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**AN BILLE UM AN nGNÍOMHAIREACHT CHÚLTACA OLA  
NÁISIÚNTA 2006  
NATIONAL OIL RESERVES AGENCY BILL 2006**

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**EXPLANATORY MEMORANDUM**

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**Introduction**

The main provisions of the Bill are to—

- establish the National Oil Reserves Agency (NORA) as a stand-alone non-commercial State body under the aegis of the Minister for Communications, Marine and Natural Resources with responsibility for the maintenance of strategic supplies of oil in line with the state's oil stockholding obligations to the EU and the International Energy Agency (IEA);
- transfer the Irish National Petroleum Corporation (INPC) shareholding in NORA to the Minister for Communications, Marine and Natural Resources and provide for the continued operation of the Agency as a private limited company under the Companies Acts;
- provide for a variable levy on disposals of petroleum products to be imposed on oil companies and oil consumers. Such a levy has operated since 1995 under the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995;
- make provision for the furnishing to the Minister of regular returns regarding oil purchases, sales, consumption, imports and exports by oil companies, oil consumers and NORA;
- provide for monitoring of compliance with provisions for the application of penalties in the event of failure by oil companies and oil consumers to comply with provisions; and
- revoke the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995.

The Bill comprises 8 Parts.

Prior to 1995 oil companies in Ireland were obliged to meet a substantial portion of Ireland's oil stockholding obligations. In 1995 however, the National Oil Reserves Agency (NORA) was set up under the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995 (S.I. No 96 of 1995) as a private limited company with responsibility for the maintenance of Ireland's strategic oil

reserves. For pragmatic reasons the Agency was set up as a subsidiary of the Irish National Petroleum Corporation.

In July 2001 the businesses and commercial assets of the INPC — the Whitegate Refinery and the Whiddy Island oil terminal — were sold to Toco Corporation (now ConocoPhillips). NORA did not form part of that transaction. The INPC has no operational capacity since the disposal of its businesses and commercial assets. The company's current activities are limited to finalising residual issues arising from the 2001 transaction and meeting requirements under company law including those arising from its role as parent to the National Oil Reserves Agency. It is considered opportune that NORA should be established on a statutory basis as a private limited company independent of the INPC. The provisions of the Bill will also allow the Department of Communications, Marine and Natural Resources to strengthen corporate governance obligations of the Agency. The provisions will also allow the Agency to continue to be funded by a levy on disposals of petroleum products and by borrowings from financial institutions.

## **Provisions of the Bill**

### **PART 1 — PRELIMINARY AND GENERAL (SECTIONS 1-3)**

*Section 1* is a standard feature. It gives the short title of the Bill when enacted, for ease of referencing, and it provides for the commencement of provisions of the Act by means of commencement orders.

*Section 2* is a standard technical feature which defines certain Acts referred to in the Bill as well as terms and references in the Bill so as to avoid unnecessary duplication of definitions and references elsewhere in the Act.

*Section 3* is a standard feature which provides that expenses incurred by the Department in the administration of the Act be paid out of monies provided by the Oireachtas.

### **PART 2 — SHARE TRANSFER (SECTIONS 4-6)**

*Section 4* provides for the transfer of the INPC shareholding in the National Oil Reserves Agency to the Minister for Communications, Marine and Natural Resources. The mechanism allows the continuation in existence of the Agency and avoids the setting up of a "new" NORA. The request to the INPC to transfer its shareholding will be effected by way of a Ministerial order.

*Section 5* provides for the making of an order by the Minister appointing a day on which the INPC will transfer its shareholding in the Agency to the Minister.

*Section 6* is a standard feature which provides that any monies paid by the Minister in respect of the transfer under *section 4* will be repaid to the Central Fund out of monies provided by the Oireachtas. It also provides that stamp duty shall not be charged.

**PART 3 — THE NATIONAL OIL RESERVES AGENCY  
(SECTIONS 7-31)**

*Section 7* provides for the continuation of the Agency as a private limited company, subject to the provisions of the Companies Acts 1963 to 2005. *Subsection (3)* is a standard feature which provides that the Agency is exempted from including the word “limited” or “teoranta” in its title.

*Section 8* sets out the principal functions and powers of NORA. The Agency’s primary functions are defined as the maintenance of strategic oil reserves to meet Ireland’s obligations to the EU and IEA, the collection of a levy on petroleum products, the provision of advice to the Minister on any matter relating to its functions and representation of the state at meetings of international bodies. *Subsection (2)* provides that the objects of the Agency as defined in *subsection (1)* be included in the Agency’s memorandum of association. *Subsection (3)* sets out the principal powers of the Agency which include powers to acquire, import, export, store and transport oil, to construct, maintain and operate equipment and storage tanks for holding oil, to charter ships and other transportation, to undertake commercial operations in connection with the functions of the Agency, to invest monies, to enter into joint ventures to construct or acquire equipment and storage tanks, to sell oil and to enter into commercial agreements with third parties both within or outside the State.

*Section 9* is a standard feature providing for the assignment of additional functions to the Agency. Such functions may be assigned by Ministerial order.

*Section 10* is a standard feature which provides that the authorized share capital of NORA will be decided by the Minister for Finance after consulting with the Minister.

*Section 11* is a standard feature. It provides that shares in the Agency may be issued with the consent of the Minister for Finance given after consulting with the Minister. *Subsection (2)* provides that the cost of any shares issued to the Minister by NORA will be advanced out of the Central Fund.

*Section 12* is a standard feature. It provides, in regard to shares held by the Minister in the Agency, that the Minister may exercise all the rights and powers of a holder of such shares.

*Section 13* provides that the memorandum and articles of association of the Agency — a private company governed by the Companies Acts — be revised to make them consistent with the provisions of the Bill. *Subsection (2)* provides that amendments to the memorandum take effect only if made with the prior approval of the Minister given with the consent of the Minister for Finance.

*Section 14* is a standard feature. It provides for a board of 6 directors. With the exception of the chief executive, the Minister will appoint all other directors. Directors appointed by the Minister are required under *subsection (2)* to have experience and competence in one of the following areas: oil or oil related industries, chemical or chemical related industries, finance, economics, legal matters and energy production and supply industries. The term of appointment of directors, with the exception of the chief executive, has been set at 5 years in *subsection (4)* with provision for re-appointment. *Subsection (8)* provides that remuneration and allowances paid to directors be paid out of the levy. *Subsection (9)* is a transition provision,

which provides that directors holding office before the commencement of *section 14* of the Bill continue in office under the terms of their appointment.

*Section 15* is a standard feature. It obliges the Agency to submit to the Minister, as soon as practicable, an initial 5 year strategy statement. The Minister will specify the periods to be covered by subsequent strategy statements to be provided. *Subsection (4)* provides that strategy statements be laid before the Houses of the Oireachtas.

*Section 16* is a standard feature relating to the establishment of state bodies. It provides that the Agency may carry out any of its functions through a subsidiary. *Subsection (4)* provides that the Agency shall ensure that the memorandum and articles of association of each subsidiary are consistent with the Act and that the prior approval of the Minister and the Minister for Finance is obtained in regard to the memorandum and articles of association of subsidiaries and any alterations to them. *Subsection (8)* provides that the numbers and salaries of staff of a subsidiary must have the approval of the Minister given with the Minister for Finance. *Subsection (12)* provides for the making of Ministerial orders where it is proposed that the operating costs and administrative expenses of a subsidiary are to be paid out of the levy on petroleum products.

*Section 17* is a standard feature. It provides that the Agency may charge fees to a body, other than a government Department, for work carried out by it.

*Section 18* is a standard feature. It provides that the Agency may engage consultants and advisers and pay their fees out of the levy.

*Section 19* is a standard feature. It makes provision for a chief executive officer to be appointed/reappointed/removed by the directors. *Subsection (3)* provides that the period of appointment will be approved by the Minister given with the consent of the Minister for Finance. *Subsection (4)* provides that the salary of the chief executive will be paid out of the levy.

*Section 20* is a standard provision. It sets out the general functions and responsibilities of the chief executive.

*Section 21* is a standard provision. It provides for the appointment of staff to the Agency whose numbers, terms and conditions of employment are to be approved by the Minister. Remuneration and allowances are to be paid out of the levy. It also provides for the continuation in employment of a member of staff appointed prior to the commencement date of this section.

*Section 22* is a standard feature. It provides for a superannuation scheme in respect of staff to be approved by the Minister with the consent of the Minister for Finance. The scheme may be amended or revoked and provision is made for appeals. *Subsection (7)* makes provision for the laying of superannuation schemes before the Houses of the Oireachtas. *Subsection (10)* makes provision for the continuation of a scheme approved before enactment of this Bill.

*Section 23* is a standard feature. *Subsection (1)* provides that a director of the Agency must cease to hold office on being elected to either House of the Oireachtas, being elected to the European Parliament or becoming a member of a local authority. *Subsection (2)* provides for secondment of an employee of the Agency in the event of he/she being elected to either House of the Oireachtas or elected to the European Parliament. *Subsection (3)* provides that no

remuneration or allowances are payable by the Agency to staff members while on secondment.

*Section 24* is a standard feature. *Subsection (1)* provides that confidential information may not be disclosed by a director, a member of a committee of the Agency, the chief executive, a consultant or a person employed by a consultant. *Subsection (2)* sets out the exceptions under which confidential information may be disclosed.

*Section 25* is a standard feature. It provides for the publication of a code of conduct in respect of standards of integrity and conduct to be maintained by directors, members of a committee of the Agency, the chief executive officer, consultants and employees of consultants engaged by the Agency.

*Section 26* provides for borrowing by the Agency. Borrowings will be sourced from financial institutions in respect of the purchase of oil stocks and for capital purposes. *Subsection (2)* makes provision for aggregate borrowings up to a threshold of €1 billion. *Subsection (3)* provides that borrowings are subject to the consent of the Minister and the approval of the Minister for Finance.

*Section 27* provides for temporary borrowings from the banks by the Agency to provide for current expenditure items such as interest on bank overdrafts. The provision provides for prior consent to borrowings to be given by the Minister with the approval of the Minister for Finance.

*Section 28* is a standard feature. It provides for the submission of annual reports of the activities of the Agency and its subsidiaries and the laying of the reports before the Houses of the Oireachtas within 6 months of the end of the financial year under review.

*Section 29* is a standard feature. It makes provision for the submission of annual accounts by the Agency for audit by the Comptroller and Auditor General. *Subsection (3)* provides that the audited accounts be presented to the Minister, together with the C&AG's report. *Subsection (4)* provides that the audited accounts together with the report of the C&AG shall be laid before the Houses of the Oireachtas within 6 months of the end of the financial year under review.

*Section 30* is a standard feature. It provides that the Agency shall make information available to the Minister as and when required, in regard to matters such as the performance of its functions, its annual reports and accounts, its future plans, its strategy statement, the efficiency of the Agency in the use of its resources and the policy of the Agency and of its subsidiaries.

*Section 31* is a standard feature. It provides that committees of the Houses of the Oireachtas may examine the chief executive on expenditure by the Agency and other matters.

#### **PART 4 — MAINTENANCE OF OIL STOCKS (SECTIONS 32-35)**

*Section 32* defines the Agency's duty as the maintenance of sufficient levels of oil stocks to comply with Ireland's international stockholding obligations or such levels as the Minister may specify. *Subsection (2)* provides that the Agency may either hold the stocks itself or enter into holding contracts with third parties.

*Section 33* defines a holding contract as a contract between the Agency and a third party for the holding of owned or rented oil stocks on behalf of the Agency. Such stocks may be held either in the State or in another state in accordance with a bilateral oil stock-holding agreement. *Subsection (4)* provides for the approval of the Minister of proposals by the Agency to store oil stocks outside the state.

*Section 34* provides that the Minister shall decide on the products to be taken into account in calculating national oil reserves and the volume of oil stocks to be maintained by the Agency. *Subsection (2)* provides that the Minister must inform the Agency as to the volume of oil to be maintained by it.

*Section 35* provides that in the event of an emergency, the Minister may direct the Agency to release oil stocks thereby letting its oil stock reserves fall below minimum obligations. Such a situation could be triggered by an oil supply disruption.

## **PART 5 — LEVY ON RELEVANT DISPOSALS OF PETROLEUM PRODUCTS (SECTIONS 36-44)**

*Section 36* is a standard technical feature which defines certain terms and references for this Part so as to avoid unnecessary duplication of definitions and references elsewhere in this Part.

*Section 37* provides for the imposition of a monthly levy on disposals of petroleum products by oil companies and oil consumers in order to meet the expenses of the Agency.

*Section 38* provides that an oil consumer that throughout the previous month, held within the State petroleum products amounting to at least 55 times the average volume of consumption by it during the previous year (or an amount to be decided by the Minister), is exempt from payment of the levy on petroleum products. *Subsection (2)* provides that an oil company must supply information to the Minister in support of its claim for exemption.

*Section 39* provides for the issue of monthly notifications to the Agency by the Minister of the volumes of petroleum products disposed of by each oil company and oil consumer in the preceding month. *Subsection (2)* provides that the assessment by the Minister be based on information supplied by oil companies and oil consumers, or in the absence of information being supplied, an estimate provided by the Minister.

*Section 40* provides for calculation by the Minister of the amount of levy payable by each oil company and oil consumer based on the amount of petroleum products disposed of by the companies and the rate of levy. It also provides for notification of each company's levy liability to the Agency.

*Section 41* provides that monthly notices be provided by the Agency to companies advising them of the volumes of petroleum products disposed of by them, the rate of the levy, the amount of the levy due, the date by which levy should be paid and any exemptions from levy payment, if applicable.

*Section 42* provides for the charging of interest (at rates prescribed under *section 44*) on levy not received by due date. *Subsection (2)*

provides that interest does not accrue on a levy payment where, following a review of a levy assessment, the Minister determines that levy is not payable.

*Section 43* provides for the recovery by the Agency of unpaid levy through the courts.

*Section 44* provides for the making of regulations by the Minister relating to the levy. *Subsection (1)* provides for regulations relating to the rate of levy, the daily volume of products to be held by oil consumers in order to qualify for an exemption, levy assessment notices, the keeping of records by companies liable to pay the levy, reviews by the Minister of a levy assessment notice on request, time limits on requests for reviews, offsetting of overpayment or underpayment of levy, the times at which levy becomes due and the rate of interest on unpaid levy. *Subsection (2)* provides that different rates of levy may be applied by the Minister for different categories of petroleum products. *Subsection (3)* provides that the rate of levy set by the Minister will aim to ensure that the revenue generated by the levy does not exceed the expenses of the Agency. *Subsection (4)* provides that in determining the expenses of the Agency the Minister will take account of the Agency's strategy statement, information provided in the annual accounts of the Agency and expenditure incurred or likely to be incurred by the Agency or a subsidiary in the following year. *Subsection (5)* provides that the rate of levy as currently set continues to apply until varied. *Subsection (6)* provides that a new rate of levy takes effect 3 months after the making of Ministerial regulations. *Subsection (7)* prescribes the formula to apply in determining the rate of interest to be charged on unpaid levy.

## **PART 6 — ENFORCEMENT PROVISIONS (SECTIONS 45-50)**

*Section 45* is a standard technical feature. It provides certain terms and references for this Part so as to avoid unnecessary duplication of definitions and references elsewhere in this Part.

*Section 46* is a standard feature. It provides standard provisions regarding the appointment of authorized officers. *Subsection (7)* provides that a person who is an authorized officer before the commencement of this section is deemed to have been appointed under this section.

*Section 47* is a standard feature which sets out the powers of authorized officers, including powers to enter and inspect premises, to inspect books and records, to direct that books be retained for a specific period, to remove books and records and retain them for examination, to require the person in charge of a premises to produce records, to examine storage tanks, to remove equipment or oil for further examination, to secure the premises and to take photographs of activities at a premises. *Subsection (4)* provides powers to enter a private dwelling under warrant.

*Section 48* is a standard feature providing for the issue of search warrants.

*Section 49* makes it an offence inter alia, to obstruct an authorized officer, to fail to comply with a direction of an authorized officer, to alter or destroy records, to give false information to an authorized officer or to impersonate an authorized officer.

*Section 50* provides that the Agency will indemnify staff carrying out duties under the Act against actions or claims.

## **PART 7 — AMENDMENTS AND REVOCATION** **(SECTIONS 51-55)**

*Section 51* amends section 7 of the Irish National Petroleum Corporation (INPC) Act 2001 (the 2001 Act). The 2001 Act provided for the sale of the businesses and commercial assets of the INPC — the Whitegate oil refinery and the Bantry oil storage terminal — to Tosco Corporation. The National Oil Reserves Agency is the sole remaining subsidiary of the INPC. *Section 51* provides that the Minister may direct the INPC to transfer the National Oil Reserves Agency to the Minister.

*Section 52* amends section 8 of the 2001 Act to release the INPC from its obligation to repay to the Minister any monies paid out by the Corporation under the provisions of the Sale and Purchase Agreement relating to the sale of the Whitegate refinery and the Bantry terminal.

*Section 53* amends section 9 of the 2001 Act to provide that the INPC must amend its memorandum and articles of association to reflect the provisions of this Bill.

*Section 54* amends the Third Schedule to the Freedom of Information Act 1997 to provide that the Agency will come within the scope of the Freedom of Information Act.

*Section 55* revokes the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995. These regulations form the basis of the Bill's provisions and will become redundant after the Bill becomes law and operative. Consequently they will be revoked.

## **PART 8 — MISCELLANEOUS PROVISIONS** **(SECTIONS 56-64)**

*Section 56* is a standard feature. It provides for the making of regulations by the Minister under the Act.

*Section 57* empowers the Minister to make regulations. *Subsection (1)* provides that the Minister may make regulations requiring the Agency, oil companies and oil consumers to supply written monthly returns to the Minister. It also provides that persons holding oil stocks in the state under a bilateral agreement, must make returns to the Minister. *Subsection (2)* provides that regulations may specify the information to be contained in the returns, requirements regarding the certification of returns by companies, the dates by which returns should be provided to the Minister, and procedures for making representations to the Minister under *section 59*. *Subsection (3)* makes provision for offences if a person fails to supply written returns for three consecutive months or provides returns that contain false or misleading information.

*Section 58* is a standard feature providing for the laying of regulations and orders under the Act (other than orders under *section 1(2), 4 or 5*), before the Houses of the Oireachtas. *Subsection (2)* provides that such orders may be annulled by a resolution of either House of the Oireachtas. *Subsection (3)* provides that the annulment of a regulation or order takes effect immediately on the passing of the resolution of the House.

*Section 59* empowers the Minister to apply to the High Court for a compliance order in the event that a person fails to comply with a requirement of the regulations relating to the provision of written returns. *Subsection (2)* provides that an application for an order to the High Court by the Minister may be made only after the person has been notified and given 14 days to remedy the situation. *Subsection (3)* provides that the High Court may make an order requiring the person to comply.

*Section 60* is a standard feature. It provides that the burden of proof rests with the defendant in a case where there is a dispute as regards liability of a company to pay the levy.

*Section 61* provides that summary proceedings may be brought and prosecuted by the Minister or the Agency in regard to an offence under *section 49* (e.g. obstruction of an authorized officer, failure to comply with a direction by an authorized officer, destruction of records). Summary proceedings may be taken by the Minister in regard to failure to provide written returns to the Minister under *section 57*.

*Section 62* makes standard provision for offences by bodies corporate and persons purported to act on their behalf.

*Section 63* provides for penalties. *Subsection (1)* provides for a maximum fine of €5,000 on summary conviction or imprisonment for a maximum of 6 months, or both. *Subsection (2)* provides that it is a further offence if the person, after having been convicted, continues to contravene the Act.

*Section 64* is a standard feature. It sets out the ways in which notices under the Act are to be given. *Subsection (2)* provides that in the case of notices to a company registered under the Companies Acts the address to be used is the registered address of the company.

### **Exchequer and Financial Implications**

The proposed establishment of the National Oil Reserves Agency is not expected to give rise to Exchequer expenditure. Since the setting up of the National Oil Reserves Agency in 1995 it has been funded by a levy of 0.476 cent per litre on disposals of petroleum products by oil companies and oil consumers, and by commercial borrowings from financial institutions. The Agency has never been the beneficiary of Exchequer funding. The legislative provisions will allow the Agency to continue to be funded by means of a variable levy and by borrowings. The proposals will have no impact on the employment levels at the Agency which has an establishment of 6 posts.

*An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha  
Meitheamh, 2006*