four main categories: 1. Declaration of support for the proposal from the Committee for Constitutional Law for a resources provision in the Constitution. 2. Comments on the terms used, mostly to the effect that their meaning was not sufficiently clear. 3. Other material comments. 4. That the effects of the Bill have not been assessed satisfactorily.
Since the Bill was published the following alterations have been made to the text of the provision, to some extent accommodating the comments submitted: It is stated in paragraph 1 that the utilisation of the natural resources of Iceland shall be for the benefit of all the people of Iceland. A sentence was added to the same paragraph to the effect that the State shall monitor and supervise the treatment and utilisation of resources. Finally, it is deemed sufficient to discuss the government's authority over resources that are the property of the nation in paragraph 2, as it is considered unnecessary to also use the concept of disposal rights.
A new chapter has been written in a memorandum wherein the proposal according to the Bill is compared to previous proposals from as far back as 1983. This chapter contains answers to various questions that were presented in the comments. Finally, the entire memorandum has been reviewed with help from experts.
The outcome of the consultation is described in further detail in a separate document that has been published in the consultancy portal.

7. Assessment of effects.

Principal conditions for resource utilisation.

As previously noted, Paragraph 1 of Article 1 includes a discussion of the principal conditions for resource utilisation. According to sentence 3 of said paragraph, the State shall monitor and supervise the treatment and utilisation of the resources and therefore it is responsible for ensuring that the utilisation is compatible with the objectives established in sentence 2. According to current law, the Icelandic State has general authority (sovereignty) with regard to the natural resources of Iceland, and laws have been enacted regarding the utilisation and treatment of the principal resources that are presently being utilised. In some of these laws, reference is made to principal views that shall be the basis for utilisation. These views are either expressed in provisions regarding the objective of the laws, or they are specifically mentioned in provisions regarding the granting of utilisation permits.
One example is that the Icelandic fisheries management system is based on certain views that are established in the objectives provisions of major legislation concerning this field. Article 1 of the Fisheries Management Act states that the objective of that Act is to promote the preservation

and efficient utilisation of exploitable stocks and thereby ensure reliable conditions for employment and habitation in Iceland. A comparable provision can be found in Article 1 of the Act on fishing in Iceland's fishing jurisdiction no. 79/1997. According to Article 1 of the Act on the exploitation of commercial marine stocks no. 57/1996, that Act is intended to promote sustainable utilisation of exploitable stock, so as to ensure maximum results for the Icelandic people in the long run.
In Article 17 of the Natural Resources Act, special attention is given to the principal views that shall be the basis for granting of utilisation permits. Therein it is stated that it shall be ensured that due consideration is given to environmental concerns in utilisation, that it is efficient from a macroeconomical point of view, and that any utilisation that has already commenced in surrounding areas is taken into consideration. However, there is no further elaboration in the Act nor in the preparatory works of what this condition entails, and therefore the executive power is given considerable leeway for assessment in this regard.
In Article 21 of the Hydrocarbons Act there is a provision to the same effect.
According to Paragraph 2 of Article 1 of the Water Act, its purpose is, among other things, to ensure sensible utilisation of water resources and long-term conservation thereof through preventive action based on sustainable development.
There is no discussion of principal views regarding the utilisation of public land in the Public Lands Act. It shall nonetheless be mentioned that for utilisation of public land resources, it is in various cases necessary to obtain, in addition to authorisation in accordance with the the Public Lands Act, an authorisation in accordance with the laws that apply to the relevant resource.
The Sea Bed Act also contains no provisions regarding the principal views on which utilisation of the resource shall be based.
In Article 1 of the Salmon and Trout Fishing Act, however, it is stated that the objective of the Act is to provide for freshwater fishing rights and sensible, efficient and sustainable utilisation of freshwater fish stocks and their preservation. According to Article 2 of the Hunting Act, its purpose is to ensure the development and natural diversity of wild animal populations and organise hunting and other utilisation of animals.
In the Revegetation Act no. 155/2018, there is in Article 1 a declaration of its purpose to protect, reclaim and improve the nation's resources that consist of vegetation and soil, and to ensure sustainable utilisation of land. In Article 1 of the Forests and Forestry Act no. 33/2019, there is a presentation of the diverse objectives of the Act, among which are the conservation of the natural forests of the country and the promotion of their increased proliferation, the conservation and reclaiming of biological diversity and sustainable utilisation of forests, so that forest resources yield maximum economic, social and environmental gain for society.
It is clear from the aforesaid examples that it varies whether or how reference shall be made to the views that shall be the basis for resource utilisation in each case. If the Bill becomes law it may therefore be expected that it will be necessary to review the major systems of law that address resource utilisation, and to assess whether there is reason to specify more clearly what the principal conditions for utilisation shall be.

Prohibition against permanent assignment of resources and land rights that are the property of the nation.
Even though it may be said that in the policy that the State shall have ownership of public land and resources that previously had no owner there shall be included the principal views that these assets shall not be permanently assigned, this is not necessarily stated in law that concern these assets. However, if the Bill becomes law it will be made clear that permanent assignment of these rights will be prohibited.
For example it is not specified in the Public Lands Act, the Sea Bed Act, the Hydrocarbons Act or the Fisheries Management Act that the land rights and the resources discussed therein may not be assigned permanently. However, the 3rd sentence of Article 1 of the last-named Act states that allocation of fishing permits according to the Act does not confer upon individuals any property rights or irrevocable authority over fishing permits.
Specific provisions regarding the prohibition of the assignment of geothermal and surface water rights held by public bodies can be found in paragraph 1 of Article 3 of the Natural Resources Act, cf. Article 6 of Act no. 58/2008, and there is a similar provision in paragraph 1 of Article 16 of

the Water Act. According to the aforesaid provision, the State, municipalities and companies wholly owned by them are prohibited from assigning ownership of geothermal energy or groundwater, directly or indirectly and permanently, except for domestic and farming purposes, cf. Paragraph 1 of Articles 10 and 14 of the Natural Resources Act. According to paragraph 1 of Article 16 of the Water Act, these parties may not directly or indirectly assign the rights to dispose of and utilise water with the potential for generation of more power than 10 MW. However, in the provisions of paragraph 2 of both Articles, allowance is made for the authority to assign rights to the state, municipality or a company that is wholly owned by the state and/or municipalities and expressly established in order to manage ownership of these rights. The provisions not only address resources that are the property of the nation, but also apply to rights over such resources that are located on State-owned lands and rights that are owned by public bodies that have been separated from land and made into independent real estate rights. As regards minerals, special care must be taken in authorisations from the Minister to exclude mineral rights on private land, cf. Article 9 of the Natural Resources Act. In light of the content of that Article, it does not apply to public land, cf. the definition of the concept of private land in the Act. This means that there is no unequivocal prohibition against separating mineral rights from public land. If this Bill becomes law there should be a specific stipulation regarding such prohibition in the Natural Resources Act. As regards fishing and hunting rights, whether for freshwater fish, cf. the the Salmon and Trout Fishing Act, or for mammals and birds, cf. the Hunting Act, such rights cannot be permanently separated from the real estate to which they are connected and sold separately. On one hand, such prohibition is stipulated in paragraph 1 of Article 9 of the Salmon and Trout Fishing Act, and on the other hand in paragraph 3 of Article 8 of the Hunting Act. In the former case, allowance is nonetheless made for the Minister to grant an exception from this prohibition. In the latter provision, the prohibition against separation is meant to apply to a land holding. In the explanatory notes to Article 1 of the Hunting Act, this concept is explained as a land parcel or another territory that is subject to direct property rights held by an individual or a legal entity, including a municipality or the State. The prohibition against separating hunting/fishing rights from land in accordance with Paragraph 3 of Article 8 of the Hunting Act therefore does not, strictly speaking, apply to public lands. In both instances, with regard to the rights to utilise freshwater fish and bird and mammal resources, it is furthermore permitted to allocate the relevant rights for a limited period of time, no more than 10 years, cf. Paragraph 2 of Article 9 of the Salmon and Trout Fishing Act, and the previously cited paragraph 3 of Article 8 of the Hunting Act. In this regard, there is reason to mention that the aforesaid rights, i.e. outside land that is subject to private property rights, are subject to special arrangement. As regards hunting birds and mammals, the public has the freedom to roam, so all Icelandic citizens and foreign citizens domiciled in Iceland are permitted to hunt such animals on common land and upland ranges outside land holdings of farms and to fish in the economic zone outside fishing zones belonging to privately owned land, cf. Paragraph 1 of Article 8 of the Hunting Act. This rule will no doubt be interpreted to mean, with reference to the Public Lands Act, that the right applies to all the land that is and will be considered public land. The right to catch freshwater fish on public land that may be the property of individuals or legal entities is part of the so-called upland range property rights, cf. Paragraph 2 of Article 5, cf. Article 7 of the Salmon and Trout Fishing Act.
The prohibition in Paragraph 2 of Article 1 against the assignment of resources and land rights that are the property of the nation does not apply to authorisations for the utilisation of these assets, which the state allocates to individuals or legal entities. In the current legislation, the prohibition against assignment and mortgaging of such utilisation rights is not absolute, even though this is the principle in many laws. In such acts, allowance is often made for the possibility of obtaining a special authorisation for assignment or mortgaging of the rights addressed therein. See for example Article 32 of the Natural Resources Act, Article 35 of the Electricity Act, Article 30 of the Hydrocarbon Act and Article 17 of the Aquaculture Act no. 71/2008. In this regard reference may also be made to Article 6 of Article 12 of the Fisheries Management Act regarding assignment of the quota shares of fishing vessels. Even though the Article in the Bill does not entail a prohibition against assignment of utilisation authorisations, the legislator nevertheless has discretion to provide for such prohibition in individual acts of law.

Charging of fees for utilisation authorisations.

The provisions of current laws regarding the charging of fees for utilisation authorisations are of a varied nature. Some acts of law include authorisation provisions, i.e. the government has the authority to decide or negotiate a fee for the utilisation of the rights or resources to which the relevant acts apply. If the Bill becomes law, such provisions will have to be revised to reflect that there is an obligation to charge a fee for commercial exploitation. In this regard, it is proper to mention paragraph 4 of Article 3 of the Public Lands Act, wherein it is stated that the Minister has the authority to decide or negotiate fees (rent) for the utilisation of rights which he/she authorises, and municipalities have a comparable authority. There is also an authorisation provision regarding fees in paragraph 2 of Article 3 of the Sea Bed Act, wherein it is stipulated that the National Energy Authority has the authority to decide or negotiate fees (rent) for extraction or utilisation which that institution authorises in accordance with Paragraph 1 of the same Article.
In the special provisions of Article 3 of the Natural Resources Act and Article 16 of the Water Act, previously discussed, it is stipulated the the Minister in charge of negotiation in the field to which the provisions apply shall negotiate a fee (rent) for utilisation rights. In these articles, it is furthermore stated that the disposal of and payment of fees for the utilisation of rights pertaining to public lands shall be in accordance with the provisions of relevant laws. As previously noted, the Public Lands Act only contains authorisation provisions regarding fees. This means that the obligation to negotiate fees only applies to rights over geothermal energy, groundwater, and water with the potential for generation of more power than 10 MW on State-owned land and such rights as have been separated from land and exist as independent real estate rights.
With regard to earth resources other than those addressed in Article 3 a, the provisions of Paragraph 1 of Article 31 of said Act shall apply. Therein it is stated that the Minister has the authority to negotiate with the holders of utilisation permits regarding fees for resources on land owned by the State, after consulting with the party that has authority over the property. In Paragraph 2 of Article 31, it is affirmed that negotiations of fees for the utilisation of resources on public lands shall be in accordance with the Public Lands Act.
In Paragraph 3 of Article 4 of the Electricity Act, it is required that a holder of authorisation for power development on private land has reached an agreement with the landowners and the owners of energy resources regarding a fee before activities are commenced. The final sentence of the provision states that this also applies to utilisation of resources on public land as applicable. It is probable that the provision must be understood to mean that it does not entail a direct requirement for the collection of a fee, as it is possible that an agreement is reached whereby utilisation will be free of charge.
Article 38 of the Electricity Act specifically addresses activities on State-owned land. It is provided that the Minister has the authority to negotiate with the transportation company, and the parties that are granted authorisation in accordance with the law to conduct activities on State-owned land, regarding fees for land and the resources available on them at each time. In Paragraph 2 of said Article it is stated that activities conducted on public lands shall be in accordance with the provisions of the Public Lands Act.
As regards fees for researching and processing hydrocarbon, there is in paragraph 7 of Article 7 of the Hydrocarbon Act a stipulation that the holder of the authorisation shall pay an annual fee to the Treasury for the use of a research area. The amount of the fee is determined in the Act. A separate Act applies to taxation of hydrocarbon processing, Act no. 109/2011. According to Article 4 thereof, the holders of research and utilisation permits shall pay a separate production fee that is calculated from the value of the volume, by barrel, of hydrocarbon that is processed each year on the basis of the activities that are subject to authorisation.
According to Article 20 of the Fisheries Management Act, everyone who is allocated harvest rights in accordance with the Act, or bring in catch when fishing is managed in another way than by allocating catch quotas, shall pay fishing quota fees in accordance with relevant laws. According to Article 1 of the Act on fishing quota fees no. 145/2018, the purpose of the fees is twofold: to meet the State's expenses from research, management, monitoring and supervision in connection with fishing and fish processing, and to ensure that the nation as a whole has a direct share in the profit from the utilisation of exploitable marine stock. The fishing quota fee is a specified amount per kilogram of ungutted catch brought ashore, which varies by species and is determined for each calendar year.

Finally, it is worth mentioning the Act on the charging of fees for marine aquaculture and the aquaculture fund no. 89/2019. Therein it is stipulated that a fee shall be paid to the Treasury by the holders of authorisations for the operation of marine aquaculture plants. The levying of the fee depends on the weight of the product at the time of slaughtering, cf. Paragraph 1 of Article 3, and the amount thereof is based on the average international market price, cf. Paragraph 2 of Article 2.
It may be expected that various laws must be amended in light of the Bill's provision on the levying of fees, if the Bill becomes law.
According to Paragraph 3 of the provision of the Bill, it is the task of the legislator to stipulate that a fee shall be charged for authorisations for the commercial utilisation of resources. When utilisation is not done for commercial reasons, the legislator has the freedom to decide whether a fee shall be charged or not. This applies in cases such as with regard to societal projects conducted by public entities, where profit is directed to society in the form of service, such as water and heating supply plants. It is at the legislator's discretion to determine the arrangement whereby fees are levied and what the amount of fees shall be, although in the latter case, the legislator is restricted by the policy targets of Paragraph 1 regarding sustainable utilisation for the benefit of all the people of Iceland.
It is proper to address the effect which the provision of the Bill has on access granted to tourists and the utilisation of land for tourism purposes. In the Constitutional Law Bill regarding environmental protection, submitted in parallel with the present Bill, it is stated that the public has the right to travel through the land and dwell there for a legitimate purpose, but also that the meaning and limits of this right according to law shall be discussed further. The right of the public to access land is discussed further in the memorandum to the aforesaid Bill. In current law, no material difference is made between the right of individuals to travel through the land based on whether they are part of a group tour that is organised by a company or travelling on their own, see Article 24 of the Nature Conservation Act no. 60/2013.
It is not considered that the right of access enjoyed by the public prevents rules being established, for instance regarding commercial use by tourism companies of public land or other State-owned land to which the Article of the Bill applies. Such rules might entail that authorisation would be required for the use. When granting such authorisation, it would be necessary to abide by the provisions of Paragraph 3 of the Article of the Bill regarding the charging of fees, and Paragraph 2 regarding that use cannot be permanent, which means that it must be of temporary duration or cancellable.
There are various examples in Icelandic legislation where a distinction is made between authorisations granted to the public for the utilisation of natural resources for personal use, and authorisations granted for the use of such resources for commercial purposes. It could be said that the fisheries management system is based on this distinction. Commercial fishing requires a fishing permit and, depending on the situation, allocation of harvest rights, cf. Articles 4 and 8 of the Fisheries Management Act. According to Article 6 of said Act, cf. Article 2 of Act no. 66/2009, the public has the right to catch fish in their leisure time for personal consumption, without a permit being required. Here it may be added that according to the same Article, tourism companies do have to obtain a special permit to operate a boat for leisure fishing, and this fishing is subject to certain conditions. In Article 27 of the Nature Conservation Act no. 60/2013, it is stated that everyone is permitted to gather vegetation on the land and shores of public lands, and the public also has a right to gather edibles for personal consumption in unused parts of privately owned land. However, according to Paragraph 4 of said Article, the Minister has the authority to establish, by regulation, provisions regarding the gathering of berries, mushrooms, Iceland moss, herbs and shore vegetation for commercial purposes, such as rules regarding sustainable use, and that the Icelandic Institute of Natural History shall be informed about the quantities and species that are gathered, and the location where they are gathered.

Temporary duration of authorisations.
It is stipulated in sentence 2 of Paragraph 2 of Article 1 that no-one may acquire natural resources or land rights that are the property of the nation for ownership or permanent use. This means, among other things, that utilisation authorisations must be of limited duration or cancellable. It is not possible to establish a general rule regarding what shall be considered appropriate time limits in the granting of utilisation permits or the negotiation of utilisation agreements. This depends on

the nature of the relevant resource and the profession which the utilisation involves, among other things with regard to the appropriate depreciable life of the investment required by the resource utilisation. The legislator must be entrusted with the assessment of this, but it is clear that the provision of the Bill establishes certain limits regarding how long the duration of the time of validity of utilisation authorisations can be. Applicable laws contain examples where the duration of periods for utilisation vary greatly.

As previously noted, Article 3 a of the Natural Resources Act and Article 16 of the Water Act contain specific provisions regarding the rights which public bodies have to utilize geothermal sources, ground water and water with the potential for generation of more power than 10 MW. According to Paragraph 3 of both the aforementioned Articles, the State, municipalities and companies owned by them that are specifically established to hold ownership of these rights have the authority to grant temporary utilisation rights to them for up to 65 years at a time. It is furthermore provided that the holder of the rights is entitled to an opportunity to negotiate an extension thereof when half the agreed utilisation time has passed. This concerns agreements for use or utilisation. It may be mentioned that this provision has been under review due to comments from the EFTA Surveillance Authority to the effect that the duration shall be determined according to the lessee's need to recover the investment with a suitable rate of return, and that the lessee shall not be given priority when the agreement is renewed.

Utilisation of many resources is subject to authorisation according to Icelandic law and this applies equally to resources to which paragraph 3 applies, i.e. resources that belong to the the Icelandic State or that are the property of the nation, and resources that are subject to the property rights held by other parties. It is often the task of lower-tier authorities to grant authorisations, and decisions regarding the granting or refusal of authorisations can therefore be appealed to authorities at a higher tier. However, this does not apply to authorisations for the utilisation of resources and land parcels that are part of public lands, due to the fact that in principle the power to grant authorisations is held by the Minister.

With regard to some resources, it is stipulated by law that utilisation permits shall be of temporary duration. For example, authorisation for the utilisation of sea bed resources and for the processing of hydrocarbon is granted for 30 years at a time, cf. Paragraph 1 of Article 4 of the Sea Bed Act and Article 10 of the Hydrocarbon Act. This involves a clash between the interests of the utilszing party and those of the owners of the resources. Public authorities must therefore have some leeway with regard to deciding the maximum duration. In this context, reference may be made to the discussion of the assessment of suitable periods of duration for water and geothermal rights in the report from the Prime Minister's Committee on the consequences of permanent assignment of such rights. (The arrangement of leasing water and geothermal rights that are the property of the Icelandic State, Report of the Prime Minister's Committee appointed in accordance with Temporary Provision III of Act no. 58/2008. March 2010).

Temporary duration of authorisation is not required in all instances. For example, it is not mentioned in the Public Lands Act that authorisations shall be of temporary duration, nor does the Act include any revision authorisation or provisions regarding cancellation. According to an amendment that was made to paragraph 2 of Article 4 of the Act by Act no. 34/2020, the Minister now has the authority to establish by regulation more detailed rules regarding the treatment and utilisation of public lands, e.g. regarding fees for use and the duration of such use. As previously noted, in various instances authorisation is also required according to other laws when the utilisation concerns resources on public lands. The Electricity Act has no provision regarding limited duration of authorisation for power development, but according to Paragraph 2 of Article 6 it can be required that the authorisation shall be revised after a specified amount of time has passed, provided that the criteria underlying the conditions for the authorisation have changed considerably. In this context, it should be kept in mind that a significant proportion of power development rights owned or under the custody of the Icelandic State is subject to the special provision of Article 16 of the Water Act, whereby it is stipulated that utilisation agreements shall be of temporary duration. According to the Natural Resources Act, it is expected that the time of validity of utilisation authorisations shall be specified, cf. item 2 of Article 18, and that it is permitted to insert a revision provision, cf. Paragraph 1 of Article 17. In Article 20 of said Act there is an authorisation for cancellation.

If this Bill becomes law, it is likely that individual Acts will have to be amended in order to ensure that they meet the requirement according to the provision regarding limited duration, i.e. provisions that concern authorisations for the utilisation of resources and land rights that belong to the nation.

Effects of the Bill on the organisation of resource utilisation.
Previously, there was a discussion of the effect that the Bill will have on existing law, if it becomes law. It is worth mentioning the effects that the Bill will have on the organisation and development of resource utilisation in Iceland in future decades. It is rare to find economies that are as dependent on resource utilisation as the Icelandic economy. Much must therefore be taken into account regarding the effects of amendments to the principles of resource utilisation in Iceland. In order to clarify this, reference can be made to the enactment of the prohibition against the assignment of water and geothermal rights that belong to the Icelandic State, through Act no. 58/2008, which entailed among other things an amendment to the Water Act and the Natural Resources Act. It was provided that the State and municipalities and companies owned by them did not have the authority to permanently assign water rights to which the Water Act applies, more specifically the right to dispose of and utilise water with the potential for generation of more power than 10 MW. In the same manner, the aforesaid parties do not have the authority to permanently dispose of the water rights to which the Natural Resources Act appies, i.e. geothermal and ground water rights, except for domestic and farming purposes. It is nevertheless permitted to dispose of such rights on a temporary basis, for a maximum of 65 years. The objective with these amendments was, among other things, to establish rules regarding the ownership of publicly-owned resources in order to ensure that the most valuable water and geothermal rights in the possession of the state or municipalities, directly or indirectly, would remain in the possession of these parties (see Parliamentary Document no. 688, Case no. 432 in the 135th Parliamentary session, 2007–2008).
Following this act of legislation a committee was appointed in accordance with the instructions of the temporary provision of the Act, for the purpose of discussing the arrangement of leasing water and geothermal rights owned by the State. The Committee was to consider what fees should be charged for leasing, the period of leasing, renewal of leasing agreements and other items concerning the rights and obligations of the parties involved, and to assess what action was required in order to ensure sustainable and efficient utilisation of the resources. The Committee submitted its report in March of 2010 (The arrangement of leasing water and geothermal rights that are the property of the Icelandic State. Report of the Prime Minister's Committee appointed in accordance with Temporary Provision III of Act no. 58/2008. March 2010).
Even though this report only addresses water and geothermal rights, it contains various other material and discussions that can be of use when determining what measures would be necessary following the establishment of a resources provision in the Constitution, which entails a prohibition against permanent assignment of rights to resources that are the property of the nation.
Chapter 4 of the report includes a discussion about agreements regarding water and geothermal rights owned by the State and/or the utilisation thereof, but the overview is not exhaustive. It does however show that the status of water and geothermal rights as regards property rights is not always clear, and that auhorisations for utilisation are varied in nature. There is also a discussion of cases where energy companies utilise water rights on the basis of special authorisations without any permanent authorisations relating to property rights being transferred from the state to these parties. It is pointed out that there is some uncertainty regarding the authorisations of the energy companies under such circumstances, including as regards the period of time and thereby the duration of the authorisations, various reciprocal obligations, etc. (Arrangement of leasing, page 136).
It is pointed out in the report that according to applicable law there is no consistency regarding what holders of State authority are the custodians of these resources and the real estate rights connected to them. Thus the matters concerning them are divided between many Ministries. It is stated in the report that in future it must be considered desirable that custody over the resources discussed is in the hands of one body, and that in a wider context consideration might be given to whether the same should not apply to the natural resources of the State in general (Arrangement of leasing, page. 135).

Substantial discussion of the effects that amendments will have on the fisheries management system can be found in reports that have been written in connection with bills proposing new laws regarding the management of fisheries in recent years. One such is the report from the team appointed by the Minister of Fisheries and Agriculture in 2009 regarding the revision of laws on fisheries management (Report from the team for revision of laws on fisheries management. Uncertain issues, analyses, reports and options with regard to alterations of the management of fisheries. The Ministry of Fisheries and Agriculture. September 2010. This report addresses different solutions in the management of fisheries and their effects on fishing activities and society. It also contains the views of experts and stakeholders regarding alterations to the arrangement of fisheries management and an assessment of their effects. It is also proper to mention the memorandum from the expert team appointed by the Minister of Fisheries and Agriculture in 2011 for the task of assessing the economic effects of a bill that involved alterations to the management of fisheries (Memorandum on the economic effects of the bill for new laws regarding the management of fisheries according to Parliamentary Documents 1475. Expert team appointed by the Minister of Fisheries and Agriculture. The Ministry of Fisheries and Agriculture. June 2011). Therein the effects on the operation of fishing ventures, macroeconomic effects and the effects on residency pattern are specifically addressed. These authorisations, like many others concerning the same subject, emphasise the importance of a regulatory system for the management of fisheries and the extent of the effects which alterations thereto can have.

Effects on utilisation authorisations that have been established on the basis of current law.
It should be pointed out that if the Bill becomes constitutional law, the provision will not automatically disrupt any rights that may be entailed in utilisation authorisations that have already been established with regard to resources and land rights that are the property of the State or of the nation. It may nevertheless be expected that some current agreements concerning the utilisation of resources over which the State has custody or utilisation permits will not be considered compatible with the provision as regards time limitations and/or the charging of fees. This would have to be addressed and it would be the task of the legislator to provide for ways in which to do so. In legislative action of this kind it is imperative to take into account general viewpoints concerning retroactive effects of laws.
It has been considered that the legislator in general has very limited leeway to intervene in current agreements so as to cause disruption to the legal status of the parties thereto. The same viewpoint applies with regard to rights that are protected under the Constitution and it is acknowledged that the legislator has limited leeway when it comes to establishing laws that impair such rights. The legislator can nevertheless provide for general impairments, not subject to liability, to such rights, provided that such lawmaking is necessary and that important public interests are at stake. In such cases, proportionality and equality must also be ensured.
Authorisations for utilisation or use is usually considered to be property rights. Property rights can be of various kinds and it is worth reiterating that in both the interpretation of Paragraph 1 of Article 72 of the Constitution, and Article 1 of the 1st amendment to the European Convention on Human Rights regarding the protection of property rights, the underlying grounds are understood in a very broad sense. The term direct property rights is used when the owner of a property has all the authorisations that are considered to be included in the property rights, irrespective of whether they apply to the utilisation fo the property, the disposal therof, such as selling or mortgaging, or other aspects. The owner then has exclusive rights over the property, which are only subject to such limitations as are imposed by law or derived from limited rights enjoyed by others with regard to the same property. The owner of a property can grant to another party limited rights to the property, such as utilisation rights, and the relevant party then becomes the owner of a share in the owner's rights, which is much more limited, usually of temporary duration, and may be subject to reservations. Such rights are called indirect or limited property rights. Utilisation authorisations granted by the government, i.e. utilisation permits, may entail such property rights. Indirect property rights are in general protected under Article 72 of the Constitution for the duration of their validity, even though this legal protection may be more limited than the protection of direct property rights. A simple yet clear example to explain this would be a party who has traditional and direct property rights to a house. That party's rights are protected under Paragraph 1 of Article 72 of the Constitution. This also applies to the rights enjoyed by a

tenant who has leased the aforesaid house for a period of one month. These indirect property rights are therefore protected by Paragraph 1 of Article 72 of the Constitution for the time of validity for those rights, and the tenant will not be deprived of these limited and temporary rights of tenancy without compensation. However, when the agreed lease term has passed, these rights are lost and the former tenant enjoys no further protection under the cited provision of the Constitution. Protection under Article 72 of the Constitution and the European Convention on Human Rights is not restricted to the aforesaid and traditional property rights but the concept is interpreted in a wide sense and includes, among other things, copyright and intellectual property rights of various types, and rights entailed by claims, etc.

The decision of the Supreme Court of Iceland of 27 September 2007 in case no. 182/2007 involved the consideration of whether legislation that among other things entailed that a 30-year utilisation permit for a company for extracting material from the sea bed was cancelled fifteen years earlier than agreed, was in violation of Articles 72 and 75 of the Constitution regarding property rights and freedom of trade. The Supreme Court found among other things that in the legislator's assessment, the changes entailed in the legislation were required for the public need, and that the courts had the power to decide whether proper and legitimate views were considered when that assessment was made. The finding includes the following:

"Important and evident public interest are at stake when it comes to the conservation and efficient utilisation of the resources of the sea bed. It is required for the public interest that limits are imposed on the freedom that people have to utilise these resources for profit. It is clear from the aforesaid that the changes that were made with Act no. 101/2000 were characterised by increased commitments from the Icelandic State on an international level, and changed attitudes regarding conservation of the environment. The changes were of a general nature and relevant to the issues, and it is not demonstrated that they were not supported by solid arguments or official legislative views. Therefore the provisions of Articles 72 and 75 of the Constitution do not prevent the provision for management of the utilisation of resources of the sea bed, as was done with Act no. 101/2000."

From this decision, it can be inferred that public interest relating to the conservation of the environment and the efficient and sustainable utilisation of jointly owned resources is of great importance as the basis for impairing constitutionally protected rights through retroactive legislation.

As regards the fisheries management system, the Bill includes an affirmation of the reservation which the 3rd sentence of Paragraph 1 of the Fisheries Management Act no. 116/2006 entails, and therefore does not entail an automatic alteration of the status of allocated fishing permits. The Supreme Court has in a number of decisions reviewed the meaning of this proviso with regard to the duration and legal protection of allocated fishing permits. In the decision of the Supreme Court of Iceland of 26 March 2013 in case no. 652/2012 it is stated amongh other things that:

"[…] according to the 3rd sentence of Article 1 of Act no. 116/2006 the allocation of fishing permits does not constitute property rights or irrevocable custody over them for individual parties, as aforesaid. Harvest rights are therefore only permanent in the sense that they cannot be cancelled nor altered except by law. Parliament can by virtue of its competence therefore decide that allocated fishing permits shall be recalled over a suitable adaptation period and, if appropriate, re-allocated, provide further for the right to conduct fisheries activities, impose conditions for that right or charge a fee for it due to altered views regarding the disposition of exploitable stock in Icelandic waters, which is the joint property of the Icelandic nation."

Regarding individual Articles of the Bill.

Regarding Article 1.

Regarding paragraph 1.

According to the Icelandic modern dictionary, the meaning of the word resource is "material that can be used for the creation of value". In the Bill, the concepts of natural resources and natural resources of Iceland are used in a wide sense and apply to nearly every kind of assets of the earth, biota, water, air, sunlight etc. In this regard, it is of no importance whether they are or may be financially significant or involve other types of value, e.g. aesthetical value, and whether they are being utilised at the present or not. The concept of the natural resources of Iceland includes all resources in Icelandic territory and resources which Iceland has a sovereign right to utilize and

manage within its economic zone and on its continental shelf. The State's right of control, especially with regard to the latter, is limited by international law, cf. for instance the United Nations Convention on the Law of the Sea. The paragraph therefore includes both natural resources that are subject to private property rights, irrespective of whether they are owned by private parties, the State or municipalities, and those that are considered the property of the nation according to the Article of the Bill.
In the 1st sentence of Paragraph 1, it is stated that the natural resources of Iceland "belong to the Icelandic nation". The purpose of this wording is not to indicate traditional property rights but the idea that the natural resources of Iceland are assets from which the entire nation benefits greatly, and in that sense they are joint assets of the Icelandic people. According to this interpretation, the resources belong to the nation irrespective of whether they are subject to property rights held by private parties or the property of the State, municipalities or the nation. Paragraph 2 of the provision. The statement of the 1st sentence is not incompatible with the establishment of special rights for individuals or legal entities for the utilisation of resources that belong to the State or the nation, provided that they are considered to promote objectives of sustainable development and the public interest. However, in Paragraphs 2 and 3 of the Article, there are reservations regarding how such special rights enjoyed by private parties shall be arranged. According to the statement in the 1st sentence, the natural resources of Iceland are also connected to the Icelandic nation over the rights of foreign parties. There is a certain connection to Paragraph 2 of Article 72 of the Constitution, wherein it is stated that by law, restrictions can be imposed with regard to the rights of foreign parties to own real estate rights or a share in an Icelandic company that is run for profit.
In the 2nd sentence of Paragraph 1, the principal conditions for resource utilisation are presented, i.e. that it shall be sustainable and for the benefit of all the people of Iceland. The provision includes policy targets that give to the legislator at each time a considerable amount of leeway for assessment. Sustainable development is meant to indicate that utilisation shall serve the long and short-term interests of society and it is endavoured to ensure a balance between views on the conservation of the environment, economic development and societal growth. The policy target that utilisation of natural resources shall be for the benefit of all the people of Iceland entails that in general, the aim shall be that utilisation of natural resources is macroeconomically efficient. In the current legislation on the utilisation of resources, there are instances where such a condition is imposed. An example is Article 17 of the Act on the survey and utilisation of ground resources, no. 57/1998, which addresses conditions for utilisation authorisations and Paragraph 4 of Article 8, cf. Article 21 of the Act on prospecting, exploration and production of hydrocarbons, no. 13/2001. In this context, reference can also be made to the objectives provision of Article 1 of the Fisheries Management Act no. 116/2006. As regards resources that are the property of the nation or the State, it is also entailed in the policy target that the nation shall enjoy reasonable profit from its property. The requirements for the nation's profit are therefore more stringent with regard to resources that are the property of the nation. This is reflected in the provision of Paragraph 3 regarding the charging of fees for authorisations to utilise these jointly owned assets. In the 3rd sentence, it is affirmed that the State has general authority (sovereignty) with regard to the natural resources of Iceland. This provision entails that the State is responsible for the treatment and utilisation of the resources, which includes ensuring that the utilisation thereof is compatible with the policy targets of the 2nd sentence. This applies irrespective of whether the relevant natural resources are subject to private property rights or the property of the nation. For this reason it may be necessary to impose general limitations to the utilisation of resources, such as requirements for permits, public supervision etc. However, this arrangement does not entail an alteration of the current legal environment as the legislator is meant to have considerable leeway to establish rules regarding the treatment and utilisation of resources, and this is considered compatible with the protection of property rights under Article 72 of the Constitution.

Regarding paragraph 2.
In the 1st sentence of Paragraph 2, it is declared that natural resources and rights to land to which private ownership rights do not apply belong to the nation. The concept of national ownership has significance relating to property rights, cf. the proposal from the Resource Committee that was made in 2000. National ownership is a new form of ownership and entails

property rights in addition to the traditional private property rights of individuals and legal entities. Traditional private property rights are protected under Article 72, and with regard to meaning and protection these are the same irrespective of whether they are held by an individual or the State, such as for instance applies to ownership of traditional real estate. If the Bill becomes law, national ownership rights will be protected under the new provision of the Constitution.

The definition of resources and land rights that are the property of the nation is also based on property rights, i.e. only resources that are not subject to private property rights are considered to be the property of the nation. More precisely, resources and land rights that are considered either to have no owner or to have been made the property of the State by law due to a previous lack of owner. In this regard, mention can be made of public lands, where the basis is the Public Lands Act, and the resources of the sea bed, where the basis is the Sea Bed Act. This is an affirmation of the establishment of the special form of property rights according to the provision. There is no listing of what resources and land rights are considered to be the property of the nation, rather it is determined by the definition entailed in the wording "that are not subject to private property rights". Further discussion of the scope of the provision can be found in the general comments earlier in this document.

The concept of land rights has been inserted into previous proposals for a constitutional provision regarding national ownership, cf. the proposal from the Resource Committee that was made in 2000. This term is intended to cover all land that is not subject to private property rights, public lands first and foremost. Second, it is intended to cover rights in marine areas and the ocean outside fishing zones belonging to privately owned land, to such extent as these rights do not come under the definition of resources in the sense intended with the Sea Bed Act, the Hydrocarbon Act and the Fisheries Management Act. An example of the exercise of such rights is fish farming that is conducted in the aforesaid marine areas. This is derived from the negative definition in paragraph 2 of national ownership to the effect that all land and other territory in the possession of the Icelandic State that is not subject to private property rights, as described above, is considered the property of the nation irrespective of whether specific resource utilisation is connected with it at the present time. Ordinary State land is subject to the private property rights of the Act on Farmland no. 81/2004, whereas highland areas that have been declared public lands on the basis of the Public Lands Act are considered the property of the nation according to the Article of the Bill. The concept of land rights involves a wider reference than that of the concepts of land or real estate, which would also have been considered for use.

In the 2nd sentence of Paragraph 2, it is stated that no-one can obtain national property or rights connected to them for ownership or permanent use. Connected rights refer to any kind of utilisation authorisations and utilisation options that might establish a right if the provision in the Constitution did not exist. It should be stated that the provision does not automatically disrupt any indirect property rights that may be entailed in utilisation rights or rights to exploitation that have already been established with regard to resources and land rights that are the property of the nation. An example of this is grazing rights, which may entail upland ranges that are owned by individuals or legal entities and located on public land, cf. Article 5 of the Public Lands Act. From the instructions of the 2nd sentence it derives that it will be prohibited to sell resources or land rights that are the property of the nation, and also that such assets may not be mortgaged. The provision also entails that the allocation of authorisations for the utilisation of assets that are the property of the nation can never lead to property rights or irrevocable custody for the holders thereof. Such authorizations must therefore be of temporary duration or cancellable.

However, the 3rd sentence of Paragraph 2 it is specifically stipulates that the holders of legislative and executive power shall have authority over resources and land rights that are the property of the nation with the nation's mandate. This means that the holders of those powers supervise resources and land rights that are the property of the nation, and have the right to dispose of them, and in that way they represent their owner, i.e. the nation. In the Article of the Bill, the right to dispose of the assets is nevertheless subject to important restrictions, as aforesaid.

Regarding paragraph 3.

It is proper to reaffirm that the scope of Paragraph 3 of Article 1 is wider than that of Paragraph 2 in the regard that the provision applies to all resources and land rights owned by and under the custody of the State, irrespective of whether the resources in question are subject to traditional private custody rights held by the State (e.g. resource utilisation of State-owned land) or

resources that are the property of the nation according to Paragraph 2 (e.g. comparable resource utilisation on public land). In other words, the provision applies to resources and land rights that are the property of the nation and owned by the state.

Regarding the definition of the scope of Paragraph 3, it is necessary to reaffirm that the provision is not intended to prevent resources that are subject to traditional private custody rights held by the state from being disposed of in a permanent manner, mortgaged etc., in contrast to what applies to resources and land rights that belong to the nation, cf. Paragraph 2 For illustration, State-owned lands will continue to be sold, including the natural resources that are located on them, with such restrictions as apply to such disposal according to law and the Constitution at each time.

The provision of paragraph 3 addresses the granting of authorisations for use or utilisation of the resources to which it applies, and such authorisations can be established anyway through permits or agreements. It should be reaffirmed that this provision applies to authorisation for use or utilisation irrespective of the manner in which it is established. To name a few examples, the following would be included in the scope of the rule: permits for fishing from exploitable marine stock, permits for research and utilisation of hydrocarbon at the sea bed outside fishing zones belonging to privately owned land, permits for the utilisation of other resources of the sea bed outside fishing zones belonging to privately owned land, agreements regarding water rights for power development, irrespective of whether the land in question is private land owned by the state or public land, and the same goes for the disposal of geothermal rights.

The 1st sentence of Paragraph 3 entails that the arrangement can only be determined by legislation, i.e. it is required that the legislator has the task of deciding if and how the granting of authorisations for the utilisation of resources should be arranged, including whether this shall be done with permits or agreements. This requirement is in accordance with the general legal policy target of the Constitution that custody over the disposal of important interests shall in general be in the hands of democratically elected representatives. In accordance with general views, this rule also entails limits regarding the extent to which the legislator can assign governance over these interests to holders of the executive power. This would in other words impose limitations on Parliament granting holders of executive power unrestricted assessment in allocating authorisations for the utilisation of resources and land rights that are in the custody of the State. The granting of such authorisations in most cases involves the allocation of limited assets. From the principle of equality in Article 65 of the Constitution that care must be taken the the candidates that seek to obtain a share in the relevent assets are on as equal a footing as possible with regard to the allocation. This is affirmed with a specific reference to the principle of equality in the provision. The emphasis on equality also extends to government authorities that are in charge of allocating limited resources. This means, among other things, that the selection from the applicants for utilisation authorisations must be based on material viewpoints, cf. also the principle of reasonableness in administrative law. In this provision it is also affirmed that there must be transparency in the allocation of utilisation authorisations. This requirement is intertwined with equality principles. Thus the conditions for allocation must be clear beforehand, and the entire subsequent process must be open and information must be accessible.

There is reason to affirm that the the instructions fo Paragraph 3 regarding the charging of fees only apply to the incidents where the utilisation of natural resources depends on the procurement of specific permits. It should be kept in mind that resource utilisation of various kinds where private property rights are not involved takes place without a permit being required. However, this often concerns minor use. An example is authorisations granted to the public on the basis of rules regarding the rights of the public to gather berries and other earth vegetation and shore vegetation on public lands. It is also worth mentioning the right which the public has regarding water abstraction in accordance with the Water Act. Sometimes it may even be considered in light of the nature of the case that there is no need for special permits. In such instances, there is no "granting of authorisations" in the sense of the provision, and in that case the provision has no requirement for charging fees.

According to the instructions of the 2nd sentence of Paragraph 3, charging fees for authorisations for the utilisation of resources that are the property of the Icelandic State or of the nation, when utilisation is done for profit. This is a reference to commercial utilisation for the purpose of profit and rate of return. The underlying thought behind this is that those who benefit from having

permits for commercial utilisation of limited, jointly-owned assets, that are not accessible to everyone, must pay for such use. In principle, such fees would go to the Treasury, although it may be mentioned that municipalities can also benefit from them, cf. the provision of the Public Lands Act regarding specific utilisation. The legislator has the task of deciding the arrangement of the collection of fees, which can be done in various manners depending on what is appropriate with regard to the nature of each resource as reflected in current legislation and implementation of laws. The State can either decide the fee for resource utilisation in advance or let it be decided through the negotiation of agreements, such as following a selection process or a tender process, cf. for example recent agreements on pumice mining on public land. Special taxation on income from resource utilisation can be one way to satisfy the requirement of the provision regarding the collection of fees for utilisation for profit. Collection of fees through the payment of taxes must be compatible with Articles 40 and 77 of the Constitution and therefore governance in that regard cannot be assigned to holders of the executive power. It would be possible to require that the State would receive a specific percentage of the so-called resource rent, i.e. the profit created through the utilisation of the relevant resource in excess of normal rate of return from the financial assets that are connected with the utilisation, with due consideration of risk. It would also be possible to base the amount of the fee on a specific percentage of the income of the holder of the authorisation for use, as indicated in recent agreements concluded by the State regarding utilisation authorisations. Through legislation, it would be possible to allow for a list of tariffs with fixed-amount fees or fixed percentages of the value of rights, as is usually done in lot lease agreements.

The legislator is granted leeway to determine the amount of the fees when they are defined by law. In the assessment thereof, the legislator is nevertheless bound by the policy targets of Paragraph 1 regarding sustainable utilisation that is for the benefit of all the people of Iceland, and the latter policy target entails among other things that the owner of these assets, the nation or the state, shall enjoy reasonable profit from its property. This also applies to the government when it is entrusted with the task of negotiating fees for the utilisation of natural resources or land rights owned by the nation or the State.

When authorisation is granted for utilisation that is not done for profit, the legislator has the freedom to decide if a fee shall be charged or not. Examples of this are societal projects conducted by public entities, where profit is directed to society in the form of service, such as water and heating supply plants.

The provision of Paragraph 3 does not entail that a fee shall be charged for permits for the utilisation of resources that are privately owned. With reference to the statement in the 1st sentence of Paragraph 1, charging of fees in this context is an option, although this must also be compatible with the provisions of the Constitution with regard to protection of property and taxation requirements. Such fees are to some extent already present in legislation and to provide an example of this, reference can be made to the permits that are issued for the research and utilisation of earth resources, including on private land, on the basis of the Natural Resources Act. The charging of such fees is mostly intended as payment for administration provided by the State, not as payment for access to the resource. It should also be kept in mind that various forms of resource utilisation take place on private land without any permits being involved.

Regarding Article 2.

This Article requires no explanations.