



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Teachtaireachtaí ón Dáil - Messages from Dáil	880
Message from Joint Committee	880
Gnó an tSeanaid - Business of Seanad	881
Sitting Arrangements: Motion	881
Residential Tenancies (No. 2) Bill 2021: Motion for Earlier Signature	881
Planning and Development (Amendment) (No. 3) Bill 2021: Motion for Earlier Signature	882
Climate Action and Low Carbon Development (Amendment) Bill 2021: Report and Final Stages	882
Land Development Agency Bill 2021: Second Stage	938

SEANAD ÉIREANN

Dé hAoine, 9 Iúil 2021

Friday, 9 July 2021

Chuaigh an Cathaoirleach i gceannas ar 9.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Teachtaireachtaí ón Dáil - Messages from Dáil

An Cathaoirleach: Dáil Éireann has passed the CervicalCheck Tribunal (Amendment) Bill 2021 on 7 July 2021, to which the agreement of Seanad Éireann is desired. Dáil Éireann has passed the Workplace Relations (Miscellaneous Provisions) Bill 2021 on 7 July 2021, to which the agreement of Seanad Éireann is desired. Dáil Éireann has passed the Companies (Rescue Process for Small and Micro Companies) Bill 2021 on 7 July 2021, to which the agreement of Seanad Éireann is desired. Dáil Éireann has agreed to the amendments made by Seanad Éireann to the Gender Pay Gap Information Bill 2019. Dáil Éireann has passed the Air Navigation and Transport Bill 2020 on 7 July 2021, to which the agreement of Seanad Éireann is desired. Dáil Éireann has passed the Finance (Covid-19 and Miscellaneous Provisions) Bill 2021 on 7 July 2021, which was sent herewith to Seanad Éireann for its recommendations. Dáil Éireann has passed the Planning and Development (Amendment) (No. 3) Bill 2021 on 7 July 2021, without amendment. Dáil Éireann has agreed on 8 July 2021 to the amendments made by Seanad Éireann to the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2021. Dáil Éireann has passed on 8 July 2021, the Affordable Housing Bill 2021, considered by virtue of Article 20.2.2° of the Constitution as a Bill initiated in Dáil Éireann to which the agreement of Seanad Éireann is desired. Dáil Éireann has agreed on 8 July 2021 to the amendments made by Seanad Éireann to the Residential Tenancies (No. 2) Bill 2021.

Message from Joint Committee

An Cathaoirleach: The Joint Committee on Education, Further and Higher Education, Research, Innovation and Science has completed its consideration of the Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2021.

9 July 2021

Gnó an tSeanaid - Business of Seanad

Senator Seán Kyne: I propose that notwithstanding the order of the Seanad of Tuesday, 6 July 2021, No. 1 on today's Order Paper shall be taken now and shall be decided without debate.

An Cathaoirleach: Is that agreed? Agreed.

Sitting Arrangements: Motion

Senator Seán Kyne: I move:

That, notwithstanding anything in the Standing Orders relative to Public Business, unless otherwise ordered, the following arrangements shall apply in relation to the sittings of the Seanad on 12th, 13th and 16th July, 2021:

(1) The Seanad shall meet in the Dáil Chamber at 9.30 a.m. on Monday, 12th July, 2021, and the following arrangements shall apply:

(a) Commencement matters shall be taken at 9.30 a.m. and up to 10 matters may be selected by the Cathaoirleach for discussion;

(b) Standing Order 30 shall stand suspended;

(c) The Order of Business shall be proposed at 12 noon.

(2) The Seanad on its rising on Monday, 12th July, 2021, shall adjourn until 9.30 a.m. on Tuesday, 13th July, 2021, in the Convention Centre Dublin, and the following arrangements shall apply:

(a) Standing Orders 29 and 30 shall stand suspended;

(b) The Order of Business shall be proposed at 9.30 a.m.

(3) The Seanad on its rising on Tuesday, 13th July, 2021, shall adjourn until 9.30 a.m. on Friday, 16th July, 2021, in the Dáil Chamber, and the following arrangements shall apply:

(a) Standing Orders 29 and 30 shall stand suspended;

(b) The Order of Business shall be proposed at 9.30 a.m. and shall, if not previously concluded, be brought to a conclusion at 10 a.m. The contributions on the Order of Business shall be confined to the proposal of the business for the day by the Leader (or such other Senator as she may authorise in that behalf); a contribution from the Leader of each Group (or a Senator nominated in his or her stead); and a reply by the Leader."

Question put and agreed to.

Residential Tenancies (No. 2) Bill 2021: Motion for Earlier Signature

Senator Seán Kyne: I move:

That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Residential Tenancies (No. 2) Bill 2021 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.”

Question put and agreed to.

Planning and Development (Amendment) (No. 3) Bill 2021: Motion for Earlier Signature

Senator Seán Kyne: I move:

That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Planning and Development (Amendment) (No. 3) Bill 2021 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.”

Question put and agreed to.

Climate Action and Low Carbon Development (Amendment) Bill 2021: Report and Final Stages

An Cathaoirleach: I welcome the Minister to the House. Before we commence, I remind Members that a Senator may speak only once on Report Stage, except the proposer of an amendment, who may reply to the discussion on it. Each non-Government amendment on Report Stage must be seconded.

Amendments Nos. 1, 13 and 14 are related. Amendments Nos. 13 and 14 are consequential on amendment No. 1. Amendment No. 14 is a logical alternative to amendment No. 13. Amendments Nos. 1, 13 and 14 may be discussed together, by agreement.

Senator Fintan Warfield: I move amendment No. 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;”.

Senator Victor Boyhan: I second the amendment.

Senator Fintan Warfield: I welcome the Minister to the House. Sinn Féin’s approach to this Bill has been to table sensible and workable amendments to improve it and make it fairer. We want to make sure the decisions taken to meet the emissions targets contained in the Bill are progressive and fair and have local communities at their core. Again, on this Stage, we are submitting several amendments. They deal with definitions of just transition, climate justice and a ban on the importation of fracked gas. Many of these efforts have been in vain. Only one Opposition amendment has been supported. I hope today will be a new approach from the Gov-

9 July 2021

ernment and the Minister in charge. I also hope that presenting amendments from the Opposition in a unified way will help with that. I thank colleagues and their staff for their co-operation and also my colleague, Senator Boylan, who cannot be here now, but who may be in later.

Amendment No. 1 is simple. It relates to the Title to the Bill. The basis behind it is that we need to limit the power of corporations to scupper serious climate action. Fossil fuel companies have an ace in the hole in the form of investor-state dispute mechanisms such as those in the Comprehensive Economic and Trade Agreement, CETA. The amendment seeks to limit that threat. The Fine Gael, Fianna Fáil and Green Party Government tried to rush through a motion before Christmas to ratify the investor court system chapters of CETA. This would have massive ramifications for every aspect of life in Ireland, not least that relating to climate action. It is only right, therefore, that we are debating these ramifications in the context of the climate Bill.

These investor court mechanisms play an outsized role in any state's ability to tackle climate change. They allow companies to sue states for actions taken to address climate change. Such cases result in massive compensation claims in the billions being made by companies against states for taking bold climate action. I mentioned some of these examples and Senator Higgins spoke on this matter at length on Committee Stage. I outlined actions taken by fossil fuel companies in Italy, France and the Netherlands on foot of bold climate action taken by those countries. Russia was ordered to pay €50 billion to a fossil fuel company. Not only does that remove resources that a state could use for progressive climate action, it also has a massive and chilling effect on other states who see what happens to the countries that take bold action. We will not stand a chance of fighting climate change if we do not curb the grotesque excess of corporate power. We saw already this week how ideologically wedded Fine Gael, Fianna Fáil and the Green Party are to ensuring profits for cuckoo fund investors over housing for average citizens. Applying the same corporate-first ideology to climate action amounts to a death wish. We need serious climate action and that means taking on corporate power, not paying out billions in compensation to fossil fuel investors for taking climate action and blocking investor courts in CETA.

Amendment Nos. 13 and 14 seek to address the hypocrisy at the heart of section 4, which precludes individuals from seeking compensation in the State for failure to comply with the legislation and take sufficient action in respect of climate change. The same limitations that are not imposed on investors, however. Under the investor-state dispute settlement mechanisms of the trade and corporate rights agreements, investors can seek compensation from states for damages and compensation on foot of progressive ambitious climate action by banning drilling for fossil fuels. Not only can investors sue for compensation for investment loss, they can also sue for profits that they would have made. This sort of extravagant compensation claim would be laughed out of our courts but this is exactly what happens under investor-state dispute mechanisms. If the State decided to cease the extraction of gas in Irish waters, the company involved might, somewhat justifiably, bring it to court for the value of the investments in infrastructure it had made. Under trade agreements such as CETA, the company could sue for the value of the oil that they were not able to extract and the profits that they would have made on it. I urge the Minister to accept either amendment No. 13 or 14.

Senator Alice-Mary Higgins: These amendments will be key to the success of this legislation. There was a narrative early in year that it was investor court systems versus the climate Bill, and that there is a trade-off. We must be clear that investor court systems are what will undermine the climate Bill in the context of it actually succeeding. Those of us who are passionate about climate action want to make sure that we do not create a giant hostage to fortune

that will have an impact beyond the area of climate action. It will affect lots of policy areas that many people care about, from public health through to housing.

In the context of the Bill, I will speak specifically to the liabilities to investors. It relates to section 4 of the Bill, which provides for the limitation to liability that I discussed with the Minister on Committee Stage. It is a most concerning provision. Section 4 effectively closes the access to compensation and damages to those who will be impacted, for whatever reason - we will come to that later - when then Government decides that it is not going to implement or follow through on the commitments made in this Bill.

We see the damage caused by climate change. We see how quickly entire towns can be lost. It is a concerning issue. Of course, people will still have access to the courts, but it is concerning that access to compensation and damages in the courts will be limited for the citizens of Ireland and their communities. That is happening in parallel with a push to open Ireland up to compensation claims in a brand new form of arbitration. I know it is not led by the Minister, but it is led by the Government. I hope that it will be reconsidered over the summer. It must be reconsidered. It is an issue that a number of committees will consider. There is a push to open Ireland up to compensation claims in a brand new form of arbitration. As Senator Warfield said, while a claim by a fossil fuel company to slow down our action on renewable energy may not succeed in a national court because that court will balance the claim against all of the other imperatives and laws that we make, an investor arbitration court will only consider the question of fair and equitable treatment, legitimate expectations, the disappointment of those expectations of profit, and all of those factors. That is what the investor arbitration court is considering when it is deciding a case.

In the context of the Bill, I will speak specifically to the liabilities to investors. It relates to section 4 of the Bill, which details the limitation of liability that I discussed with the Minister on Committee Stage. It is a really concerning provision. Effectively, section 4 closes the access to compensation for damages to those who will be impacted for whatever reason - we will come to that later - when the Government decides that it is not going to implement or follow through on the commitments made in this Bill. We see the damage done by climate change. We see how quickly entire towns can be lost. Of course, people will still have access to the courts, but it is most concerning that access to compensation and damages will be limited in the courts for the citizens of Ireland and their communities. That is happening in parallel with a push to open Ireland up to compensation claims in a brand new form of arbitration. I know it is not led by the Minister, but it is led by the Government. I hope that it is being reconsidered and will be so over the summer. It must be reconsidered. It is an issue which we are going to be looking at in a number of committees. There is a push to open Ireland up to compensation claims in a brand new form of arbitration. As Senator Warfield said, while a claim by a fossil fuel company to slow down our action on renewable energy - while a claim indeed may not succeed in a national court - because that national court is balancing it against all of those other imperatives and laws that we make, an investor arbitration court is only looking to the question of fair and equitable treatment, legitimate expectations and the disappointment of those expectations of profit and all of those factors. That is what they are considering when they are granting a case.

CETA states that the mere fact of regulation does not entitle a company to compensation. However, it is the mere fact plus the expectations the company had and the inducement. It must be noted that even the giving of planning permission or the holding of a meeting with the Minister could be regarded as an inducement. The term “inducement” is widely interpreted. We hear many terrible horror stories from around the world of compensation cases costing

9 July 2021

billions. Those are the exact same grounds on which companies have taken cases and won billions. The fair and equitable treatment ground and all of those factors I mentioned are the exact same grounds that are contained in this new agreement and in the new proposed investor court system, ICS. That is why it is a matter for concern. My hope is that the Government will not ratify it. If it does ratify it, it should at least put in some protective measures to try to strengthen its hand when it does go to negotiate or fight an investment claim for compensation.

When I spoke to the Tánaiste and Minister for Enterprise, Trade and Employment on this issue, I was disappointed to learn that he had not completed a risk analysis on the ICS under CETA. He did not think it was necessary because he did not expect that Ireland would ever treat a company unfairly. It must be borne in mind that what we see as unfair and what a company sees as unfair are very different. It may well be that a company that is impacted by what we understand to be a necessary climate measure taken under this Bill, will look for compensation and it may well get it. The very fact of it taking that case will cost us hundreds of millions of euro in legal costs.

What Senators Warfield, Boylan and others are asking the Minister to do is to try to future-proof this legislation against those dangers and include in it measures that will protect or at least give a basis for protection to the State in relation to those kinds of claims. Cases taken under the ICS of CETA would be extremely wide, but we are already vulnerable, as the Minister is aware, to claims for compensation, specifically by fossil fuel companies, under the energy charter treaty. The European Commission is talking about why we would leave the energy charter treaty if it were not for the 20-year exit clause. It is the same 20-year exit clause, by the way, that is going to be attached to CETA. The Energy Charter Treaty allows companies to take cases and they are doing so.

As has been described, companies succeeded in having climate law and climate policy diluted in France in this way. In Germany, companies are suing for millions and billions. Right across Europe, companies are actively litigating for compensation and putting price tags on climate action which are slowing it down and delaying the change we need. I have my own amendments on this topic, to which we will come later, with specific regard to petroleum, gas and oil licences. The Minister will be aware that we will also be discussing liquefied natural gas, LNG. It would be useful if the Minister could either confirm or deny that the energy charter treaty is being considered in the drafting of policy because it seems that we are greatly exposed. If these amendments were to be accepted, it would represent some small degree of future-proofing against the CETA investor court system's impact on climate action. It might also provide us with some protection in respect of claims under the energy charter treaty because we would be sending a clear signal that there should not be an expectation. These clauses in respect of liability are very important.

I spoke about a disconnect in terms of limiting our liability to citizens while opening our liability to companies, by which I mean international corporations. It is predominantly such corporations that use these tribunals. It is important to note that small and medium enterprises in Ireland would not be able to use these courts if they were impacted by either climate action or the failure to take climate action. As persons under this provision, they would also be excluded from gaining any compensation from the State. They would also not be able to get compensation in these investor courts, which are only open to international investors. That is just the legal and financial context of this Bill. These amendments propose very sensible protective measures to strengthen our hand so that we can steer these climate goals through and steer the State towards the actions it needs to take without unnecessary dangers.

Minister for the Environment, Climate and Communications (Deputy Eamon Ryan): I thank the Senators very much. I am happy to continue the debate we had on Committee Stage. I will not be accepting the amendments. I reiterate a point I made on Committee Stage, which is that this Bill is designed to require the State to set out its internal processes and structures to deliver on our objectives under the UN Paris Agreement on climate. It is not going to resolve the range of different issues involved, including this issue of free trade agreements, the issue of the relative roles or powers involved in the investor court dispute resolution mechanisms and a range of other issues. We will not resolve those issues in our debate here. I understand that our courts will be examining the matter in the coming weeks. To my mind, it is not relevant to the structures we are setting up and putting in place. There are mechanisms within various trade agreements whereby environmental treaties, including the Paris Agreement, must be taken into account. Rather than trying to resolve that whole issue within this Bill, which would not be possible or effective in any way, it is better to focus on what the Bill actually does. It organises how we, as a State, are to manage meeting our climate objectives under the Paris Agreement. It is increasingly recognised in international law, including in the area of trade agreements and investor-state agreements, that such agreements cannot be in breach of an international agreement signed by 198 countries. It is recognised that this agreement has primacy and is not subject to the kind of litigation this amendment seeks to protect against. I cannot accept the amendment.

Senator Fintan Warfield: It is very disappointing that the Minister is unwilling to accept the amendment. This provision of the Bill is of great significance and has major ramifications for the fight for climate action. As has been mentioned, we need to future-proof against these investment courts. I will press the amendment that reads:

For the avoidance of [any] 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.

As a legislator, I cannot for one minute allow this Bill to move on without pressing a vote on this amendment.

Amendment put and declared lost.

Acting Chairperson (Senator Aisling Dolan): Amendments Nos. 2, 37 and 38 are related. Amendments Nos. 37 and 38 are consequential on amendment No. 2 while amendment No. 38 is a logical alternative to amendment No. 37. Amendments Nos. 2, 37 and 38 may be discussed together by agreement. Is that agreed? Agreed.

Senator Fintan Warfield: I move amendment No. 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;”.

Senator Alice-Mary Higgins: I second the amendment.

Senator Fintan Warfield: This amendment seeks to change the Title of the Bill to reflect the provisions of amendment No. 20, which relates to banning fracked gas imports. I welcome the opportunity to debate the ban on importing fracked gas. Sinn Féin tabled the same amendment in the Dáil but it was ruled out of order. We seem to be able to debate it in the Seanad. It is regrettable that the Minister did not accept this amendment. On Committee Stage in the

9 July 2021

Seanad, the debate was guillotined before we had a chance to debate the issue of fracked gas, so I welcome the chance to do so today. We have missed an important opportunity to debate the issue.

If the Minister were serious about banning fracked gas, he would legislate for it. Instead, we have a policy statement that stops short of banning it. It is not clear why the Minister will not do it. We have been met with a wall of excuses that just do not stand up to scrutiny. The liquefied natural gas, LNG, policy statement presented the usual approach. The Attorney General says we cannot do it because of what is stated in EU treaties and so on. We do not agree with this response. We have it on good authority from the EU library and research service that nothing in the treaties prevents a member state from banning fracked gas. On the contrary, there are explicit rights for member states to introduce a ban. Article 194 of the Treaty on the Functioning of the European Union makes clear that it is fully in the gift of a member state to bring in a ban. It indicates that member states choose the conditions for exploiting their energy resources and which energy resources they allow. This does not affect a member state's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply without prejudice to Article 192(2)(c). There are no legal barriers in EU law, so it begs the question, what is the real reason we cannot, and will not, legislate for a ban?

Senator Alice-Mary Higgins: These are very important amendments because energy policy will be at the heart of this issue. We have talked a lot about agriculture, but perhaps this is now the moment to talk about energy. Energy and a change in how we approach it will be central to the making of this transition. There has been a reluctance to face the hard issues relating to energy. For example, there has been a reluctance to bring in a moratorium on data centres, which it is estimated will be using one third of all our national energy by 2031.

10 o'clock

That is the demand push. Again, the Government is not yet acting on that, although I hope it will. The issue has been discussed at length at the climate committee and elsewhere.

We are not taking the necessary actions to reduce demand or to be clear about what kind of supply is or is not acceptable in this country. Senator Warfield is correct about the Energy Charter Treaty. It clearly allows the State to make its own policies and decisions on energy. Nothing in the charter prevents Ireland from banning the importation of fracked gas but, as we have discussed, there are provisions whereby companies might seek financial compensation if they are impacted by a change in policy. Will the Minister clearly state whether that is why there is not yet a ban on fracked gas? If it is about waiting for the energy security review, why not introduce a ban now and remove it if the energy security review were somehow to indicate that we should? I doubt it will, however, because I imagine that the bigger issue in the context of the energy security review is the fact that 33% of our energy is used by one type of business.

The Minister will be familiar with the precautionary principle, which applied in the previous amendments. Surely we should take the opportunity in the Bill to send a clear signal and ensure there is a ban on the importation of fracked gas. Thereby, if it turns out that our caution is somehow not needed, we can undo it. If we are not doing that, we need to be clear.

On the actions the Minister mentioned in regard to the communication of policy, that has been sent under the Planning and Development (Amendment) Bill. It did not seem to be

regarded by An Bord Pleanála when it made clear that planning permission had not yet been sought but that it could be sought again in respect of the Shannon LNG terminal and that there could be a case whereby it was brought through because of its strategic importance, given that it is still benefitting in its engagement with the planning process from the fact that it was once recognised as an area of potential strategic importance.

The Minister will be aware that there have been many calls for a section 30 measure, which is much firmer. Section 30 limits the powers of the Minister to engage in an individual case. That is clear, although it has been diluted with the powers of the Minister, which are meant to be checks and balances, being subsumed and granted to the Minister for Housing, Local Government and Heritage who, originally, was explicitly prohibited from intervening in policies on heritage matters. Now, according to the changes made, on heritage matters the Minister for Housing, Local Government and Heritage may, under section 30, engage specifically and explicitly with the planning process through an application, a request or an appeal. I suspect that, moreover, that there are heritage matters in terms of the environment that are impacted by the LNG terminal. I urge the Minister to look carefully to those provisions within the planning process in that period when an application has not yet been made for the LNG terminal but there have been signals of an intent to make that application. If we were to introduce a ban at this point, it would be in place prior to any application, whether in Cork or any other part of the country. It would send a signal related not to a specific matter but to the policy of the State, whereby we will not import fracked gas.

This is important. All these energy questions are not tangents. There is a reason the Petroleum and Other Minerals Development Act, the National Oil Reserves Agency and everything else are listed at the back of this Bill. It is because energy policy is the key. We should send a good signal and strong message on energy policy by explicitly banning the importation of fracked gas, as proposed by my colleagues Senators Warfield and Boylan, who have done much work on this area.

Senator Fintan Warfield: Can I speak to my amendment No. 37? As I overlooked it, would the Chair be willing to let me in to address it?

Acting Chairperson (Senator Aisling Dolan): I will check with the Clerk.

Senator Fintan Warfield: It is in your gift to do so.

Acting Chairperson (Senator Aisling Dolan): Yes, that is fine.

Senator Fintan Warfield: I appreciate the support of the Acting Chairperson on that. In terms of banning the importation of fracked gas, the wording in amendment No. 37 was drafted based on extensive legal opinion that showed the proposed statutory ban would be compatible with EU, EFTA and WTO trade rules. I thank the efforts and work of activists from Safety Before LNG, and others, who have been working so hard on this issue. We are serving up an easy win for the Minister to deliver a key demand of the climate movement, to make the State a leader on climate action and to ban the importation of fracked gas.

A ban on fracked gas is a no-brainer. Just over a month ago, the International Energy Agency released a report stating that we do not need further investment in new oil, gas and coal projects. The State has already banned fracking in this jurisdiction based on human rights, environmental and public health grounds. A ban in the North is also forthcoming. It is difficult to countenance the hypocrisy of saying that fracking is intolerable inside our borders but we are

9 July 2021

willing to subject people across the globe to it. The name of the organisation doing so much work in this area, Not Here Not Anywhere, encapsulates the idea better than I ever could. We need a ban on the importation of fracked gas. Can the Minister outline exactly why he has not accepted a legislative ban on fracking imports given the reason provided for this decision, that the EU treaties do not allow it, has been debunked?

Acting Chairperson (Senator Aisling Dolan): Do any other Senators wish to speak on the matter?

Senator Victor Boyhan: I will be brief. I support the amendments on the prohibition of the importation of fracked gas. It is a major issue. The Minister will be aware that many members of his party were very much to the fore in this issue. There is an expectation that he will deliver for them in terms of the political side of this argument. I do not want to go into great detail because I am conscious we have a lot of work to do here today, but that expectation of the Minister is there. I hope he will be in a position to accept these amendments today.

Acting Chairperson (Senator Aisling Dolan): If no other Senators wish to speak, I will call on the Minister to respond.

Deputy Eamon Ryan: This is a significant issue. We lived up to our commitments in the programme for Government. We issued the policy statement that put a hold on the development of any LNG terminals pending an energy security review. That is the appropriate approach to take. I cannot accept these amendments. I do not believe they would be effective. They would need to be redrafted. It is difficult with gas being imported from the UK, some of which originates from fracked gas sources as they come from LNG terminals in the UK. One cannot completely determine whether gas coming through those pipelines is fracked gas. These amendments would, therefore, not be effective.

On the argument made on the preceding amendment, the purpose of this legislation is not to address every single political issue in relation to the energy or climate debate. There are valid questions around the rules of the importation of fracked gas, but that is not best addressed here. The best thing to do is to put in place our own mechanisms to reduce our volume and use of gas, and we will manage the issue of LNG terminals separately and, if necessary, in appropriate legislation. This is not the right place to address that legislatively. Therefore, I cannot accept the amendment.

Senator Fintan Warfield: I am disappointed that these amendments will not be accepted. I do not understand why we cannot legislate for a ban. It seems like a risky strategy to introduce policy and hope that An Bord Pleanála will adhere to it. The Minister has said in the past that he would be surprised if An Bord Pleanála were to allow planning. Why not use the powers available to him as a Minister to eliminate the possibility of a surprise by legislating for a ban? The people at Safety Before LNG have raised important issues. They revealed that the planning application for the LNG terminal to import fracked gas has been made under section 37 of the Planning and Development Act. Under that section, there is no obligation for An Bord Pleanála to consider Government policy. It needs only have regard to Government policies. If an order to comply under section 29(1) was given, An Bord Pleanála shall comply as long as the order is given before the planning application is lodged. The Minister should not leave the decision to chance when there are options available to make an airtight decision against Shannon LNG using section 29(1) or, better yet, accept our amendment and legislate for a ban.

Amendment put:

The Seanad divided: Tá, 6; Níl, 19.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Gavan, Paul.	Buttimer, Jerry.
Higgins, Alice-Mary.	Casey, Pat.
Moynihan, Rebecca.	Chambers, Lisa.
Ruane, Lynn.	Conway, Martin.
Warfield, Fintan.	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Dolan, Aisling.
	Dooley, Timmy.
	Fitzpatrick, Mary.
	Garvey, Róisín.
	Kyne, Seán.
	Lombard, Tim.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.

Tellers: Tá, Senators Alice-Mary Higgins and Fintan Warfield; Níl, Senators Lisa Chambers and Seán Kyne.

Amendment declared lost.

An Cathaoirleach: Amendments Nos. 3 and 23 to 27, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 3:

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

Deputy Eamon Ryan: These amendments are tabled following reflection and further legal advice from the Attorney General's office and others in regard to the two amendments from Fianna Fáil and Fine Gael Senators, in particular Senator Paul Daly, that were agreed on Committee Stage. The amendments seek to ensure that we have the ability to account for removals and emissions reductions on sinks, and to give the Government and the Minister the powers to be able to regulate in that regard, in particular in respect of the evolving accounting rules, which are constantly evolving, with regard to how they are measured and accounted for and how we then generate income streams for the farming communities from some of the nature-based solutions that will provide sinks for carbon and other greenhouse gases.

These amendments amend the amendments agreed on Committee Stage to provide greater clarity on how the Minister will apply the sectoral regulations to regulate evolving accounting

9 July 2021

mechanisms, having regard to the rules applying in the EU which are also set out within EU regulation, and the changes that will occur in those regulations, for example, the provision from 2026 for the EU to include wetlands within its regulatory system and other changes that we can expect in the international and European accounting rules and mechanisms.

The amendments give the Minister the ability, through regulation, to designate how the carbon budgets are accounted for and how the removals and the emissions reductions on the sinks are accounted for through this process. That is why I brought forward this amendment.

Senator Alice-Mary Higgins: I am glad that more nuance is at least being added. I was concerned about the lack of clarity as to how the process of removals would be approached and what models and measures will be adopted. I made that clear at the time.

It is important for me to speak now because amendment No. 9 in my name, to which we will come later, relates to removals and to the importance of international best practice as to how we approach those. In that regard, I welcome that the Minister referred to having regard to the rules of the European Union on the regulations or removals. I would prefer if the phrase “be consistent with” applied. I would also prefer if there was a direct reference to the United Nations Framework Convention on Climate Change, UNFCCC, and the Intergovernmental Panel on Climate Change, IPCC, because the best international measurements and calculations of removals may well come from the scientific experts within the UN and the IPCC. In that context, I would have liked the legislation to include a reference to the UN. The European Union is fine, it is referred to and we engage through it. However, it is also vital that we signal the importance we attach to this matter. I am aware that the European Union will seek to comply with the UN measures but I would have liked if those were referred to directly. I reiterate that I also like if it was a matter of being consistent with the rules of the European Union rather than having regard to them.

Under the proposed subsection (5B) in amendment No. 23, the Government may make regulations to specify a new base year in respect of the reduction of greenhouse gas emissions for budget periods after 31 December 2030. I would like to know what is meant by that because I am a little concerned. It could be that we are moving back to the 1992 measures or those of the other years. If we were consistent with the rest of Europe in terms of our base year, that would be good, especially as new European laws evolve. We know that there will be very strict rules coming through from Europe. For clarity and to facilitate better engagement with our European partners, it would be good if we could have a similar base year. There are problems with that because at a certain point Ireland was a very low emitter but then became and stayed a very high emitter. The crucial point is that if there is a change in the base year, that change should not be such that the actual tonnage of emission reductions required would be reduced. We do not want to arrive at our 51% reduction by 2030 - I hope we can do that, and I believe we will, although we have created a number of obstacles to navigate, unfortunately, to get there - when the base year then changes and suddenly we start seeing that Ireland has 60% and 70% reductions and we are giving ourselves wonderful news about what we are doing but we are not actually referring to the same thing.

The Minister will be very aware of the principle in the Paris Agreement of highest possible ambition and progression. I would like assurances from him that we will not either pick a year that might be more appropriate for our EU colleagues but which that is not appropriate for us or pick any other year. We could, of course, pick the year of our lowest emissions and have that as the baseline. That is provided for here. I want the Minister to make clear the provisions that are

there to ensure that any change in the base year will not in any way contribute to a lessening of either progression or our level of ambition and that will only represent our moving to a higher level of ambition. I am just concerned because what is proposed does not make provide that.

The Minister will be aware that the Scottish legislation contains a ratchet clause. Such a clause is very useful. The ratchet clause in the CETA Bill is unfortunate because it stops us re-nationalising private services but the ratchet clause in the context of the Scottish legislation is really useful because it means that you are only increasing your level of ambition. When we start talking about percentages and tonnage, it is in the context that we want to see a reduction in tonnage of emissions year on year. In the end, that is where we need to go. Will the Minister address the proposed subsection (5B) and give us reassurances in respect of it?

Senator Eugene Murphy: I welcome the fact that the Minister and his officials have taken account of the amendments tabled, first, by Senator Paul Daly from Fianna Fáil, and also Senator Lombard, who is present. It is important that we show the farming and rural communities that we have a Minister who does take into account what must be taken into account when dealing with climate change.

I have had a number of calls from farmers in my constituency. I fought a lone battle in saying the Minister would take into consideration issues concerning the farming community that needed to be taken into consideration in the context of carbon count. It is extremely important that hedgerows and trees are taken into account. The Minister knows that from his own county. What it has done also is helped to keep the debate going in a positive way in rural communities. I accept there is more to be done, but we will get through it. It is only right and proper that we take into account the agricultural community, the vast majority of whom are more than willing to accept that some changes have to happen, but we must do it in a fair-minded way. What the Minister and his officials have done is very important for the entire debate going forward.

Senator Tim Lombard: I welcome the Minister's amendment on foot of the amendments proposed last week. It brings clarity to how we can work through the ministerial ability to set the removal targets going forward and also how the legislation will work. I am grateful to the Minister and his officials for the briefing last night, as I was deeply concerned about where this was going to go. It is important that we had that discussion. I am very much in favour of the amendment, which will work well for society and for the agricultural community as well.

The last week has been an eye-opener for me in terms of the number of phone calls I received personally and in my office from all over the country regarding the real frustration in the agricultural community on how the Bill has been put forward in recent months. The belief is that a level of engagement is now taking place and that community is beginning to buy into it. That will be the key driver going forward. It will be the responsibility of the Minister for Agriculture, Food and the Marine to engage with the agricultural community and that engagement will be the biggest issue going forward. The sector is responsible for a third of the emissions and those involved in it feel they have not been involved in the debate. If anything, they feel the sector did not have a voice when the Bill was being scrutinised in the committee and none of its members was present. The sector is now having a say on the floor of the Seanad. That is something we must work on. It cannot just stop here. The engagement from the agricultural community on this issue is amazing but it wants to have engagement with the Government.

I fully understand the need for the amendment. It has been explained to me in detail that it gives the power to the Minister to work with the legislation to establish that appropriate mecha-

9 July 2021

nisms are put in place to ensure we do removals. A key element of the debate was that the ability of the farming and agricultural community to account for removals was not considered. A week later, we have that enshrined in legislation, which is an important step forward. We must build on that.

Very few in the agricultural community are making big money. They are working to bring their families through life, put their children through college and just to survive in society. The agricultural community is getting older and it needs help and resources. In many ways, the CAP reform involves the same budget but it will be distributed differently. Some 25% of CAP money will go on environmental issues, but the other 75% will go on maintaining their standard of living, good or bad as may be. Much work remains to be done and that will be the challenge. I am willing to work with the Minister to ensure we get the message out. The terminology has driven farmers mad in the last week. It was stated that the farming community is the key to this. If it is key and it is left outside the door, it will achieve nothing to meet the genuine challenge to ensure society reaches its targets for 2030. Those targets are significant and I fully understand they will be troublesome to reach. The 2030 targets are substantial but we have a longer timeline for the 2050 targets. The 2030 targets will be challenging for the agriculture community, industry and transportation. We have solutions, expertise and people with the ability to help to get the message out. I am willing to work with everyone to ensure we get that message out. The amendments the Minister has proposed have been helpful. I am willing to work with him in that regard. I fully support the amendment under discussion.

Senator Victor Boyhan: I agree with Senators Lombard and Murphy on agriculture and I thank the Minister. I support the amendment. I acknowledge the work of Senator Paul Daly, in particular. He is a member of the agriculture committee, as is Senator Lombard. Senator Murphy is on the panel.

The amendment goes some way towards addressing the issues but we have a hell of a lot of work to do. To endorse what other Senators have said on engagement, the agriculture community, including farmers, did engage with the committee. The difference is that it was not necessarily listened to. I thank Deputy Leddin and the other members of the committee. They did an awful lot of work. It is only when we start teasing it out that this is evident. I am sure all of our desks are covered in papers related to this legislation. The committee members did very comprehensive work. Clearly, not everything they wanted to achieve got done. I acknowledge the civil servants, including the Minister's team in his Department.

This is political, not personal. It can never be personal. People bought into this whole thing about the environment and climate. I referred to its importance the other day. Ultimately, it is not about us in this House; it is about the public, the electorate in this country who gave us a very strong mandate to protect the environment and planet. Ultimately, it delivered democratically the people who were to govern. This is clearly reflected in their programme for Government. One does not get everything in one's programme.

I acknowledge the amendment, which is important, but we have a long way to go in regard to agriculture. We would be fooling ourselves to believe otherwise. I am not in the business of greenwashing or environment-washing. There are challenges and these will arise later in respect of just transition. This is important.

I quoted from the Green Party website the other day. A press release from 2018 on that website states the Green Party launched its Just Transition (Worker and Community Environ-

mental Rights) Bill 2018, and this is followed by wonderful quotations from the Minister and the Minister of State, Senator Hackett, who at the time was the party's spokesperson on agriculture. Also quoted is Ms Grace O'Sullivan, MEP. The website refers to transition, fairness and leaving no farmer or anybody else behind. In this regard, I want to refer specifically to the amendment and agriculture. I acknowledge former Senator Grace O'Sullivan, who did considerable work in this area. The website refers to bringing together "workers, communities, employers, experts, and government agencies to formulate and facilitate the plans, policies, and investments". It states there needs to be a "fair and just transition to a low-carbon economy".

We have a lot of work to do. We have a lot of communication to engage in with the farming community. Ultimately, that is where it is at. The farmers are the custodians of our land and want to play their part. Ultimately, however, they have to bring home the goods, put the food on the table and pay for their families and farms. Therefore, a lot of work has to be done. I am not saying the Minister or Green Party is against that but I am saying the challenge concerns how to bring rural communities and the people who produce our food along. The Minister, on the website, states the future of the labour movement is green. It is environmental. It could be emerald or any other colour. We can call it whatever we want but it has to be about justice and fairness and support the people who work our land, our greatest resource, and the families who derive their household incomes from farms and the land, that wonderful resource that we have in this country.

Senator Róisín Garvey: Is deas an rud an tAire a fheiceáil i gcomhair an lae fhada seo, lá stairiúil freisin, le cúnaimh Dé. I thank Senator Lombard for his work on the amendment. It is really important that we are very clear about the process. There was a Citizens' Assembly and a climate committee that went on for ages. I found it interesting that the people who were shouting the most about the poor farmers were the ones who turned up least at the negotiations and at the climate committees. We have to be very careful how we spin this one out. To me, the environmentalists and the farmers are all the same. I say that as someone who lives on a farm. We get the climate the most. We are on the same side. There is a kind of polarisation that has been happening. Maybe the big farming lobby groups or certain journalists are responsible for that. I meet the local IFA regularly and the Minister meets the senior IFA regularly. It is not as if the farmers I know have been left out.

It is a struggle to see how we are going to deal with climate change, which is not of our creation. We have been aware of it for many years. That is why I feel that today is historic. This climate Bill had to happen. It is important that we stop with the polarisation and all work together for the greater good. No one cares as much about the farmers as custodians of the land as the Green Party, which is why we recognise the need to look at this and do it properly. There must be a just transition where we see money and employment in rural Ireland.

Deputy Eamon Ryan: Senator Higgins asked a valid question on amendment No. 23, which proposes the insertion of a new subsection (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.

This amendment has been introduced to recognise that the current Bill embodies the programme for Government commitment to halve emissions from 2018, which was the first year to which the commitment in question could refer, in the decade to 31 December 2030. This amendment will facilitate any future Government that may seek to provide for a similar time-

line target and will ensure it does not have to amend the legislation to do so.

This is incredibly complex in terms of the various base years. The ultimate base year, from a UN climate perspective, is 1990. All of our anthropogenic emissions are measured from that date. The Paris Climate Accord is central, based from 2005. Within the Paris Agreement, Ireland works through the EU so our nationally declared contribution is part of the whole European approach. That is where the European regulations kick in.

This is a huge opportunity but we should not underestimate the challenge in terms of land use emissions. There is real potential income for farming as we rewet certain land, as we do agriforestry and forestry and as we restore peatlands, but there are also real challenges. Our net land use emissions in 2018 came to approximately 4 million tonnes, so the emissions are greater than the sinks from the whole land use sector. We can radically change that, and get an income for farming as we do so, but there are also changing factors. The land use change and forestry mechanisms, the reduction in forestation we have seen in recent years and the clear-felling of certain forests have meant that we have a whole range of moving parts. This presents a real and significant challenge for us in meeting our targets.

We have to focus on 2050. The key target is a net zero economy then. The work we start now in land use and nature-based solutions will really start kicking in over subsequent decades. It takes time for forestation to deliver carbon sinks. The curve of emission reductions from bog rehabilitation shoots up in the second decade, but not necessarily in the first. These amendments are being proposed to facilitate regulations to provide for that. It does provide opportunities but no one should underestimate the challenges in land use as well in as other sectors. I appreciate the support, as I have heard it, from the Senators.

Senator Pauline O'Reilly: The concerns that were raised were valid ones. Farmers were concerned that sequestration was not going to be taken into account. As I said on Friday, anything that we can do to allay farmers' concerns is very important. We are all on the same side. As Senator Garvey stated, and I said last week, we recognise that farmers are the custodians of the land. The work they do must be taken into account when we are coming up with that calculation.

It is important to remember that the carbon budget means the total amount of greenhouse gases, which would take into account both the reductions and the increases. However, we must be very clear that sequestration is only a small part of what has to be done. Farmers need to be paid for their work, whether that is in sequestration or the reduction of emissions. It is only right that we look at the science when we are deciding how it is measured. The concern might have been that it was just an emissions target, set in a blasé manner. This amendment will empower both the Minister and the council to look at the science and come back with that in relation to the calculation.

I wish to make an important point on public participation. Public participation features throughout this Bill. It is not coming up to the same extent in the amendments but it is key to the Bill. To ensure a just transition, the Minister is required to "support persons and communities that may be negatively affected by the transition". That is key to this Bill and it includes farmers. As the Minister said last week, the Bill goes well beyond the obligations under the Aarhus Convention on public participation. Therefore, people need not fear that they will be left out of this conversation. They will not be left out when it comes to the actions the Government and Minister are taking. They will be included and will have input at every stage. That is

what is outlined in the Bill. We should not forget that. We should be honest and truthful when we are speaking about the Bill.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 4 and 5 are related. Amendment No. 5 is a logical alternative to amendment No. 4. Amendments Nos. 4 and 5 may be discussed together by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 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;”.

Senator Victor Boyhan: I second the amendment.

Senator Alice-Mary Higgins: I will speak to the question of climate justice. We discussed the issue on Committee Stage. With respect to my colleagues, who spoke of a situation that is not of our creation, it is of our creation. Anthropogenic climate change is driven by human activity, predominately in developed and wealthier countries, including Ireland. We have a huge responsibility in that regard. When we talk about that situation, climate justice is about acknowledging the responsibility that we hold. There is a common but differentiated responsibility. Everybody has a responsibility to respond. There are those who have done the most to drive it and have built their wealth on it. Companies have built their wealth on the causes of climate change. Countries have also built wealth by driving emissions, and through emissions, the costs of which have been felt in other parts of the world.

That is the context of where we are now. We are at a point of incredible international vulnerability. We know that 140,000 people are already dying each year due to climate change. Entire cities and towns are vanishing from the face of the earth. Floods are making some uninhabitable while, in others, temperatures are being reached at which the human body can no longer survive. We have seen the impacts of drought in Central America and in the African Sahel. Drought is forcing millions of people to move as they seek to survive. That is the situation now. We bear a disproportionate responsibility because we have been, and still are, responsible for a disproportionate amount of the emissions. In our debate on Second Stage, I mentioned that Ireland produces over 8 tonnes of carbon emissions per person as opposed to Malawi’s 0.11 tonnes per person. The people in Malawi are farmers as well, albeit very small farmers. When I met them, I saw that they were doing everything they could to try to burn slightly less charcoal and to reduce their emissions. They were working to do that. That is the context of climate justice.

I am glad the Minister removed that language which was problematic and about which there was real concern. This language, previously in the Bill, would have been an embarrassment to Ireland. I am also glad that he has acknowledged that the UN Framework Convention

9 July 2021

on Climate Change and the idea of common but differentiated responsibilities inform part of his understanding of climate justice. However, I believe we should cement that understanding in the Bill because, as has been pointed out, climate justice is not referenced directly in the UN Framework Convention on Climate Change, although the principle of climate justice is reflected in the narrative regarding common but differentiated responsibilities. We want to ensure that, where provisions state the advisory council or Government must have regard to or be consistent with climate justice, it is really clear what is meant. We want to copper-fasten the relationship between climate justice, the UN Framework Convention on Climate Change commitments on equality and the requirement that decisions and actions taken to reduce climate greenhouse gas emissions and to adapt to the effects 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 safeguard the rights of the most vulnerable persons.

The Minister mentioned that it is complicated and difficult to come up with definitions. It is not that complicated. The entire Opposition has come up with this proposal collectively. All groups in the Opposition were involved. We all had multiple definitions, because we all care about climate justice, and we have now come up with one. Even the Labour Party, which put forward its own proposal, has agreed to support this one. All non-Government groups in the Seanad are putting forward this definition of climate justice. We have taken out some of the things we would have liked to include, such as provisions in respect of equality and recognising indigenous communities who led on the concept of climate justice. We have narrowed the definition to the absolute bones of what must be thought about, which are the issues of common but differentiated responsibilities and respective capabilities, support for the people who are most affected by climate change and who have done the least to cause it and are least equipped to deal with its catastrophic consequences, and the safeguarding of human rights for vulnerable people. That is what we think should be considered part of climate justice within this Bill.

The Minister should accept this definition. It will strengthen the Bill. While the commitment to the overall reduction to 2050 is part of our goal in trying to do our piece in achieving net zero by 2050, including the definition will mean that, in all of those actions in between, when we are thinking about our plans, specific budgets and all of the various other instruments and periods of action that flow from the Bill, climate justice and those really important principles will be to the fore. It is a really useful check in deciding on how to achieve these emissions reductions. It would be good to accept the amendment. There is nothing in it which was not in the Joint Committee on Climate Action's recommendations. We have taken out a number of the elements of those recommendations but the core elements remain. It would send a really good signal in respect of climate justice.

11 o'clock

As the Minister is aware, a number of NGOs have also indicated their support for this definition, including Trócaire, Oxfam, Christian Aid and others. We are putting this amendment forward now. There is not really an excuse for there not being a definition of climate justice, because when I campaigned with many others from around the world on the issue during the Copenhagen climate talks the Minister was active in that area too. He has known about the issue of climate justice and has campaigned on it since 2008 or 2009. There is no excuse for not having a good definition in this Bill. The Minister did not start thinking about this in January. I have been thinking about climate justice, and talking and engaging with him, Stop Climate Chaos and others, about it. We have been talking about climate justice for two decades. There is no excuse, therefore, for not including in this Bill a definition of climate justice that is strong,

good and shows leadership by Ireland. It is good that there is not a bad definition. I am glad it is not a backwards step, but let us try to take a step forward.

I urge the Minister to accept this amendment, which is put forward by every Opposition group in the Seanad. It is consistent with the principles put forward by the joint Oireachtas committee and has been called for by many of the international NGOs currently trying to work with local communities across the world to alleviate the devastating impacts of climate change. They know this is an issue of justice and how important a signal on climate justice can be. I urge the Minister to accept the amendment in that context.

Senator Rebecca Moynihan: I am always reluctant to speak after Senator Higgins on an issue like this because she speaks so eloquently and with knowledge. The Labour Party has tabled amendment No. 5, which proposes to include a definition of climate justice. However, we will withdraw it and row in behind the amendment before us. In the debate in the House last Friday, the Government side argued that, after much deliberation at the climate committee, there was no good definition of climate justice. The Labour Party has come together, in a united front, with members of the Opposition, NGOs and outside interests to have one definition, cutting it down, as Senator Higgins said, to the bare bones and understanding that the targets set in this Bill will be the bread and butter issue.

It is important to have an overarching principle within what is groundbreaking legislation. Senator Higgins spoke very eloquently about how climate justice is fundamental to how a developed country, like Ireland, tackles the issue of climate change, by recognising that others who have not contributed as much towards the increasing heating up of the planet will be most affected by it. They will be most affected by displacement and the impact of climate change. It is important that we, as a country, and particularly the Minister, as somebody who has been active in this area for three, if not four, decades and knows and deeply understands the issues around this, have an overarching principle in terms of climate justice. The poorest people in the world need to be protected by that.

I urge the Minister to accept the amendment from the Opposition parties, which has stripped the issue back to the bare bones. As Senator Higgins said, while the amendment does not include matters she wanted to include, for example, the very disproportionate impact climate change has on indigenous populations, it is also general enough to capture the spirit of what we are trying to achieve. The Labour Party will not press its amendment. We will be behind the wider Opposition amendment, which proposes a workable definition of climate justice. I urge the Minister, in a spirit of co-operation, to accept that definition because it is important that overarching principles are contained in the Bill, in addition to bread and butter targets that put meat and bones on the Bill.

Senator Pauline O'Reilly: We are very much behind both a just transition and climate justice. Everybody needs to be clear on that. The decision not to accept Senator Higgins's amendment to remove the definition is one with the best of intentions. This is not academics but law, and it is important to get that law right. As I said last week, we have spent a long time discussing climate justice and a just transition. There is a definition of climate justice from Mary Robinson, for instance, that we found would not achieve the best results.

Part of the amendment refers to something already in the Bill, namely, the common but differentiated responsibilities, which are outlined in the UNFCCC, as was stated. Including the words "climate justice" in as broad as possible a way, without restrictions, will allow the Cli-

9 July 2021

mate Action Advisory Council and the Minister to examine the most up-to-date research and science. It will allow us to do more in respect of climate justice and to take on board the latest research in that regard. I say this from a genuine place because I firmly believe that, fundamentally, we have to protect the poorest people on the planet, who have done the least to cause the problems. That has to be fundamental to everything we do, and we need to ensure we do not put the needs of our workers above those of people who can do little about the climate crisis. It is really important, across the board in the context of the Bill, to ensure we do not try to throw things into the pot that then tie our hands when it comes to doing what we need to do for the poorest on the planet. We need to keep up to date with what climate justice and a just transition mean, and with what it means to take the action required across the board when it comes to climate change.

I hope the Senator will consider what I have said and bear in mind that we are all coming from the same place. Fundamentally, the Green Party wants a just transition and climate justice to be part of this transition.

Senator Fintan Warfield: During the debate on Committee Stage, the definition was removed because it was so poor and problematic. What we are proposing with this amendment is reasonable, seeking as it does to replace the wording to reflect the principle of climate justice and the fact that, historically, not every nation has contributed to climate change to the same degree. Not every country is capable of mitigating it at the same pace. The chosen wording draws on the language of the 1992 UNFCCC treaty to ensure the common but differentiated responsibilities in respect of capabilities in the Bill. I am glad to say the Opposition has come together and I thank the teams in the offices of Senators Boylan and Higgins for their co-operation and collaboration on this. We need a definition of climate justice in the Bill and I hope the Minister will accept the amendment.

Senator Paul Gavan: I am a little frustrated because we had a good debate on this last week. One of the key arguments made by the Government parties - specifically, the Green Party, as I recall - was that it is difficult to find agreement in respect of this issue. We took that argument at its word and the Opposition came together. I give credit to Senator Higgins in that regard because of the initiatives she has taken, and to all the Opposition parties for working constructively to come up with a definition. It is important to note what Senator Higgins said about people working on the coalface from organisations that we all respect such as Trócaire, Oxfam and Christian Aid. They want this definition in the Bill. They are watching the debate this morning. They watched last week when the argument was made that we cannot reach an agreement because it is too difficult to do so. The Opposition, which is a very disparate one, has come together in saying that we can reach an agreement. We have made sure that the wording of that agreement is acceptable. Senator Pauline O'Reilly said earlier that we must be careful not to tie our hands. The wording of amendment No. 4 does not tie our hands. It states:

the decisions and actions taken to reduce greenhouse gas emissions and to adapt to the effects of climate change should ... 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 safeguard the human rights of the most vulnerable persons.

I must be clear on this. There is not a one word in that amendment that anyone in this Chamber could argue with in this regard. However, if there is, and I acknowledge what Senator Higgins said in terms of the Minister's record and commitment on this issue, perhaps he could talk to us about which word or sentence somehow is objectionable.

Senator Garvey said something very important this morning when she said we should all work together on this Bill. That is exactly what we are doing with these amendments. The Opposition parties came together and took on board the objections that were made last week. We came together and agreed a wording that has been endorsed by the most important organisations working on the coalface in this country. I see no reason why the Government will not accept these amendments. Let us be clear on this. Accepting this amendment will not further delay the Bill, because we know some amendments have been accepted already. It is, therefore, not a question of delay. It is certainly not a question of tying our hands because there is nothing in these amendments that ties our hands. Unless, of course, there is an objection to tying our hands in defending the most vulnerable and weak people who have suffered the most with climate change.

The final point is not directly related to these amendments but I will raise it now because I may not get the opportunity again to raise it with the Minister. When we talk about the most vulnerable people in the world right now, we must also talk about vaccine justice. I appeal to him, the next time he sits with his colleagues in government, on behalf of humanity - I say this not on a party basis-----

An Leas-Chathaoirleach: The Senator must be brief.

Senator Paul Gavan: I will be very brief. I ask the Minister to revisit the issue of the TRIPS waiver.

An Leas-Chathaoirleach: I apologise to Senator Murphy, as I did not call him to speak earlier.

Senator Eugene Murphy: The Leas-Chathaoirleach can signal when he wants me to finish. I do not intend to go on for too long. Everybody here who talks about the just transition means well. This is not a tactic by the Opposition but if one looks at the voting records in this House when amendments are put forward on various issues, the reality is that nine times out of ten, the Opposition votes together. This is not so different to that. I do not criticise what the Minister has said today and I fully accept that when we use the phrase “just transition” we must acknowledge that there are vulnerable people, particularly in our own country and, of course, across the world, who must be looked after.

I refer to the area of retrofitting and the fact that briquettes will no longer be available. In fairness, the Government and the Minister, Deputy Eamon Ryan, have always said that people who suffer because of the cost, for example, of retrofitting, must be properly assisted by Government with grant aids or low-cost loans. The same should apply in regard to other fuel costs if people have them. We must take that in good faith.

I do not dismiss what Senator Pauline O’Reilly said about tying our hands. I believe the Government is in a tricky situation here. There is world engagement on climate change. It is happening all over the world, which is a good thing, but the Government must try - I believe it is genuinely trying to do so - to bring forward the best ideas and plans in order that every sector is looked after. I heard Senator Pauline O’Reilly say in a previous contribution that farmers must be looked after, as custodians of the land. Every sector must be looked after, particularly vulnerable people. I accept the Opposition means well with the talk of just transition.

Another phrase constantly used here is “those of us who are passionate about climate change”. It has been used dozens of times in the debates. I am passionate about climate change.

Climate change is discussed every week by our Senators' group or our party. We know it has to happen. I know Senator Higgins did not mean it that way. As far as I am concerned, every person who sits in this Chamber is passionate about climate change. Senators might remember that when they are speaking. We all know what we have to do and we want to do it the right way.

Deputy Eamon Ryan: At the outset, I should state that I accept both the bona fides and the thrust of what the Opposition is looking to do. I accept it has come together on that. The argument is not that there are so many different definitions and so on. I will continue with the process we agreed on Committee Stage, which is to revert back to what we did in the 2015 Bill and not to provide this more specific definition.

I come back to the argument I have made repeatedly. The strength and core of this legislation is in the adherence to Article 2 of the United Nations Framework Convention on Climate Change, UNFCCC, from 1992 and Article 2 from the Paris Agreement of 2015. Article 2 of the UNFCCC laid out the objective of stabilising concentration of greenhouse gases in the atmosphere. Article 3 of that convention has to be read as well and it outlines the principles behind all this. It states:

In [our] actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided ... by the following:

...[That they must] protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

It continues with further principles which, in effect, provide many of the similar definitions of climate justice we have to adhere to. Our Bill specifically directs us to that objective in the underlying UN treaties and agreements. It is appropriate for us to adhere to those. This is, more than anything, our playing a role in international agreements.

Senator Higgins mentioned the farmers in Malawi, who are on the front line and are being affected worst. We have to address climate mitigation, climate adaptation and resilience. As a State, we can rightly criticise ourselves much of the time but we have done good work in our development aid in supporting climate finance for adaptation and resilience for those farmers in developing countries who are finding the greatest difficulties as climate changes.

Going back to our earlier discussions around Irish agriculture, we have an opportunity to adapt and reward our farming system, which is small compared to other countries. In setting international rules, supporting climate adaptation and resilience in Africa and Ireland, we recognise that we have a common goal but a differentiated responsibility. We have greater responsibility. People ask why Ireland should do something. Trócaire did good work some years ago saying our emissions are equivalent to those of some 400 million people from the poorest countries in the world. That drives us to take real responsibility for our actions and recognise we have a common opportunity to support our small family farming system, as well as those in Africa, other developing countries and small island states. We are doing that within our UN system. It is within the UN that we can deliver this climate justice system and, therefore, the principles and objectives set out in Articles 2 and 3 of the underlying treaty and in the updated Paris Agreement give us the direction on climate justice. It is that to which I would adhere and, therefore, I cannot accept these amendments.

Senator Alice-Mary Higgins: I regret that the Minister is not accepting amendment No. 4. I know there are other things that will be done and I will come back to them later, but I want to first return to the question of injustice in the context of this amending legislation on climate action. Recognition of the injustice is core in terms of the action that we need to take. We need to understand, recognise and make as visible as possible our recognition of the injustice. It is sometimes hard to put together the terrible stories we see every week from different parts of the world on the impact of climate change and to place all of those alongside each other and see them as not just a series of individual tragedies but a manifestation of injustice.

In thinking about this issue earlier this morning I came up with the following two metaphors to explain it. We are in a building and we are up on the top floor running all of the water taps. The bottom two floors are already under water, but we are busily discussing which taps we may or may not turn off, our long-term plan for tap turn-off and whether or not the taps we have not turned on should be counted against the taps we might need to turn off. Are we happy to let the water keep rising and people keep dying, not in the future, but this year and next year while we move our figures around in terms of accountancy? It is important that as we do that work of figuring out how we turn off, turn down or escalate the tap on emissions we always remain mindful of those people who are drowning in the lower floors. It is important to also remember that we cannot leave the building. There is only one planet. That is just one metaphor.

Another metaphor for the injustice would be if there was a global pandemic and we had a vaccine recipe that could save the world and 100 countries, including nine of our partner countries which are the least developed countries that Ireland is meant to be supporting, asked for the recipe to be shared in order that they could make more vaccines and save more people sooner. However, we said “No” because the profit of a few companies based near to us is more important than escalating saving everybody from the pandemic. Of course, that is not a metaphor; it is what we are doing now. It is what Ireland will be doing on climate action unless we change our position and support a TRIPS waiver before 27 July.

Senator Paul Gavan: Well said.

Senator Alice-Mary Higgins: That is the level of injustice. I mentioned *The Lancet*. We know that in rich countries, unless they refocus and frame themselves within justice, the forces of injustice are strong. We wanted this amendment accepted to strengthen the Minister’s hand. The Minister mentioned the UNFCCC. I am glad it exists and that the Minister acknowledges its connection. Let us be clear, the Minister quoted extensively from Article 3 of the UN Framework Convention on Climate Change. In the new section 3(3) on the climate objective being introduced in this Bill, the Minister and the Government are only specifically required to carry out their respective functions in a way that is consistent with the ultimate objective specified in Article 2. I have pointed out that we should be referencing the Paris Agreement in its totality and that we should also be referencing the UNFCCC, which I know we have signed up to and are bound by. The reason this is important is because that is the bit about the functions. We may well aim for that ultimate objective. I am glad that climate justice is mentioned in the Long Title of the Bill. I acknowledge that the Minister sees the goal of reaching net zero by 2050 as part of how we fulfil that ultimate objective. The bit that matters in amendment No. 4 is that in each of our decisions and actions between now and 2050 we would be consistent with and have regard to climate justice. Those are the reasons we would like to see it in the Bill and strengthened. I will draw the Minister’s attention to the fact that if he is not accepting the amendment and if he is not going to put a particular requirement and definition on climate justice around decisions and actions, can he show us this, if it is not here in the Bill, in his deci-

sions and actions in the next year and in the next climate plan? I will be watching the climate plan, as I know others will, to see whether climate justice decisions and actions are reflected fully. The NGOs who wrote to us, namely, Trócaire, Christian Aid, Oxfam, Concern and many others who are concerned, have many ideas and programmes they have put forward. Is Ireland going to step up on that? In the Oireachtas Joint Committee on Climate Action report we made a number of very practical recommendations on climate justice. Let us be clear that this is not about development aid, because this is stuff that we owe. It is also about loss and damage funding. It is not just about green financing but is about green adaptation funding. We should be giving this money to countries that are most affected.

Can the Minister at least guarantee us in this regard, and I am aware that he may not be able to come back to us on this? I am stating to the Minister, that if we have not put this definition of climate justice in the Bill now we will be watching extra carefully to ensure that climate justice is reflected in the actions of his Department and of the Government in how we engage in the UN Climate Change Conference of the Parties later this year and in the position that Ireland is taking. Will Ireland take the positions that support climate justice and take actions and decisions that reflect that? It would have been a very useful opportunity for the Minister to send that signal today. I will be looking and watching for those signals as I am sure will all of the NGOs who support and care about climate justice. Of course, everybody cares about climate justice. All of the Government Members said that they support and care about climate justice.

Let us talk about the evidence. I hope the Minister will come back and that we will have a debate on climate justice in six months or in a year's time where he tells us the various ways that Ireland has stepped up to the plate on this issue. I thank the Leas-Chathaoirleach.

Amendment put:

The Seanad divided: Tá, 8; Níl, 25.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Gavan, Paul.	Ardagh, Catherine.
Higgins, Alice-Mary.	Burke, Paddy.
Moynihan, Rebecca.	Buttimer, Jerry.
Ruane, Lynn.	Byrne, Malcolm.
Sherlock, Marie.	Casey, Pat.
Wall, Mark.	Chambers, Lisa.
Warfield, Fintan.	Conway, Martin.
	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Fitzpatrick, Mary.
	Garvey, Róisín.
	Kyne, Seán.
	Lombard, Tim.

	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Wilson, Diarmuid.

Tellers: Tá, Senators Alice-Mary Higgins and Fintan Warfield; Níl, Senators Lisa Chambers and Seán Kyne.

Amendment declared lost.

Sitting suspended at 11.42 a.m. and resumed at 12.02 p.m.

Amendment No. 5 not moved.

Acting Chairperson (Senator Gerry Horkan): Amendments Nos. 6 and 7 are related. Amendment No. 7 is a logical alternative to No. 6, and they may be discussed together by agreement. Is that agreed? Agreed.

Senator Paul Gavan: I move amendment No. 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;”.

Senator Alice-Mary Higgins: I second the amendment.

Senator Paul Gavan: I am open to withdrawing amendment No. 6 if we can reach agreement on amendment No. 7. The Minister will be aware that we discussed this last week. It is disappointing that the Bill does not contain a definition of “just transition”. It is a serious missed opportunity. I hope he will consider the wording we put forward with colleagues from across the Opposition, because what we have done collectively across the Opposition is try to work towards a consensus, which we achieved.

The Green Party has talked the talk on a just transition but we have yet to see it walk the walk. Unfortunately, judging the Minister on his actions, it is clear that he is not serious about a just transition. First, the initial version of the Bill did not even mention just transition. The redraft mentioned it once but without defining it and with the proviso, “in so far as practicable”, rendering the provisions relating to the just transition meaningless. Then, when Sinn Féin and others offered constructive, practical suggestions based on the working Scottish example, the Minister rejected them. That includes the Sinn Féin amendment to define a just transition,

9 July 2021

which copied wording verbatim from the Green Party's 2018 climate justice Bill. If that was not satisfactory for him, it is hard to know what would be.

To top it all off, on Committee Stage the Minister opted for the one amendment by the Green Party Senators to change the Title in yet another inconsequential, tokenistic gesture towards a just transition. One of the reasons given by Government Senators for not accepting amendments to define critical issues such as the just transition and climate justice is there is no definition on which we could all agree. I am pleased to say the Opposition has united around a singular definition. It is time for the Minister to walk the walk when it comes to the just transition. I hope he will accept this wording.

Senator Victor Boyhan: I would like to reiterate what Senator Gavan said. The Opposition has come together. There was no difficulty coming together to seek to have greater clarity and a definition of "just transition". I referred at the very outset to the importance of fairness, climate justice, just transition and bringing everyone with us, particularly those in the agriculture, horticulture and forestry sectors. I acknowledge the work of SIPTU. It has done considerable work in this area and has engaged with all Members of the Houses regarding its view. Losing a job is terrible for anyone but I am thinking, in particular, of the workers in the midlands. I am thinking, in particular, of workers in the peat sector who have been hit particularly hard by Bord na Móna job losses, especially in counties Laois and Offaly. They have to put a crust on their table. Hundreds of workers in these communities recognise that there is a need for alternative work. The Minister also recognises that but we have to engage with these people and retrain them. While he talks about green labour and new opportunities, we have to support the workers. We have to support their communities and employers and engage with experts and Government agencies to formulate new policies that will offer them genuine alternatives as family incomes, and so they can understand and somehow have confidence that they are going to fit into a new green labour work plan. Ultimately, we can have all the principles we want but just transition needs to bring all the people with us.

The other day, we were talking about the sustainable development goals. The Minister was not present. The Minister of State, Deputy Ossian Smyth, was his substitute on the day. I was stating how the Minister had given me a gift of a little crest with the sustainable development goals. Subsequently, someone asked me about it and I told them he had given it to me. It was after one of our engagements here. I thank him again for it. I received a letter the other day in this House, not my own, containing another crest from a mother and her daughter. I am delighted to say that, with pride, I have it today. There is very little emphasis on sustainable development goals within this Bill, which is exceptionally disappointing given the Minister is a great advocate of them and that he carries with pride his sustainable goals most of the time. This relates to the amendment because it refers to just transition and addressing the issues in terms of finding alternatives and bringing people with us. I have a concern.

I have said previously and will continue to say I am particularly mindful of the people in the mushroom sector, the impact on that sector and the associated issue of peat. I understand the challenges. As a member of the Joint Committee on Agriculture, Food and the Marine, I have evidence and supporting documentation from Teagasc stating there was no real practical, viable alternative. This ties in with the idea of just transition. I would appreciate it if the Minister could address this. I am not suggesting, in the context, that he will accept the amendment on the basis of this but I ask him to address it. We have to find an alternative. It is not sustainable, practical, proper or right that we should be bringing perlite or other substitutes from Sri Lanka or halfway around the world in heavy crude-diesel boats, ships and other forms of transport,

with all that goes with that. It is about sustainability and just transition. I want the Minister and House to give comfort to the households that strictly rely on, and need, the support of the Government. They need the comfort of knowing that, on account of this legislation, there will be genuine alternatives in the form of jobs to replace jobs in dirty or non-sustainable industry or industry that is somehow negative or in conflict with the legislation.

Senator Pauline O'Reilly: I do not fully agree with the definition. To return to the original point, I did not say the reason we should not have a definition is we cannot all agree in this Chamber. What I said was that there are many different interpretations and definitions possible, including, I would say, this one. It leaves out intergenerational justice, for instance. The Bill, when looking at just transition, refers to maximising employment opportunities and supporting persons and communities that may be negatively affected by the transition. It is not just about current workers, their trade unions and public participation with people who are now living on this planet; it is about the generations to come as well. I believe that what has been stopping much of climate action is that we are solely focused on the jobs and workers that currently are in place and are feeling afraid to move into the unknown. This Bill states that we have to move into that because there is a climate crisis and we have to move. We must also find a just transition for workers. It is not limiting it and if I am honest, this amendment does limit it. The climate action committee did have sessions on a just transition and no one came to us, that I can recall, with a perfect definition. The whole point is that our understanding of this changes over time - it has changed in relation to farmers - but we have to keep the Bill and just transition open enough to ensure that we can adjust as we go on. I do not believe one will find any political party here does not want workers' rights, farmers and the midlands protected. That is top of the agenda for any politician but what we are saying is that climate action must also be top of the agenda. We cannot put one above the other. Core to the Green Party is a just transition because we are a social and an environmental party and that will remain. The amendment that was accepted was quite significant. What was in the Bill originally was to promote climate justice. Our amendment was to promote climate justice and just transition so it is not just about just transition but also its promotion. The Sinn Féin Senator has called it tokenistic, but Sinn Féin had tabled an amendment to the Long Title to insert one word. If that is not tokenistic, I do not know what that is. I believe there is something quite substantial about not only putting in a just transition but in its promotion.

As I have said before, throughout the Bill there is something that goes far beyond the Aarhus Convention. It is the true meaning of public participation, it is stakeholder engagement, the just transition and climate justice. It refers back to the Paris Agreement and to the UNFCCC, all the time. I believe it is an incredibly strong Bill as is and I do not think that this captures exactly what my interpretation of a just transition would be, which would take into consideration future jobs, future workers and my children and our children's children.

Senator Alice-Mary Higgins: I must unfortunately disagree with the idea that no party in this Oireachtas does not want workers' rights centre stage. The fact is Ireland is one of very few countries that are seeking to dilute or oppose new directives on workers' rights at European level. Specifically, Ireland is one of the countries that are effectively blocking the introduction of collective bargaining rights and seeking to do so. It is important to be clear: the Minister for Enterprise, Trade and Employment, Deputy Varadkar, is opposing the strengthening of workers' rights in the European Union on our behalf right now. That is important to remember and that is why we want to create a counter-pressure on just transition. I am glad that the reference to employment is in the Bill attached to just transition and that the reference to supporting persons

and communities is there. However, what our amendment does by bringing it into a definition is that it changes it quite a bit and strengthens it. We did get a lot of recommendations on just transition to the joint committee but one of the strongest recommendations we had again and again was for the Scottish approach, which is that there would be principles of just transition that would be reflected in how things were done under the legislation. Again, that was very strongly and widely recommended. It was one of the proposals that was rejected last week.

This new amendment is a compromise. I recognise that people feel very strongly on the issue. Senators Boyhan and Mullen tabled strong amendments on just transition on Committee Stage. The Sinn Féin and Labour Party Senators have put forward proposals. We have consolidated and put together a new amendment. It is important to state that it is not about just transition as a delay. I do not think that any of us regard just transition as being about not completing the transition or slowing down on it. In fact, the amendment explicitly uses the phrase “needed for a fast and fair transition to a low carbon economy”. It is about putting the measures in place that allow us to do this well and early.

There are specific elements of the amendment that are important. They place workers and their trade unions centre stage. They mention communities, employers and public representatives, including local public representatives, who will have a role in terms of an input and insight into what it means for particular places in this country that are going to be hit hardest by the necessary transition and potentially, at the same time, by the impacts of climate change. Of course, some of the places that will be affected by the necessary transition will also be the same places that are being affected by climate change, for example, places like north Kerry and the flooding projections in that area.

This amendment does not just mention employment, but sustainable employment. I believe the Minister has said that he wants better jobs to be created. We have reflected that in the amendment. It advocates for the creation of sustainable employment and replacement jobs of equal quality. That is the minimum. It mentions new sustainable employment. It also mentions social supports, as well as training. There is going to be a need for direct social support for families where one of the family members may be a worker who is impacted by the issue. Crucially, the amendment recognises, but does not bind Ireland to, the International Labour Organization, ILO, guidelines on just transition. The language is carefully chosen. It states: “The just transition process in Ireland may reflect and draw on aspects of the International Labour Organisation Guidelines on Just Transition”. It does not bind us to the ILO guidelines, but it offers them as a very useful resource in order that we can look to best practice on just transition around the world. In that regard, I must mention the National Economic and Social Council, NESC, which has done excellent work on best practice in just transition around the world. We must reflect on the learnings from places that have started the process earlier, such as Scotland and Spain, which are doing it quite well, and other places where it has been poorly handled. We need to learn from the best. Looking to the ILO guidelines will help us to do that.

I also want to mention that one of the important things about the approach of the amendment to just transition is that it works from the ground up. It is not just about supporting communities or employing workers. It is about listening to them and social dialogue. It is about ensuring that there are ground-up initiatives that come from communities and workers, which empower them. It is most important, because we do not want to see a just transition that simply works through companies. For example, we do not want to see funding going to companies in the hope that it will trickle down into new employment or new forms of action.

Unfortunately, we have seen some of that. I do not usually like to give individual examples but I will on this occasion, because it is appropriate. We have seen it in relation to funding for the cycling project in Lough Boora. It is an example of an unfortunate situation whereby communities led the transition, started a new engagement with peatlands and promoted cycling back when nobody wanted to cycle in these areas. The public procurement policies were designed in such a way that 50% of the weighting for the project depended on whether national contracts had already been awarded. It effectively and intrinsically meant that being awarded a local contract and having experience in the locality that was rooted in that place did not count, while being awarded national contracts in other parts of the country counted towards the 50% experience threshold. That is an example of the detail. It is one example of how we need to do it better. That is why we believe we should include a definition so that all the various public bodies and others who are engaging in processes relevant to a just transition, including those from every sector from horticulture right through to aviation, will have guidance from the Government with regard to what they need to consider when thinking about just transition.

Deputy Eamon Ryan: I agree very much with Senator Higgins that it is in the detail that a just transition must be delivered with regard to jobs. I still say that these must be better jobs. However, it is not just about jobs. It is also about communities and whole sectors. It is about planning and looking to see where we will have difficulties so that we can start preparing in advance. It is also about social dialogue and addressing regional imbalances. It is about preparing our country for the future and changing the economy as well as protecting our environment. We all agree on this. It is not a matter of one political party or perspective against others. We have a job to do and we must deliver on it. The appropriate place to do so is in the climate action plan and the strategies. They are the centre of what the Government must do to deliver and of what we are doing.

I had a meeting yesterday with our just transition commissioner, Kieran Mulvey, who gave me an update on what is happening in the midlands. Progress has been slow because we are disbursing public money. If we were to disburse it without care, we would be similarly lambasted. There is now €108 million in funding for the restoration of bogs. Some 200 jobs, between part-time and full-time, are already in place. This number will grow. More than 60 community projects have been funded with total funding to the tune of €27 million. Getting state aid approval has been slow, as has getting through all of the administrative procedures that must be completed, but a start has been made. There is a great diversity of new community initiatives being developed. The retrofitting of houses has been somewhat delayed by Covid but retrofitting has begun on some 850 local authority houses occupied by those in fuel poverty. We are actually doing it in reality and learning lessons that we will be able to apply as we look for just transition solutions in other areas. It is in the doing that this matters.

I was very happy to accept the amendment of my Green Party colleagues on Committee Stage because it very much reflected the debate in the Dáil on Report Stage, during which the emphasis was on a similar amendment to the Long Title of the Bill. I was glad to be able to accept that. The key point relates to the climate action plan and the strategy. The proposed new section 4(8)(k) of the Climate Action and Low Carbon Development Act 2015 correctly focuses on employment opportunities and support for individuals and communities that may be negatively affected. This is the appropriate steer and guide. We will use that to deliver a just transition. I cannot accept the amendments. While I very much understand the arguments being made, I believe we have the right structure within the Bill.

Senator Paul Gavan: I thank the Minister for his response. It is fair to say that I am disap-

pointed. I will put what is happening here on the record of the House for the people watching at home. It is a cause of extreme regret to many of us across the Opposition that the Green Party is rejecting a proposal to define “just transition” in this Bill. That is the bottom line. That is what we are witnessing here today.

I will respond to a couple of the points that were made. We proposed a change to the Title of the Bill but we backed it up with substantial changes, such as this definition, so it was in no way tokenistic. Changing words without backing them up in this way is, frankly, just tokenism. I was very struck by what Senator Pauline O’Reilly said on Committee Stage. She said that nobody had come forward with a perfect definition. Does that sound to the Minister like someone who actually wants a definition to be achieved? I remind the Senator of the words of the great philosopher, Neil Young. I believe they were heard at Live Aid in 1985, which only the Minister and I are likely to remember. He sang “nothing is perfect in God’s perfect plan”. We had an opportunity this morning to reach agreement on a definition of “just transition”. We were all able to come to an agreement very easily, pretty much the next day, after the previous debate. I echo what Senator Garvey correctly stated, which is that we all need to work together. Yet, for the second time today, we see the Minister and the Government rejecting the best efforts we have made to strengthen this Bill further. To be clear, we are supporting this Bill. We believe in this Bill and want to make it stronger and better.

As a trade unionist, it is particularly disappointing because, and I referenced this last week, the Minister does not seem willing to listen to what trade unions are saying. They want a definition of “just transition” in the Bill. I have to regretfully disagree with Senator Pauline O’Reilly’s statement that we are all here to protect workers’ rights because the fact of the matter is - and Senator Higgins is quite correct in this regard - that the Government has written to the EU Commission to ask that the EU minimum wage directive is not made binding. That directive is specifically about strengthening the right to collective bargaining. As many Senators know, we do not have a right to collective bargaining in this country. Please, let us hear no more nonsense from Fianna Fáil, Fine Gael or the Green Party about how they are protecting workers’ rights when the Tánaiste has written to the EU Commission to lobby against collective bargaining rights in this country. That is a fact. We have a copy of the letter. There is no argument about this matter because that is where the Government stands on it.

As already stated, I am a trade unionist. I must point out that - unfortunately, this has been a constant failing - the Minister is not listening. I am delighted to hear the update on the midlands. There is some encouraging news in that regard, which is great. We are talking about the Bill, however, and, unfortunately, the reality is that the Minister is rejecting a definition of “just transition” that ties in very well, and aligns us without restricting us, to the International Labour Organization. Why can the Minister not accept that? Again, I note that he is not giving a reason why. We have had a lack of reasons. It is, basically, that the Minister is not prepared to work with us. That is the most disappointing aspect of all.

Deputy Eamon Ryan: Throughout this whole process, over several years, Government and Opposition have worked together, at joint committees and in the drafting and pre-legislative processes, and the Bill has been transformed through listening and accepting a large number of different changes. This included the insertion of a definition of “just transition”, which was not, as mentioned earlier, in the original Bill. We agreed to include it in the Bill in the place that it is most appropriate and where it can and where it can have real effect. Having listened to the Opposition extensively and changed the Bill accordingly, what is there now is well drafted.

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 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;”.

Senator Victor Boyhan: I second the amendment.

Amendment put:

The Seanad divided: Tá, 9; Níl, 25.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Gavan, Paul.	Ardagh, Catherine.
Higgins, Alice-Mary.	Burke, Paddy.
Keogan, Sharon.	Buttimer, Jerry.
Moynihan, Rebecca.	Byrne, Malcolm.
Ruane, Lynn.	Casey, Pat.
Sherlock, Marie.	Chambers, Lisa.
Wall, Mark.	Conway, Martin.
Warfield, Fintan.	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Fitzpatrick, Mary.
	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.

Tellers: Tá, Senators Alice-Mary Higgins and Victor Boyhan; Níl, Senators Lisa Chambers and Seán Kyne.

Amendment declared lost.

Senator Rebecca Moynihan: I move amendment No. 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;””.

Senator Lynn Ruane: I second the amendment.

Senator Rebecca Moynihan: This amendment relates somewhat to the issues we have been discussing, namely, a just transition and, more specifically, climate justice. It relates to the sustainable development goals, SDGs, which Ireland was one of the leaders in negotiating. As I mentioned earlier, this seeks to highlight the principles and parameters within which the Bill is considered and its main thrust. It is important, in the context of groundbreaking legislation updated from 2015, that we include matters such as the SDGs. In the context of climate justice, we must ensure we stick to goals to which we, the United Nations and the majority of developed nations have signed up in regard to protecting the world’s poorest people.

Senator Alice-Mary Higgins: When we were in early discussions about the Bill, I spoke to an environmental group in Galway. We were discussing the Bill, what needed to be changed or fixed and what areas could be strengthened. When I told the group the SDGs were not mentioned in the Bill, they were shocked, even though they are really supportive of the general thrust of the legislation. I was focusing on other matters and I said, foolishly perhaps, that I imagined it was an issue that would be addressed. I said that there would be other areas we would have to debate but that I was sure the SDGs would, eventually, be included. Of course, their inclusion was recommended by the Oireachtas joint committee. It seemed to me to be a simple and sensible provision.

While the SDGs are referenced in other agreements such as the Paris Agreement, they are explicitly a commitment that Ireland has made that has not been transposed into law, yet it is important that we have regard to that commitment. It was David Donoghue, on behalf of Ireland, who negotiated with the world. Imagine getting every country in the UN to sign up to detailed proposals about work, cities, water and how we treat it, life on land and in water, and health and its basics - not in vague language but with specific targets and goals - yet we cannot agree to refer in our climate legislation to that groundbreaking global agreement. That is despite the fact that of all the SDGs, the one on which we are doing worst is that which relates to environmental legislation. It is the one on which we scored 15th of 15 EU countries.

The SDGs are not merely aspirational. The badges are lovely - I have a number of them at home - but they are not there as an inspiration, a colourful prop or an aspiration; they are a blueprint for what good development looks like. Considering things like the coronavirus pandemic, which we are prolonging by not introducing a TRIPS waiver, Brexit and the social cohesion loss, if an approach to ensure the measures in the sustainable development goals were in place a long time ago, the world would face fewer crises. The fact that those crises are present now

is not a reason to postpone the sustainable development goals. It is a reason we need to speed up on delivering them because they are the blueprint for how we do things better, and how we make society more resilient and prepare it to ensure we have strong integrated approaches on equality and the environment. The sustainable development goals are a gift to the world. They are a collective high point of our international vision of what it means to live together on this planet. We should think about them when we develop our climate policies.

The Minister's Bill refers to "sustainable development" but, as we have pointed out, that could mean anything. It could mean sustaining the model of development we currently have. It could mean sustaining trickle-down models of development. It could mean sustaining business as usual. I do not know why sustainable development goals are not referenced and included in the Bill. While they do refer to the 2030 deadline, that does not preclude them. Our definition states that it "includes, but is not limited to, the United Nations sustainable development goals". It, therefore, allows space for what comes after the sustainable development goals when we reach the 2030 deadline and the decade of action, which we are one year into already, ends. It leaves space for what the world will collectively come up with that follows that. This amendment only requires that regard is given to this. It does not bind or tie down. We know that "have regard" is weak language but it gives an important signal. It would not be justiciable in every respect, but it would be something that is thought about.

Can the Minister indicate why Ireland, the lead negotiator of the United Nations sustainable development goals, is not putting that into the Bill? Can he specifically indicate what "sustainable development" means if it does not mean the United Nations sustainable development goals? How might it be interpreted? We have been warned of the dangers of loose interpretation at various points of the Bill. I am concerned that "sustainable development" is open to loose interpretation. How does the Minister plan to nail down and clarify what sustainable development means in the course of the implementation of the actions in the Bill?

Senator Paul Gavan: I wish to put Sinn Féin's support for this amendment on the record. We agree that it is important to tie the definition of sustainable development to the UN's definition of sustainable development goals. Otherwise, as was argued well by the last speaker, they could become more vague words without any legal meaning. I was also shocked as I had assumed the Minister would accept this amendment. Let me remind him that there are people from NGOs, who have given years to this area, watching this debate today. They are watching the Green Party reject this amendment. It is genuinely surprising. I cannot imagine why anyone in any political party would object to tying this Bill's definition to the UN's definition of sustainable development goals. Surely, there is a duty on all of us to do that. To see the Green Party bypassing that today is hugely disappointing.

Senator Pauline O'Reilly: I reiterate what I said on Committee Stage in relation to the sustainable development goals. I want to see them implemented in regard to other things, such as in planning and across the board in different Departments. This needs to be put on some kind of a footing. While we have signed up to the UN's sustainable development goals, I agree that it needs to be placed on a stronger footing in this country. I argue that the Bill is providing for everything that is required under the sustainable development goals. It would be a stronger action to include it in other Bills in relation to development and planning, etc. We must put it in its own setting as well as on a legislative footing. That is preferable to putting it into a Bill that is already doing what is set out in the sustainable development goals. That is what I would argue. I go back to the point that we could put everything into this Bill but we need to get on with doing what is fundamental to the Bill, which is strengthening the Climate Change

9 July 2021

Advisory Council, putting in place climate action plans and reaching our targets. We mention them as much as we can and I agree with the sustainable development goals in principle. I ask the Minister to look at what we might be able to do outside of the Bill to strengthen Ireland's commitment to them.

Deputy Eamon Ryan: The issue of the definition of sustainable development goes back to the Brundtland report and the principle that we will not compromise the interests of those in the future with what we deliver today. The sustainable development goals within that have been hugely significant. With regard to the Rio agreement, the Johannesburg agreement and New York in 2015, they were taken as an overarching manifesto for the future, which is what they are. They are a guide in everything we are doing. We do not need to define that here, however. That is a manifesto for the future which will have to apply in a variety of legislative measures in respect of education, justice, environment and other areas.

We are delivering on goal 13 in setting the right legislation for our climate approach. We will not write that manifesto for all the different areas which are contained, correctly, in the sustainable development goals. This is focused legislation on how we in the State meet goal 13 in climate legislation. It is specific, precise legislation in order that we set about meeting that goal and the targets.

It is appropriate that we have regard to sustainable development but I cannot accept the amendment. I see this legislation as a key means by which the State organises to meet goal 13. It is in the context of the wider sustainable development agenda, which integrates social justice with ecological justice but it is not the purpose of this Bill to bring that into being. Its purpose is to focus on the immediate task in hand in meeting our climate commitments.

Senator Rebecca Moynihan: That is disappointing, when taken in conjunction with the climate justice amendment we tried to insert. Those amendments are not intended to be the meat of the Bill but to set the parameters within which we will deliver the targets in the Bill. I am disappointed to hear the Minister say this is not a manifesto for everything we want to include in it and that this is a way of ensuring we hit our targets as part of the sustainable development goals. They do not work in isolation, but in conjunction with one another. They are meant to complement one another.

The intention of this is not to put in that we are writing a party political manifesto or a manifesto for Ireland. It is intended to set the principles and objectives which will frame the actions taken in the Bill. That is fundamentally important. I am disappointed the Minister is not accepting this or the other amendments in which we are trying to set the parameters for the principles and objectives from which the action flows. That is fundamentally putting climate justice, just transition and the sustainable development goals, which work together and complement one another, with one another. It is disappointing that those key amendments are not being accepted.

1 o'clock

Deputy Eamon Ryan: The Bill states in various sections that we have to take into account public health, employment and social objectives and so there is integration. It sets out the requirement for a climate plan, which is the centre of what we are doing, and for a climate strategy to have a social, health and economic perspective. It is in those provisions the approach that is set out within the sustainable development goals is recognised and that is the appropriate

place to have it.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 9:

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

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: This amendment seeks to ensure that within the Bill the approach taken in regard to removals would be in a manner consistent with current international carbon reporting practice. This arises in the context of the elevated focus on removals signalled by the Government’s acceptance of amendments on Committee Stage and the Report Stage amendments brought forward by the Government which place a stronger emphasis on removals. How that is done will be important, as will be how much that is done.

My concern, which the Minister might address, is whether there will be a cap on the level of removals. For example, might it be 5%, 10%, 20%? What we do not want to see happen is that, rather than reducing emissions, we are disappearing or calculating out so that they do not count on paper. I previously mentioned the idea of getting credit for the taps that you do not turn on that allows you to keep other taps running. There is sometimes a little bit of that in removals. This is about looking for credit for the things that you do not do as well as for the active measures that you might take to increase removals. I do not see that specifically named in the Government amendments.

The Minister mentioned EU guidelines and the land-use, land-use change and forestry approach. Currently, Ireland is a net emitter. Forestry is a net emitter. We hear a lot about trees. The approach we have taken to forestry is such that currently forestry emits more emissions than it sequesters. It is important that that is reflected. My amendment, if inserted, copperfastens it. In my amendment, I state “current international carbon reporting practice”, which is the language from the Scottish legislation and how they approached the issue of removals. The Minister specifies the EU. In referencing “international” I am hoping to encompass the EU and UN evolving science in these measures. The other part of the amendment, that is, “in a manner that is consistent” is about making sure that we set some limits on how removals are used. I am concerned. I opposed a blunt insertion of the idea of removals without any caveats, as happened on Committee Stage. There is a real danger that in the end we will still be producing a lot of emissions and we will not reach the goal of highest possible ambition of progression.

If we have two hands that we can act with, that is, removals and emissions reduction, we should be working with both hands. I believe that farmers should be paid and supported. They are custodians of the land, but they are not the only custodians of the land. Every person in Ireland is a custodian of the land of the country. It is important to remember that it is a shared responsibility of farmers and everyone else. All of us play a role in this. We need to look at how we can sequester and remove better but it must not be done in any way that compromises our ultimate goal of as much reduction in emissions as we can possibly achieve. I suggest that as the Minister develops those guidelines, it might be worthwhile for him to refer back to some of the committee proceedings where we heard about double-counting scenarios in which trees are reported as doing two or three different pieces of work.

9 July 2021

I am concerned that the Minister has mentioned a potential trading scheme in this area because that opens us up to further potential manoeuvres. We know how trading systems and company structures, etc., have been used to move tax around the world so it never really gets counted anywhere. I hope we will be very careful not to introduce measures like that. The Minister hinted that such an approach might be taken in the case of emissions.

The Minister did not answer my question about the regulations he intends to insert under the proposed new subsection (5B), which corresponds with my amendment No. 9. I asked the Minister to assure us that a change in the baseline year will not lead to any diminution, reduction or backward slide. Such a change should not lead to a different way of measuring progress which effectively reduces the amount of tonnage that might need to be sought. It should not lead to any scenario that involves a potential for backsliding. In fact, it should operate on the principle of highest possible ambition and progression. In effect, there should be a ratchet approach.

The Minister has just told me that the baseline year was politically negotiated and that something else would be politically negotiated. If we allow for a change of baseline year in this legislation, I want to be assured that we are not allowing whatever is politically negotiated to be less ambitious. Our prerogative now, as the legislators in this Oireachtas, is to ensure this Bill is as strong as possible. I do not want us to be inserting loopholes to allow for the programme for government negotiations of a future Government. That is not my affair as a legislator. I do not like to see that being brought into this Bill. The Minister did not answer my question on that point. He simply indicated that it is a political matter for the future. Can the Minister give me an assurance that the baseline year movement will not be effectively regressive? Can he also say whether there is potential within the regulations he has set out for the degree to which removals might be used to be limited?

Deputy Eamon Ryan: I can give the Senator a complete reassurance that her issue with the baseline relates only to how it is worded. It is intended as something that will be considered after 31 December 2030. The 2018 baseline would become less relevant in that context because we would have met it. That is the reason I have brought the-----

Senator Alice-Mary Higgins: I am speaking of the period 2030 to 2050.

Deputy Eamon Ryan: A future government may examine the matter and set a baseline to help to guide the Climate Change Advisory Council, but that would be after the fact. There will not be any weakening or watering down. The overall objective is still the same - it has to be net zero by 2050. This measure will give future governments the ability, should they want to do so, to set further baseline targets in addressing those third, fourth, fifth and sixth five-year periods. That is the intention of the amendment.

I am afraid I cannot accept amendment No. 9. To answer directly the question on whether there should be a cap on removals, I do not believe there should not be. The reality is that for the 2050 period we will need significant removals to get to net zero while being able to cover the agricultural activities which will still be ongoing. Many of the benefits and realities of removals will come from nature-based solutions which have ancillary benefits and are going to help us to develop and protect ourselves from the biodiversity crisis we also face. This will also help us in terms of water quality, employment and balanced regional development. This is a solution which brings not just climate benefits but also other benefits. It will take time, it is not going to be immediate. It includes the prospect of making payments to farmers. That is something we want to optimise, not restrict.

There are also risks. We can focus on the removals but there are also climate risks. Our climate is changing. We have large areas of exposed bog in particular where we have seen and could see very large fires developing in drought conditions and that would lead to further massive releases of carbon into the atmosphere. There is nothing certain in forestry. Those involved in the development of forestry have seen it with ash dieback and major forest fires. In Europe, the biggest issue in terms of land use, land-use change and forestry is that our carbon sinks are shrinking. The ability of the natural world to absorb and retain carbon is in crisis because of climate change. The real issue and risk is how we stop the further release of emissions. There are benefits from forestry when we pursue a closer-to-nature model that is much more climate resilient. When we rewet soils and restore bogland, it helps in the context of climate adaptation as well as resilience. This is opening up solutions that deliver for us in a whole variety of different ways. Far from a cap, my real concern is that the natural world is increasingly unable to store carbon because of the climate change that we are already seeing. I cannot accept the amendment.

Senator Malcolm Byrne: I would like a bit of clarity on what current international carbon-recording practices are, because they can be quite vague and generalised. The OECD has done some work on this, but it varies as to what exactly the definition involves.

I favour us exploring an emissions trading scheme. I say this because it is important, in the context of this legislation, that we bring people with us. I accept the Minister's point that it is not just farmers who are custodians of the land, but it is farmers who will be our front-line workers in the battle against climate change. What farmers want now is sustainability - not just from an environmental perspective but also from a financial point of view. We must shift to a situation whereby farm families believe that by doing things which are environmentally friendly they will be able to sustain their families financially. That is why I favour an emissions trading scheme. At present, if somebody looks at planting a forest or pasture land that could be used as a carbon sink, any of the carbon credits that they may generate are owned by the State. It is almost a communist system. Whereas, if we move to a situation whereby we can reward and recognise farmers by investing and that they will be able to trade the credits they produce or create, they can either offset them against other farm activities or offset them more generally. Then we can see a sustainable model that is both financially and environmentally sustainable.

The New Zealand emissions trading scheme has flaws. I do not say that it is directly applicable here, but it is one whereby participants have to pay an emission unit for every 2 tonnes of carbon dioxide they produce. It is pretty clear. There is a fixed price of NZ\$35 that they have to pay, but farmers are then also incentivised to generate income for themselves if they use land as a carbon sink. I would like to see that kind of model being explored. Just transition is not only about telling people this is what they cannot do, it also involves providing them with real opportunities to be able to generate income so that they can sustain their families and communities. We must be imaginative in the approach we take. That is why I believe an emissions trading scheme should be considered. It should be considered if it means it gets us to a position where we have carbon sinks. It also incentivises people who own the land to create them. This is an approach we need to take across all this legislation. I appreciate that the Minister is working at this for a long number of years so I will not say the easy part is the passing of the legislation. The bigger challenge will be putting it into effect with the carbon budgets. That means bringing people along with us. If that means we should consider ways whereby we can incentivise and reward, we should definitely approach it in that way. I would certainly like to hear the Minister's views on the possibility of considering an emissions trading scheme and on

how we can reward landowners so they can ensure that, for them and their families, their livelihoods will be sustainable.

Acting Chairperson (Senator Róisín Garvey): We are going to stick to the amendments today because we have a lot to get through.

Senator Alice-Mary Higgins: I am concerned by the unwillingness to set a ceiling or limits in terms of the removals. I am concerned about the loss of emissions from our soil, forestry and peatlands. Urgent action is required in that regard. There is a need to ensure payment. I recognise that farmers are on the front line. They have key work that needs to be rewarded. The Minister said the benefit comes to the State in terms of the reduction of emissions. That should be recognised by the State because it is the sequestering and reductions in emissions that will allow the State to meet its targets and, if we are talking financially, avoid very large fines, which we have been facing for not reaching our targets. However, it is also important that we set limits. We must not have any danger - and I am worried about the danger - of an idea whereby we keep business going as usual while doing other things to make up for it. It needs to be a case of emissions reduction and removal, and we need to have hard measures on emissions reduction as well as removal and sequestration. When the Government is making the regulations mandated under the section, the Minister should engage with the Oireachtas Joint Committee on Environment and Climate Action on them. He should engage widely to ensure there is potential to put a limit on the use of removals within the regulations. That would be appropriate.

Regarding the idea of the trading schemes, we know the position from housing. Trying to let the market solve our housing problems has not worked out very well. If we try to fit climate action into the stock market model, we will fail and the world will burn. That is just clear as day. Therefore, we need to be careful. Ireland uses offsets at the moment. Our use of offsets has allowed us to keep doing things we should not really be doing. I do not want us to facilitate other countries to use offsets to avoid making the changes they need to make. Therefore, we need to be really clear. Every country needs to be doing everything it can do. We should not use offsetting to either limit our own ambition and responsibility or limit the responsibilities and actions of others. There are roles within the State for recognising carbon credits; I want to be clear on that. It is important to recognise the role of ecological care because it is sometimes a matter of ecological care, not just the measurement of carbon units solely when we talk about sequestration.

The Minister mentioned the integrated approach. I hope it will be reflected. When I went to Madrid, it was funny in that one could not get people to talk about the biodiversity convention at all; rather, they talked about trees, seaweed, mangroves and units of kelp. That is the nature services approach as opposed to the nature-based solutions model whereby one takes different approaches to how we might store different carbon and the information is broken down on spreadsheets. When you do that, you lose the forest. I have stated previously, in the context of the debate on forestry, that an investment firm claimed that trees were one of the best things it had invented. That company did not invent trees. As part of the regulations on removals and how we measure carbon sequestration, it is extremely important that we integrate those biodiversity benefits and that we do not just look at them as extra benefits which may happen to occur but, rather, that we include them. Many of the environmental champions of biodiversity have sometimes been villainised as if they are delaying climate action when they are pushing for an integrated approach. The devil will be in the detail in the context of these regulations. I am of the view that the issues of biodiversity and limits on removals may need to be considered as part of the process.

Deputy Eamon Ryan: It will not be the market deciding this, it will be a land use strategy within the programme for Government. The key commitment here relates to a review of land use with a view to then setting out a policy that optimises rural development, storage of carbon, protection of biodiversity, an improvement in water quality and a reduction in ammonia and nitrogen pollution. That then frames any emissions trading scheme or other trading system. We need investment in forestry, in managing grasslands, particularly wetlands, wetting soils and managing that. We need to identify mechanisms to pay for it, especially in the context of forestry and the restoration of bogs, because it is labour intensive and takes time. The market will not decide this, it will be the land use review based on ecosystems and getting nature-based solutions to compliment each other. That is one of the elements that will be critical. One does not set up a fund and just let the market decide, it is science and the science needs to be funded. It is part of the funded support. Rural communities and farming need to be funded and this is one of the ways we can do it. I do not think that it is accurate or fair to depict this as being akin to the housing market. This is about land-use management in the biggest, widest, longest-term thinking way and that is what we will deliver.

Amendment put and declared lost.

Acting Chairperson (Senator Róisín Garvey): Amendments Nos. 10, 35 and 36 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Rebecca Moynihan: I move amendment No. 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.”.”.

This is a technical amendment but it is also a fundamental one. Senator Higgins will speak to it in more detail. It arises on foot of a judgment relating to Safety Before LNG and clears up the technical distinction between who is responsible for action. Under the amendment, it will not just be the Minister but, rather, the entire Government that will be held responsible. This would be an important tightening up of legislative language. Senator Higgins has several amendments which try to do this and this is Labour’s amendment, which we think covers it all. I urge the Minister to accept the amendment, not because the principle is important, which it is, but because it clears up potential legal issues arising from the Bill and ensures that there is responsibility across Government.

It clears up potential legal issues arising from the Bill and ensures that there is cross-Government responsibility. It ensures that companies, for example, cannot get away on a technicality when it is not referencing the whole Government as being part of the action. Senator Higgins is also going to speak to the amendment.

Senator Alice-Mary Higgins: I have two remaining amendments that deal with the issue of liability from a particular perspective. I have removed around ten to 15 amendments that I would have tabled individually because of this very elegant amendment that has been put by Senators Bacik and Moynihan. It deals with the same issue. The Minister will be aware that his Department was involved in a case in the High Court this year. It was not a past iteration of his

Department or the Government. This Government and the Minister's Department successfully argued in the High Court this year, in respect of the provisions of the 2015 Act, which is still the relevant Act because this Bill amends the 2015 Act, that because the Government was not specifically named, it was not required or obliged to basically account for and deliver on provisions. Due to the fact that a Minister was named but the Government was not named, it was argued that the Government could not be held to account in relation to provisions of the 2015 Act. That is a huge concern. We know that one of the key recommendations of the Citizens' Assembly was justiciability. The committee also recommended that there should be greater justiciability and accountability. Of course, there is some justiciability here. We want there to be justiciability that is successful and justiciability for the Government.

The Government is referred to in some of the sections of the Bill. However, it is important to note that in many of the places where it is referenced, reference is made to the Minister and the Government's respective functions. For example the new section 3(3) states: "The Minister and the Government shall carry out their respective functions" in ways that are consistent with the UNFCCC and the European Union. However, and this is where I come to my amendments Nos. 35 and 36, in respect of one of the key sections of the Bill cited by the Government, when claiming that it did not have to deliver on, or be bound by, the commitments contained in the 2015 Act, the argument was that the Government was not listed as a relevant body. The solution that I have put forward is a simple one. I do not list the Government as a relevant body, but I list it alongside the relevant bodies. My amendment states that a relevant body "and the Government of Ireland" will be required to act in a way consistent with the UNFCCC and the EU. That is important in respect of section 15.

Section 15, and specifically the new section 15, as inserted, is where the climate plan, sectoral targets and all of the building blocks of achieving our national objective are listed. All of those building blocks - the plans, the mitigation, the strategies, the budgets and all of that - are listed in section 15. Relevant bodies have to consider them, but the Government is not bound by that. The Government is referred to in section 3(3), which specifies "The Minister and the Government shall carry out their respective functions" in a manner consistent with the higher ultimate goal. However, the Government is not referenced in section 15, which states that a relevant body must perform its functions in a manner consistent with all of those tools that we are effectively going to create. There may be room for interpretation, but it is not specified as clearly as it should be in that section. I understand that there are a few sections in the Bill where reference is made to the Government. However, my concern is that through section 15, we could be allowing a loophole to continue. It is not a theoretical loophole. It is a loophole which has been used, and used very recently.

I ask the Minister to consider supporting Senators Moynihan and Bacik's amendment to ensure that reference is made to the Government when reference is made to the Minister throughout the Bill. I also ask the Minister to consider supporting amendment No. 35, specifically to ensure that the Government of Ireland is required to have regard to and consider the same things and meet the same levels of accountability as must a local authority or any other relevant body under this Bill. Will the Minister address that issue? I hope he will consider accepting one or other of these amendments.

Acting Chairperson (Senator Róisín Garvey): Does Senator Wall wish to speak?

Senator Paul Gavan: It is Senator Gavan but not to worry.

Acting Chairperson (Senator Róisín Garvey): I am sorry.

Senator Paul Gavan: It is okay. I have been called worse. I wish to put on record Sinn Féin's perspective on this matter, which is that we support our Labour Party colleagues. This amendment relates to the recent High Court finding with regard to the Climate Action and Low Carbon Development Act 2015, which the Climate Action and Low Carbon Development (Amendment) Bill 2021 seeks to amend. The section 15 loophole was discussed on 2 July in connection with Committee Stage amendment No. 20 and others. The judge upheld arguments from the Government that there was a massive loophole in the legislation which the Government could use to evade having to adhere to the Act's provisions. The Government argued that it was not a relevant body and that the provisions of the Bill applied only to Ministers and magically ceased to apply to those Ministers when they crossed the threshold of the Cabinet room. That really is Monty Pythonesque, is it not? However, that is what this Government successfully argued in court. It is a glaring loophole of which the Government is undoubtedly aware because the Department made the argument in court. Frankly, it is appalling that this loophole has not been closed. I hope the Minister will reconsider.

Deputy Eamon Ryan: I cannot accept the amendment. I read the judgment, which was very interesting. As I recall, the issue regarding the role of the Government was not presented as one of the main arguments in the appellant's original presentation. The judge drew it out in his judgment. The judgment relates to the 2015 Act, which is being fundamentally changed and altered by this Bill. As Senator Higgins has referred to, the proposed new section 3(3) says that "The Minister and the Government shall carry out their respective functions [...] in a manner [...] that is consistent with the [...] United Nations Framework". That is a fundamentally stronger and more powerful requirement on the Government and Ministers than had existed in the 2015 Act. If one goes down through the Bill to see how this applies to those respective functions, the critical one relates to the devising, evolution and updating of a climate action plan and the setting of the climate strategy. The proposed new section 4(8) specifies that both the Minister and the Government must have regard to all of those other requirements we mentioned earlier with regard to just transition and so on. Both of them must take the requirements into account. Critically, the Government, as the approving body, is cited at centre stage with regard to the approval of the carbon budgets and a whole range of other respective functions. It is a fundamentally different Bill which will amend the existing Act in a way which addresses any questions that could arise from that judgment. Therefore, I will not accept the amendment.

Senator Rebecca Moynihan: There is nothing I can say to that. It is disappointing. I will push the matter to a vote.

Amendment put:

The Seanad divided: Tá, 7; Níl, 27.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Gavan, Paul.	Ardagh, Catherine.
Higgins, Alice-Mary.	Burke, Paddy.
Keogan, Sharon.	Buttimer, Jerry.
Moynihan, Rebecca.	Byrne, Malcolm.
Sherlock, Marie.	Carrigy, Micheál.

9 July 2021

Wall, Mark.	Chambers, Lisa.
	Clifford-Lee, Lorraine.
	Conway, Martin.
	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Doherty, Regina.
	Dolan, Aisling.
	Fitzpatrick, Mary.
	Garvey, Róisín.
	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Alice-Mary Higgins and Rebecca Moynihan; Níl, Senators Lisa Chambers and Seán Kyne.

Amendment declared lost.

An Cathaoirleach: I welcome the Minister back to the House. Amendment No. 12 is a logical alternative to amendment No. 11. Amendments Nos. 11 and 12 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 11:

In page 7, to delete lines 32 to 38.

Senator Paul Gavan: I second the amendment.

Senator Alice-Mary Higgins: Amendment No. 11 removes the language in respect of limitation of liability. I had a very lengthy discussion on this issue with the Minister, which I do not think was satisfactory, but we probably do not need to go over it all again. This clause was added to the Bill after scrutiny and pre-legislative scrutiny. If our last discussion was about closing a loophole in the previous Bill, this opens a new loophole in the new Bill. It is a provision that would remove the potential to access remedy or redress by way of damages or compensation for not just individual citizens but, as was mentioned, SMEs, and others who might be affected, by a failure “of whatever kind, to comply with [the] provision of this Act or any obligation or duty created thereunder.” It is very widely framed.

There are very serious concerns about this when one looks at Article 13 of the European

Convention of Human Rights, which specifically mentions individuals' rights to effective remedy. This is especially since remedy is mentioned in the way limitation of liability is phrased in this clause. There are also concerns in respect of the Aarhus Convention regarding climate action and the environment. As was pointed out in other amendments we discussed, this creates a situation whereby we are, potentially, weakening the strength of judicial action. Part of the strength of judicial action is that the Government might be required to take new measures and instigate new policies, but another is the potential financial cost of non-compliance. We are removing the element of financial penalty in terms of redress, remediation, relief, compensation or damages. We are removing one of the strong levers that might be used to force the Government to follow through and not fail to comply with the obligations and duties created under this Act.

At the same time, as has been mentioned, we are looking at proposals to bring in new liabilities for investment companies and international investors, where they would still be able to seek compensation and have the threat of legal action with, potentially, devastating costs. We are creating an environment where one hand is being strengthened, which is those who may wish to take action against climate action, while the other hand, those who want to take action to seek and press the Government to follow through and deliver, is being weakened. We may have a scenario where inaction might become less expensive than action. The concern is, of course, that it might have a chilling effect on Government and its policies. We know that cost forms part of the advice received from the Attorney General. We know the potential for cases to be taken because we have heard it 1 million times on property rights and all the rest.

I am concerned in this regard and I support, along with Senators Bacik, Moynihan, Sherlock and others, the removal of this clause from the Bill. The Minister should think about, and reflect, on it. If measures are needed in future, they should be brought in as separate or amending legislation but, right now, this is an incredibly wide provision that creates hostages to fortune, loopholes and, potentially, perverse disincentives to action.

On my other amendment in this set, I note the language: "arising out of any failure, of whatever kind, to comply with any provision of this Act or any obligation or duty...thereunder". Again, this is not saying that if, despite our best reasonable efforts we fail to achieve measures, or, if due to circumstances beyond our control we fail to achieve it, or anything else. This language is not subtle, it is wide open. It refers to any failure of whatever kind. One failure of any kind could be that we did not want to, and there would be no damages or compensation in such cases. There is no nuance.

I would like the Minister to tell us why the phrase "of whatever kind" is included. I am sure that in including it and seeking to limit the liability, the Government probably had certain scenarios in mind, some of them perhaps very reasonable, in which compensation or damages might not be appropriate. In phrasing the provision this broadly, however, it could mean anything. Will the Minister tell us what the words "of whatever kind" mean in this instance? What is the range of scenarios envisaged? We can then determine whether the scenarios are those that unfold when people seek compensation for, say, the avoidable flooding of their communities or other subsidiary actions, or for the failure to follow through on anything that might be in a sectoral plan, a climate plan or budget or a departmental plan that emerges from the Bill.

Deputy Eamon Ryan: The amendment was introduced, as it states, for "the avoidance of doubt" because it was never intended or expected that we would, in a sense, set up a justiciability whereby in the case of an individual action, such as an investment decision having been

9 July 2021

made for a power plan or transport project, the remedy would be financial liability in respect of that act. The provision is fully justiciable. It has strength and the Supreme Court judgment of last summer copper-fastens it. There is compellability on the Government such that if it does not follow the processes put in place by the Bill to deliver the objectives, it can be brought to court and held to account in regard to whether it is pursuing the requirements set out in the legislation. That is appropriate, and the Supreme Court judgment showed that the remedy in that case was the annulling of the plan. The Government cannot ignore a Supreme Court judgment where it is clearly in breach of the import of the law.

The import in question relates to setting out the processes by which we must meet the 2050 goal. It is not to hold to account each decision of whatever kind, particularly those that relate to investment or other decisions, and to have the remedy such that a financial penalty will be applied by the courts. The Bill has never been constructed in that way. It would have to be changed in its entirety in order to set up that sort of construct. That was never envisaged but, for the avoidance of doubt, this provision was included. Accordingly, I cannot accept the amendment.

Senator Alice-Mary Higgins: It is a one-way clause that provides protection from failures to comply with any provision, while there is nothing in respect of protection from damages or compensation for successful compliance with any provision of the Bill or obligations or duties created thereunder. It is a one-way clause that refers simply to envisaging or imagining failure. It is not clear how far that limitation on liability cascades. Does it cascade to the sectoral mitigation measures and failure to comply with them or with the national mitigation plan? Does it cascade to local authorities or to each of the relevant bodies? Is everybody off the hook with regard to potential damages, redress or compensation if they decide not to comply? It is not clear. The provision does not add the clarity the Minister suggested. In fact, it creates ambiguity and jeopardy. I urge him to remove it or, if he will not do so, to be clear that it is envisaged as being narrow in scope by removing the phrase “of whatever kind”.

2 o'clock

I regret that he will not accept the amendment.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 12:

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

An Cathaoirleach: As there is no seconder, the amendment lapses.

Amendment No. 12 lapsed.

An Cathaoirleach: Amendments Nos. 13 and 14 cannot be moved. Amendment No. 15 has been ruled out of order.

Senator Alice-Mary Higgins: Can I move amendments Nos. 13 and 14?

An Cathaoirleach: As outlined earlier, it was decided that amendments Nos. 1, 13 and 14 could be discussed together by agreement.

Senator Alice-Mary Higgins: They were discussed together but they can still be moved.

An Cathaoirleach: Amendments Nos. 1, 13 and 14 are related. Amendments Nos. 13 and 14 are consequential on amendment No. 1. Amendment No. 14 is a logical alternative to amendment No. 13. Amendments Nos. 1, 13 and 14 may be discussed together, by agreement. That was agreed.

Amendments Nos. 13 to 15, inclusive, not moved.

Sitting suspended at 2.02 p.m. and resumed at 2.35 p.m.

Senator Alice-Mary Higgins: I move amendment No. 16:

In page 8, line 26, to delete “(1)”.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: Earlier the Minister quoted from Article 3 of the UNFCCC and I pointed out that in section 3(3), the only specific reference was to Article 2, not to Article 3. Similarly, there is a reference to Articles 2 and 4(1) of the Paris Agreement. Why not all of Article 4? This is a simple amendment to ensure all of Article 4 be given the same consideration and be part of the important section 3(3), which deals with being consistent with the named articles in the performance of functions.

Deputy Eamon Ryan: Article 4(1) of the Paris Agreement is specific in terms of its key objective. There are 19 subset articles within that but the key point in this is peaking of global emissions as soon as possible, recognising it will take longer for developing country parties, and undertaking rapid reductions thereafter. It aims to “achieve a balance between anthropogenic emissions by sources and removals by sinks ... on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty”. Going back to our earlier debates, that was the centre of what we wanted. That reflects the objectives of climate justice in what we do. Article 2 sets out the key science and the commitment to keep global temperature rises below 1.5°C. The combination of the main scientific objective and the recognition in Article 4(1) that different countries will have differentiated responsibility is an appropriate focus in what we are setting ourselves to be consistent with, rather than all 19 of the subsections in Article 4.

Amendment put and declared lost.

An Cathaoirleach: Amendments Nos. 17 to 19, inclusive, are related. No. 18 is a physical alternative to No. 17. Nos. 17 to 19 may be discussed together by agreement. Is that agreed? Agreed.

Amendment No. 17 not moved.

Senator Alice-Mary Higgins: I move amendment No. 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”.

We do not need to go over this again. This amendment is about the need to promote Ireland’s commitments under the United Nations sustainable development goals and the need to promote long-term sustainable developments. It seeks to ensure that when we talk about sustainable development we are talking about long-term sustainable development and that we are

9 July 2021

giving recognition to the United Nations sustainable development goals. We had this debate in regard to other issues. This is yet another way that it could be elegantly inserted into the Bill.

Amendment No. 19 is one on which we had a passionate debate. I hope it was registered as being a passionate debate from across the House. This is again another amendment that has been signed by all groups in the Opposition in regard to the Aarhus Convention, the principles of access to environmental information and access to justice and that they would be core and had regard to in how the measures in this Bill are delivered. This is important and a matter of serious concern at a time when we see kite-flying around, for example, judicial reviews and the idea of limiting them. It is important that access to justice is not compromised in any way and that this Bill, or any other measures under climate, are not used as a flag in regard to curtailing access to justice and curtailing the use of the Aarhus Convention.

This is a really important area. The Minister heard in the previous debate how passionately all of the groups across this House feel about the Aarhus convention and its centrality. There is a concern in regard to the incremental erosion or shrinking of space in terms of that participation and engagement and in regard to the issue I highlighted earlier whereby those who are championing biodiversity and raising our obligations under, for example, the EU directives on habitats on birds, etc., are the same people who are championing climate change in terms of responsible climate action that is environmentally consistent and beneficial.

Senator Paul Gavan: Sinn Féin supports amendment No. 18 for the reasons previously outlined. In terms of amendment No. 19, access to information on the environment is essential for good decision making. AIE requests are used by ordinary citizens, journalists and people across the State seeking to hold the Government to account. The work of Right To Know in this area has been invaluable. While the State has signed up to the Aarhus Convention, there could always be better implementation of it. A key part of the Aarhus Convention is the proactive dissemination of information on the environment. Unfortunately, the Government's efforts in this regard leave a lot to be desired. This is a matter on which my colleague, Senator Boylan, is working. However, that is a debate for another day. Today, Sinn Fein is happy to co-sign this amendment with our Civil Engagement Group and Labour Party colleagues and Senator Boyhan.

Senator Pauline O'Reilly: I reiterate the points I made on Committee Stage in regard to the Aarhus Convention. During pre-legislative scrutiny by the Joint Oireachtas Committee on Climate Action, I pushed to have recommendation 57 included in the recommendations. The Minister might let us know if this Bill has been checked for compatibility with the Aarhus Convention. Last week, the Minister of State, Deputy Ossian Smyth, said that he believes this Bill goes beyond the Aarhus Convention and, therefore, it is not appropriate necessarily to have it referenced within it. Ireland has signed up to the Aarhus Convention and if there is concern around adherence, as raised by Senator Gavan and shared by many people, that cannot be addressed by the inclusion of the Aarhus Convention in this Bill; it has to be addressed outside of this Bill. I do not believe this Bill is the place for this. As I have said many times, throwing everything into the pot can lessen the impact of this Bill. We need to stand firm behind our commitment around the Aarhus Convention but we should not be putting that into this Bill because it is already with the Aarhus Convention, and goes beyond it.

Deputy Eamon Ryan: Senator Pauline O'Reilly is correct. In the structure of the Bill and various sections throughout, the Aarhus Convention is respected in the consultation and in the reference to debate and discussion. It has been specifically designed to be in compliance with

the Aarhus Convention. I agree that rather than having to list every convention that we have to comply with, be it the sustainable development goals, the Aarhus Convention or others, it is in the actual structure of the Bill that the provisions are best reflected and on that basis, I do not accept the amendment.

An Cathaoirleach: Is the amendment being pressed?

Senator Alice-Mary Higgins: My apologies to Senator Gavan, as his name was first on that amendment so I should have had him move it.

Senator Paul Gavan: Not a bother, Senator.

Senator Alice-Mary Higgins: I will press amendment. No. 18.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 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.”.

Senator Paul Gavan: I second this amendment.

Amendment put and declared lost.

An Cathaoirleach: Amendment No. 20, the names of Senators Bacik, Hoey, Moynihan, Sherlock and Wall, has been ruled out of order.

Amendment No. 20 not moved.

An Cathaoirleach: Amendments Nos. 21 and 22 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 21:

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

Senator Lynn Ruane: I second this amendment.

Senator Alice-Mary Higgins: Amendment No. 21 points to the fact that the 51% is only there as a proposal of the Climate Change Advisory Council. While the Government is obligated by the national climate objectives, this is not in fact language that clearly states this 51% will be approved by the Government and that carbon budgets that reach this particular target will be approved. It simply states in the Bill that they will be proposed. It would be appropriate and strong and a better reflection of the political commitment to put such a commitment onto the political actors involved, namely, the Government, in order that it is politically and legally obliged to follow through. That is why it should say: “and approved by the Government” when we talk about the 51% of emission reductions in 2030.

The other amendment, amendment No. 22, inserting the phrase, “at least”, is the idea that 51% should be the floor of our ambition and not its ceiling. The inclusion of “at least” is a signal in respect of that 51% figure. This may well be what emerges from the carbon budgets

and is certainly likely what will be approved by the Government because that is what the political agreement is there for. There would be scope, however, for the Climate Change Advisory Council to actually follow through on what it is being told to do in all of the other parts of the Bill, which is to make proposals that are consistent with the science, to look to the UN and all of those things that we are telling the advisory council that it needs to consider. We already have told the council the exact and specific outcome it needs to come up with, however. We are not setting a minimum but in fact we are being very specific about that 51% in just that year, 2030. It is a pity that we do not put in “at least”, which would then indicate that 51% was a minimum target. The Climate Change Advisory Council would be able to demonstrate its independence by making a recommendation which could go above that, if drawn on to do so by the science and others, and the Government could then politically follow through and deliver on the 51% if that is all it could be politically agreed and achieved.

It would be a much clearer line between the independent functions of the Climate Change Advisory Council, which we want to play a key role in the architecture of dealing with climate change in the State, rather than tying it to what is essentially a politically negotiated commitment point. The political negotiation should be coming after the independent advice, rather than the independent advice being required to deliver the politically negotiated outcome.

That is why it should be a minimum target which would allow both the assurance of the delivery but also the approval by the Government. I hope that the Minister may accept either of those amendments.

Senator Eugene Murphy: I fully respect Senator Higgins and she has great experience in this area but I have real reservations about putting in a minimum figure of 51%. We all want to get there but there are going to be great challenges in getting there. We need to bring people and the public with us and we are doing a good job in that. If the Minister starts by putting in a minimum of 51%, which I do not say is a bad idea, he will lose people in the process. This is a significant challenge for all politicians and we want to achieve it. If, however, we start using language like that, we will end up alienating the people we are desperately trying to bring on board. We want people to make changes and we must help them along. The Minister has consistently stated that we need to help people, support them and finance them where changes must be made. I certainly would not like to see a reference to a minimum of 51% included.

Deputy Eamon Ryan: If we get to 51%, we will still be on a path towards net zero, although we will still have a long way to go. Therefore, it will be up to whoever is in government in ten years' time. The way it will evolve is that five-year budgets will continue to be developed one after the other. As one expires, another one will be put in place. We will have a better idea of where we are in the process. I do not see any Government looking to hold back, as that would not make any sense because we will only be halfway there at the 51% reduction. I do not believe it needs the words “at least”. The commitment is hugely ambitious because we are starting from almost zero in effect. Halving emissions in a decade is ambitious beyond compare but we can deliver it. We will do so because it is better for the country and better for the economic development opportunities it will bring, as well as a fairer economy as we deliver it with a just transition.

I believe the wording is appropriate in terms of reflecting the programme for Government commitment. While we are working on the legislation here, behind the scenes we are working flat out on the climate action plan. In the work that is being done, nothing less than a 50% or 51% emissions reduction requirement is being expected by the advisory council. Every Depart-

ment is now being asked to play its part in meeting this target. This is something we will be able to demonstrate in the autumn when we enact the Bill and start proceeding. I do not believe the Bill needs to be amended in that regard. The Government's commitment internally is as strong as the wording in the provision and I do not believe it needs to be amended.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 22:

In page 14, line 8, after "is" to insert "at least".

Senator Paul Gavan: I second the amendment.

Amendment put and declared lost.

Government amendment No. 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.”.

Amendment agreed to.

Government amendment No. 24:

In page 15, line 6, to delete “and”.

Amendment agreed to.

Government amendment No. 25:

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

Amendment agreed to.

Government amendment No. 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.

9 July 2021

(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).”

Amendment agreed to.

Government amendment No. 27:

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

Amendment agreed to.

Senator Alice-Mary Higgins: I move amendment No. 28:

In page 18, to delete lines 19 to 23.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: This is simply to provide that, where the performance is better than anticipated with regard to the carbon budget, the gain may not be carried over for the next carbon budget because our national share of emissions is still out of proportion and we should be consistent with the principle of highest-possible emissions ambition. It is a straightforward amendment, which involves the deletion of the provision on carrying over.

Deputy Eamon Ryan: While I understand the case for further ambition, we also need flexibility in carrying over or bringing forward emissions targets when they are not being achieved. Therefore, I cannot accept the amendment.

Amendment put and declared lost.

An Cathaoirleach: Amendments Nos. 29 and 31 are related and may be discussed together, by agreement.

Senator Alice-Mary Higgins: I move amendment No. 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).”.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: Recognising that it is the Minister’s right and prerogative to revise a carbon budget, the amendment seeks that the Climate Change Advisory Council would have the power to request the Minister to revise a budget if it is concerned about those factors that can trigger a review, for example, a sudden or radical change in the science or a change in EU law. It is not giving the council the same powers as the Minister but allowing it to request that the Minister use his or her powers to revise a budget.

Deputy Eamon Ryan: I cannot accept the amendment. Section 12 requires the Climate Change Advisory Council to prepare its annual report each year, providing a review of progress made. The Bill broadens the list of matters that can be contained in that annual report. It can also include a review of compliance with the carbon budget and with each sectoral emissions ceiling for the period covered and provide recommendations that the council considers necessary to comply with the sectoral emissions ceilings. As these are already provided for in the annual report, which will review overall progress in achieving the national climate objective and set out advice or recommendations, the detail suggested in the amendment would be captured. An additional provision is not necessary.

Senator Alice-Mary Higgins: While that covers how the targets are being met, it does not provide for a revision of the targets to make them more ambitious, if that is required.

Amendment put and declared lost.

Amendments Nos. 30 and 31 not moved.

An Cathaoirleach: Amendments Nos. 32 to 34, inclusive, are related and may be discussed together, by agreement.

3 o'clock

Senator Alice-Mary Higgins: I move amendment No. 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

9 July 2021

functions to a committee referred to in subsection (16) if such functions include or are related to the setting or proposal of carbon budgets.”.”.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: This was the exact point at which the debate ended on Committee Stage. Unfortunately, it was only halfway through the Bill. The Minister of State, Deputy Ossian Smyth was responding. There were serious concerns that relate to the original 2015 Act but which are still in this Act whereby some of the safeguards have been put in place did not apply to everybody. The 2015 Act allowed that the advisory council could set up subcommittees and could delegate functions to subcommittees. Amendment no. 32 seeks to be clear that one function that should never be delegated to a subcommittee is the proposal or setting of carbon budgets, because that is almost the core work of the advisory council.

Another concern is that those subcommittees were only obliged to contain one member of the advisory council. All the positive things that were put in around the balance of skills and expertise in the advisory council and the provisions that were there around declarations of interests to ensure that we have clarity around the interests of members of the advisory council only applied to the advisory council members on a subcommittee, whereas there may be many other members who do not have to meet the same qualification criteria discussed in other parts of the Bill and who do not have to declare interests. There is a concern that while we have this high level of scrutiny in appointment and a high level of obligation and declaration of interests and transparency placed on the advisory council, the actual work of the advisory council could be delegated to subcommittees which will contain other persons who do not have to declare their interests. That is not a measure that is being introduced by this Bill but a flaw in the original 2015 legislation. However, given the very serious responsibilities being placed on the advisory council in this Bill it is very important that we address that gap.

Deputy Eamon Ryan: I recognise the concern and the case made by Senator Higgins. I tend to agree to accepting amendment No. 34, which provides certain reassurance in that regard in that a member of the committee, even if they are not a member of the climate advisory council, is required to provide the same declaration of interests and so on. I hope that addresses the Senator's concerns. I cannot accept amendments Nos. 32 or 33 but I hope that in accepting amendment No. 34, I reflect her valid issue.

Senator Alice-Mary Higgins: I regret that the Minister cannot accept my amendment in terms of the delegation of functions. I urge that attention is paid. It may be a matter to be tracked and carefully monitored and reflected in the report of the advisory council in order that there is clarity that the key decision-making functions are not delegated to subcommittees but are voted at council level and that the powers are centred on that balance of expertise and gender the Minister has tried to set up within the advisory council in other parts of the Bill. There should be assurance that it is the aforementioned carefully constructed advisory council that will make the really important key functions and decisions in respect of this. If the Minister will not accept my amendment, I urge that this issue be very carefully traced and monitored because we do not want to see a subcommittee that effectively takes control or leadership, which may include representations of industries and others.

I strongly welcome the Minister's acceptance of amendment no. 34. That will at least give some transparency and clarity around the membership of the subcommittees working with the advisory council, the declaration of interests and, I imagine, appropriate steps and measures

that would flow from that around recusing oneself from key and important decisions where there may be financial interest, for example. Those will help to build confidence in the advisory council structure and its subcommittee structure and will help and add to transparency. I thank the Minister for taking that amendment on board and making an important correction to strengthen the governance of the process.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 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.”.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 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”.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared carried.

Senator Alice-Mary Higgins: I move amendment No. 35:

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

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

Amendments Nos. 36 to 38, inclusive, not moved.

An Cathaoirleach: Amendments Nos. 39 to 47, inclusive, are related. Amendments Nos. 41 to 44, inclusive, are physical alternatives to amendment No. 40.

Senator Alice-Mary Higgins: I propose that amendment No. 39 be taken separately.

An Cathaoirleach: Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 39:

9 July 2021

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.”.”.

I wish to take this amendment separately because it concerns a slightly different point. The others concern issues around petroleum and explorations. However, this amendment relates to the climate action fund.

It seeks to provide clarification on the list of areas that may be funded by the fund. There is a concern in respect of some of areas around renewable energy and the transition to that. We do not want to have a situation whereby the fossil fuel and oil companies paying levies under section 37 of the National Oil Reserves Agency Act 2007 because of the cost that they create in respect of energy can take money out again. As part a recognition of their responsibility to contribute to the transition that is needed, the same companies that are paying the levies should not be able to take the money out again, wearing another hat or through a subsidiary company. Many of the big oil and gas companies are taking cases against governments to enable them to continue extracting oil and gas, while setting up subsidiary companies to get in on the next thing with renewables at the same time.

The amendment seeks to copper-fasten and ensure that we are not requiring companies to give with one hand and allowing them to take with another. Some not-for-profit initiatives that are set up are, in fact, subsidiaries controlled by fossil fuel companies. The amendment seeks to ensure that there is clarity. We want to ensure that funding from the climate action fund is going to the alternatives, the new perspectives and the nature-based solutions, the inclusion of which I welcome in the section.

Deputy Eamon Ryan: I am afraid I cannot accept the amendment. While I understand the motivation behind it, the mechanisms for the allocation of funding from the climate action fund are set out in section 37B(9) of the National Oil Reserves Agency Act 2007, as amended. These have already been amended by this Bill to include funding for community-led initiatives on biodiversity. The funding calls will all be in line with the Government’s climate and energy policy strategies. It would not be appropriate to amend those in the way set out in this amendment. The Bill is sufficiently well structured at present.

Senator Alice-Mary Higgins: My one-line response to that is that there is an amendment I have not been able to put forward because I did not get to it on Committee Stage. It relates to the cost of dealing with the oil and gas infrastructure of companies that are exiting. It is very important that such costs do not end up coming out of this fund. That is one of the reasons this was important. We should not end up having to effectively pay the cost of fossil fuel companies exiting. It is very important that levies be charged so that companies pay their own exit costs. I will press the amendment.

Amendment put and declared lost.

An Cathaoirleach: Amendment No. 40 arises out of proceedings on Committee Stage.

Amendments Nos. 40 to 47, inclusive, are related. Amendments Nos. 41 to 44, inclusive, are physical alternatives to No. 40. Amendments Nos. 40 to 47, inclusive, may be discussed together by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 40:

In page 29, to delete lines 5 to 32.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: This amendment relates to the section of the Bill which is supposed to be the section in which we pull back from fossil fuels and stop issuing licences. I will pull up the relevant pages because this is a matter on which it is useful to have the facts. Unfortunately, the withdrawal is not as clean as it should be. This is because, in saying that new licences will not be issued, a number of exemptions are provided for, including in situations where, prior to commencement of the section, the Minister has entered an undertaking. I will point out the sections I propose to amend. Section 20(6) says that, where an exploration licence, a petroleum prospecting licence, an undertaking or a petroleum lease is in place, they might not be removed. That can be understood, although we might need to move towards radical decisions in that area. The sections about which I am concerned are sections 20(2), 20(3), 20(4) and 20(5) which provide for the granting of new exploration licences, petroleum prospecting licences, petroleum leases and undertakings where there has been previous engagement from the State. Where the Minister has entered into an undertaking, he or she may then add to that by granting an exploration licence or prospecting licence.

The section on which I am specifically focused, and which I am really concerned about, states that, where the Minister has granted an exploration licence, he or she may go on to grant a petroleum prospecting licence, a petroleum lease or an undertaking. In such situations, a company may have only had a licence to explore and to look at an area. When we try to object to planning applications relating to exploration we are told that it is only exploration rather than extraction and that climate issues will be considered if a licence for extraction is sought. However, this section seems to suggest that the mere granting of an exploration licence means that the Minister may still grant licences for prospecting and extraction. That is extremely concerning. What the Minister is telling us with this section is that he is happy to start brand-new fossil fuel extraction in this State wherever there has been exploration. That is not sustaining what we have and certainly does not represent the stopping of the granting of new licences, which we were told was happening. That is not stopping new licences or leases, it is providing for them. It seems to be providing them in a scenario based on some kind of concern about the Energy Charter Treaty. The Minister did not answer my earlier question on that treaty. I ask him to clarify if these measures have been put in the Bill due to concerns and expectations about the Energy Charter Treaty. Is the State unwilling to take actions that might be necessary and are ambitious in ensuring that we do not issue new licences or leases for petroleum extraction here? Why are we not taking those actions? Is it because we are concerned about the Energy Charter Treaty and being sued for compensation? That is a real concern.

This is a serious matter if we look at it globally. The International Energy Agency has been very clear that to achieve our goal of 1.5°C, which is the ultimate objective outlined at the start of the Bill, no new oil or gas exploration licences or developments should be approved after 2021. Academics have outlined that the extraction of fossil fuels must stop. The concern is that if we renew licences that already exist and grant licences to those who have explored and if a

few other countries take the same approach, we will not stop climate change. We are looking towards a point where we will have to come back, possibly under section 6, and where activities under some of the existing licences might need to stop. If we say we are in a bind and have to allow those activities to continue, what does that say to places like Uganda, where Irish companies will be pressing the Government of that country to continue with oil and gas extraction in the Queen Elizabeth National Park? There is a real danger that if we start limiting our ambition to what we think we can do without annoying companies, that ambition will not be enough to keep the temperature below the threshold needed for safety on this planet. If Canada and all these other countries do the same, and everybody says that they will just keep going with the things they have started or, in the case of exploration, the things they thought about starting, then we will not have done enough. I ask the Minister to remove those exemptions, so that when we talk about having stopped petroleum licences it will actually be true. That would be good.

On fracking, which was discussed earlier, I will point out that the fracking amendment originally came from the Fine Gael back benches. The divestment from fossil fuels trumpeted by the Government around the world and on the back of which it sold many green bonds came about on foot of a Bill put forward by Deputy Pringle. This is a reminder that the ideas and ambition we need are not necessarily emanating from the Department in those cases. They have come from concerned public representatives from the back benches, Government and Opposition. It is a good reminder of where we have had progress so far on oil and gas. I worry that we do not see the same level of vision or ambition we saw from those backbenchers and individual Members in this set of measures from the Department. I see equivocation, dilution of ambition and an emphasis on economic concerns.

I suggest the removal of these exemptions. I have a number of related amendments because this is quite a large set. They again mirror some of that limitation of liability language at the very start of the Bill and one of which states:

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 ... where, in the opinion of the Minister, such actions would be inconsistent with any provision of the Climate Action and Low Carbon Development Act ... and any obligation or duty created thereunder.

This is the flip side of that provision for limitation of liability at the beginning of the Bill. This is where it is stated that if it is an obligation that we have because it is set out in the Bill, we will not pay compensation for doing what we have to do to fulfil our duties under the Bill. It does not matter whether there was an expectation or a profit planned, or whether we were looking forward to selling some oil or gas in the future, or whatever, because we will not grant that licence and we will owe nothing if we do it because we are doing it for the right reasons, that is, our obligations and duties under the Bill.

This is the safety net for the Government, again, in respect of investment court systems. I do not know whether it is a strong enough safety net but it is an attempt at one in respect of both the investment court system under CETA - given that, crucially, many Canadian companies are heavy investors in Ireland's oil and gas fields - and the current provisions of the Energy Charter Treaty. Will the Minister please be clear in regard to the Energy Charter Treaty, how it impacts in this regard and what it means in respect of these provisions? Is that why exploration is still

mentioned? Cases may, of course, be taken in national courts, but the compensation bills that come from national courts are not the same and a national court would be obliged to consider domestic law and other priorities, whereas an investor tribunal, according to the text of CETA, may only consider domestic law but does not have to. Will the Minister address what I have outlined? I would like him to consider taking on board this safety net.

Amendment No. 46 refers to “[n]othing in this section”. I am concerned that by not including it, we might be digging ourselves a deeper hole and creating expectations. Companies might say that the legislation signals that wherever there is an exploration licence, one can expect prospecting to be permitted. Will that apply to other areas for which exploration licences have been granted or to other extractive industries? That is the concern and I tried to address it by being clear. If the Minister cannot accept the other amendments relating to safety nets, he might accept this short one, amendment No. 46, which clarifies: “Nothing in this section shall be construed as constituting an inducement to investment or giving rise to any expectations for any persons for the granting of any licence or lease.” It will allow the granting of licences and so on to continue, but will protect the Government and the State against what might be perceived as inducements, encouragements or the creation of expectations. Amendments Nos. 44 and 45 are similar in that they specifically provide that licences and leases may be granted under the sections, but not where doing so would be contrary to the goals in the Bill.

Deputy Eamon Ryan: I am afraid I cannot accept the amendments. To respond to the questions and concerns, this did not come from any provision of the Energy Charter Treaty. It has not impacted in any way on the Government’s decision making regarding the ending of new oil or gas exploration licences. The Senator is correct that many of these developments come from the political sphere, such as the ban on fracking or the restriction on State investment in fossil fuels. I recall my party publishing a Bill, on the same day that Deputy Bríd Smith happened to publish one, in which we set out that we would seek in government to deliver what we are delivering with the Bill, that is, an end to oil and gas exploration and new licences. We said at the time - it must have been four or five years ago - that we recognised that when the State enters into licence arrangements or agreements with companies or individuals, we honour our commitments. In other words, we do not reverse engines; ours is a country where the rule of law applies and where the Government is good to its word insofar as it can be. In those circumstances, I do not believe it is appropriate for us to take a different approach in this area. The reality is that our waters have not been hugely successful for oil and gas exploration. There have been three or four commercial developments over 40 or 50 years of exploration. Prior to the removal of allowing any new licences to be issued at the end of 2019, there were approximately 55 authorisations. By the end of last year, that figure was down to 30. I expect the decrease to continue because those licences were not likely to be commercial and were speculative in the first place. It is unlikely that there will be further commercial developments. I could be proved wrong under an existing licence, no one knows, but there will be no new licences and that is the radical shift and change.

This approach is similar to other countries. Denmark has entered into a similar proposal. It has a much larger oil and gas exploration industry and allows a longer wind-down lead time, but it is a similar approach. Prospecting licences are part of the overall exploration licence, as are ability-to-lease arrangements or other undertakings, but they are not new exploration licences. We are, effectively, divesting and this is highly significant. We were one of the first countries to do this. It is a huge win from an environmental perspective. It is one of the ways in which Ireland is starting to show leadership.

9 July 2021

Nothing should distract from what is, from an environmental perspective, a very good day and story. Those of us in the political system are now delivering on our commitments and promises. As for the approach proposed by us when we were in opposition, I tend to follow through in government, which is what we are doing today. Consequently, I cannot accept the amendments.

Senator Alice-Mary Higgins: I hate to detract from a very good story but the Bill allows for the granting of petroleum prospecting licences under sections 20(2), 20(3) and 20(4) and for the granting of petroleum leases under sections 20(3) and 20(4). These provisions do not exist in the principal Act and are not existing commitments. They provide for situations where the State can grant new things if there has been previous engagement. Section 20(6) refers to existing commitments but sections 20(2), 20(3) and 20(4) are about granting new things. Let us be clear, there is provisions for the granting of new licences, and this is very unfortunate. It is also unfortunate that the Minister has not taken on board any of my safety nets or caveats. The simple thing to say would be that we will not allow something that works against the climate Bill. Why not say that? That is regrettable and it is not acceptable.

When we talk about political responsibility, it is not acceptable to hope that the market, through companies not receiving funding or getting investors, will sort out the problem. That is not adequate. We are here to create legislation and find legislative solutions, to do everything we can to create the parameters within which the market works, instead of hoping that the worst does not happen. Down the line, if investment comes to one of these potential licensing areas and if oil and gas is discovered, will we then say there is nothing we can do because it is under way? We can do better and we should do better.

I am conscious the debate is about to end. The last part of this Bill refers to the Electricity Supply Board. We are authorising them to borrow €12 billion from the market. There is no safety net to ensure that there are no expectations construed or potential liabilities for the State. We do not know what story the Electricity Supply Board will tell those investors and what expectations they, in turn, will have.

Of course, today is a good day in that we will pass this climate Bill. I salute many members of the Minister's party, as well as those in the much wider climate movement, who have done work to bring this Bill forward. Let us be clear, this has not been a situation of simply battling against naysayers and coming through with exactly what was wanted. There has been a lot of compromising and I believe there has been too much. We could have fought harder and won something more robust to be put in the law. I regret that the progressive amendments to strengthen the Bill have not been accepted, while welcoming the positive measures in the Bill. There will be a number of areas where we will have to battle in the future and I wish more had been done to strengthen it, introduce safety nets, avoid hostages to fortune and remove loopholes. This is a good starting point but, because we are starting so late, we should have started stronger. I thank the Minister.

An Cathaoirleach: As it is 3.30 p.m., I am required to put the following question in accordance with the order of the Seanad on Tuesday, 6 July 2021: "That amendment No. 40 is hereby negatived in Committee; Fourth Stage is hereby completed; the Bill, as amended, is hereby received for final consideration; and the Bill is hereby passed."

Minister for the Environment, Climate and Communications (Deputy Eamon Ryan): I thank all Senators. I thank Senator Higgins, in particular, for her closing words. It is a signifi-

cant day but it is only the start. What Senator Higgins says is true. We have to start with real action and delivering on the provisions. We have to get it finally approved in the Dáil before enactment but it requires an obligation on all of us. We start from a good place because we have, in our political system, worked collaboratively on this for a number of years. It sets the foundation for us, as a country, to start to step up and show real leadership. It will not be easy. There will be all sorts of challenges. We will have to change tack, reverse engines and learn as we do it but the structure in the Bill as to how the State organises itself, including consultation with the Oireachtas and the public, is a good one.

I thank my officials in the Department for the endless, tireless and excellent work they have done on the Bill and on their wider responsibilities. One of the strengths in this country, alongside the consensus in the political system on climate, as I see it, is the quality and character of our public servants. I thank them and I thank the Cathaoirleach for allowing us to get our business done in a proper manner.

An Cathaoirleach: I thank the Minister. The Minister has championed the Bill, taken it through the House and given it time in this House for consideration. I am sure it is a proud day for him and his officials in terms of climate action. It is an issue he has championed all his life and the very reason he is in politics. I am delighted it has got this far in this House and he was able to champion it. A politician does not often get to champion his or her life's work and get this far. I thank all Members for their contributions.

Question put and agreed to.

Sitting suspended at 3.33 p.m. and resumed at 4.05 p.m.

Land Development Agency Bill 2021: Second Stage

An Cathaoirleach: I welcome the Minister of State at the Department of Housing, Local Government and Heritage, Deputy Peter Burke, to the House.

Question proposed: "That the Bill be now read a Second Time."

Minister of State at the Department of Housing, Local Government and Heritage (Deputy Peter Burke): I am grateful for the opportunity to bring the Land Development Agency Bill 2021 before the Seanad. This Bill is a key priority for Government and establishes the Land Development Agency, LDA, on a statutory basis. It sets out the core goals of the LDA to undertake strategic land assembly and to effectively utilise public lands to build affordable homes and sustainable communities.

A number of amendments were made to the Bill by the Dáil and I take this opportunity to highlight some of them. Part 9 of the Bill deals with the delivery of affordable housing on relevant public lands by a developer, including the LDA. It requires the developer of the lands to enter into an agreement with the planning authority to deliver an agreed percentage of affordable housing units for cost-rental or affordable sale, known as a Part 9 agreement. Significant amendments have been made to Part 9 to align it more closely with the Affordable Housing Bill 2021 as this Bill was drafted prior to the Affordable Housing Bill 2021 being published. A provision has now been included to ensure that affordable housing delivered on relevant public

lands by the LDA or another developer for purchase or cost rental will be provided fully in accordance with the provisions of the Affordable Housing Bill 2021.

In summary, there are three options for a developer to deliver affordable housing on public land under this Bill: the housing can be designated and leased as cost rental under Part 3 of the Affordable Housing Bill 2021; the housing can be transferred on completion to a planning authority under Part 2 of the Affordable Housing Bill 2021; and the housing can be transferred on completion to the ownership of relevant applicants as nominated by the local authority under an affordable purchase direct sales agreement under Part 2 of the Affordable Housing Bill 2021. I consider this to be a more transparent way of delivering affordable housing on relevant public lands.

The rent for the cost-rental units will be designated in accordance with Part 3 of the Affordable Housing Bill 2021. Where the units are to be sold as affordable purchase to a local authority, the basis for calculating the cost of the unit, if bought from the LDA by a local authority, is clearly specified in Part 9 of the Land Development Agency Bill 2021. This approach will also ensure that if any provisions in the Affordable Housing Bill 2021, including its regulations, change in the future they will automatically apply to any developer of relevant public lands, including the LDA, under a Part 9 affordable housing delivery agreement.

Part 9 has been also amended to provide for 80% affordable housing on relevant public lands in urban areas with a population greater than 150,000, that is, the cities of Dublin and Cork. Section 75(4) of the LDA Bill states that there shall be a specified percentage and section 75(11)(a) specifies that this is 80% for population centres over 150,000. This provision, alongside a further 20% social and affordable housing to be provided under the revised Part V arrangements being introduced in the Affordable Housing Bill 2021, will ensure that there will be 100% affordable and social housing on such lands in our largest cities. It is a minimum of 50% on public lands in other locations in addition to the 20% Part V. The Bill, when published, provided that where a local authority is disposing of land to the LDA, the provisions of section 183 of the Local Government Act 2001 would not apply. This provision in section 58 of the LDA Bill has been amended so that section 183 will not apply where the land has been zoned for housing. It is appropriate that section 183 will not apply where the land has been zoned for housing as the local authority has, in effect, designated it as appropriate for housing. In the case of local authority lands, it remains the position that it is up to the local authority how best to determine how best to deliver housing on their own lands. Where a local authority wants to dispose of land to the LDA that has not been zoned for housing, the section will continue to apply and the consent of the elected members will be required. I also want to make it clear that the section remains in place for all other local authority land disposals.

The primary role of local authorities as housing authorities will not be altered in any way by this legislation. The LDA will complement that work by providing services to local authorities, at their request, under section 15 to develop large scale complex sites for housing, including social housing. In such projects, the land will predominantly remain in local authority ownership.

I will now outline the main provisions of the Bill in which there are ten Parts.

Part 1 deals and sets out the purposes of the Bill.

Section 2 outlines the purposes of the Bill which, in summary, are to increase the supply of housing in the State.

Section 4 provides the definition of relevant public lands and relevant public bodies which are key definitions for this legislation. Relevant public land is all land in a town with a population greater than 10,000 that is owned by a relevant public body. A relevant public body is a body listed in either Schedule 1 or 2. This Part also provides that the Minister can issue directions to the LDA regarding the performance of its functions.

Part 2 deals with the establishment of the LDA as a designated activity company, DAC, under the Companies Act. It will also facilitate €1.25 billion in equity investment in the LDA from the National Treasury Management Agency, NTMA's, Ireland Strategic Investment Fund, ISIF. This Part also deals with the establishment of the board, appointment of the CEO and staff.

Section 14 sets out the functions of the LDA.

Section 15 provides that the LDA will provide services to local authorities, when requested by a local authority to assist them in the development of large-scale, multi-tenure sites for housing and urban development in population centres in excess of 30,000. This will assist with the construction of increased affordable and social housing on local authority-owned sites, including Traveller-specific accommodation and underpins the strong collaborative working which we have seen between the LDA and local authorities to date.

Section 16 provides for the appointment of the board of the LDA. The Public Appointments Service, PAS, *Stateboards.ie* process for the recruitment of the LDA's chair is currently under way.

Sections 18 and 19 provide that the LDA will be accountable to the Committee of Public Accounts and other committees of the Oireachtas.

Section 21 deals with the staffing of the agency and also provides for the making of a superannuation scheme by the LDA.

Part 3 deals with the funding of the LDA. The National Treasury Management Agency (Amendment) Act 2014 will be amended to provide for the capitalisation of the agency through an equity investment from the ISIF of up to €1.25 billion. The LDA will also be able to engage in borrowing up to a limit of €1.25 billion and ministerial consent will be required for LDA borrowing. The initial shareholding in the LDA will be €100 million, with the Minister of Public Expenditure and Reform holding shares with a value of €99 million and the Minister for Housing, Local Government and Heritage holding shares with a value of €1 million. Part 3 also provides that the LDA will not be able to enter into capital commitments above a certain level without ministerial consent.

Part 4 provides that the LDA will be able to form subsidiary DACs for the purposes of carrying out its functions. These subsidiaries will be subject to the same level of governance and accountability as the LDA parent company and their published accounts will also be audited by the Comptroller and Auditor General. The formation and winding up of such subsidiaries will require the consent of both the Minister and the Minister for Public Expenditure and Reform.

Part 5 deals with the dissolution of the existing LDA and the transfer of its functions to the new entity.

Part 6 deals with financial reporting and public accountability of the LDA. The accounts of the LDA and its subsidiaries will be prepared in accordance with the Companies Act and will

be submitted to the Comptroller and Auditor General.

Part 7 deals with the establishment of a public lands register and arrangements for the acquisition of land by bodies to the LDA.

Sections 50 and 51 provide that the LDA will establish a register of relevant public lands to identify land in urban population centres in excess of 10,000 that may be suitable for housing. This register will be publicly available on the agency's website.

Section 52 provides that the agency will report periodically to Government on land on the register and will include information on such lands assessed by it to be fit for use for the purposes of this Act. Under section 54, the Government having considered such a report can direct that land of a Schedule 1 public body can be acquired by the agency.

Section 53 provides that where a relevant public body is seeking to dispose of land it must offer it for sale to the LDA in the first instance.

Section 55 provides that where the LDA is acquiring land from relevant public bodies under this Part 7, it will be acquired at market value, taking into account the fundamental requirement in respect of the development of houses on public lands under Part 9. An amendment was made on Committee Stage in the Dáil to include a definition of "market value", which is an accepted technical definition that is used by persons valuing land including the Valuation Office, which will undertake most valuations of land under this part. In order for any valuation of land or property to take place there must be an accepted understanding of what market value means. This definition of "market value" already appears in the Department of Public Expenditure and Reform's Circulars 11/2015 and 17/2016. In effect, this is an affordable land value which in reality will be a minimal price. I reiterate that when land is being valued under Part 7 it will take into account the proposed use of the land, which will be to deliver significant levels of affordable housing as well as Part V housing. As stated, this will be 100% social and affordable in Dublin and Cork.

Section 57 provides that where the LDA is acquiring land from a local authority under Part 8, the provisions of section 183 of the Local Government Act 2001 will not apply. As already mentioned, this provision was amended on Report Stage in the Dáil to provide that where a local authority is disposing of land to the LDA that section 183 will not apply only where the land has been zoned for housing.

Part 8 deals with compulsory purchase order, CPO, powers for the LDA. It is intended that the LDA will primarily purchase private lands for site assembly purposes through agreement with landowners. Part 8 provides that the LDA will have appropriate CPO powers to purchase ransom strips of land, where required, for the purposes of its public functions.

Part 9 deals with the provision of affordable housing. Section 75 provides that where a developer, either the LDA or another developer, is developing relevant public lands that there will be a requirement to enter into an agreement with the planning authority to provide a certain percentage of affordable housing on the lands in line with provisions of the Affordable Housing Bill. Section 77 provides that the Minister may vary the percentage of housing and may also set different percentages for different geographical or administrative areas.

Part 10 deals with amendments to other Acts, including adding the LDA to the list of State bodies empowered to act as development agencies under the Planning Acts. Part 10 also pro-

vides that freedom of information, FOI, will fully apply to the LDA from establishment day and also provides that records held by the dissolved LDA body will continue to be subject to freedom of information requirements.

I look forward to our debate on the Bill's provisions. I thank Senators for their attention. I apologise for the delayed start.

An Cathaoirleach: That is perfectly okay. I thank the Minister of State for his contribution.

Senator John Cummins: I propose to share time with Senator Kyne, if that is agreeable. We will have five minutes and three minutes, respectively.

An Cathaoirleach: Is that agreed? Agreed.

Senator John Cummins: I welcome the Minister of State and thank him for bringing this Bill before us, which seeks to formally establish the LDA. The latter has the potential to be a very useful tool in the delivery of large-scale residential projects across the State, particularly in the main urban centres. Any individual or party that is serious about tackling the supply issues in housing should warmly welcome the establishment of this agency, which will bring significant additionality to the work of local authorities that have been empowered to deliver vast quantities of affordable housing, be it affordable-purchase homes or cost-rental homes through the Affordable Housing Bill. I use the word "additionality" very carefully because it is not a case of replacing the role of local authorities, as some have suggested in the lead-up to this debate. In fact, the resources the LDA will be able to bring to the table will assist local authorities in master planning and the technical preparation of sites. In addition, what the Government is doing in terms of the provisions included in the Affordable Housing Bill is empowering local authorities to deliver affordable-purchase homes and cost-rental homes in association with approved housing bodies. We are going to see those ambitious targets being set out by the Minister in the coming weeks under the new Housing for All plan.

The LDA must identify a number of additional sites in early course. We know that the LDA has been working on master planning and developing nine sites in recent years. What I would like to see the LDA doing in early course is identifying the next 19 sites in urban centres across the country, including in my county of Waterford and especially in the city. That would signal an intent by the agency to step up the delivery of large-scale units across the country.

I will address some of the main points and provisions in the Bill. We must examine whether the allocation of €1.25 million and the lending capacity for an additional €1.25 million is sufficient capitalisation for the agency. The Minister of State might comment on that.

I saw the beta version of the register of relevant public lands on the LDA's website, which is provided for in the Bill. There is a mapping tool for local authority areas. The city of Waterford was included. It will be a very useful tool for all urban populations of more than 10,000 to see where the public land assets lie, with whom and how they can be progressed in early course. There has been some comment on the CPO powers not going far enough. I believe negotiation is always the best way of resolving issues but it is appropriate that the LDA has the ability to acquire ransom strips.

I am conscious that I must hand over to my colleague, Senator Kyne, but I wish to briefly refer to market value. As the Minister of State identified, it is a technical definition as a result of state-aid rules. What we are looking at here is an affordable land value in terms of transfer

9 July 2021

which will result in minimal to no cost on a transfer. People keep referring to market value, but when one considers that 100% of a site in Dublin or Cork will be utilised for social and affordable housing, that will result in minimal to no value.

My final point before I hand over relates to sections 56 and 183. I welcome the fact that the Bill provides that where a local authority identifies land for recreational purpose, for example, in a development plan that the executive cannot go over and above the councillors to transfer the land. It only applies in the case of residential land. That should not be a factor because if councils have land in their armoury that is zoned residential, local authorities will have the resources to be able to develop that. I will hand over to my colleague.

Senator Seán Kyne: I welcome the Minister of State. I acknowledge the work of all colleagues on the pre-legislative scrutiny of the Bill in the committee. I also acknowledge the work done previously by the then Minister, Eoghan Murphy, to establish the LDA as an entity and to put it on a statutory footing. It is hugely important legislation that effectively acts as a game-changer for strategic lands across the country.

I can point to my area of Galway and the strategic lands at Sandy Road and the Dyke Road at Galway Port. The city council is engaging with the LDA on the development of affordable housing in those areas. They are hugely important, strategic lands at the heart of Galway city within easy commuting distance by walking and cycling. It is a right and proper use of these strategic lands. I acknowledge the importance of the LDA to try to move the situation forward, develop master plans and bring the projects through the planning process, which we expect to see next year for both the Dyke Road and Sandy Road, and the appointment of multidisciplinary design teams to prepare these master plans and go for planning permissions. I certainly hope the planning process through An Bord Pleanála will not unduly delay these vital projects and people will have the ability to submit their views. I have, however, expressed my concerns many times in this House regarding planning applications for all types of projects, whether they relate to housing, transport or greenways, being delayed and tied up. The people who suffer are those who are waiting for affordable cost-rental homes, which are key and at the heart of the LDA project.

I welcome the Bill and the potential within it in terms of acting to develop homes. It is all about providing and increasing the supply of affordable cost-rental homes across strategic sites. I look forward to the Bill's development and its progress through the House.

Senator Victor Boyhan: I welcome the Minister of State to the House. For those outside of the House, it is worth saying that the Land Development Agency is a commercial, State-sponsored body and has been created to co-ordinate land within the State's control for more optimal uses with an appropriate focus on the provision of housing.

I am particularly delighted that again, even today, I read in the national press that the Land Development Agency is currently seeking procurement and bidders to develop 600 affordable and social homes at Shanganagh Castle. This is a large tract of land that was sold with the involvement of the then Minister for Justice, Equality and Law Reform, Senator McDowell. It has lain idle for a long time. It is an amazing site, on a public transport route beside wonderful amenities, and is one of the sites that are ready to go. I thank the Minister of State and all those involved for that.

The Shanganagh Castle site shows, as many of my colleagues on the Joint Committee on

Housing, Local Government and Heritage who are present will agree, the good and constructive work that has been done by the executive and members of Dún Laoghaire-Rathdown County Council and the Land Development Agency, who pulled everything together. This case shows what can be achieved through dialogue. Dialogue has not always taken place, however. We have chief executives in local authorities who do not have the same commitment to engaging. We all know that.

I have tabled a number of amendments, which I will deal with next week. I acknowledge the work of the Association of Irish Local Government, AILG, representatives of which appeared before the joint committee and sought our support. I have committed to supporting the AILG and I will table all of the amendments it has proposed. Hopefully, we can tease them out next week.

One of the big issues for the AILG is section 183 of the Local Government Act. The Minister of State and Senators might ask why the association is so hung up about this section but it is an important one. What does section 183 do? It requires the chief executive to prepare a report for the elected members showing if there are any restrictive covenants and historical or other issues concerning sites, and to provide maps and certainty about ownership. What is important is that this is put to the elected members who can then decide to dispose of a site. If they fail to dispose of a site or make a decision within a certain time, the chief executive can automatically dispose of it. The most important point about section 183, however, is that it provides conditionality for the elected members. I have been involved in many section 183 disposals. I cannot recall members every opposing one. We teased them out and had many arguments before attaching certain conditions to them. That is very important. There was some debate about conditionality with regard to Shanganagh Castle and interesting legal advice was provided for the members in that regard. For this reason, I can understand why elected members do not want to see this particular section.

I wish to speak to the Minister of State about the land aggregation scheme, with which he may be familiar. Under this scheme, local authority chief executives acquired land at great expense, having decided it would be suitable as a land bank at some time in the future. We must be very careful when we use the words “local authority”. I am talking about the executive of a local authority, not sitting county councillors. In my local authority, the land acquired did not have water services, electricity or other infrastructure. Some of it was halfway up a mountain. Millions of pounds were paid for it. Members can speculate all they like about the reasons or who owned the land, why it was bought and why public money was used. It should not have happened. All local authorities under previous administrations were asked if they would consider sending these lands back into the land aggregation scheme. The Department rejected most applications to the scheme - why would it want these lands? - and they were, therefore, sent back to the local authorities. These local authorities are now paying only interest on these sites. Many of the problems associated with these sites were because of executives and not elected members. None of these executives got fired and no one got sacked. That is common. A person would be fired in the private sector. We are now suggesting that we will empower the non-elected executive of these councils to dispose of lands, albeit I take the Minister of State’s point that they are zoned residential, without any reference to or veto for the elected representatives. I do not necessarily believe that is the right way to go. I would have liked all these disposals to go to a section 183 and where one fails for the Land Development Agency, there would be a third-party arbitration scheme. We should have insisted that all disposals still go through the section 183 regardless of the LDA and if there is a dispute, it goes to a third-party arbitration

appeals process. That would have been fairer.

The Minister of State is committed to empowering local authorities. He spoke very eloquently recently about the elected mayors. We will, therefore, take Limerick as an example. If we have an elected mayor in Limerick next year, that elected mayor will not have any function. The executive - the men and women in the room next door - will be making decisions unknown or perhaps known to the elected member. The elected mayor we are empowering in Limerick, however - hopefully, there will be elected mayors all over the country in time - will have no veto on behalf of the people. If, therefore, we are really empowering local city and county councillors, we must give them that power and function. Through their representative body, the AILG, they have asked us to put a case forward. I note that one of the Government Senators has tabled an amendment. I believe that is really important.

Generally, I am supportive of the Land Development Agency. I believe it is a good agency. I want to be positive. Its database and systems, to which Senator Cummins referred, are amazing. They are wonderful tools, which have shone a light on places we never knew. We know we have health authority, railway and harbour company lands. We have lands all over the place. We have Defence Forces lands in very sensitive locations, which will be challenging but must be looked at. We have Thornton Hall and lands all over this country and we need to do something about them. We need to use them constructively with regard to housing. I would go as far as to say that in time, we will have to look at using the Land Development Agency to secure lands for enterprise and schools. I see the Land Development Agency being the old - dare I say it - land agent. It will be the central hub and knowledge of all our lands in this State and at least they will be accounted for. It will tidy up title and mapping. We will know who owns the lands and they will feed into our local development plans and country, regional and national plans. I believe, therefore, that is good.

There is an issue with regard to valuation, which I believe we must look at. We can no longer have Dublin city valuers valuing land for Dún Laoghaire-Rathdown County Council and *vice versa*. I do not believe the Land Development Agency is about a land grab. It should focus on the delivery of housing. The reality is that we need to go back and focus on the delivery of houses. I gave the elected members and their organisation, the Association of Irish Local Government, a commitment. I have tabled the amendments. Hopefully, we will debate them. I would like to think we might consider accepting some of them. I thank the Minister of State very much.

Senator Mary Fitzpatrick: I thank the Minister of State for coming into the House with the Land Development Agency Bill 2021, which the Fianna Fáil Party is obviously supporting. It reflects the result of the general election in 2020 when people voted for change, and particularly for change in the Government's and State's role in the provision of housing. The electorate then quite legitimately asked why we have such a housing crisis of supply and affordability when we have so much land; why the State is not providing affordable homes; why local authorities are not empowered to deliver affordable homes; and why they are not providing affordable homes both to purchase and rent.

I am delighted to say the Affordable Housing Bill 2021 passed in the Dáil yesterday with cross-party support, albeit that the Social Democrats and a small minority of others for some reason did not support the provision of affordable housing by the State. I commend all the other parties and Independents who supported the Affordable Housing Bill, which is the most comprehensive affordable housing Bill in the history of the State. The Land Development Agency

will be put on a statutory footing once this Bill is passed and it will be charged with assembling and managing productively all State-owned lands. As others have said, the database it has been compiling is impressive. It exposes the extent of available lands to the State that are not in productive use for the provision of affordable housing. We are determined to reverse that situation. We will reverse it through the Affordable Housing Bill and the Land Development Agency Bill. I very much welcome the commitment to 100% public housing on the public lands that are being identified as being suitable for housing in Dublin and Cork and a minimum of 70% social and affordable housing in every other location. That is important. It was not good enough for us to give the local authorities the power to deliver affordable homes to purchase and rent alone. We need to support them by ensuring any of the available lands have a designation for affordability and for public housing.

The fact that the Land Development Agency initially will have €1.25 billion of capital gives it a good working capital base and there is the potential to increase that up to €2.5 billion. Senator Cummins has already mentioned that scale is important. There are nine sites and 4,000 houses already in train, which is welcome, but we need housing on massive scale and housing on a significant scale within the next 12 to 24 months and beyond.

It is welcome the Land Development Agency is being set up as a development agency. I have seen in my constituency the way a development agency such as the Grangegorman Development Agency was able to assemble lands. In that instance, it was HSE lands and city council lands and it is now a world-class leading university campus. The Land Development Agency as a development agency will have similar powers but, critically, it will not have planning powers. That is important also. We have spoken about the powers of elected members to our local authorities. We have also spoken a great deal about the powers we are giving them under the planning and development Bill to control the making of their development plans. In their development plans they get to determine what lands are zoned for housing, recreational, industrial and other uses. Our local authority members are those who are closest to their communities. They are the people who understand best what their community needs in terms of housing. It is the local authorities, if we are all honest about it, that have the tradition of providing housing not only for those who need it most but for their own communities. It is important that under the development plans, our local authority members will determine how lands will be used in each local authority area. This legislation will then further determine other State-owned lands as held by the Departments of Defence, Education or Justice and will ensure that in Dublin and Cork, it will be 100% social and affordable housing. The development agency, as has been demonstrated in Shanganagh, will work to support local authorities where they have designated and zoned their own lands for housing and will provide them with expertise and capacity, which is important. I speak as a former local authority member who has been greatly frustrated by the fact that local authorities were not previously empowered to deliver affordable housing. Now that they will have the power to deliver affordable purchase and cost rental housing, our elected local authority members are both ambitious and capable of delivering for their communities. I believe this agency can help them.

I want to refer specifically to section 183. The president of the Association of Irish Local Government, AILG, Mary Hoade, made a comprehensive presentation to the Oireachtas joint committee. That association demonstrated how close its members are to their communities. They argued strongly for the removal of section 183. We have all spoken to the Minister of State and I know all my Fianna Fáil colleagues have spoken to him and to the Minister, Deputy Darragh O'Brien, on this issue. It remains a significant point of contention for us. We accept

9 July 2021

section 183 is only being removed when it comes to lands zoned for housing and that it will not apply to every other piece of land designated and zoned in a development plan. We strongly believe, and want to see it in the legislation or in the regulations, that if lands are transferred without applying section 183, a timescale should be put on the Land Development Agency to deliver housing on those lands. That is the only reasonable approach. It is the only acceptable approach for our local authority members. I ask the Minister of State to come back to me on that point.

We support the Land Development Agency. It has significant potential. It will be accountable to the Oireachtas and its committees and to the Minister of State and the Government. It has adequate funding to commence with but we want there to be scaling up of development and for the agency to be ambitious. We want to ensure our local authority members are supported and resourced in order that they can use the Affordable Housing Bill and the Land Development Agency's capacity to deliver in every local authority around the country.

Senator Rebecca Moynihan: I welcome the Minister of State to the House again. He must be sick of looking at us. Between the Minister and all the Ministers of State with responsibility for the housing sector, he has been in the House a great deal as we approach the end of term.

I am supportive, in principle, of the Land Development Agency Bill before the Seanad. The Bill was initiated in the Dáil but, in practice, the Government did not accept amendments to the Bill from the Opposition on Committee Stage and was not prepared to work with us on them. Unfortunately, our party will be voting against the Bill on Second Stage in the same way as we voted against it, in its eventuality, in the Dáil.

We all accept the Land Development Agency is to use public land, effectively, to get houses built. We are fully supportive of the concept of a development plan to develop public housing on public land. It has been our party's policy for a very long time. If the Land Development Agency works as it should, and works as a true State-run public developer, it should supply public housing on public land and create a long-term secure mechanism for proactive management of the State's land to solve the housing crisis, both today and into the future, and deliver social and affordable housing.

I am encouraged by some of the amendments accepted by the Government in terms of the delivery of public housing on public land but it is very limited in terms of the population centres to which it will apply. For example, it will not apply to Limerick which has a severe social housing crisis. An aspect that concerns me is the amount of the Bill that will be included in regulation and that it will be left up to the Minister. For something of this significance, the principles under which it operates must be copper-fastened in legislation. While I might be encouraged in some respects by some of the movement that has happened, we do not know who will be in ministerial office in the next Government or in ten or 15 years' time. There is a danger in the long term that public land could be sold off and used for private developers.

I want to touch on the issue of affordability. A fundamental flaw in the Bill, and it is perhaps even more of a fundamental flaw than with respect to the Affordable Housing Bill, is linking of what is affordable and affordability. Specifically in this Bill, what will be provided will be linked to market rates. I am specifically referring to the land that will be available at or below market rates. An affordable home should be affordable to buy or to rent and what a person pays should amount to about one third of his or her income. The concept and definition of affordability and how that will work in the context of public land should be enshrined in the Bill and

this should have been done in tandem with the Affordable Housing Bill 2021. I worry that the LDA could end up as a mechanism for the privatisation of large tranches of public land, with windfall profits for agents, while delivering the bare minimum of 50% and a welcome 20% of social housing. I again acknowledge that the Government has moved in that regard. The arguments I am making, however, are not just for how the LDA is going to be in the short term, but how such a body will be structured in the long term.

This Bill addresses the idea of market value in that section 53 provides that where there is a dispute, the Minister should prescribe the manner in which the market value of the relevant public land should be determined. Under section 76, housing pursuant to section 73 must be below the prevailing market price or rent, but, equally, it fails to make any provision for how far below the market price or rent the cost of the housing should be. We must provide for these aspects now and not allow the door to be opened for manipulation in respect of true affordability and value. Again, that is an element which worries me.

I welcome an approach such as that taken by the Minister in the Affordable Housing Bill 2021, where he specified the parameters of affordability. It is being delivered on in places like Lusk, for example. It is a concern, however, that this might not always be the case. We also then see certain developers arguing that the 10% affordable stipulation be provided in respect of €600,000. Equally, at the Irish Glass Bottle site, affordability is going to be in the region of €450,000. That is why it is so important that we define “affordability” in the Bill in the context of land and for the housing that will eventually be available, tie such aspects to changes in people’s incomes and find a mechanism for doing that.

Under the Bill before us, the Minister will have an astounding amount of power regarding the determination of the prices of land and affordable housing. We must have some control over the power the Minister has to potentially transfer land of significant value from public to private ownership. I am also concerned about the LDA’s lack of accountability. This Bill explicitly removes the role of local authorities in examining and scrutinising deals involving land acquisition from local councils, as set out in section 183 of the Local Government Act 2001. However, I welcome the clarification that this change does not involve land which has been zoned for housing.

Those of us who have been members of local authorities understand the significance that the power of section 183 has for local authority members. An example relates to where I was able to use this power in respect of land disposal in my area of Dublin 8 to deliver one of the first parks ever created there and where the management of the local authority wanted to sell the land concerned to developers. It was going to happen, but I was supported by my colleagues across the council chamber who recognised the need for green spaces to balance the high density of construction in that area. The members of the local authorities had the power to intervene in such cases. The park I referred to has been packed during the pandemic because such a green space was badly needed by many people.

The consistent removal of the powers of local councillors is very unfair. As Senator Fitzpatrick said, we must be able to trust the members of our local authorities because they are as ambitious and as focused on housing as we are and as are the officials in the Department of Housing, Local Government and Heritage.

It is, with regret that I will not be supporting this Bill. I believe in the concept of a State development agency, but we must enshrine affordability and accountability in the Bill and en-

9 July 2021

sure that the Minister does not have too many powers in the context of such a body. This issue centres on public housing on public land and on delivering affordable housing, not just in the short term but in the long term of the next 50 to 100 years.

Senator Róisín Garvey: I welcome the Minister of State. It is not an easy task trying to deal with housing. I welcome the Bill. It is definitely progress. Housing in Ireland is a complete mess. On top of the existing crisis, the pandemic has meant it has not been possible to build houses for more than a year, while there are also now issues with accessing materials. We could spend the whole day playing the blame game but the basic point is that we must deal with housing in some way.

The establishment of the Land Development Agency is progressive and timely. It would have been great if we had done this 20 years ago, but it is happening now and better late than never. It was good that all three parties in government agreed on this agency as part of the programme for Government. We also agreed that it will be covered by the Freedom of Information Act, which is good. In addition, we agreed that we would try to provide houses at an affordable price and also on the concept of cost rental for the first time in the history of the State. People talk about affordability, but they forget that is what we are trying to do. We care as much about affordable housing as does anybody in the Opposition. It is ridiculous to say otherwise.

The cost-rental model is of great importance. Over the years, we have put pressure on people to become house owners because of the lack of trust in tenure. Historically, there has been a major issue with freedom of tenure, which was one of the three F's long ago. We are only starting with the cost-rental model. It will set an important precedent in allowing people to become long-term renters and pay the cost of building the house, without a private builder making loads of money. Renters will pay the cost of the house and have fixed tenure, so they will not have to worry in that regard. I was one of the stressed out renters who never know how long the contract will last.

This is a positive day. It is a shame that people cannot see when progress is being made and we cannot have a little space for positivity. That is what people in Ireland need now. They must have some faith that we are trying our best here to come up with some solutions. The Land Development Agency is finally going to properly identify how much public land exists and then decide what to do with it. For the most part, no private houses will be built on this land. In two cities, 100% of it will be used for affordable, cost-rental and social housing, and 70% of it will be used for this purpose everywhere else. That is a huge reason to celebrate today. It is so frustrating that every time something good happens, there are complaints and questions about why it not this, that or the other and why free houses are not being provided for everybody today.

We must live in the reality of the challenge we face. For the first time, affordable, social and cost-rental housing will be built on 70% of all public land all over the Twenty-six Counties. In addition, 100% of all public land in the cities of Dublin and Cork will not be used for private housing but for affordable and cost-rental housing. Therefore, let us celebrate this Bill, try to make progress and give people hope. Despite all the challenges we faced during the Covid-19 pandemic, including the lack of houses that were built, which was nobody's fault, we start here today with a positive Bill. Let us move forward in a positive direction, working together in government and opposition, to finally start solving the housing crisis by having proper cost rental, increased social housing and public land used in a correct way.

Senator Fintan Warfield: This legislation comes to the Seanad having passed all Stages

in the Dáil. I am sure the Bill will pass in this House as well, given the Government's majority and the support coming from some Members of the Opposition. It remains my view and that of Sinn Féin that the most cost-effective and fastest way to deliver a large volume of social and affordable homes is through the delivery of public homes on public lands by local authorities, approved housing bodies and community housing trusts.

The basis of our position is that if local authorities are starved of funding and the ability to build homes, the way to reverse that situation is not to set up another quango. The answer, instead, is to adequately fund local authorities to build public homes on public land. The LDA was set up by the former Deputy and Minister, Eoghan Murphy, and has staff, offices, etc. I urge the Minister to essentially split the LDA into two separate functions. One would deal with land management and the other would involve an office located in the County and City Management Association, CCMA, that would assist local authorities with the delivery of housing plans. In our view, there is an urgent need for a non-commercial State agency to have responsibility to ensure the best strategic use of all public lands. Such an agency should have comprehensive CPO powers, a significant land acquisition budget and the political backing of the Government to transfer land from one Department or agency to another, or to local authorities, so it may be used in the best way. In particular, the agency should be a driver for increasing the stock of local authority land in every county for public housing delivery.

Rebuilding Ireland committed to establishing a housing delivery office within the Department of Housing, Local Government and Heritage. Its purpose was to assist in speeding up the delivery of social housing through assisting councils with their project pipelines. While the office was established, it was not a success and, at the end of 2019, it was transferred from the Department to the CCMA. As we are aware, however, it is hampered by the continued existence of the Department's overly bureaucratic four-stage approval process. We are also aware that the procurement process adds about 18 months to the development time alone for social housing projects. Moreover, the office does not have enough staff to work with local authorities to meet their housing targets.

Ultimately, we do not need another housing quango; we need local authorities to be adequately funded to deliver social and affordable homes, whereby we provide housing delivered based on local need and local democratic decisions, as outlined by Senator Boyhan. We have failed to support local authorities to do what they do best, that is, build public housing on public land. The answer, therefore, is to fund local authorities adequately, not set up a quango to do exactly what we have prevented them from doing.

Senator Alice-Mary Higgins: The Minister of State is hearing from everybody that everybody wants public houses on public land. Like Senator Moynihan, I had wanted a land development agency, or something close to it, for some time but I always believed that, for one to be successful, it would need to be a non-commercial State agency. The delivery of public housing on public land, as described by Senator Warfield, should be through supporting local authorities and through a non-commercial State entity. That combination is clear but there is still a fundamental misunderstanding at the core of the Bill, just as there was at the core of Government proposals over the previous term and the term beforehand. I refer to the fundamental misunderstanding of the relationship between the speculative market and supply. These are the philosophical points we probably will not have time to cover in our two-hour debate next week.

Reference has been made to addressing deficiencies in the housing market and the shortage of land where the market is experiencing a systemic housing shortage. Let us be clear: the

9 July 2021

market is not simply experiencing a housing shortage; in many cases, the market is driving a systemic housing shortage, and it has been encouraged and facilitated in this regard because market logic dictates that the narrowing of supply drives up prices. That is a known fact. We see it right now with vaccines. Artificial scarcity is being created so vaccines can be sold for more rather than addressing a human need. This is because the priority of investors is to get the best value.

Over five or six years, we have had a lot of housing legislation. It is always offering more. First, tax breaks were introduced. There were waivers on capital gains tax in the hope it would encourage supply. The easiest option was taken, and that often meant commercial property. Many commercial units are empty under the measure.

5 o'clock

We also considered the strategic housing developments and we were told they were the issue and that all that was needed in respect of them was faster planning permission. More than half of the strategic housing developments that have received planning permission are sitting on it. There are vacant properties all over this State because a property can be rented out for more if the prices go up. Those are the market dynamics. Again, the Bill is trying to place them at the centre. In fact, they are acting as perverse incentives. Even the systemic lowering of standards, to which former Minister, Eoghan Murphy, contributed to, in some cases encouraged people to sit on a development because they knew that if they waited for a year or two longer, the standards might go down and more units could be crammed into the same space. Those are perverse incentives that have been created systemically.

It was, of course, the market that led to the property crash. Then NAMA again placed the interests of investors centre stage. That is why there is a commission of investigation examining the relationship between it and investors, particularly regarding the Project Eagle portfolio. When NAMA had all the housing, it worked with investors. That is why I will ask the Minister to ensure the new agency will not commence until we have what is promised for September, the long-awaited publication of the final report of the commission of investigation into NAMA. Let us learn from the previous time we had a State agency with a large portfolio of property. Let us make sure the mistakes are not being set up to be made again. Let us wait for the report to inform the detail of how the new Land Development Agency might work.

I am going to highlight three or four key issues, including the role of local authorities. Others have spoken eloquently about this. Others, on all sides of the House, have experience of the power and importance of section 183. As was mentioned, this is not simply associated with housing because it also relates to issues such as accessibility, the needs of the community for whom access is a concern, and matters related to how a development will fit into the fabric and vision of a local area plan or local development plan. The section is important because local authorities know the balance of housing needs in their area and what is required. I hope the Minister of State will listen to his colleagues on section 183 because there is a big difference between locations of individual developments and how they fit into the fabric and meet the needs of plans. I am even thinking of the UN Convention on the Rights of Persons with Disabilities and the particular demographic breakdown and needs in a local area and its local area plan, or, indeed, the connectivity requirements. There is a lot to be thought about. I am referring to the intelligence and insight to be had from the section 183 conditions attached to disposals. The provision is still in the Bill. It is still a concern.

If the LDA wants to complement the work of local authorities, it needs to relate to local development plans. There is concern that many of the new local development plans may be delayed so it is important that if local authorities are in the process of developing a new local development plan, the vision for the next five years be considered. The agency should not simply work off a previous local development plan when a new and different one may be in process. That will be important.

On the question of the 80%, there is a concern that it may be varied by the Minister. It is not a guaranteed 80% because section 77 permits the Minister to vary the percentage unilaterally. That is a concern. The 80% is not a proportion of public housing because much of it will be public only for a few moments before it is sold as affordable housing and direct provision accommodation. Crucially, if it is cost rental, it can be private cost rental. That is the concern. Again, the market would be involved and those concerned would be allowed to have cost-rental arrangements, possibly on public land, and get equity returns. They would take the property out of public ownership.

It becomes a private asset at the end. We do not know what mix we might have because it is a commercial speculative asset. Private equity firm cost rental is glorified leasing and it is making those same mistakes. It is leasing which local authorities were pushed into when they should have been supported to build and buy.

I will come back to public land. I will make a final point on shares, which I think is important. It is unacceptable that there is provision in the Bill to allow the Ministers to dispose of shares in this company. They must be held publicly, in trust and in perpetuity, and there should not be any danger that Ministers could choose to effectively privatise the Land Development Agency. I urge that that be addressed.

Senator Malcolm Byrne: Like Senator Moynihan, I welcome the Minister of State. Senator Moynihan said she is almost tired of seeing the Minister of State and the senior Minister in the House. That is reflective of the Government's commitment to addressing issues around housing. Senator Garvey pointed out well the broad range of issues. We are talking about legislation that will unlock unused public lands for housing, an affordable rental scheme and a council-led affordable purchase scheme. All of this is combined with the highest social housing budget in the history of the State. That shows clearly that the Government is strongly committed to addressing the housing issue.

I read with interest the interview published this morning in *The Currency* with Ed Brophy, the recently retired special adviser to the Minister for Finance, Deputy Donohoe. The interview was conducted by Stephen Kinsella. He talked about how the incrementalism of Government is often a problem in terms of decisions being taken. In this case and for this Government, there is clearly a whole-of-government approach to housing. It is an issue we want to see addressed and the reason my party went into Government. My party has a strong tradition of wanting to build homes and communities. Unlike some Opposition parties, we support the aspiration of an individual to own his or her own home. That continues to be important.

Senator Higgins's criticisms reminded me of the phrase once ascribed to Garret FitzGerald: "That's fine in practice, but will it work in theory?" Too often, there is an obsession around ideology. Our obsession in this House should be about mechanisms to ensure we combine the best of the public and private sectors to deliver homes and communities.

9 July 2021

I say to Senator Warfield that we all want to see public homes build on public lands but the best thing the Senator can do is encourage his Sinn Féin colleagues on local councils, including most recently in Bray, to stop opposing the building of social housing. It is another example of ideological talk in these Chambers and failure to deliver on local authorities across the country. I agree with Senator Moynihan about trusting our local councillors. I trust them. I know that Government, particularly Fianna Fáil, councillors want to see homes built. We are working in government to put in place the mechanisms, including through the Land Development Agency Bill, for this to happen. Our councillors at local level are voting to provide it. We are not being hypocrites in this regard.

There are a couple of things the Minister of State might consider during the course of the legislation. The membership of the board of the agency and knowledge of the type of individuals that go on the board is dealt with in section 16(6). The Minister of State might consider adding the word “design”, so it is not just the knowledge of construction, the market and so on but also of design. Part of the problem we often have in large-scale development of housing is a lack of emphasis on design. Senator Moynihan is right that we are not just designing housing but communities. Frequently, when we see trouble arise in estates, it is because of poor design at the start. As the Land Development Agency starts to grow, I would love to see it have an experienced team of architects to advise local authorities and so on. We need a clear design function on it. I welcome the commitment to investing in research in that area. There are clear mechanisms. It is important the Land Development Agency is accountable to the Oireachtas. It could be considered that a number of members of the board would come through an appointments process set out by the Oireachtas Committee on Housing, Local Government and Heritage. Such an arrangement exists in other areas, including, as Senator Warfield and I know, with regard to appointments to the board of RTÉ and BAI. That is done through the Oireachtas Joint Committee on Tourism, Culture, Arts, Sport and Media. We could consider looking at a number of appointments to the board coming through the Oireachtas committee. I commend the legislation. It is part of an overall package of work the Government is committed to bringing forward. I ask the Minister of State to consider that greater emphasis be placed on the design of these estates.

Senator Paddy Burke: I am sharing time with Senator Buttimer.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Senator Paddy Burke: I welcome the Minister of State back to the House. He is here nearly as often as the Senators. He could be taken for a Senator if he came in any more often. I wish him well with this Bill. I have mixed feelings about it. We have a lot of State control in the country. Too much State control, in my view, is not a good thing. We have seen where NAMA failed miserably. It was the biggest land development agency in the world and it failed to deliver housing in this country. The whole NAMA situation is shameful. When it was set up, the late Brian Lenihan said there should be 25,000 units per year. That was not delivered. NAMA had the land and, in many cases, the houses, but it failed to deliver and failed the people.

I have a fear in relation to where local authorities request assistance from the Land Development Agency. We have seen this time after time when the local authority contacts the Department looking for assistance and nothing happens. It is fobbed off. In this case, the local authority in towns with populations of more than 30,000 can request the assistance of the Land Development Agency. It can look for assistance in design, money and everything to provide housing and to go into joint ventures. It will not have enough money to satisfy every town. We

will be on the merry-go-round again, like with water services and sewerage. You are waiting and waiting and then you are fobbed off. Will the Minister of State make it clear that there will be an open, transparent structure in place and the local authorities will know exactly how long they will have to wait for the assistance and the money? Other than that, I welcome the Bill. I ask that the cost of the Land Development Agency be taken account in relation to unit costing so it is not just fobbed off and paid for by the Department.

Senator Jerry Buttimer: I welcome the Minister of State. This is important legislation. It is about ensuring we deliver affordable housing on publicly-owned lands. The hypocrisy of those voting against this Bill should be laid clear for everybody. They are opposing the sale and building of housing on public lands for citizens of our country. This is what the Opposition is doing in opposing the Bill. As has Senator Burke, I have misgivings about the LDA but I welcome the change that gives more power to local councillors and I thank the Minister of State and the Minister for doing this as it was not in the original Bill.

In Cork, we have a wonderful site at St. Kevin's with a proposal for 266 new homes. It is an ambitious project that must be delivered. The Minister of State was in Cork this week and I commend him on that visit and the work he is doing regarding a particular project. The synergy between the local authority, the executive, our councillors, the Department and the LDA must be about working together. Senator Burke is correct. I believe NAMA was a gargantuan error and it made significant errors and we must learn from it with the Land Development Agency.

If I heard Senator Warfield correctly in his contribution, he said he was opposed to another quango but I thought, and I am open to correction, he asked to have two new quangos created instead of one.

Senator Fintan Warfield: Senator Buttimer heard me wrong.

Senator Jerry Buttimer: That is fine, and I did ask for clarification because I was surprised he wanted to have a second new tier.

Senator Fintan Warfield: Split it into two.

Senator Jerry Buttimer: "Split it into two" was the phrase he used and I am glad he clarified it. Housing is a generational issue. We must build more houses. There was an audit and mapping exercise done on State lands by the LDA. Please let us not have more procrastination. Let us have delivery. Let the Minister of State's legacy in the Department be one of acting, building and creating a platform for people to be able to have their own homes. This is a good Bill with regard to what we are trying to achieve. I have my reservations but I am prepared to give it a chance. We must build the synergy between local authorities, our elected members, the executive and the Department.

Senator Rónán Mullen: Cuirim fáilte roimh an Aire Stáit arís go dtí an Teach. I broadly support this Bill, as I did the recent Affordable Housing Bill. As I said then, the scale of the housing problem is such that the Oireachtas should be willing to make serious direct interventions to tackle it, and to give the Government the benefit of the doubt when it seeks to do so.

The Bill establishes the Land Development Agency as a commercial State entity. Its objective will be to assemble land for development and to utilise State and public lands properly, and, using that land, to implement the affordable purchase and cost-rental schemes envisaged under the Affordable Housing Bill. I support all of these aims.

9 July 2021

This Bill has proved controversial, not least among city and county councils and councillors themselves. Legitimate concerns have been expressed that it represents a further erosion of local democracy, taking reserved functions out of the hands of councillors. There are also concerns about the accountability and transparency of how the agency will operate, and whether oversight by the Ministers with responsibility for housing and public expenditure is sufficient. In a way, these concerns mirror those expressed at the time of the establishment of NAMA in 2009, another agency that was taking major decisions in the public interest, albeit on an infinitely larger scale.

I share all of these concerns. What we need is more local democracy and more decisions made locally in the communities affected by them but the reality is that many councils have repeatedly failed to address adequately the housing problem in their functional areas. The failings of Dublin City Council in this regard are nothing short of appalling for the local authority of a modern European city. That council seems to spend most of its time debating whether to display the Palestinian flag, or vanity projects such as the white-water rafting white elephant, or pie in the sky issues such as a four-day working week for its staff, which was the latest flight of fancy discussed at its meeting this week. This is what is on the agenda of an elected local authority of a city that cannot adequately house its own population. Can we blame central government for intervening?

There are two primary reasons for the failures of local authorities in recent years. I say this with fraternal affection for my colleague, Senator Warfield. One reason is the deliberate obstruction of large-density housing projects by the Sinn Féin party. The party says that it is not doing so deliberately and cites what it says are legitimate objections each time. However, the reality is that no matter what the project, Sinn Féin councillors always manage to find reasons to oppose it. The developments are either too large or too small, or they do not have enough social housing, or they are the wrong mix, or there are objections to the use of publicly-owned land by private developers, and so on *ad infinitum*. Even Goldilocks found a bowl of porridge to suit her eventually. It is impossible to accept that these are genuine objections and not part of a deliberate and concerted strategy to prolong the housing crisis for political gain. I have a funny feeling that if Sinn Féin were elected to government in the near future, new orders will be issued - and many new orders I might worry about - to its councillors by the armchair generals, and we would see a sudden increase in the number of developments being approved.

The greatest reason for the dysfunction of local government are the so-called reforms of the system rammed through by the Fine Gael-Labour Party coalition in 2014. The amusingly-titled Putting People First plan, implemented in the Local Government Reform Act 2014, slashed and burned town councils, reduced the number of local representatives and rebranded city and county managers as chief executives. The net effect was to continue the centralisation of power in unelected management and to continue the paralysis in decision-making. Having failed to improve the effectiveness of local government in the last attempt, these problems will just not be solved in the short term. While I accept the concerns raised by councillors about the lack of oversight and the usurpation of their powers, the nature of the housing shortage is such that we urgently need to take bold steps and soon.

As the Bill aims to increase the availability of land for housing, I want to raise an issue I have raised several times in recent weeks, namely, the vacant site levy. I have submitted an amendment to the Bill for Committee Stage and I pressed a similar amendment during Report Stage of the Affordable Housing Bill. The vacant site levy is not working. It is not generating any revenue worth talking about for councils and nor is it freeing up land for development.

Meanwhile, there are many vacant sites that are not being registered or levied because the rules on what qualifies as a vacant site are so complicated and vague, leading some councils to not even try to implement it.

The Minister has a lot to think about these days so I will just remind him that what I have been proposing is that we simplify the operation of the levy by introducing an element of self-assessment, placing an onus on landowners to register their own sites, and by bringing within the definition of a vacant site properties on which planning permission for the development of multiple residential units had been granted but where development has not commenced. This would help get a more effective vacant site levy. It would help lead to more sites being developed. This is the kind of proposal that could have broad cross-party support. I acknowledge that on Report Stage of the Affordable Housing Bill in this House, the Minister of State said a wider review of the levy is under way and he assured me that proposals such as that which I put forward would form part of that review and I welcomed it. I intend to keep the issue on the agenda, however.

Senator Pat Casey: Before I begin to speak on the Land Development Agency, I want to say that I agree with Senator Mullen on the vacant site levy. At this stage, we all agree it is not fit for purpose. How it is applied in the various local authorities differs and there is no consistency. It does not do what it was intended to do.

I welcome the opportunity to speak on Second Stage of the Bill and I welcome the Minister of State to the House. Having served on the housing committee in the previous Dáil I was there when the heads of the first Land Development Agency Bill came before us. At that time, I had serious reservations about the Bill and how it was formed. What was presented originally in the Bill was completely different to what we saw on Committee Stage in 2019. In fairness to everybody involved in the legislation, they have listened to what Members have said until this point. What is before us now is significantly different to what was laid before the House initially.

The Minister of State mentioned the phrase “market value” and the Opposition love to hang onto such phrases. The Minister of State gave a fair description of how it is working out. While it might start at market value, the obligations in delivering affordable housing, cost rental housing and social housing will have a huge impact on land. I am glad to see the legislative provisions on this have been changed.

Another element is public land for public housing. In fairness, the Minister of State has more or less delivered on this, particularly in Dublin and Cork where it is now 80%, with 20% under Part V. It is now delivering 100% public housing on public land. We also need to give things time to work and to see whether they work out. As I pointed out through amendments a while ago, we need private housing in some localities. We need that mix in communities and to get the right balance. Building 100% public housing on public lands is not always the best option. We sometimes need to have a mix.

I will move on to section 183 of the Local Government Act 2001, which my colleagues have all mentioned. We are all on the one page in this regard. I acknowledge and recognise the work done in this regard and the amendments that have been made. The provision now only relates to land zoned for housing. While I encourage the Minister of State to see if a bit more could be done for local authorities in this regard and to see if it can be pushed out a bit more, I understand why the provision is needed, as my colleague referred to earlier on. As a Senator from Wicklow who was a Deputy for Wicklow in the previous Dáil and who has served on the local

9 July 2021

authority in Wicklow for 12 years, I know that when something lands on one's desk in one's own county, one understands it better. What happened in Wicklow on Tuesday night and how Sinn Féin voted in Bray shows nothing other than hypocrisy of the worst kind. I am sick and tired of listening to Deputy Brady's megaphone politics. On Tuesday night, his two councillors voted against 18 social housing units on public land. Sinn Féin does not want social housing on public land. The hypocrisy in which Sinn Féin engages time and again must stop. I have served with Deputy Ó Broin on the housing committee and, while I have respect for him, the hypocrisy of the Sinn Féin Party must be called out for once and for all.

The Land Development Agency Bill 2021 represents another avenue to deliver housing and must be welcomed. It is now a matter of multiple choice. Housing may be provided through the local authority, approved housing bodies or the LDA. We have multiple avenues through which to deliver affordable, social and cost-rental homes. I have concerns about the legislation. I always will and always should because we should always question legislation that comes before us. In my own business, I sometimes have to say that things are not working out. We have had to amend this legislation since it was originally launched. If we can keep the legislation under review, we can identify aspects that are working and others that are not. We should not be afraid to come back and change the legislation.

Senator Emer Currie: I will share my time with Senator Ward. The Minister of State is very welcome to the House. I am very supportive of this Bill, which puts the LDA on a statutory footing. It is good news, especially for Dublin. There are two principles that are central to tackling the housing crisis, and we are working on them. These are accessibility, whether through affordability measures or social support, and stock and supply. We will not have a healthy housing system without both. They are inextricably linked. The Land Development Agency Bill 2021 and the Affordable Housing Bill 2021 will provide a significant framework and step change. The Land Development Agency is about scale and supply and unlocking State land to build affordable homes and sustainable communities. It is an agency which will develop significant housing developments on lands owned by the State. Increasing the supply of homes will have a knock-on effect on affordability and increasing the supply of sites will reduce the cost of housing.

There are two stories in housing. There is one where councillors continuously vote against housing projects based on catchy sound bites masquerading as ideology and another where bids to build 600 social and affordable homes in Shankill are being sought by the LDA in partnership with the local authority. Some 200 of these homes are to be social housing, 91 are to be sold to low and middle-income workers under the forthcoming affordability scheme and 206 are to be cost-rental units. This is part of a master plan which includes a gym, a crèche, a space for co-working, cafes and shops. We need more of this. It is really reassuring to hear that this kind of project is going to be scaled up. It is not about building disaffection but about building homes.

I completely agree that the LDA has to work alongside and complement local authorities and local authority members. Nobody knows their area better than councillors. It would be welcome to allow them as much input as they can give. I believe in the importance of local county development plans, which are crafted by and consented to by local authorities, and that we should learn from the mistakes made in respect of strategic housing developments, which circumvented those plans. I welcome the Minister of State's reassurances with regard to section 183 to the effect that existing zoning will be respected. With regard to flexibility, it is great news that while developments in Dublin will be 100% social and affordable housing, including the 20% under Part V, the model in general requires a minimum of 50% plus 20%. We need

fewer sound bites and more solutions.

Senator Barry Ward: I welcome the Minister of State to the House. I will touch on just a few points. With regard to section 51(1), which I believe was section 48 in the original Bill before being amended in the Dáil, I pay tribute to the Minister of State and the Department. I wrote to the Department and to the Minister, Deputy Darragh O'Brien, on this matter. It was initially proposed that local authority members would have to give every possible assistance to the Land Development Agency, which was deeply inappropriate. I note that the Government put down an amendment in the Dáil in this regard, which was a welcome reaction to the objections of many councillors around the country. In my own area of Dún Laoghaire-Rathdown, Councillor Jim Gildea has done an enormous amount of work during the term of this council and the last council to promote the development of the lands at Shanganagh in the Shankill area to provide for a whole range of different housing models. He has been in touch with me about this, as have other councillors in Dún Laoghaire-Rathdown. I very much welcome the reaction to the representations made on that issue. I welcome the change to what is now section 51.

I agree with those other Members who have talked about the general reduction in the powers of local authority members. That is regrettable. It has not only arisen under this Government or the last Government but goes back to the passing of planning and development legislation in 2000. We have successively stripped away powers from councillors, the people who make decisions that are informed at a local level. The executive of the council is never going to knock on a constituent's door to ask what he or she thinks about something but councillors do that all the time. There is a failure to recognise the important value they bring to the process and the role that they have. In that regard, I have misgivings about section 58, which deals with section 183 of the Local Government Act 2001. I heard what Senator Cummins said about this earlier and Senator Currie has just raised the same issue. I wonder about the wisdom of stripping from councillors the power to decide on the disposal of land. However, I also recognise, as I said earlier, that this has now been limited. I accept the work the Minister of State has done with Senator Cummins to address that issue and to make the proposition more reasonable.

An Leas-Chathaoirleach: I was reluctant to interrupt the Senator in case councillors were watching. The next speaker, as per the list, is Senator Murphy.

Senator Eugene Murphy: The Minister of State is welcome to the House. He, the Minister, Deputy Darragh O'Brien, and the Government have really put a lot of work into the Affordable Housing Bill which, despite all the recent brouhaha, was voted through with 101 votes while only eight Members voted against it. I hope the public will take heed of that. For whatever reasons, the Social Democrats voted against it while others abstained. When I think of the brouhaha in the media in recent days from some of those who abstained, I ask myself whether it is a propaganda war. As I said earlier during the debate on the Climate Action and Low Carbon Development (Amendment) Bill 2021, there are one or two people in this House who constantly say they are passionate about climate action. Every Member of this House, not just those on one side, is passionate about solving the housing problem. It is not just one section. I admire Senator Mullen's contribution today, which was honest and forthright. I invest much time in trying to sort out housing issues, as do many other Members. There is an absolute commitment to getting this done. As Members of the Oireachtas, if we cannot solve this and put a roof over people's heads, we do not deserve to be where we are. There are huge contributions coming from all sides on this matter. I welcome the fact that so much time is given to it because that is only right.

9 July 2021

Senator Warfield is a good colleague and a friend. He is a gentleman. However, the reality is that there are too many objections, particularly from Sinn Féin councillors, to housing developments. Senator Casey referred to what happened recently in Wicklow. It amazes me when one of Sinn Féin's Front Bench spokespersons - not Senator Warfield - goes on television and says this does not happen. It did happen, all over the place. Sinn Féin cannot speak out of both sides of its mouth on this issue. That is the reality. I do not mean that in a personal way against Senator Warfield.

As has been stated, the purpose of the Bill is to give legislative underpinning to the Land Development Agency, which was previously established on an interim basis through a statutory instrument. I fully agree with most of the comments made by the Government side. I again bring people's attention to section 183 and the good way we in which can engage with local authority members and take their knowledge into account. They are not going to run amok. They know well what needs to be done here and they will make a very valuable contribution. We should keep that in mind at all costs.

The Affordable Housing Bill went through the Dáil last night. That was a very important decision. Now we are dealing with the Land Development Agency Bill. I can say with full confidence that we will see a major change in how housing is developed in the months and years ahead. Many people who have struggled, and are struggling, with high rents will be able to afford a house because of everything the Government is doing. I am not saying that everything that comes from the Opposition is negative and critical, but much of it is. Let me make this quite clear. Many people and politicians are investing much time and are doing a lot of work on this, in all the Government parties. Our party meets about this issue constantly and puts in hours upon hours late at night when nobody knows about it. That is being led by Senators Fitzpatrick, Casey and others. I am sure other parties are doing the same thing.

We have to solve the issue of housing. We think of it as a problem in the major cities but as Senator Dolan will know, in rural areas such as Ballinasloe and parts of Roscommon houses that were available for rent at €600 or €700 per month have gone up to €1,200 or €1,400. The Minister of State will know that from his own part of the country as well. It makes perfect sense to bring in schemes, such as those that will now come in under the Affordable Housing Bill, that will put people in houses where their mortgage payments will be far less than they would have paid in rent. I am confident for the future. We are on the right track and we have to have a little patience for this to work. Maybe some members of the Opposition are scared that we are on the right track, that we are going to make progress and solve this. We have two major issues in Ireland at the moment: Covid and housing. I expect that all politicians, no matter what side of the House they are on, would take into account the two crises with which we are dealing. Of course everybody's point of view is very important but we should not be obstructing progress that needs to be made.

Senator Aisling Dolan: I am sharing time with Senator Seery Kearney. I welcome the Minister of State to the House. Today we are dealing with the Land Development Agency Bill. It is great to see it. This Bill is going to develop and regenerate publicly owned lands for affordable housing. That is what it comes down to, in a nutshell. I welcome the clarity the Minister of State has given on section 183. He has stated very clearly that it will only not apply where land has been zoned for housing. In other words, the only place it would not be implemented is in county development plans where the local authorities have indicated that the land is there for housing. Senator Murphy referred to certain areas of Roscommon and east Galway where we do not have large urban centres - at least not yet. Hopefully we will soon but many of our cen-

tres have populations of under 10,000. How can we capture the tracts of land in our areas on the public land register? I am thinking in particular of lands owned by the HSE. We have an awful lot of land from Bord na Móna as well but that is probably not as suitable for housing, although it is suitable for many other things. As far as I am aware, the ESRI maps on the website show State-owned lands. Will the public land register reflect the ESRI maps and areas outside those large urban centres? What resources could the Government offer to support local authorities? For example, Galway County Council is the second lowest funded council in the country. The Minister, Deputy Darragh O'Brien, has indicated that supports will be offered in the form of project teams for the directors of housing within local authorities. How will the LDA be able to support county councils where there are not urban centres over 10,000 with resources?

An Leas-Chathaoirleach: I thank the Senator. That was very efficient. I ask Senators to bear in mind that in order to complete the speaking list we have to be efficient.

Senator Mary Seery Kearney: What can I say? Much has been said here today, as well as in the Dáil. I have read over the debate on this Bill in the Dáil and I have no doubt that during Committee and Report Stages in this House much will be said to create misinformation, spin and nice little sound bites to be posted on social media about the LDA, which will not do anything to advance real people getting into real houses. The Government is working together and ensuring people have affordable and social housing in the two great pieces of legislation that are going through the House, namely, the Affordable Housing Bill, which was passed last night, and this Bill.

This Bill is a game changer. I am very proud that this agency was born under a Fine Gael Minister, who brought this idea forward. We are now putting it on a statutory footing. A little bit of spin goes on in that regard as well. I am terribly fond of Senator Fitzpatrick but to use the Jim Mitchell version of the famous phrase, if you keep telling lies about us one of these days we will start telling the truth about you. There are cost-rental initiatives here that are now coming into fruition, as we said they would. I am very proud of them. I am very anxious that they come to fruition, especially in my home area of Dublin South-Central, where there are tracts of land in Cherry Orchard, Bluebell and the CIE works. There are tracts of land there about which there have been plans for years but they have not come to fruition until now. The pressure and structure of the LDA is going to allow that to happen. The combination of the Affordable Housing Bill and the Land Development Agency Bill will bring those projects to fruition. It is important that happens with a sense of urgency. The fact that Senators comment on how frequently both the Minister of State and the Minister appear in this House is a testament to that urgency and the commitment of the Government to ensuring that real people are in real houses. The pilot cost-rental scheme in Emmet Road is going to hit the ground running very soon. We have so many initiatives that are not about spouting ideology, voting against housing or setting up cynical websites like LDA Watch, which promotes press releases from political organisations opposed to housing. It is not that cynical an obstruction and delay. This is about supply. I am very proud to support this Bill.

Senator Micheál Carrigy: I welcome the Minister of State and I welcome this Bill. Section 13 sets out the functions of the LDA, which are to develop and manage relevant public land and, thereafter, other lands for “the provision of housing for the public good”. It is acknowledged that there is a shortage of new housing being developed and, in particular, housing that is affordable in certain areas. There is a requirement in this Bill that a proportion of any housing provided on public land and former relevant public land be made available for affordable housing by the agency and other agencies that may require such land. This Bill will increase the

9 July 2021

supply of affordable and social housing by establishing the LDA as a publicly owned commercial State body that will be accountable to the Houses of the Oireachtas through the Committee of Public Accounts, as stated in section 17. I agree with Senator Byrne's proposals regarding nominations to the LDA coming through the joint Oireachtas committee. That is a very positive proposal.

The Government is assigning the LDA a key role in the delivery of housing, while also assisting local authorities by developing on public lands not used heretofore. The Bill comes about on foot of a commitment in the programme for Government, which prioritises health, housing and climate action as the three key pillars of our coalition. The climate action Bill went through earlier today and the Affordable Housing Bill was signed last night. I concur with Senator Seery Kearney in remembering former Deputy Eoghan Murphy, the Minister for Housing, Planning and Local Government who introduced the Land Development Agency Bill a number of years ago. It is a very simple concept that has been complicated by the Opposition because, unlike Government, it does not want the housing situation resolved because that will take away the opportunity for the usual sound bites about vulture funds, developers, etc.

If you have a problem with your teeth, you go to a dentist and if you want a wardrobe in your house, you go to a carpenter. To get your car fixed, you go to a mechanic. Developers build housing and infrastructure that is needed. It is their profession and career and what they have experience in doing. Nine sites have been opened up or are on the way, and 4,000 houses are currently on track with more to come. It is important that we create sustainable and well-planned communities and that the focus is not on high-density development but on building homes in such communities that will have sufficient open, public amenity spaces and are close to all public services, be they education, health or transport.

I share the views expressed regarding NAMA, which was not a success. We saw situations a number of years back where houses were demolished and, indeed, housing stock disposed of at cheap sale prices. I also believe that any decision we make must be made in conjunction with those who operate on the ground and who know best, namely, elected representatives in local authorities throughout the country. They are the voice of the people and are elected by the people. Any decisions that are made, must be made in conjunction with members of local authorities.

Minister of State at the Department of Housing, Local Government and Heritage (Deputy Peter Burke): I thank all the Senators for their contributions. At the heart of the role of the LDA is ensuring that we make a step change in how we manage State lands and take a long term strategic land management approach to provide a more sustainable approach to housing delivery at affordable levels. This is part of a wider suite of measures the Government is implementing as part of its housing for all mission to improve overall supply and bring forward new initiatives on affordable housing.

From listening to the debate, it is apparent that there is major consensus across all sides of the House that we should ensure public lands not required for other purposes should be used for housing. I want to be clear that the decisions the Government will make on transferring public lands to the LDA will apply to those lands already in the ownership of the State. This is clearly what is set out in Part 7. This will be a very transparent process as details of public lands will be available on the register on the LDA website and the reports to Government by the LDA will also be published.

In the case of local authority lands, it remains the position that it is up to local authorities to determine how best to deliver housing on their lands. Under section 15 of the LDA Bill, local authorities can request the assistance of the Land Development Agency to manage the development of large-scale complex sites and the LDA will generally be required, by statute, to give assistance in this regard. A number of people have raised concerns about section 183 in that process and I hear them fully. I am firmly of the belief that local authority members should have maximum power. In my role as Minister of State with responsibility for local government, every day I try to give local authority members more power. It is interesting to note that was not the case in the original Bill, so this is a change that has been made. I will bring Senators' views back to the Minister in connection with that issue. On the residential aspect, the Minister has conceded that land zoned as residential is the only aspect where section 183 can be changed. I will absolutely raise all concerns regarding that with the Minister.

Separately, where local authorities no longer require land for their own purposes, as I mentioned, similar to other public bodies, including commercial bodies, they must give first refusal to the LDA before selling to the market. It is only in circumstances where land is already zoned for housing that section 183 of the Local Government Act would not apply, as it is moving land from one public body to another to deliver housing. These provisions support the role of local authority members, allowing them to work in partnership with the LDA to deliver on complex sites. They will need to be able to avail of a centre of excellence, which will also be developed through the LDA in delivering housing in key urban areas.

The LDA will be a powerful land management agency. While its immediate focus will be on developing housing on public lands, in the longer term it will assemble strategic land banks from a mix of public and private lands, making these available for housing and bringing essential long-term stability to the Irish housing market. I also welcome the positive commitments and comments today on the prototype that the LDA's land register already has available on its website.

I will follow up on a few other specific issues. On the land valuation for public land being sold to the LDA, I want to reiterate that while the LDA will pay for such land, and the price will take into account the proposed use of the land, it will also deliver significant levels of affordable housing in addition to Part V housing.

Many Senators referenced the affordability requirement in the Bill. As I said in my opening comments, the Part 9 provision has been amended to ensure that there is 80% affordability on relevant public lands in Cork and Dublin cities. This, when taken together with Part V housing, will ensure that there will be 100% social and affordable housing on these sites. The affordability requirement will be set at a minimum of 50% in all other areas, which will be effectively 70%, including Part V. This housing will not be linked to market rents or market prices, as was referenced by some during the debate, but will be delivered in accordance with the Affordable Housing Bill in relation to the cost rental and affordable housing purchase schemes.

Quite the opposite of the LDA being a vehicle for divestment of public lands to the private sector, the LDA, as a fully State-owned agency, represents a far more active and impactful role for the State in the land development market, including utilising public lands more efficiently. The LDA is mandated to replenish and assemble land banks, including by way of acquisition from the open market, which means that certain privately held lands may become publicly owned in the future. It is also important to note that ministerial approval is required under section 57 of the Bill for the LDA and its subsidiaries to sell land. There is no question of any mass

9 July 2021

sell-off of public land or housing to be developed on those lands.

The LDA marks an important step for the State in actively managing its own land for the common good. As has been referenced, we are all about trying to ensure as much public housing on public land, and affordable housing for all our citizens, as possible. On finances, as has been pointed out, the LDA will receive a cash injection of €1.25 billion and can borrow up to €1.25 billion. The point about the LDA budget has been well made by some Senators, including Senator Cummins. We need to be serious about this and put the maximum possible amount the State can afford into the Land Development Agency because it will be a key driver of social and affordable housing in our State. We need to give it maximum support so it can carry out all its activities in the best interests of all our citizens.

I acknowledge a long-standing Member of the House, Senator Ivana Bacik. It looks like she will have a major result today. She has made a huge contribution to this House and it is not before time that she has been elected to the Thirty-third Dáil. I wish her the best.

An Leas-Chathaoirleach: I thank the Minister of State for his comprehensive responses, as always. On his final point, he echoed the sentiment of everyone in this Chamber. Senator Bacik is very popular and well regarded here.

Question put:

The Seanad divided: Tá, 22; Níl, 7.	
Tá	Níl
Ahearn, Garret.	Gavan, Paul.
Burke, Paddy.	Higgins, Alice-Mary.
Buttimer, Jerry.	Keogan, Sharon.
Byrne, Malcolm.	Moynihan, Rebecca.
Carrigy, Micheál.	Sherlock, Marie.
Casey, Pat.	Wall, Mark.
Conway, Martin.	Warfield, Fintan.
Cummins, John.	
Currie, Emer.	
Doherty, Regina.	
Dolan, Aisling.	
Dooley, Timmy.	
Fitzpatrick, Mary.	
Garvey, Róisín.	
Lombard, Tim.	
McGahon, John.	
McGreehan, Erin.	
O'Reilly, Joe.	
O'Reilly, Pauline.	
Seery Kearney, Mary.	
Ward, Barry.	
Wilson, Diarmuid.	

Seanad Éireann

Tellers: Tá, Senators Jerry Buttimer and Pat Casey; Níl, Senators Fintan Warfield and Rebecca Moynihan.

Question declared carried.

An Cathaoirleach: When is it proposed to take Committee Stage?

Senator Jerry Buttimer: Next Monday.

An Cathaoirleach: Is that agreed? Agreed.

Committee Stage ordered for Monday, 12 July 2021.

An Cathaoirleach: The House stands adjourned until 9.30 a.m. on Monday, 12 July 2021, in the Dáil Chamber in accordance with the order of the Seanad today.

The Seanad adjourned at 6.10 p.m. until 9.30 a.m. on Monday, 12 July 2021.