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Bill Digest

National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2020

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Aoife Halligan, Senior Parliamentary Researcher, Economics
Darren Lawlor, Senior Parliamentary Researcher, Economics
Maggie Semple, Parliamentary Researcher, Environmental Science

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Abstract

The National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2020 will amend the *National Oil Reserves Agency Act 2007* to achieve a number of aims, including:

- To put the existing Climate Action Fund on a statutory footing (the Fund is one of four funds established under the National Development Plan 2018-2027 as part of Project Ireland 2040);
- To provide that future surpluses generated by the National Oil Reserves Agency (NORA) levy be utilised to fund climate action initiatives and projects through the Climate Action Fund, and to fix the NORA levy at €0.02 per litre;
- To provide for changes to the Biofuels Obligation Scheme and the biofuel levy; and
- To achieve efficiencies for the exchequer by facilitating access by NORA (and Irish Water) to the Central Treasury Service facility provided by the National Treasury Management Agency (NTMA).

A Bill Briefing page is available here [internal access only].

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Glossary

2007 Act	*National Oil Reserves Agency Act 2007* [the 'Principal Act']
AD	Anaerobic Digestion
BOS	Biofuels Obligation Scheme
C&AG	Comptroller and Auditor General
CNG	Compressed Natural Gas
CO_2	Carbon dioxide (a greenhouse gas)
CRU	The Commission for Regulation of Utilities
DCCAE	Department of Communications, Climate Action and Environment
ETB	Education and Training Board
ETS	Emissions Trading Scheme for greenhouse gas emissions
EVs	Electric Vehicles
Fund	Climate Action Fund (the Fund)
GHG	Greenhouse gas emissions
HSE	Health Service Executive
IEA	International Energy Agency
IEEF	Ireland Energy Efficiency Fund
ILUC	Indirect land use change
HVO	Hydrotreated vegetable oil
NDP	National Development Plan
NORA	National Oil Reserves Agency
NPF	*National Planning Framework*
NMP	*National Mitigation Plan*
NTMA	National Treasury Management Agency
RED	Renewable Energy Directive
RESS	Renewable Electricity Support Scheme
RES	Renewable Energy Sources
SEAI	Sustainable Energy Authority of Ireland
TII	Transport Infrastructure Ireland
UCO	Used Cooking Oil

Summary

- The primary purpose of the National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2020 is to place the existing Climate Action Fund on a statutory footing;
- The development of the €500m Climate Action Fund (the Fund) was approved in May 2018. The first funding 'call for applications' was launched in July 2018 and 7 projects by public and private entities were selected in November 2018. A second funding call was launched in December 2019;
- The Fund will be established for the duration of the existing National Development Plan (NDP) up to 2027, with annual funding of at least €50m per annum over 10 years;
- The Fund, following passage of this Bill, will be resourced by the repurposing of surplus moneys generated by the existing €0.02 per litre National Oil Reserves Agency (NORA) levy (the 'NORA levy') which will be available to the Fund after the expenses of NORA are provided for. This follows a Government decision in May 2018.[1] Following enactment, the Minister (for Communications, Climate Action and Environment[2]) will no longer be able to adjust this levy rate by regulation. In 2018, the NORA levy raised **€134.2m** for NORA;
- As of December 2019, there have been no support payments made under the Fund.[3] The transfer of funds from NORA to the Climate Action Fund will be made only when this legislation is enacted;
- The Bill also proposes that technical changes will be made to the Biofuels Obligation Scheme and sets the biofuel levy at a nominal amount (€0.001, or 0.1c per litre) to incentivise the use of biofuels over fossil fuels. In 2018, the biofuel levy raised **€4.3m** for NORA; and
- The Bill allows NORA (and Irish Water) to avail of the Central Treasury Service facility provided by the National Treasury Management Agency (NTMA).

Table 1 below summarises the provisions in this Bill. The Bill contains 3 parts and 28 sections.

Table 1: Table of provisions

Section(s)	Title	Explanation
1-2	Definitions and commencement	These sections set out the definitions used in this Bill. It states that the "Act of 2007" (the Principal Act) refers to the *National Oil Reserves Agency Act 2007* and that the "Minister" refers to the Ministers for Communications, Climate Action and Environment. Different parts of the Bill can be commenced by the Minister at different times.
3	Revocations	This section revokes existing provisions of secondary legislation that set the rate of the NORA levy. This is done because the existing provisions in the Principal Act that allows the Minister to set the rate of the NORA levy are deleted in this Bill and a new provision that fixes the rate of the levy at €0.02 per litre is inserted.

[1] This, and Government decisions related to particulars of the Climate Action Fund, were outlined by the Department of Communications, Climate Action and Environment in published correspondence provided to the Dáil Committee of Public Accounts in October 2019 – available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2019/2019-12-31_correspondence-michael-goodwin-energy-security-division-department-fo-communications-climate-action-and-environment-32r002454-pac_en.pdf

[2] The names of Departments and Ministerial briefs are subject to change following the formation of the 32nd Government of Ireland / Government of the 33rd Dáil on 27 June 2020.

[3] According to the Minister for Communications, Climate Action and Environment's response to a parliamentary question on the topic – Climate Action Fund, 17 December 2019.

4	Amendment of section 2 of the Principal Act	This section amends the Principal Act providing a definition under section 2 for the "Climate Action Fund" (section 15 of this Bill introduces a new section 37B to the Principal Act).
5	Amendment of section 8 of the Principal Act	This section amends the Principal Act, expanding the functions and powers of NORA to now include payment of NORA levy funds into the Climate Action Fund, as directed by the Minister.
6-10	Amendment of section 14, section 16, section 18, section 19 and section 21 of the Principal Act	These sections make technical amendments to the provisions of the Principal Act that provide for the expenses of NORA (or any subsidiary) to be paid out of the proceeds of the 'NORA levy' or biofuels levy. This will also enable the payment of expenses from the proceeds of the 'NORA levy' or biofuel levy moneys which are recovered. Expenses include: The NORA chairperson and other director remuneration and allowances (s.14), costs and administrative expenses of NORA subsidiaries (s.16), fees to consultants or advisors engaged by NORA (s.18), remuneration and allowance of the NORA chief executive (s.19) and remuneration and allowances of NORA staff (s.21).
11	Removal of "Principal Act" from section 31	This section provides for textual efficiency in the Principal Act, removing "Principal Act" from section 31A, subsection (2)(a)(i).
12	Amendment of section 36 of the Principal Act	This section expands the definition of the expenses of NORA and any designated subsidiary to include <u>not only</u> the costs incurred in the collecting of the NORA levy and biofuels levy, but also the costs incurred in recovering the NORA levy and the biofuels levy.
13	Amendment of section 37 of the Principal Act	This section expands the purpose for which the levy is paid from the current purpose of funding the expenses of NORA to also include contributing to the Climate Action Fund. This section also sets the rate of the levy to €0.02 per litre by statute.
14	Payments into the Climate Action Fund by direction of Minister	This section inserts a new section 37A into the Principal Act to: • Define 'income' and 'expenses' of NORA and 'financial year'; • Permit the Minister to issue an annual direction to NORA to pay a specified amount of levy moneys to the Climate Action Fund. Only levy moneys collected and recovered after the commencement of this legislation may be paid to the Fund; • This direction, though issued by the Minister for Communications, Climate Action and Environment, is subject to consultation with NORA, the Minister for Public Expenditure and Reform and the Minster for Finance; • Considerations include the adequacy of the Fund's existing financial resources, the Fund's planned future expenditure and NORA's own financial resources and position (any payment to the Fund will be made from moneys standing to the credit of NORA accrued from proceeds of the NORA levy).
15	Climate Action Fund	This section inserts a new section (37B) into the Principal Act after section 37A (summarised above) which: • Establishes and provides governance arrangements for the Climate Action Fund, including the submission of annual financial accounts to the C&AG for audit, and the laying of a copy of the report of the C&AG and audited accounts before each Houses of the Oireachtas; • Provides for the Minister to **<u>pay into</u>** the Fund any amount provided by the Oireachtas with the consent of the Minister for Public Expenditure and Reform; • Provides for the Minister to **<u>pay out</u>** moneys from the Fund to support projects, initiatives or research that seeks to reduce greenhouse gas emissions, increase the production or use of renewable energy or improve energy efficiency in the State. In addition, provision is made for projects or initiatives to support regions and sectors of the economy impacted by the transition to a low carbon economy. It also provides for the Minister to pay out moneys to defray costs of establishing the Fund; • Provides for the Minister to invite proposals to avail of moneys from the Fund in accordance with guidelines prepared by the Minister, after consultation with the Minister for Public Expenditure And Reform, and published on the Department's website (**<u>Note</u>**: Two funding 'calls' have been held since the Fund was established in 2018); • Provides for the Minister to establish a committee for advisory purposes.

16-18	Amendment of section 40, section 41 and section 44 of the Principal Act [Calculation of the 'NORA levy']	These sections provide for consequential amendments to the Principal Act to remove reference to the Minister setting the rate of the levy by regulation, replacing it with reference to the new section 37A(1A) which fixes the levy rate at €0.02 per litre. As a result of these amendments, the NORA levy can no longer be adjusted by the Minister.
19-21	Amendments of sections 44B, 44D and 44G of the Principal Act [Changes in Departmental responsibilities]	These sections provide for updates to Departmental / Ministerial responsibilities. These sections were originally added by the *Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010*.
22	Amendment of section 44I of the Principal Act	This section makes a technical change to section 44I of the Principal Act in relation to the biofuels obligation scheme, whereby the amount of biofuel certificates from the two previous obligation periods which may be used in the current period is reduced from the previous cap of 25% to 15% of the total obligation.
23	Amendment of section 44J of the Principal Act	This section amends the reference to the Minister for the Environment, Heritage and Local Government as a consultee relating to the biofuel's obligation scheme, changing it to refer to the Minister for Transport, Tourism and Sport. The Minister for Finance is also added as a consultee within this section.
24	Amendment of section 44N of the Principal Act [The 'biofuel levy']	This section provides for the setting of the rate of the biofuel levy at €0.001 per litre of biofuels placed on the market. This removes an anomaly which currently exists, whereby the levy placed on biofuels is the same as that on petroleum (oil) products placed on the market.
25-26	Amendment of sections 44P and 44Q of the Principal Act [The 'biofuel levy']	This section removes the ability of the Minister to set the rate of the biofuel levy by regulation. The rate is now set in section 44N (1A) at €0.001 per litre (1/10 of a cent) of relevant disposal of biofuels.
27	Amendment of section 44T of the Principal Act [The 'biofuel levy']	This section removes the ability of the Minister to set the rate of the biofuel levy by regulation. The rate is now set in section 44N (1A) at €0.001 per litre (1/10 of a cent) of relevant disposal of biofuels.
28	Amendment of section 18 of the *NTMA (Amendment) Act 2000)*	This section provides for the designation of both NORA and Irish Water as 'designated bodies' to which the NTMA may provide a central treasury service. The NTMA's central treasury service established in 2001 under the *National Treasury Management Agency (Amendment) Act 2000* takes deposits from and makes advances (in the form of overdraft and loan facilities) to designated non-commercial State bodies (including local authorities) to provide them with alternatives to the commercial banking sector with a goal of achieving efficiencies and savings for the exchequer. Irish Water is not a non-commercial State body and its access to a central treasury service facility requires an amendment to the *NTMA (Amendment) Act 2000*.

Source: L&RS summary based on the Bill (as published) and the accompanying Explanatory and Financial Memorandum, available at https://billsadmin.oir.ie/view/5537

Pre-legislative scrutiny (PLS)

The then Joint Committee on Communications, Climate Action and Environment (of the 32nd Dáil / 25th Seanad) agreed on 12 November 2019 not to undertake PLS on the then General Scheme.[4]

[4] The General Scheme was supplied to the Joint Committee but was not made publicly available.

Introduction

The National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2020 was published on 22 June 2020 by the then Minister for Communications, Climate Action and Environment, Richard Bruton T.D. The aim of the Bill, according to the Minister is:

> "…[to] establish the government's €500m Climate Action Fund, on a statutory basis and repurpose surplus funds from the NORA levy, which is a levy on the use of fossil fuels, for use by the Fund. It will ensure that the Fund can be used for measures to support climate action and just transition. The Climate Action Fund is one of four Project Ireland 2040 Investment funds."

Project Ireland 2040 (the 'National Planning Framework' or NPF) is the Government's long-term overarching policy and planning framework for the social, economic and cultural development of Ireland to 2040. The Climate Action Fund was established under the €116 billion 10-year *National Development Plan (2018-2027)* which sets out the Government's investment priorities which will underpin the delivery of the NPF. As stated by the Minister, it is one of four funds established under the NDP.

Box 1: The four Project Ireland 2040 investment funds and expected expenditure over the lifetime of the NDP (2018-2027)

- Urban Regeneration and Development Fund (**€2 billion);**
- Rural Regeneration and Development Fund (**€1 billion);**
- Climate Action Fund (**€500 million);** and the
- Disruptive Technologies Innovation Fund (**€500 million);**

Source: Gov.ie

The purpose of the Fund is to support initiatives proposed by both public and private bodies that contribute to the achievement of Ireland's climate and energy targets. In the press release accompanying the publication of the Bill, the following specific uses of the Fund were stated:

- to support projects that seek to reduce greenhouse gas emissions;
- to support projects that seek to increase the production, or use, of renewable energy;
- to support projects that seek to improve energy efficiency;
- to support initiatives involving potentially innovative solutions; and
- to support projects and initiatives in regions in the State and within sectors of the economy impacted by the transition to a low carbon economy.

The first 'Call for Applications' under the Fund was launched by the then Minister for Communications, Climate Action and Environment, Denis Naughten T.D., on 9 July 2018. In all, 97 applications were received, and 7 projects were approved for funding. A second 'Call for Applications' was launched on 31 December 2019.[5] No support payments have yet been made under the Fund. More detail on the Climate Action Fund and the funding calls is available in the relevant section of this *Bill Digest*.

A detailed timeline of events related to this Bill is provided overleaf.

[5] Confirmed by the Minister in his response to a parliamentary question – 'Climate Action Fund', 17 December 2019.

Table 1: Recent developments related to this Bill

Date	Detail
29 May 2018	The Government approves the development of the Climate Action Fund to fulfil the commitment set out in the National Development Plan (2018-2027).
9 July 2018	The first 'Call for Applications' (Round 1) to the €500m Fund is launched[6]. The deadline was 1 October 2018. In all, 97 applications are received.
28 November 2018	Government announces first successful projects under Round 1. In all, 7 projects are successful, sharing €77m, leveraging a total investment of €300m[7]. Of this, the breakdown is as follows: ▪ **€33.5 million** (circa 44% of the total) has been allocated to commercial State Bodies; ▪ **€42 million** (circa 55% of the total) to the Local Authority sector; and ▪ **€1.4m** (circa 2% of the total) to non-Government organisations.
November 2018	Government approves the General Scheme of the National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2018. A consultation was subsequently undertaken with the Office of the Attorney General.
5 November 2019	A revised General Scheme is approved by Cabinet. The revised General Scheme provides for, among other things, the establishment of the Climate Action Fund on a statutory basis.
12 November 2019	The then Joint Committee on Communications, Climate Action and the Environment agrees that pre-legislative scrutiny (PLS) of the revised General Scheme is not required.
31 December 2019	The second 'Call for Applications' (Round 2) to the €500m Fund is launched.
14 February 2020	Following the Department of Communications, Climate Action and Environment's engagement with organisations taking part in the Fund's *Expressions of Interest* process, a *Clarification Note* is published.
22 June 2020	The National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2020 is published.

Source: Compiled by L&RS based on correspondence between the Department of Communications, Climate Action and Environment, and the Joint Committee.

[6] Calls are open to applications from public and private sector entities.
[7] In the first round of funding, Climate Action Fund support was limited to 50% of total project costs which can be lower if State Aid rules are a factor. The rationale being that the Department wants to leverage non-exchequer (or non-Fund) funding. See: DCCAE (2020) *Clarification Note*, p.8. Available at https://www.dccae.gov.ie/documents/Climate_Action_Fund_Clarification_Note.pdf

Payment of surplus 'NORA levy' moneys to the Climate Action Fund

The rationale for the use of surplus moneys generated by the NORA levy to finance the Climate Action Fund is succinctly summarised by the Department of Communications, Climate Action and Environment[8] as follows:

> "Given that NORA no longer requires a levy set at 2 cents (€0.02) per litre to fund its expenses, and there is no provision in legislation for the payment of a dividend by NORA to the Exchequer, the Minister considered that future surplus funds could be utilised to fund climate action, through the Climate Action Fund".

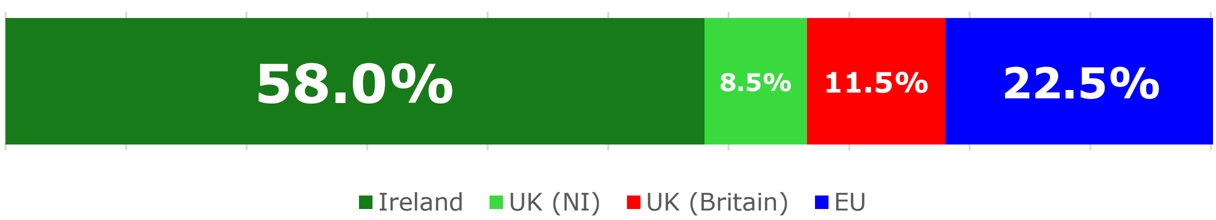
This section of the Bill Digest further explores the NORA levy and considers NORA's oil reserves obligations and its financial position over time.

NORA's obligation to maintain the State's strategic oil reserves

Under EU legislation and International Energy Agency (IEA) rules, Ireland is obligated to hold the equivalent of 90 days of net oil imports (comprising refined oil and crude oil) as a strategic reserve in case of a disruption to supply. This reserve is managed by the National Oil Reserves Agency (NORA). NORA was established in 1995 as a subsidiary of the Irish National Petroleum Corporation Limited (INPC) under the European Communities (Minimum Stocks of Petroleum Oils) Regulations 1995. Fulfilling a Government commitment included in the White Paper 'Delivering a Sustainable Energy Future for Ireland" (published in March 2007), NORA was established as an independent statutory State Agency under the aegis of the then Department of Communications, Energy and Natural Resources under the *National Oil Reserves Agency Act 2007*.

NORA's obligation volumes are publicly available on the NORA website.[9] NORA's purchasing of oil is currently funded by commercial borrowing.[10] As of April 2020, Ireland holds the equivalent of 114 days of oil reserves (the equivalent of 89 days are held publicly by NORA and 25 days held by industry).[11] Issues with storage availability and value for money considerations mean that some of Ireland's oil reserves are not located in the State. As of August 2019, approximately 67% of Ireland's oil reserves are stored on the island of Ireland (58% in Ireland and 8.5% in Northern Ireland), 11.5% are held in Britain and 22.5% are held in EU Member States other than Ireland (as required under the provisions of Article 3.1 of the EU Oil Stocks Directive). Oil stocks are primarily stored in in third party commercial storage locations. Figure 1 below shows the geographical profile of NORA stocks.

Figure 1: Geographical profile of NORA stocks (as of end August 2019)



Source: NORA (2020) Information Note for the Committee of Public Accounts, 11 October 2019.

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8 *Ibid.*
9 See https://www.nora.ie/oil-stocks.138.html [accessed 12 July 2020].
10 See http://www.nora.ie/function/function.397.397.html [accessed 10 July 2020].
11 https://www.iea.org/articles/oil-stocks-of-iea-countries [accessed 9 July 2020].

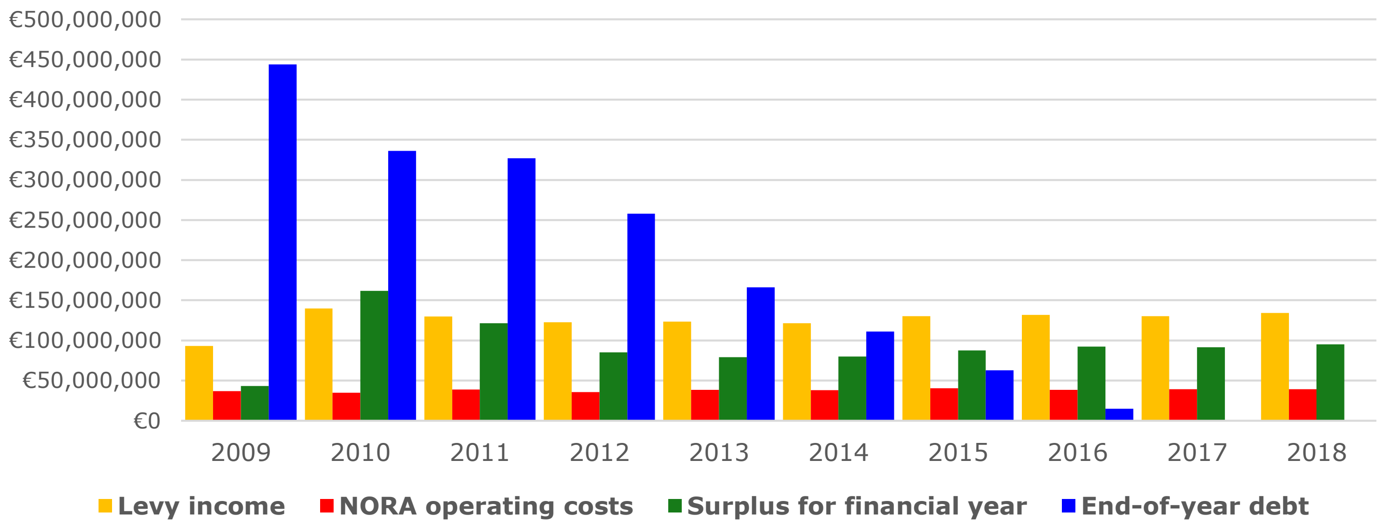
It is unclear whether the cost implications of moving storage from UK sites (reflecting Brexit) are known.[12] NORA indicated in September 2019 that the Irish Government had, at that time, no plans to relocate oil reserves ahead of Brexit but stated that NORA will continue to engage with the European Commission to ensure Ireland's compliance with EU obligations.

The NORA levy and NORA's financial position over time (2009-2018)

NORA's operational activities are funded by a levy (currently €0.02/2c per litre) imposed on certain oil products (paid by consumers at point of sale then collected and paid by oil companies to NORA). This is known as the 'petroleum products levy' or simply the 'NORA levy'. The levy is set by the Minister with responsibility for the energy portfolio, by regulation, pursuant to section 44(1)(a) of the Principal Act.

The NORA levy was introduced in 1996 to fund NORA's purchase and storage of oil stocks (to fulfil NORA's obligations) and, related to this, to service the debt accumulated from its activities. The levy remained unchanged until 2009 when it was increased to €0.02 to reduce accumulated debt of €444m that NORA had incurred. Figure 2/Table 2 (below) illustrate the financial position of NORA and levy moneys generated since 2009.

Figure 2/Table 2: NORA levy income, operating costs, surplus and outstanding debt (2009-2018)



	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Levy income	€93.3m	€139.7m	€129.7m	€122.8m	€123.4m	€121.3m	€130.4m	€131.8m	€130.4m	€134.2m
NORA operating costs	€36.9m	€34.8m	€38.8m	€35.7m	€38.7m	€37.9m	€40.5m	€38.7m	€39.2m	€39.2m
Surplus for financial year	€43.2m	€161.8m	€121.4m	€85.3m	€79.2m	€79.9m	€87.7m	€92.5m	€91.4m	€95.1m
End-of-year debt	€444m	€336m	€327m	€258m	€166m	€111m	€63m	€15m	€0	€0

Source: Compiled by L&RS based on NORA's annual financial statements.

[12] NORA (2020) Information Note for the Committee of Public Accounts, 11 October 2019.

Over the period 2019-2023, average levy receipts are expected to be €141m per annum, and average NORA expenses are expected to be €76m pa. This leaves a potential surplus (net of operating costs) of €325m.[13] As of **end-August 2019**, NORA held a cash balance of €221.7m. NORA is also expected to incur additional costs in 2020 in excess of €60m in purchasing stock for the newly refurbished Poolbeg storage facility.[14]

Changes proposed in this Bill

Several sections in this Bill provide for changes to the existing NORA levy. Section 5 amends the Principal Act to expand the powers and functions of NORA to now include the paying of levy revenue into the Climate Action Fund. Section 13 amends the Principal Act to expand the purpose for which the levy is paid from the current purpose alone (funding the expenses of NORA) to also include contributions to the Climate Action Fund. Section 13 sets the levy rate at €0.02 per litre (by way of reference to a new section 37A(1A) to the Principal Act introduced by section 14). Consequentially, sections 16-18 have the effect of removing the ability of the Minister to adjust the levy by regulation.[15]

Maintaining the NORA levy at €0.02 is expected to provide at least €50m per annum during the lifetime of the €500m Climate Action Fund (2018-2027, or €50m annually for 10 years) which, combined with the existing cash balance, is considered sufficient to also continue to cover NORA's operational expenses.

[13] All 2019-2023 figures provided by the then Minister for Communications, Climate Action and Environment, Richard Bruton T.D., in response to a parliamentary question – ['National Oil Reserves Agency'](), 6 September 2019.
[14] Figures provided by the Department of Communications, Climate Action and Environment in [correspondence]() with the Dáil Committee of Public Accounts (PAC) in October 2019.
[15] Adjustments to the levy will have to be made through primary legislation.

The Climate Action Fund

This section of the Bill Digest reviews Ireland's climate and planning policy, with a focus on the history to the Climate Action Fund. It also sets out the financial support for the Fund, project funding calls and the proposed changes in this Bill.

A brief history of Ireland's climate policy response

Ireland's response to climate change is shaped by its commitments at EU and international levels. A summary is as follows:

- In **2007**, the Government published the *National Climate Change Strategy (NCCS) 2007-2012*, followed by the *National Climate Change Adaptation Framework* (NCCAF) in **2012**. However, both policy papers were non-statutory;
- The *Climate Action and Low Carbon Development Act 2015* placed national climate policy in legislation with the aim of pursuing the transition to a low carbon, climate resilient and environmentally sustainable economy by 2050. To achieve this transition, a key provision of the Act requires the Minister to devise a National Mitigation Plan (NMP) to reduce greenhouse gas (GHG) emissions, a National Adaptation Framework (NAF) to respond to changes caused by climate change and Sectoral Adaptation Plans (SAP), with each plan reviewed every five years. The *2015 Act* also established the Climate Change Advisory Council**,** an independent advisory body tasked with assessing and advising on how Ireland is making the transition to a low carbon, climate resilient and environmentally sustainable economy by 2050;
- In **December 2015**, the Government launched its *White Paper on Ireland's transition to a low carbon energy future 2015-2030.* Its vision is of a low carbon energy system where GHG emissions from the energy sector will be reduced by between 80-95%, compared to 1990 levels, by 2050, and will fall to zero or below by 2100;
- In **July 2017**, the Department for Communications, Climate Action and Environment published Ireland's first *National Mitigation Plan (NMP) i*n accordance with the provisions of the *Climate Action and Low Carbon Development Act, 2015*. It contains a series of mitigation measures and actions to address how Ireland will achieve 2020 and 2030 emissions targets and how Ireland will reach the objectives of the National Policy Position for 2050[16]; and
- In **January 2018**, the Department of Communications, Climate Action and the Environment published Ireland's first statutory *National Adaptation Framework, Planning for a climate resilient Ireland*.

National planning policy and the Climate Action Fund

On 16 February 2018, the Government published *Project Ireland 2040*, the overarching planning and policy framework for social, economic and cultural development to 2040 in Ireland. *Project Ireland 2040* is comprised of the *National Planning Framework* (NPF) and the *National Development Plan 2018-2027* (NDP).

The NDP is the 10-year, €116 billion programme underpinning the NPF. The capital will be used to upgrade Ireland's infrastructure in anticipation of the population increase.[17] The NDP includes for the strategic investment priority to transition to a low carbon and climate resilient society. It has

[16] Friends of the Irish Environment challenged the adequacy of the NMP to reduce greenhouse gas emissions. In June 2020 the Supreme Court announced that it would make a judgement on the appeal over the adequacy of the NMP at a later date. Further information is available at: https://www.irishtimes.com/news/crime-and-law/courts/supreme-court/supreme-court-to-rule-later-on-important-and-difficult-climate-case-1.4286457 [accessed on 14.07.2020].

[17] DHPLG (2018) *Reimagining our country: Government launches €116 billion Project Ireland 2040, 16 February* [online] - available at: http://npf.ie/project-ireland-2040-launched/ [accessed on 12.07.2020]

committed funding of €21.8 billion (€7.6 billion Exchequer/€14.2 billion non-Exchequer) to achieve this. In addition, the NDP allocated a further €8.6 billion for investments in sustainable mobility.

As a part of its commitment to transitioning to a low carbon society, the NDP pledges to allocate €500 million to a newly established Climate Action Fund under the remit of the (then) Department of Communications, Climate Action and Environment.[18]

Recent climate action policy and the Climate Action Fund

Report of the Joint Oireachtas Committee on Climate Action (2019)

In March 2019, in response to the 2017 Report of the Citizens' Assembly, *How the State can make Ireland a leader in tackling climate change*, the Joint Oireachtas Committee on Climate Action published its report, *Climate change: a cross party consensus for action*. The report recommended, among other things, increasing carbon tax, strengthening climate action legislation and embracing community-led and micro-generation of renewable energy. The Report also acknowledges the importance of the Climate Action Fund and made several recommendations in relation to the Fund as follows:

- A review of the eligibility criteria and the projects financed by the Climate Action Fund should be undertaken by the Department of Communications, Climate Action and Environment at regular intervals (and, where necessary, it should receive extra resources). The outcomes of such reviews should be referred to the Standing Committee on Climate Action;
- The Department of Communications, Climate Action and Environment should provide support to a limited number of community-led pilot renewable energy projects in 2019, if possible, through a ring-fenced community pot in the first Renewable Electricity Support Scheme (RESS) auction, and through the Climate Action Fund; and
- The Department of Communications, Climate Action and Environment should accelerate the roll-out of a national fast-charging network aided by the Climate Action Fund and there should be a more ambitious roll out of EV charging infrastructure in accordance with the planned increases in EV numbers by 2030.

Climate Action Plan, 2019

In June 2019, the Government published its *Climate Action Plan* which aims to set Ireland on the path to meeting its 2030 EU GHG emissions reduction targets and achieving net zero GHG emissions by 2050. Key measures include introducing new climate action legislation, developing five-year carbon budgets and raising the energy efficiency of our housing stock. The Plan also included a number of actions specific to the Climate Action Fund under its *Climate Action Plan Annex of Actions* as follows:

- **Action 39:** Launch targeted call under Climate Action Fund (Q3 2019, DCCAE);
- **Action 70**: Develop a policy framework for the progression of district heating in Ireland. Steps necessary for delivery include to support the provision of two district heating projects under the Climate Action Fund (the South Dublin County Council Tallaght District Heating Scheme project and the Dublin District Heating Scheme project);
- **Action 72:** Develop the Electric Vehicle (EV) charging network necessary to support the growth of EVs to at least 800,000 by 2030 and set a target for the supply of infrastructure to stay sufficiently ahead of demand. Steps necessary for delivery include to commence the

[18] DCCAE, n.d. *Climate action fund* [online]. Available at: https://www.dccae.gov.ie/en-ie/climate-action/topics/climate-action-fund/Pages/default.aspx [accessed on 13.7.2020]

ESB Electric Vehicle High Power Charging Infrastructure Development Project, supported by the Climate Action Fund, which will support growth to at least 40,000 EVs (Q3 2019) and Include EV fast chargers as a category eligible for support in the next call for Expressions of Interest from Climate Action Fund (Q4 2019);

- **Action 76:** Develop the Compressed Natural Gas (CNG) fuelling network to support the uptake of CNG vehicles. Steps necessary for delivery include: CNG public fuelling stations as a category eligible for support in the next call for Expressions of Interest from Climate Action Fund (Q1 2020); to assess the current and planned developments of CNG fuelling stations to inform the need to include a dedicated category of support in future calls from Climate Action Fund (Q2 2020); and to commence the Green Renewable Agricultural Zero Emissions (GRAZE) Gas Project, supported by the Climate Action Fund, which will include support for two CNG stations (Q4 2020); and
- **Action 165:** Extend flagship low-carbon projects to other towns and villages. Steps necessary for delivery include to develop a category of low carbon town projects for future calls under the Climate Action Fund (Q3 2020).

Carbon tax and *Budget 2020*

In *Budget 2020* (published in October 2019), the Government announced support to roll out the Climate Action Plan, increased carbon tax and ring-fenced the revenue for climate action measures. *Budget 2020* refers to a "Climate Action Fund" regarding carbon tax moneys. It is important to note that this Fund is **separate** to the Climate Action Fund proposed under this Bill.[19]

Funding under the Climate Action Fund

The Climate Action Fund was approved by Government on 29 May 2018 to fulfil the commitment set out under the NDP and is already established on an administrative basis (like the other funds established under the NDP). The overall funding level will be €500 million. The funding levels of the four Project Ireland 2040 funds are detailed below.

Box 2: The four Project Ireland 2040 investment funds and expected expenditure over the lifetime of the NDP (2018-2027)

- Urban Regeneration and Development Fund (**€2 billion);**
- Rural Regeneration and Development Fund (**€1 billion);**
- Climate Action Fund (**€500 million);** and the
- Disruptive Technologies Innovation Fund (**€500 million)**.

Source: Gov.ie

There will be several calls for applications under the Climate Action Fund to 2027 (over 10 years). Applications for funding be made by either public or private bodies.[20] Two funding 'calls' or rounds have been launched to date. The first call for proposals was launched on 9 July 2018 and received

[19] 'A' Climate Action Fund involving carbon tax moneys is also included in the June 2020 Programme for Government.
[20] DCCAE (2019) Letter to the PAC, 19 October. *Re: The NORA levy and the repurposing of the levy for use y the Climate Action Fund* [online]. Available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2019/2019-12-31_correspondence-michael-goodwin-energy-security-division-department-fo-communications-climate-action-and-environment-32r002454-pac_en.pdf [accessed on 13.07.2020].

97 applicants. In November 2018, it was announced that seven projects were successful, sharing €77m and leveraging a total investment of €300m. The breakdown is as follows.[21]

- **€33.5 million** (circa 44% of the total) has been allocated to commercial State Bodies;
- **€42 million** (circa 55% of the total) to the Local Authority sector; and
- **€1.4m** (circa 2% of the total) to non-Government organisations.

The seven successful projects and the support they will receive is outlined in Table 3, below. To date, no support payments from the Fund have yet been made to approved projects.[22] The transfer of funds from NORA to the Climate Action Fund will be made when this legislation is enacted.[23] Projects will not receive 100% of their costs from the Fund. As provided above, direct funding for the first call amounted to €77m, compared to total project cost (or investments) of €300m.

Table 3: Allocation of funding approval – first call for applications, Climate Action Fund

Lead applicant	Type of lead applicant	Project name	Maximum support
ESB eCars	Commercial State bodies	ESB Electric Vehicle High Power Charging Infrastructure Development Project	€10,000,000
Gas Networks Ireland	Commercial State bodies	GRAZE Gas – Green Renewable Agricultural Zero Emissions Gas	€8,474,340
Irish Rail	Commercial State bodies	Hybrid Drive for Inter City Railcar (ICR 22000) fleet	€15,000,000
Dublin City Council	Local Authority sector	Dublin District Heating System (DDHS)	€20,000,000
South Dublin County Council	Local Authority sector	The South Dublin County Council Tallaght District Heating Scheme	€4,447,952
Road Management Office	Local Authority sector	Local Authority Public Lighting Energy Efficiency Project	€17,470,000
3 Counties Energy Agency CLG	NGO	Driving HGV Efficiently into Brexit	€1,373,400

Source: MerrionStreet.ie (2019) *'First Successful projects under Climate Action Fund announced'*, 28 November 2019.Note: categorisation is provided by the L&RS for illustrative purposes only in line with the Minister's response.

An initial allocation of €100m to the fund?

The NDP refers to an initial allocation of €100m under plans for the Climate Action Fund:

> "Given the very significant levels of investment required to fund the necessary climate action measures identified in the National Development Plan, a new Climate Action Fund will be established that will leverage investment by public and private bodies. The fund will have **an initial allocation of €100 million** and with an annual income of at least €50 million thereafter. To finance the fund and ensure it remains capable of replenishing its

[21] Categorisation supplied by the Minister in his written response to a parliamentary question 'Climate Action Fund', 1 October 2019.

[22] According to the Minister for Communications, Climate Action and Environment's response to a parliamentary question on the topic – Climate Action Fund, 17 December 2019.

[23] A news report published in September 2018 indicated that €21m would be transferred from the €75m Ireland Energy Efficiency Fund (IEEF). See: Irish Times (2018) *'C&AG warns of risks to department over energy efficiency fund'*, 28 September 2018.

> resources, the Government will repurpose part of the existing petroleum products levy (commonly known as the NORA levy) of 2 cents per litre that has been in place since 2007. The fund will focus on climate action projects where it can augment existing public or private investment. It will have a strong focus on interventions in the transport sector."[24]

In relation to the source of this €100 million, the then Minister for Communications, Climate Action and Environment, Richard Bruton T.D., in response to a parliamentary question on 6 September 2019 stated that:

> "Under the National Development Plan, the Government has decided that the Climate Action Fund will have an initial allocation of €100 million and an annual allocation of at least €50 million thereafter. To finance this Fund, the Government has decided to repurpose part of the NORA levy. There are no plans to use the NORA levy for any other purposes."[25]

In correspondence between the Department and the L&RS, [26] it was confirmed that this €100m was based on an early passing of this Bill, meaning that €100m would be built up over 12 months after the Bill was enacted and then provided to the Climate Action Fund on the direction of the Minister. However, the Department clarified that, as the Bill was only published in June 2020 and is yet to be enacted, there are no levy funds accumulated. As stated previously, it is not possible to retrospectively use levy funds collected legally for the purpose of funding NORA only, for the Climate Action Fund.

Future funding

It is estimated that the annual Fund expenditure over its 10-year lifespan will be as follows:[27]

Table 4: Estimated annual Fund expenditure over the lifetime of the Fund

Year	Estimated annual expenditure
2020	€10m
2021	€30m
2022	€40m
2023-2026	€80m
2027	€100m

As stated, these forecast expenditure amounts will not constitute 100% of project costs for successful applicants / approved projects. In a Clarification Note issued by the Department on 14 February 2020, this issue was explained further:

> "**Q. Does the Fund give 100% financial support to projects?**
>
> It is very unlikely that CAF [Climate Action Fund] support of 100% of project costs would be approved. In the first round of funding the limit was 50% of total costs though this can be lower if State Aid rules come into factor, e.g. the difference between total costs and eligible costs. No decision has been made on the next round of funding and organisations are free

[24] Taken from pages 77-78 of the NDP and reiterated on page 10 of NORA's 2018 accounts, available at: https://www.nora.ie/_fileupload/Signed%20Financial%20Statements%2031_12_2018.pdf [accessed on 13.07.2020]

[25] Response by the then Minister for Communications, Climate Action and Environment, Richard Bruton, T.D., to parliamentary question 1549, *National Oil Reserves Agency*, 6 September 2019 [online]. Available at: https://www.oireachtas.ie/en/debates/question/2019-09-06/1549/ [accessed on 13.07.2020]

[26] Confirmed by email, as received on 14 July 2020.

[27] Figures provided by the Minister for Communications, Climate Action and Environment, Richard Bruton T.D., in his response to a parliamentary question – 'Climate Action Fund', 17 December 2019.

> to submit for any funding percent, however anything over a 50% threshold would need particular justification. State Aid intensity levels will be adhered to in all cases.
>
> The Government wants to leverage non-Exchequer or non-CAF funding. A good indicator, which DCCAE would seek to emulate, was the first round in which commitments of up to €77 million in CAF support leveraged €300 million in investments overall".

Changes proposed under the Bill

Establishment of the Climate Action Fund on a statutory footing

The Climate Action Fund is already operational on an administrative footing, using moneys from the National Energy Efficiency Fund. However, the Office of the Attorney General has advised that the Climate Action Fund should be placed on a statutory footing.[28]

Section 15 of the Bill amends Section 37 of the Principal Act and provides for the establishment of the Climate Action Fund on a statutory footing on the enactment of this Bill.

Section 15 of the Bill also provides that the Climate Action Fund will be managed and controlled by the Minister, who may delegate these and any other functions relating to the Fund under this section to a specified person. The Minister may give direction and guidance to this specified person and prior to this, may consult with other Minister(s) whom he or she sees fit.

The Fund shall consist of accounts as the Minister may determine and the Minister shall keep all proper and usual accounts of money paid in to and dispersed out of the Fund.

Subsection 9 of section 15 of the Bill provides that the Fund will support projects, initiatives and research which aim to reduce greenhouse gas emissions, increase renewable energy and/or improve energy efficiency in Ireland. The Fund will also support projects and initiatives in specific regions and sectors affected by the transition to a low carbon future. This will help to help deliver a Just Transition in Ireland (a Just Transition relates to exploring opportunities to green existing jobs and creating new jobs in areas such as energy retrofitting for buildings, sustainable forestry and peatland restoration. It also aims to provide protection and support to those regions and sectors that are most likely to be impacted by climate action, such as Bord na Móna workers and the midlands[29]).

Section 15 of the Bill also provides that the Minister or such person as the Minister specifies, may invite proposals to avail of funding from the Climate Action Fund and such invitations will be published on the Department of Communications, Climate Action and Environment website. The Minister may also establish a committee to advise him/her with regards to the performance of his/her functions under this section.

Payment of levy moneys into the Climate Action Fund

Section 5 of the Bill amends Section 8 of the Principal Act and includes the provision that the Minister may give direction to pay a specified amount of money into the Climate Action Fund in that financial year. The amount to be paid into the Fund will be paid from the proceeds of the NORA levy collected and recovered. The Minister will ensure that when that amount is deducted, NORAs remaining income is sufficient to meet its expenses.

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[28] DCCAE (2019) *Screening Regulatory Impact Assessment (RIA) - National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2019*

[29] Committee on Climate Action, 2019. *Climate Change: a cross party consensus for action* [online]. Available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_climate_action/reports/2019/2019-03-28_report-climate-change-a-cross-party-consensus-for-action_en.pdf [accessed on 14.07.2020]

Section 14 of the Bill includes the provision that any levy moneys collected or recovered prior to the commencement of the proposed Bill "shall not form part of any payment into the Climate Action Fund under this section."

Provision of a Central Treasury Service facility by the NTMA to NORA (and Irish Water)

Section 28 of the Bill provides for the designation of both NORA and Irish Water as 'designated bodies' to which the NTMA may provide a central treasury service. The NTMA's central treasury service was established in 2001 under the *National Treasury Management Agency (Amendment) Act 2000*. It allows for the NTMA to take deposits from and makes advances (in the form of overdraft and loan facilities) to designated State bodies. In the case of NORA, this will provide the agency with an alternative to borrowing from the commercial banking sector. In the case of Irish Water, this will cover short-term, temporary and timing-related working capital funding gaps.

Box 3: 'Designated bodies' under the *NTMA (Amendment) Act 2000*

Designated bodies are defined under section 18 of the *2000 Act*, and include the following:

- Local Authorities;
- An Education and Training Board (ETB);
- The Commission for Regulation of Utilities (CRU);
- The Health Service Executive (HSE);
- The Courts Service;
- Transport Infrastructure Ireland (TII);
- The Housing Finance Agency;

Section 19 of the *2000 Act* allows for the Minister, with the approval of the relevant Minister, to designate a non-commercial State body. Section 14 of the *Markets in Financial Instruments and Miscellaneous Provisions Act 2007* amended the *2000 Act* to also include reference to "a body specified in schedule 4 of the *Taxes Consolidation Act 1997*" (i.e. a non-commercial State sponsored body). An updated list of these bodies is available here.

Source: *National Treasury Management Agency (Amendment) Act 2000*

The overall goal, as detailed in the Explanatory and Financial Memorandum accompanying the Bill is to "[provide for] efficiencies in the financial management of both agencies". Funds accessed through the NTMA are typically available and provided to applicants at lower interest rates relative to those rates offered by commercial banks.

NORA

The NTMA currently advises NORA in relation to the management of its financing, taking account of the need for the ongoing retention of cash reserves, likely future requirements for capital expenditure, oil stock purchases and borrowing facilities, if required. Section 28 of this Bill will additionally enable the NTMA to provide funds to NORA in the event of an oil supply emergency and allow NORA to make deposits with the NTMA rather than commercial banks which is considered more cost effective for the exchequer. [30]

[30] Department of Communications, Climate Action and Environment (2020) *Screening Regulatory Impact Assessment - National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2019*, p.2.

Unrelated to this Bill, the NTMA (through the National Development Finance Agency)[31] is also currently advising the Department of Communications, Climate Action and Environment in respect of the selection of projects for the Climate Action Fund (Round 2), having previously assisted with the validation of projects under Round 1.

Irish Water [32]

Uniquely, Irish Water is not a non-commercial State body[33] and, and such, its access to the central treasury service facility provided by the NTMA requires an amendment to section 18 of the *National Treasury Management Agency (Amendment Act 2000*. Access to a working capital loan facility (to fulfil short-term financing requirements) from the NTMA's central treasury service to Irish Water is explicitly outlined in the NTMA's 2019 Annual Report (p. 42):

> "The third phase relates to a planned provision of a working capital loan facility from the NTMA's Central Treasury Service to Irish Water, which will require amending legislation."

This follows a Government decision on 18 October 2016 that stated that Irish Water's external debt facilities should be replaced with State-funded debt facilities, and the agreement on 6 September 2017 that a new funding model for Irish Water would involve funding for Irish Water being channelled through the Department of Housing, Planning and Local Government Vote (as recommend by a report published by the Department of Housing, Planning and Local Government).

A separate and subsequent report of a Department of Finance Working Group set up to consider the best approach to facilitate this transition and the replacement of Irish Water's commercial debt ('Working Group on the Replacement of Irish Water's Commercial Debt') recommended that Irish Water's short term working capital requirements be addressed through the provision of a central treasury service facility by the NTMA.[34] The amount of the loan facility is subject to the approval of the Minister for Finance and Minister for Housing, Planning and Local Government (or the Minister responsible for water services) and the amount is subject to a review after one year of operation.

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[31] NTMA (2020) Annual Report 2019, p. 37 – available at https://www.ntma.ie/annualreport2019/downloads/8953-NTMA-Annual-Report-2019-full-report.pdf

[32] See – Oireachtas Parliamentary Budget Office (2019) *Irish Water's Strategic Funding Plan 2019-2024 (Context and Implications)* for a detailed overview and analysis of Irish Water's funding plan – available at https://data.oireachtas.ie/ie/oireachtas/parliamentaryBudgetOffice/2019/2019-04-02_irish-water-s-strategic-funding-plan-2019-2024-context-and-implications_en.pdf

[33] Irish Water, established under the *Water Services Act 2013*, is a subsidiary company of Ervia (formerly known as Bord Gáis Éireann). Ervia is a commercial semi-state company. See: https://www.water.ie/about-us/our-company/ [accessed 10 July 2020].

[34] Department of Communications, Climate Action and Environment (2020) *Screening Regulatory Impact Assessment - National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2019*, p.2.

Changes to the biofuels levy and the Biofuel Obligation Scheme (BOS)

The Bill proposes two substantive changes regarding the use of biofuels in Ireland - by providing for technical changes to the Biofuels Obligation Scheme, in addition to setting the rate of the biofuel levy to a nominal amount (€0.001 or 0.1c). This section of the Bill Digest explores biofuels, the Biofuels Obligation Scheme and the changes proposed in this Bill.

Defining biofuels

Biofuels are renewable liquid or gaseous fuels, which are derived directly or indirectly from biomass crops or by-products.[35] Suitable for use in vehicle engines or heating systems, biofuels can be considered as potential replacements or extenders for mineral fuels such as diesel or petrol.[36]

A wide range of materials can be used in the production of biofuels including sugarcane, wheat, corn and waste materials such as Used Cooking Oil (UCO) and animal fats. Biofuels can be split up into three categories:[37]

- **Solid biofuels:** covers solid organic, non-fossil material of biological origin (also known as biomass). Examples include fuelwood, wood residues, wood pellets, animal waste, vegetal material. Solid biofuels may be used as fuel for heat production or electricity generation;
- **Liquid biofuels:** include all liquid fuels of natural origin (e.g. produced from biomass and/or the biodegradable fraction of waste) and are suitable to be blended with or replace liquid fuels from fossil origin. Liquid biofuels are typically categorised by the fossil fuels that they can be blended with or can replace.[38] The two most common categories of liquid biofuel are biodiesel and biogasoline, with bio jet kerosene another example of a liquid biofuel;
- **Biogas:** is a gas composed principally of methane and carbon dioxide produced by anaerobic digestion[39] of biomass or by thermal processes from biomass, including biomass in waste. Biogases can come from anaerobic fermentation and from thermal processes.

A description some of the main types of biofuels currently available (biodiesel, bioethanol, hydrotreated vegetable oil (HVO) and biomethane) is provided in Box 4, overleaf.

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[35] Eurostat defines biomass as organic, non-fossil material of biological origin (plants and animals) used as a raw material for production of biofuels.

[36] SEAI (2020) *Renewable Energy in Ireland, 2020 Report*. Available at https://www.seai.ie/publications/2020-Renewable-Energy-in-Ireland-Report.pdf

[37] The following descriptions of categories of biofuels draws heavily on Eurostat definitions available at https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Biofuels

[38] SEAI (2020) *Renewable Energy in Ireland, 2020 Report*. Available at https://www.seai.ie/publications/2020-Renewable-Energy-in-Ireland-Report.pdf

[39] Anaerobic Digestion is a way of generating renewable energy – micro-organisms break down biodegradable waste material (such as slurry and manure) or energy crops (such as grass and maize) in the absence of oxygen and produce a biogas and nutrient-rich waste material called digestate.

Box 4: Overview of certain biofuels

Biodiesel can be deployed in diesel-powered vehicles or blended with diesel fuel. It can be made from several feedstocks such as vegetable oils and animals' fats including rapeseed oil, recycled vegetable oils (UCO), palm oil, soybean oil, sunflower oil and tallow.

Bioethanol typically derives from raw materials such as wheat, corn, barley, rye and sugar beet. It is typically blended with gasoline and used in petrol vehicles.

Hydrotreated vegetable oil (HVO) is a form of renewable diesel which can be used as a direct replacement for diesel or deployed in diesel in higher concentrations than B7[40] without any technical issues.

Biomethane is a renewable fuel produced by removing impurities from biogas and can be deployed for use in natural gas vehicles. It can also be injected into the gas grid and used to provide heat and electricity.

Source: Department of Communications, Climate Action and Environment webpage, *What are biofuels?* Available at https://www.dccae.gov.ie/en-ie/energy/topics/Renewable-Energy/transport/biofuels/Pages/Biofuels0419-1107.aspx

The European Commission explains that biofuels are used in transport as a renewable alternative to fossil fuels in the EU's transport sector, helping to reduce greenhouse gas emissions and improve the EU's security of supply.[41] The Department of Communications, Climate Action and Environment identifies a number of benefits arising from the use of biofuels:

> "The use of biofuels brings a wide range of environmental benefits including the reduction of carbon monoxide emissions, harmful particulates, hydrocarbons and sulfates. There are other advantages to Ireland in increasing our use of biofuels. They will reduce Ireland's dependency on oil and help us in our efforts to meet our mandatory EU Renewable Energy and Greenhouse Gas emission targets".[42]

EU target on renewable energy in transport

All EU Member States are required to obtain 10% of their transport fuels from renewable energy sources (RES), such as biofuels, by 2020. Ireland must also achieve a 16% RES in overall consumption as set out in the Renewable Energy Directive (2009/28/ EC).[43] This Directive maps out various mechanisms that Member States can apply in order to reach their targets (support schemes, guarantees of origin, joint projects, cooperation between Member States and third countries), as well as sustainability criteria for biofuels (see below for more on sustainability criteria).[44]

Specifically, the Renewable Energy Directive (RED) established a mandatory minimum target of 10% for the share of all petrol, diesel, biofuels and electricity consumed in road and rail transport to come from renewable energy by 2020.[45] The overall renewable energy share (RES) target of 16%, the 10% transport target, and the 20% non-ETS emissions reduction target are all binding at

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[40] Diesel blended with 7% biodiesel.

[41] European Commission webpage, *Biofuels*. Available at https://ec.europa.eu/energy/topics/renewable-energy/biofuels/overview_en

[42] Department of Communications, Climate Action and Environment webpage, *Benefits of Biofuels*. Available at https://www.dccae.gov.ie/en-ie/energy/topics/Renewable-Energy/transport/biofuels/Pages/Benefits.aspx

[43] A revised Renewable Energy Directive (Directive (EU) 2018/2001) entered into force in December 2018.

[44] European Parliament (2020) *Renewable energy fact sheet*. Available at https://www.europarl.europa.eu/factsheets/en/sheet/70/renewable-energy

[45] SEAI (2020) *Renewable Energy in Ireland, 2020 Report*. Available at https://www.seai.ie/publications/2020-Renewable-Energy-in-Ireland-Report.pdf

EU level. In Ireland, the share of renewable transport energy (RES-T) including adjustments was 7.2% in 2018, compared to the 2020 target of 10%.

Table 5: Progress towards renewable transport target, 2005 to 2018

Share of renewable transport	2005	2010	2011	2012	2013	2014	2015	2016	2017	2018
RES-T with weightings*	0.0%	2.5%	3.8%	4.0%	4.9%	5.2%	5.9%	5.2%	7.4%	7.2%
Renewable transport in overall RES calculation	0.0%	2.0%	2.3%	2.1%	2.4%	2.7%	2.8%	2.5%	3.4%	3.2%

Source: SEAI (2020) *Renewable Energy in Ireland, 2020 Report*. Available at https://www.seai.ie/publications/2020-Renewable-Energy-in-Ireland-Report.pdf. Table 4.

Notes: *The SEAI explains that the RED specifies several weightings or multipliers that can be applied to certain fuels. The weightings help to incentivise these fuels and make it easier to meet the RES-T target. A weighting factor of 2 is applied to advanced biofuels and biofuels from waste. A weighting of 2.5 is applied to electricity from renewable energy sources consumed by electric rail transport, and a weighting of 5 is applied to electricity from renewable sources consumed by electric cars. The share of electricity that comes from renewable sources in a particular year is taken to be the share that was measured two years before the year in question. These weightings only apply to the RES-T target, not to the transport contribution to the overall RES target.

Impact on land use and sustainability

Biofuels are intended to assist EU Member States in meeting their emissions reductions targets. However, ensuring that biofuels are produced in a sustainable way is central to them reducing greenhouse gas emissions without adversely affecting the environment or social sustainability. In this context, the EU has set sustainability criteria for biofuels and bioliquids

In order to address the issue of indirect land use change (ILUC), the EU has sought to strengthen the sustainability criteria in recent years. ILUC is the process whereby growing biofuels on existing agricultural land displaces food production to previously non-agricultural land such as forests, with the consequent removal of tress (which absorb CO_2 from the atmosphere) potentially leading to an increase of net greenhouse gases instead of a decrease.[46] The recast Renewable Energy Directive (EU) 2018/2001 reinforces the sustainability criteria of biofuels through different provisions, including on ILUC.[47]

This issue of biofuels and their interaction with land use has also been discussed by the SEAI, which explains how the EU has sought to mitigate the potential effects of ILUC:

> “Biofuels are important in helping Ireland to meet its greenhouse gas reduction targets; however, biofuel production typically takes place on cropland that was previously used for other agricultural purposes such as growing food or feed. Since this type of agricultural production is still necessary, it may be partly displaced to previously noncropland such as grasslands and forests. This process is known as indirect land use change (ILUC). In September 2015, the European Commission published a Directive containing amendments to the Renewable Energy Directive. This was aimed at mitigating the potential effects of ILUC by, for example, limiting the contribution that land-based biofuels can make to 7 percentage points of the 10% RES-T target. The Directive included an indicative 0.5% target for so-

[46] European Commission webpage, *Biofuels*. Available at https://ec.europa.eu/energy/topics/renewable-energy/biofuels/overview_en

[47] *Ibid.*

> called second-generation biofuels, whose contribution towards the 10% renewable energy target for transport would be double-counted."[48]

Biofuel Obligation Scheme (BOS)

Administered by NORA, the Biofuels Obligation Scheme (BOS) is one of the main measures introduced by Ireland in order to help meet the target for renewable energy in transport. It came into effect in 2010 and sets out an obligation that suppliers of road transport fuels must include a certain percentage of environmentally sustainable biofuels across their general fuel mix.[49]

The BOS works based on tradable certificates, which are granted for each litre of biofuel blended that meets the minimum sustainability requirements. Suppliers can meet their obligation either by placing sufficient amounts of biofuel on the market themselves, or by purchasing certificates from other suppliers with a surplus. Either one or two certificates per litre of biofuel are awarded depending on the source used in the production of the biofuel:

> "It is a certificate-based scheme where certificates are issued in respect of volumes of biofuel which are placed on the market (e.g. by fuel suppliers). In order to be issued certificates, compliance with strict sustainability criteria must be demonstrated. Two certificates are awarded for each litre of biofuel produced from specified sources (including wastes and residues) with one certificate awarded per litre biofuels produced from other sources (generally crops).
>
> For each calendar year, a fuel supplier must hold sufficient biofuel obligation certificates to demonstrate compliance. The number of certificates required is determined by the biofuel obligation rate.
>
> The **biofuel obligation rate** is the number of biofuel certificates that must be held by each supplier in a given year as a percentage of the total transport fuel placed on the market in litres.
>
> Since the start of 2019, the obligation rate is set at 10% by volume. This means that for every 90 litres of fossil-based road transport fuel placed on the market, 10 certificates must be held. This rate is set in legislation as 11.111% which is calculated as the number of certificates (i.e. 10) divided by the litres of fossil-based road transport fuel (i.e. 90).
>
> From 1st January 2020, the obligation will increase to 11% by volume which is set in legislation as 12.359% corresponding to 11 certificates per 89 litres of fossil fuel."[50]

As noted above, the BOS currently places an obligation on suppliers of mineral oil to ensure that 12.359% (by volume) of the motor fuel (generally gasoline and motor diesel) they place on the market in Ireland is produced from renewable sources, e.g. bioethanol and biodiesel.[51]

Under the terms of the *National Oil Reserves Agency Act 2007 (Returns and Biofuel Levy) Regulations 2010*, a biofuel levy of €0.02 (or 2 cent) per litre is payable on the sales of all biofuels

[48] SEAI (2016) *Ireland's Energy Targets: Progress, Ambition & Impacts*. Available at https://www.seai.ie/publications/Ireland___s-Energy-Targets-Progress-Ambition-and-Impacts.pdf

[49] Department of Communications, Climate Action and Environment webpage, *Biofuels*. Available at https://www.dccae.gov.ie/en-ie/energy/topics/Renewable-Energy/transport/biofuels/Pages/Biofuels.aspx

[50] Department of Communications, Climate Action and Environment (2019) Biofuels Obligation Scheme, Consultation on the development of the Biofuels Obligation Scheme for the period 2021 to 2030. Available at https://www.dccae.gov.ie/en-ie/energy/consultations/Documents/44/consultations/Biofuels_Obligation_Scheme_Consultation.pdf

[51] NORA webpage, *Biofuels Obligation Scheme*. Available at https://www.nora.ie/biofuels-obligation-scheme.141.html See S.I. No. 38/2019 - National Oil Reserves Agency Act 2007 (Biofuel Obligation Rate) Order 2019

placed on the market with effect from 1 July 2010.[52] In 2018, the biofuel levy raised €4.3m for NORA.[53]

Box 5: Biofuel Obligation Scheme (BOS) and sustainability criteria

The sustainability of biofuels is of paramount importance to the Biofuel Obligation Scheme and certificates are issued only for biofuels that can prove they have complied with mandatory sustainability criteria. Sustainability criteria ensure that raw materials do not come from endangered land and that they reach certain levels of greenhouse gas emissions reductions. Further details of applicable sustainability criteria can be found in the *European Union (Renewable Energy) Regulations 2014*.

Source: Department of Communications, Climate Action and Environment webpage, *Benefits of Biofuels*. Available at https://www.dccae.gov.ie/en-ie/energy/topics/Renewable-Energy/transport/biofuels/Pages/Benefits.aspx

The BOS has been the subject of several policy documents and consultations in recent years. The Department of Communications, Climate Action and Environment published the Biofuel Obligation Scheme Policy Statement in April 2018, with the aim of providing "certainty to obligated parties". This was informed by the responses received to the Biofuel Obligation Scheme public consultation which took place in December 2017 and January 2018 which identified "the need to provide certainty to industry and stakeholders to facilitate longer term planning for achieving compliance in future years". In September 2019, the Department launched a Consultation on the development of the Biofuels Obligation Scheme for the period 2021 to 2030 including the implementation of the elements relating to renewable transport fuels in the recast Renewable Energy Directive.

Changes proposed by this Bill

The Bill proposes two substantive changes regarding the use of biofuels in Ireland - by providing for technical changes to the Biofuels Obligation Scheme, in addition to setting the rate of the existing biofuel levy to a nominal amount.

Changes to the Biofuel Obligation Scheme (BOS)

The process for awarding certificates under the BOS was explained previously. Specifically, two certificates are awarded for each litre of biofuel produced from specified sources (including wastes and residues) with one certificate awarded per litre biofuels produced from other sources (generally crops).

A fuel supplier must hold sufficient biofuel obligation certificates to demonstrate compliance in respect of each obligation period (i.e. a calendar year), with the number of certificates required determined by the biofuel obligation rate.

The maximum amount of biofuel certificates from the two previous obligation periods (i.e. calendar years) which can be used in the current period is currently capped at 25%. This allows a fuel supplier to meet up to 25% of their obligation in a given year by using certificates (i.e. biofuel

[52] NORA webpage, *Biofuels Obligation Scheme*. Available at https://www.nora.ie/biofuels-obligation-scheme.141.html

[53] Figure provided by the Department of Communications, Climate Action and Environment in published correspondence provided to the Dáil Committee of Public Accounts in October 2019. Available at https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2019/2019-12-31_correspondence-michael-goodwin-energy-security-division-department-fo-communications-climate-action-and-environment-32r002454-pac_en.pdf

placed on the market) from either of the previous two years. This is on the proviso that the certificates have not been used to meet the obligation in previous years.

The Biofuel Obligation Scheme Policy Statement published in April 2018 signalled the Minister's intention to reduce the carryover of biofuel certificates from 25% to 15% from 1 January 2020.[54] The Policy Statement explains that whilst that 25% limit was an important flexibility that allowed industry to respond to market developments, it increased the risk that the overall contribution to national targets in any given year may be significantly less than the obligation rate. It anticipated that reducing the carryover limit to 15% in 2020 and for all subsequent years would reduce this risk and, at the same time, maintain a significant level of flexibility for the industry.

Accordingly, section 22 of the Bill makes a technical change to section 44I of the Principal Act in relation to the BOS. It proposes reducing the maximum amount of biofuel certificates from the two previous obligation periods, which may be used in the current period, from the previous cap of 25% to 15% of the total obligation. This would apply for obligation periods beginning from 1st January 2020 onwards.

According to the screening RIA published on the Bill, the option of amending the Principal Act (which reduces the biofuels levy to a nominal amount and provides for a reduction in biofuel certificates from the two previous obligation periods which may be used in the current period from the previous cap of 25% to 15%) would incentivise the use of biofuels over fossil fuels and optimise the operation of the BOS. [55]

Changes to the biofuels levy

Section 24 of the Bill amends section 44N of the Principal Act by setting the rate of the biofuel levy at €0.001 (0.1c) per litre of biofuels placed on the market. Setting the rate of the biofuel levy to a nominal amount is intended to remove a current anomaly, whereby the levy placed on biofuels is the same as that on petroleum products placed on the market. This amendment, and consequent adjustment of the biofuel levy, is aimed at incentivising the use of biofuels over fossil fuels in Ireland.

[54] This means that for all obligation periods up to and included in 2019, the level will remain at 25%.
[55] Detailed provided in the *Screening Regulatory Impact Assessment (RIA) - National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Bill 2019.*

Policy implications

The following Table summarises the likely policy implications arising from the implementation of the various measures contained within this Bill.

Table 6: Policy implications and regulatory impact of the Bill's provisions

	Costs	**Benefits**		
	Exchequer	**Competitiveness and employment**	**Environment**	**Rural Communities**
Payment of excess/surplus NORA levy moneys to the Climate Action Fund **Putting the Climate Action Fund on a statutory footing**	No costs to the exchequer. (Note: The Climate Action Fund is already established, and funding has been approved to 7 projects. No moneys have yet been disbursed to date).	Projects which will be in receipt of funding from the Climate Action Fund will support employment. The leveraging of additional investment (and spill overs) is likely to also generate additional employment.	Projects will contribute to the decarbonisation of industry and society and thus positively impact the environment**.**	The Fund will be open to projects across Ireland, which will lead to benefits for rural communities. Climate resilience projects, such as those aimed at providing resilience against flood or rising sea water may benefit rural communities.
Provision of Central Treasury Services by the NTMA to NORA and Irish Water	No costs to the exchequer.	For **NORA**, it will allow efficiencies in the management of NORA funds, compared to the commercial banks. For **Irish Water**, it will cover short-term and temporary timing-related funding gaps, related to working capital purposes.	None.	None.
Changes to the biofuels levy and the Biofuel Obligation Scheme (BOS)	No costs to the exchequer.	None.	None.	None.

Source: L&RS based on the Bill, the Explanatory and Financial Memorandum accompanying the Bill and the screening regulatory impact assessment (RIA) provided to the authors / L&RS by the Department of Communications, Climate Action and Environment.

The Programme for Government (June 2020)

The Programme for Government - "Our Shared Future" agreed on 15 June 2020 following negotiations held between Fianna Fáil, Fine Gael and the Green Party and endorsed by the respective party memberships on 26 June 2020 includes a number of references to the (or a) 'Climate Action Fund' under two 'missions'. These are replicated below.

Mission: Reigniting and Renewing the Economy

Under: ***National Economic Plan – Investment and stimulus*** (p. 21)

- "Bring forward funding for the Project Ireland 2040 Climate Action Fund and the Disruptive Technologies and Innovation Fund, and issue new awards in conjunction with the National Economic Plan";

Under: ***Carbon Tax*** (p.24)

- "We will legislate to hypothecate all additional carbon tax revenue into a Climate Action Fund[56] raising an estimated €9.5 billion over the next ten years. This Fund will be utilised over that period to:

  1. Ensure that the increases in the carbon tax are progressive by spending €3 billion on targeted social welfare and other initiatives to prevent fuel poverty and ensure a just transition;
  2. Provide €5 billion to part fund a socially progressive national retrofitting programme targeting all homes but with a particular emphasis on the Midlands region and on social and low-income tenancies;
  3. Allocate €1.5 billion to a REPS-2 programme to encourage and incentivise farmers to farm in a greener and more sustainable way. This funding will be additional to funding from the Common Agriculture Policy. It will include incentives to plant native forestry and to enhance and support biodiversity."

Mission: A Green New Deal

Under: ***Climate Action Fund*** (p.39)

- "We will establish the Climate Action Fund in law within 100 days, through the early enactment of the National Oil Reserves Agency Bill. We will quickly launch a second call under the Climate Action Fund. We will also launch a call under a Local Environmental Innovation Fund to enhance community participation."

[56] This reference is to 'a' Climate Action Fund rather than the existing Climate Action Fund which will (as proposed by this Bill) be resourced by surplus NORA levy moneys.

Commentary and criticism

The Irish Times reported in July 2019[57] that the Irish Petroleum Industry Association (IPIA), which represents approximately 95% of Irish oil industry companies, has criticised the repurposing of surplus funds raised by the NORA levy (which is paid by oil companies through the collection and payment of proceeds from the sale of oil products). The IPIA, it was reported, rejects the use of the surplus levy funds for any purpose other than the funding the operational and administrative expenses of NORA itself. The IPIA instead recommended that surplus funds be used to support existing oil users in the transition to low carbon alternative fuels.

However, the then Minister for Communications, Climate Action and Environment, Richard Bruton T.D., rejected the criticism[58] and noted in a detailed response, among other things [that]:

> "The IPIA suggest that the NORA surplus could be used to create a fund to support current users of oil-based fuels to transition to low carbon alternatives. That is exactly what the government is doing through the establishment of the Climate Action Fund."
>
> "However, it must be the Minister who sets the criteria for the projects that are to be supported in an independent way. In that way, we can ensure that the objectives of the Climate Action Plan are supported."

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[57] As detailed in an article published by the Irish Times in 2019. See: Irish Times (2019) *'Oil industry threatens legal action over €500m climate plan'*, 11 July 2019.

[58] The Minister's detailed response was published by the Government's press service – see: MerrionStreet.ie (2019) '*Minister Rejects Criticism from Oil Industry*', 12 July 2019.

Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie
Tel: +353 (0)1 6183000 or 076 1001700
Twitter: @OireachtasNews

Library & Research Service
Tel: +353 (0)1 6184701
Email: library.and.research@oireachtas.ie

Connect with us