



SEANAD ÉIREANN

**AN BILLE UM GHNÍOMHÚ AERÁIDE AGUS UM
FHORBAIRT ÍSEALCHARBÓIN (LEASÚ), 2021
CLIMATE ACTION AND LOW CARBON DEVELOPMENT
(AMENDMENT) BILL 2021**

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM GHNÍOMHÚ AERÁIDE AGUS UM FHORBAIRT ÍSEALCHARBÓIN (LEASÚ), 2021 —AN TUARASCÁIL

CLIMATE ACTION AND LOW CARBON DEVELOPMENT (AMENDMENT) BILL 2021 —REPORT

*Leasuithe
Amendments*

**Government amendments are denoted by an asterisk*

1. In page 5, line 10, after “justice;” to insert “to limit the liability from investors seeking compensation with regard to any actions taken to comply with this Act;”.

—Senators Lynn Boylan, Paul Gavan, Niall Ó Donnghaile, Fintan Warfield.

2. In page 5, line 20, after “1960;” to insert “to amend the Petroleum and Other Minerals Development Act 1960 to ban the importation of fracked gas;”.

—Senators Lynn Boylan, Paul Gavan, Niall Ó Donnghaile, Fintan Warfield.

- *3. In page 6, in line 29, to delete the text inserted by amendment 1 at Seanad Committee.

4. In page 6, between lines 33 and 34, to insert the following:

“ ‘climate justice’ reflects the United Nations Framework Convention on Climate Change commitments on equity and ‘common but differentiated responsibilities and respective capabilities’ and requires that the decisions and actions taken to reduce greenhouse gas emissions and to adapt to the effects of climate change should—

(a) support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects, and

(b) safeguard the human rights of the most vulnerable persons;”.

*—Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn, Victor Boyhan,
Lynn Boylan, Paul Gavan, Fintan Warfield, Niall Ó Donnghaile, Ivana Bacik,
Rebecca Moynihan, Marie Sherlock, Mark Wall, Annie Hoey.*

5. In page 6, to delete lines 34 and 35, and in page 7, to delete lines 1 to 3 and substitute the following:

“ ‘climate justice’ means the requirement that decisions and actions taken, within the State and at the international level, to reduce greenhouse gas emissions and to adapt to the effects of climate change shall, in so far as it is practicable to do so—

- (a) support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects,
- (b) safeguard the most vulnerable persons,
- (c) endeavour to share the burdens and benefits arising from climate change, and
- (d) help to address inequality;”.”.

—*Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock, Mark Wall.*

6. In page 7, between lines 8 and 9, to insert the following:

“ ‘just transition’ means bringing together workers and their trade unions, communities, employers and public representatives in social dialogue to develop, agree and drive the plans, policies and investments needed for a fast and fair transition to a low carbon economy and includes; the creation of sustainable employment and replacement jobs of equal quality based on the principles of decent work, the establishment of appropriate social supports and training, reskilling and enterprise programmes for workers and communities affected by the transition. The just transition process in Ireland may reflect and draw on aspects of the International Labour Organisation Guidelines on Just Transition;”.

—*Senators Lynn Boylan, Paul Gavan, Niall Ó Donnghaile, Fintan Warfield.*

7. In page 7, between lines 8 and 9, to insert the following:

“ ‘just transition’ means bringing together workers and their trade unions, communities, employers and public representatives in social dialogue to develop, agree and drive the plans, policies and investments needed for a fast and fair transition to a low carbon economy and includes; the creation of sustainable employment and replacement jobs of equal quality based on the principles of decent work, the establishment of appropriate social supports and training, reskilling and enterprise programmes for workers and communities affected by the transition. The just transition process in Ireland may reflect and draw on the International Labour Organisation Guidelines on Just Transition;”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn, Victor Boyhan, Lynn Boylan, Paul Gavan, Fintan Warfield, Niall Ó Donnghaile, Ivana Bacik, Rebecca Moynihan, Marie Sherlock, Mark Wall, Annie Hoey.*

8. In page 7, between lines 16 and 17, to insert the following:

“ ‘sustainable development’ includes, but is not limited to, the United Nations Sustainable Development Goals;”.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn, Victor Boyhan, Lynn Boylan, Paul Gavan, Fintan Warfield, Niall Ó Donnghaile, Ivana Bacik, Rebecca Moynihan, Marie Sherlock, Mark Wall, Annie Hoey.*

9. In page 7, line 25, after “State” to insert “in a manner consistent with current international carbon reporting practice”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

10. In page 7, between lines 31 and 32, to insert the following:

“(e) by the insertion of the following subsection:

“(2) The references in section 4(11), section 5(8) and section 6B(13) to a Minister of the Government shall each be construed as including a reference to the Government.”.”

—*Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock, Mark Wall.*

11. In page 7, to delete lines 32 to 38.

—*Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock, Mark Wall, Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

12. In page 7, lines 36 and 37, to delete “, of whatever kind,”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

13. In page 7, after line 38, to insert the following:

“(2) For the avoidance of doubt, in order to limit liability, no remedy or relief by way of compensation shall be available to investors for any perceived expectation of profit with respect to actions taken of whatever kind to comply with any provision of this Act or any obligation or duty created thereunder.”.”

—*Senators Lynn Boylan, Paul Gavan, Niall Ó Donnghaile, Fintan Warfield.*

14. In page 7, after line 38, to insert the following:

“(2) For the avoidance of doubt, no remedy or relief by way of damages or compensation shall be available to investors with respect to actions taken of whatever kind to comply with any provision of this Act or any obligation or duty created thereunder.”.”

—*Senators Lynn Boylan, Paul Gavan, Niall Ó Donnghaile, Fintan Warfield.*

15. In page 7, after line 38, to insert the following:

“(2) Nothing in this section shall be construed as limiting the right to effective remedy, which may include compensation or damages, under the European Convention on Human Rights.”.”

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

16. In page 8, line 26, to delete “(1)”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

17. In page 10, to delete lines 31 to 40, and in page 11, to delete lines 1 to 39 and substitute the following:

“(8) In performing their respective functions under this section, the Minister and the Government—

(a) shall ensure that the national long-term climate action strategy is consistent with—

(i) climate justice, and

(ii) a just transition to a climate neutral economy which, in so far as is practicable—

(I) maximises opportunities for decent, fair and high-value work that is environmentally and socially sustainable, in a way which does not negatively affect the current workforce or the overall economy,

(II) supports low-carbon investment and infrastructure,

(III) develops and maintains social consensus through engagement with the social partners, local communities, non-governmental organisations, and other appropriate persons,

(IV) contributes to resource-efficient and sustainable economic approaches which help to address inequality and poverty, and

(V) supports persons and communities that may be negatively affected by the transition,

and

(b) shall have regard to the following matters:

(i) the need to deliver the best possible value for money consistent with the sustainable management of the public finances and to maximise, as far as practicable, the net benefits to society taking into account the impact of greenhouse gas emissions;

(ii) the need to promote sustainable development and restore, and protect, biodiversity;

(iii) relevant scientific or technical advice;

(iv) any recommendations or advice of the Advisory Council;

(v) the social and economic imperative for early and cost-effective action in relation to climate change;

(vi) in so far as practicable, the need to maximise employment, the attractiveness of the State for investment and the long-term competitiveness of the economy;

- (vii) the fact that the means of achieving a climate neutral economy and other measures to enable the State to pursue the national climate objective may not yet be fully identified and may evolve over time through innovation, evolving scientific consensus and emerging technologies;
- (viii) the role of behavioural change on the part of individuals and different sectors of society in supporting the Government to pursue the national climate objective and the policies and measures required to effect such change;
- (ix) the risk of substantial and unreasonable carbon leakage as a consequence of measures implemented by the State to pursue the national climate objective;
- (x) the protection of public health;
- (xi) the National Planning Framework (or, where appropriate, the National Spatial Strategy);
- (xii) the special economic and social role of agriculture, including with regard to the distinct characteristics of biogenic methane;
- (xiii) where a national long-term climate action strategy has been approved under this section, the most recent approved national long-term climate action strategy;
- (xiv) the 2019 Climate Action Plan or, where a climate action plan has been approved under this section, the most recent approved climate action plan;
- (xv) where a national adaptation framework has been approved under section 5, the most recent approved national adaptation framework;
- (xvi) where sectoral adaptation plans have been approved under section 6, the most recent approved sectoral adaptation plans.”.

—*Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock, Mark Wall.*

- 18.** In page 10, line 38, to delete “the need to promote” and substitute “Ireland’s commitments under the United Nations Sustainable Development Goals and the need to promote long term”.

—*Senators Lynn Boylan, Paul Gavan, Niall Ó Donnghaile, Fintan Warfield, Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

- 19.** In page 11, between lines 39 and 40, to insert the following:

“(s) access to environmental information and justice, including in respect of Ireland’s international obligations under the Aarhus Convention.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn, Victor Boyhan, Lynn Boylan, Paul Gavan, Fintan Warfield, Niall Ó Donnghaile, Ivana Bacik,*

20. In page 13, to delete line 2 and substitute the following:

“responsibility.

(1B) Without prejudice to the generality of subsection (1)—

- (a) a sectoral adaptation plan made by the Minister for Agriculture, Food and the Marine shall include annual targets to be achieved in afforestation,
- (b) a joint sectoral adaptation plan made by the Minister and the Minister for Agriculture, Food and the Marine and Energy shall include annual targets to be achieved in the remediation of bogs that have been cleared in whole or in part of turf.”.

—*Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock, Mark Wall.*

21. In page 14, line 5, after “Council” to insert “and approved by the Government”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

22. In page 14, line 8, after “is” to insert “at least”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

***23.** In page 14, between lines 11 and 12, to insert the following:

“(5A) (a) The Government shall make regulations for determining the greenhouse gas emissions to be taken into account, and the manner of calculating and accounting for such emissions (including any reductions), for the purpose of—

- (i) the first 2 carbon budgets referred to in subsection (5), and
- (ii) every carbon budget thereafter.

(b) The Government shall, when making regulations under paragraph (a), have regard to the rules applied by the European Union in relation to the matters referred to in paragraph (a).

(5B) The Government may make regulations to specify the base year in relation to the reduction of greenhouse gas emissions for budget periods after 31 December 2030.”.

***24.** In page 15, line 6, to delete “and”.

***25.** In page 15, line 8, to delete “section.” and substitute “section, and”.

***26.** In page 15, between lines 8 and 9, to insert the following:

“(c) the Advisory Council shall comply with regulations under subsection (5A) when carrying out its functions under this section.

(10) (a) The Minister shall, when preparing a carbon budget and a sectoral emissions ceiling, recommend to Government to decide that a

Minister of the Government may comply with the carbon budget, and a sectoral emissions ceiling for which that Minister of the Government has responsibility, by the removal of greenhouse gas emissions.

(b) Where the Government approves the recommendation of the Minister under paragraph (a), the Minister of the Government concerned shall, when complying with the carbon budget and the sectoral emission ceiling for which that Minister of the Government has responsibility, comply with regulations made by the Government under subsection (11).

- (11) (a) The Government shall make regulations for the purpose of—
- (i) determining how the removal of greenhouse gas emissions may be taken into account, and in particular the method of calculating and accounting for such removals, including the base year to be applied to such removals, when complying with a carbon budget and a sectoral emissions ceiling,
 - (ii) specifying which removals may be used for the purposes referred to in subparagraph (i), and
 - (iii) determining the mechanism by which such removals are to be effected.
- (b) When making regulations under paragraph (a) the Government shall have regard to the rules applied by the European Union in respect of the matters specified in subparagraphs (i) to (iii) of paragraph (a).”

***27.** In page 18, between lines 2 and 3, to delete the subsection inserted by amendment 92 at Seanad Committee.

28. In page 18, to delete lines 19 to 23.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

29. In page 18, between lines 40 and 41, to insert the following:

“(7A) The Advisory Council may issue a formal request to the Minister, asking him or her to exercise his or her powers to revise a carbon budget under this section, where the Council believe that a greater reduction in greenhouse gases has become necessary due to either of the factors specified in subsection (2).”

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

30. In page 19, between lines 34 and 35, to insert the following:

“(i) adequate resources to enable the members to perform their functions effectively and efficiently,”

—*Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock, Mark Wall.*

31. In page 22, to delete line 26 and substitute the following:

- “projected failure, to comply with a sectoral emissions ceiling,
- (bc) the reasoned opinion of the Advisory Council, and such advice or recommendations, as it considers necessary or appropriate, in relation to the continuing appropriateness of the national climate objective provided for in section 3, including in particular the designation of 2050 as the year by the end of which the State should achieve a transition to a low carbon, climate resilient and environmentally sustainable economy.”.”.

—*Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock, Mark Wall.*

32. In page 23, between lines 18 and 19, to insert the following:

“Amendment of section 9 of Principal Act

14. Section 9 of the Principal Act is amended by the insertion of the following subsection after subsection (16)—

- “(16A) For the avoidance of doubt the Advisory Council may not delegate functions to a committee referred to in subsection (16) if such functions include or are related to the setting or proposal of carbon budgets.”.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

33. In page 23, between lines 18 and 19, to insert the following:

“Amendment of section 9 of Principal Act

14. Section 9 of the Principal Act is amended in subsection (16), by the deletion of:

“; and

- (b) perform such functions of the Advisory Council as it may, with the consent of the Minister, delegate to the committee.”.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

34. In page 23, between lines 18 and 19, to insert the following:

“Amendment of section 10 of Principal Act

14. Section 10 of the Principal Act is amended in subsection (1) by the insertion of “or a committee” after “a member of the Advisory Council”.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

35. In page 26, line 37, after “body” to insert “and the Government of Ireland”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

36. In page 27, between lines 5 and 6, to insert the following:

“(2) Section 15 of the Principal Act is amended, in subsection (5), by the substitution of the following definition for the definition of “relevant body”:

“ ‘relevant body’ means—

- (a) a prescribed body,
- (b) a public body, and
- (c) the Government and, for the purposes of this section, the relevant Minister in relation to the Government is the Taoiseach;”.

—*Senators Ivana Bacik, Annie Hoey, Rebecca Moynihan, Marie Sherlock, Mark Wall.*

37. In page 28, between lines 33 and 34, to insert the following:

“Amendment of Petroleum and Other Minerals Development Act 1960

20. The Petroleum and Other Minerals Development Act 1960 is amended—

(a) in section 5A by the insertion of the following definition:

“ ‘fracked gas’ means petroleum got, raised, taken, carried away or worked by means of hydraulic fracturing;”,

(b) in section 5C, by the insertion of “or subsection (1) of section 5D” after “section 5B”, and

(c) by the insertion of the following section after section 5C:

“Prohibition on the importation of fracked gas

5D. (1) Notwithstanding anything in this Act or any other enactment or rule of law, it shall not be lawful for a person to import or sell fracked gas.

(2) For the purpose of the Customs Act 2015, the importation of fracked gas is hereby prohibited.”.

—*Senators Lynn Boylan, Paul Gavan, Niall Ó Donnghaile, Fintan Warfield, Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

38. In page 28, between lines 33 and 34, to insert the following:

“Amendment of the Act of 1960

20. The Petroleum and Other Minerals Development Act 1960 is amended—

(a) in section 5A by the insertion of the following definition:

“ ‘fracked gas’ means petroleum got, raised, taken, carried away or worked by means of hydraulic fracturing;”,

(b) in section 5C by the insertion of “or subsection (1) of section 5D” after “section 5B”, and

(c) by the insertion of the following section after section 5C:

“Prohibition on the storage of fracked gas

5D. Notwithstanding anything in this Act or any other enactment or rule of law, it shall not be lawful for a person to store fracked gas in the territory of Ireland.”.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

39. In page 28, between lines 33 and 34, to insert the following:

“Amendment of section 37B of National Oil Reserves Agency Act 2007

20. Section 37B of the National Oil Reserves Agency Act 2007 is amended by the insertion of the following subsection after subsection (13):

“(13A) The Minister may not provide monies paid out of the Climate Action Fund to any oil companies who are subject to levies under section 37 of this Act.”.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

40. In page 29, to delete lines 5 to 32.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

41. In page 29, to delete lines 7 and 8.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

42. In page 29, to delete lines 7 to 10.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

43. In page 29, to delete lines 13 to 21.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

44. In page 29, between lines 21 and 22, to insert the following:

“(3A) The Minister may not grant a licence, licence or enter into an undertaking under *sections 8, 9, 10 or 13*, where, in the opinion of the Minister, such actions would be inconsistent with any provision of the Climate Action and Low Carbon Development Act 2015 and any obligation or duty created thereunder and for the avoidance of doubt, no remedy or relief by way of damages or compensation is available where a Minister makes such a determination.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

45. In page 29, after line 38, to insert the following:

“(7) The Minister may not grant any such licence or lease or enter into any undertaking under *subsections (2), (3), (4) or (5)* until Ireland is compliant with its obligations for conservation and protection and designation of Marine Protected Areas under both the Marine Strategy Framework Directive and the Maritime Spatial Planning Directive and/or adequate interim protection measures to comply with both such directives.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

46. In page 29, after line 38, to insert the following:

“(7) Nothing in this section shall be construed as constituting an inducement to investment or giving rise to any expectations for any person for the granting of any licence or lease.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

47. In page 29, after line 38, to insert the following:

“(7) For the avoidance of doubt, no remedy or relief by way of damages or compensation is available where a Minister declines to grant a lease or licence or enter into an undertaking under this section or approve the renewal, extension or progression of any licence, lease or undertaking under this section, where, in the opinion of the Minister, such actions would be inconsistent with any provision of the Climate Action and Low Carbon Development Act 2015 and any obligation or duty created thereunder.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

48. In page 30, between lines 32 and 33, to insert the following:

“(6A) The Board and its subsidiaries shall, in relation to the above, have regard at all times to national policy, the State’s National Climate Objective and climate justice.

(6B) The Board and its subsidiaries shall, in relation to investments received or made, have regard at all times to climate justice and the public duty on equality and human rights.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

49. In page 30, after line 36, to insert the following:

“(8) In relation to the subsection (4), monies shall not be borrowed by the Board or its subsidiaries to invest in energy derived from fossil fuels, including any development or production or distribution of hydrogen energy, with the exception of clean hydrogen, where ‘clean hydrogen’ means hydrogen that is produced by the electrolysis of water using only electricity produced by renewable energy resources and where no greenhouse gas is emitted during the process.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*

50. In page 30, after line 36, to insert the following:

“(8) Any representations or agreements or arrangements made in respect of the borrowing of such monies shall not be construed as constituting a State inducement to investors or giving rise to any expectations in respect of State actions or policy or creating any associated liability in respect of investor compensation.”.

—*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, Eileen Flynn.*