

# DÁIL ÉIREANN

## AN ROGHCHOISTE UM GHNÓ, FIONTAIR AGUS NUÁLAÍOCHT

### SELECT COMMITTEE ON BUSINESS, ENTERPRISE AND INNOVATION

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*Dé Céadaoin, 9 Bealtaine 2018*

*Wednesday, 9 May 2018*

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Tháinig an Roghchoiste le chéile ag 4.40 p.m.

The Select Committee met at 4.40 p.m.

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Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	
Pat Breen (Minister of State at the Department of Business, Enterprise and Innovation),	
Billy Kelleher,	
Tom Neville,	
Maurice Quinlivan.	

I láthair / In attendance: Deputy Clare Daly.

Teachta / Deputy Mary Butler sa Chathaoir / in the Chair.

## **Industrial Development (Amendment) Bill 2018: Committee Stage**

**Chairman:** The Industrial Development (Amendment) Bill 2018 was referred to the select committee by Order of the Dáil on 28 March 2018.

I welcome the Minister of State, Deputy Pat Breen, and his officials to the meeting. Before we begin I ask members to turn off their mobile phones or switch their phones to airplane, safe or flight mode, depending on their device. It is not sufficient to put them on silent mode as this will maintain the level of interference in the committee room and impacts negatively on the broadcasting.

It is intended that we will consider this Bill until we conclude Committee Stage. Is that agreed? Agreed.

### SECTION 1

Question proposed: “That section 1 stand part of the Bill.”

**Minister of State at the Department of Business, Enterprise and Innovation (Deputy Pat Breen):** I am pleased to bring the Industrial Development (Amendment) Bill 2018 before the committee for its consideration. I thank the Chairman and members for the opportunity to do so.

This is a short, technical but essential Bill which aims to ensure that IDA Ireland continues to have the capacity to provide property solutions to potential investors. I am sure that members will recognise that in order to sustain and to grow foreign direct investment in regional areas in particular, there must be sufficient property solutions for new and existing clients. In fact this is a key factor in encouraging multinational companies to locate here. Accordingly, a vital aspect of IDA Ireland’s work remains as has been the case for many years connecting those firms with property solutions and to be able to do so effectively, it needs the continued capacity to purchase property that can be marketed to potential investors.

This Bill addresses the implications of the 2015 Supreme Court judgment and seeks to ensure that IDA Ireland will continue to have the capacity to compulsorily acquire property on an exceptional basis in very limited circumstances, subject to strict requirements. As per the terms of that judgment, provision has been made in the Bill for an independent body, which is An Bord Pleanála, to undertake a full adjudicatory role in the process, a role that has been very much aligned to its existing role in compulsory purchases carried out by other State bodies. The Bill does not grant any additional or expanded compulsory purchase powers to IDA Ireland, rather the Bill seeks to modernise the process and apply best practice to it. Second, the Bill will ensure that IDA Ireland can continue to purchase property by agreement, even when it is for the future use and no specific company has been identified as the beneficiary of the acquisition.

The committee will, of course, be aware that regional development is one of the key priorities of this Government, my Department and of IDA Ireland. It is a common goal that all of us share. We are committed to doing everything we can to both sustain and create employment opportunities all over Ireland and IDA Ireland has a significant role to play in that work. Given the critical role, particularly in terms of trying to support regional development, it is essential that there is no legal uncertainty when it comes to its property purchasing powers. This is why this Bill is particularly important and why I am seeking the committee’s support today in progressing this legislation and I look forward to engaging with members.

**Chairman:** I thank the Minister of State.

Question put and agreed to.

## SECTION 2

Question proposed: "That section 2 stand part of the Bill."

**Deputy Clare Daly:** I am opposing this section. I acknowledge that amendments Nos. 1 and 2 in my name were ruled out of order. With the indulgence of the Chairman, I wish to make a number of points which apply to all the sections. I will not repeat my arguments on the sections or detain members, the Minister and his officials unnecessarily. The points I make now apply to this and all the other sections I oppose.

My goal in tabling amendments to the Bill was with a view to reining in the powers granted to IDA Ireland under the Industrial Development Act 1986 to compulsorily acquire land for use by industry. Unfortunately, the amendment which gave effect to that was ruled out of order, so I will summarise why I am opposing the section that copperfastens this power of IDA Ireland.

Its power to take land from people and to give it to private companies is quite extraordinary. It is extraordinary in the sense that it is incredibly far-reaching and it is extraordinary in the sense that on a global scale it is incredibly unusual. I made the point on Second Stage that if one goes through the literature on CPOs globally, what is very striking is that it is never mentioned in the context of state expropriation of land on behalf of private multinational corporations, which is exactly the activity that gave us this Bill in the first place. What is talked about is the state compulsorily acquiring for state infrastructural projects, which is fair enough obviously, and occasionally we hear about it in the context of public private partnerships, PPP, unsurprisingly in a neoliberal world, but the idea of actually forcibly expropriating land for private multinationals is incredibly rare on a global scale. That is what this Bill does by giving land to them, including to American corporations which could well afford to buy land from people if they were willing to surrender it voluntarily.

It is not about compulsory purchase orders, CPOs for schools, hospitals, roads or anything like this. This Bill deals only with CPOs for large industry, which in Ireland means foreign industry. In point of fact, Enterprise Ireland has been specifically excluded from the Bill. We are not talking about small or even medium-sized business. A review of compulsory purchase order laws by a World Bank senior counsel said that an overarching principle in most cases is that a government's taking powers are extraordinary powers that are intended to meet public needs that are not well addressed through the operation of the market, hence it is not typical for laws to allow governments to use compulsory acquisition as the normal means of assembling land for purposes that are clearly commercial, industrial or other profitably private uses alone. That is exactly what we are talking about here. IDA Ireland has had this power since the 1980s but the only time it tried to exercise it was in the Thomas Reid case. The case was appealed to the Supreme Court, which said that not only had IDA Ireland operated *ultra vires* of the 1986 legislation, but it was also objectively biased in its quest to CPO Thomas Reid's home.

The objective bias in that case derived from the fact that the then chairman of IDA Ireland, Mr. O'Mahony, at the time of the CPO on Thomas Reid's land was also a non-executive director of the PM group, a consultancy firm that shows his site as the most attractive one for Intel from a survey conducted in west Dublin. The Supreme Court found that Mr. O'Mahony participated in two key decisions relating to the lands at Blakestown - the original decision to

initiate the compulsory purchase and the crucial final decision in the making of the CPO in November 2012. Mr. Justice McKechnie found that a reasonable observer might doubt whether the chairman of IDA Ireland would be in a position to remain as objective as he might have been expected to be in the circumstances. I think that the finding of objective bias on IDA Ireland's part in the Reid case is something we should bear in mind when we are deliberating on consider giving it more powers in this regard. A State agency, which is not democratically accountable to anybody, having the power to expropriate land on behalf of private industry is crazy enough, but this Bill copperfastens that, when we know that the one time IDA Ireland exercised this power, it did not do so in an upfront manner. This raises very serious questions.

We have zero guarantees that the same thing will not happen again, and the role of An Bord Pleanála under the Bill is insufficient to police it. An Bord Pleanála's remit is not to investigate shady dealings or potential bias. Apart from any concerns regarding potential abuses, I remind members that if a private company wants to acquire land, it can always approach the landowner with an offer. If that first offer is not good enough, it can always raise the offer or decide it is not worth that figure. Why can the company not do that? Why does the company absolutely have to have that piece of land? Bringing in IDA Ireland to take land from a landowner because the company is not willing to pay a high enough price or because the landowner does not want to sell, as was the position in the Thomas Reid case. I am sure that 99% of people in Ireland would not agree with that and they would be appalled that IDA Ireland would be given that power.

My amendments to this Bill which would have had the effect of forcing private companies to have to ask landowners to sell their land and pay the asking price were ruled out of order. It means that it will continue to be the case that private companies can do as they have done and again it is a power that was exercised only once. I think it could be abused and I am opposed to this and to the other sections, although I will not repeat the same points on the other sections.

**Deputy Pat Breen:** Deputy Daly has outlined that IDA Ireland has these powers already. It is important to note that, from our point of view, the Bill does not equip the agency with extended, strengthened or additional statutory powers. That must be stated at this meeting. If I could offer any reassurance to Deputy Daly, it would be that in reality I do not expect anything will change in practice with regard to how IDA Ireland carries out its property functions on foot of this legislation. As the Deputy said, the use of the power is extremely rare and, as she also said, IDA Ireland used it once. It is only in exceptional circumstances where a property is of great strategic importance is involved.

I do not expect any change in practice and I think IDA Ireland would be very careful in how it would use this section. That is why the Bill does not change anything.

Question put and agreed to.

**Chairman:** Amendment No. 1 to section 3 was ruled out of order.

Amendment No. 1 not moved.

Section 3 agreed to.

Question, "That section 4 stand part of the Bill", put and declared carried.

Question, "That section 5 stand part of the Bill", put and declared carried.

Question, "That section 6 stand part of the Bill", put and declared carried.

Question, “That section 7 stand part of the Bill”, put and declared carried.

## SECTION 8

Question proposed: “That section 8 stand part of the Bill.”

**Deputy Pat Breen:** As members will know, a key objective of Government policy is supporting increased levels of research, development and innovation in Ireland based in companies. Innovation is central to Ireland’s competitiveness and to the ability of companies based in Ireland to compete internationally. The job of Enterprise Ireland, as part of the wider enterprise supporting role, is to help maintain and drive innovation in Irish industry. It achieves this by developing in-company research and development facilities and by leveraging external assets, such as the higher education system.

My Department, together with Enterprise Ireland, has considered a number of measures aimed at driving an increase in research and development. These measures include a number of proposed amendments to Enterprise Ireland’s governing legislation, four in total, to increase its ability to support research and development in a number of critical sectors. It is my intention to introduce these four research and development-related amendments on Report Stage.

If I may, I will give a brief outline of their objectives. One is to permit Enterprise Ireland to support research and development in the horticulture sector for the first time. Second, it will facilitate grants to support research activity overseas, where research needs cannot be met in Ireland. That is important as well. Third, it will increase the flexibility of Enterprise Ireland to award grants, within permissible EU research and development grant rates, and a fourth amendment will allow the agency to make advance partial payments of research and development grants to firms that may be experiencing cashflow restrictions during research, development and innovation, RDI, projects.

The proposed changes are deemed necessary in light of Government policy to drive an increase in RDI and related activity across our indigenous enterprise base, as well as the challenges of business posed by the Brexit decision. In addition it is important that Enterprise Ireland can flexibly deploy the widest degree of interventions to assist indigenous industry that match supports available for other countries, particularly now in the context of Brexit.

In addition to those four research and development-related amendments, I also intend to put forward amendments to give Enterprise Ireland powers to use certain additional lending investment instruments in certain circumstances. This is medium to long-term debt being proposed to help scale client companies in the form of convertible loan notes and non-convertible debt instruments. The amendments will also propose to permit certain types of follow-on investments without having to fully meet the enterprise development criteria, set out in current legislation. These additional powers will increase the flexibility to support enterprise development and to manage those investments on a par with private sector investors. My officials are currently working on these amendments with the Office of the Parliamentary Counsel and I hope to be in a position to bring them forward at a later stage.

**Deputy Maurice Quinlivan:** The Minister had tabled amendments to section 8 but they are not on the Committee Stage list. Are the proposed amendments on Report Stage similar to what had been proposed on 3 May?

**Deputy Pat Breen:** Yes, that is what I have spoken about. We will have more clarity on Report Stage.

**Deputy Maurice Quinlivan:** That is good.

I thank the Minister for his presentation and I thank him for his engagement on the Bill in the past number of months. That was much appreciated. I also wish to acknowledge the concerns that Deputy Clare Daly has raised both in the committee and also on Second Stage of the Dáil debate. I did take time out after she raised those concerns and as a consequence I reconsidered the Bill and spoke to party members in response to some of some of the concerns she raised on Second Stage. However, we concluded that the powers outlined for the IDA are proportionate and the oversight by An Bord Pleanála is adequate, so unfortunately I will not be supporting the thrust of the Deputy's amendments that were ruled out of order.

A compulsory purchase order should only be used in strict circumstances and as rarely as possible. We need compulsory purchase orders, CPOs, for strategic investment such as roads and hospitals and in very limited cases they could be needed for expansion of companies that will create substantial employment. I note the IDA has only ever used these powers once, albeit unsuccessfully, in the Thomas Reid case, which is welcome, because it highlights that most acquisitions by the IDA are done by agreement. In the future, should these powers appear to be used in a way that is not envisaged, I would be happy to revisit the issue.

I have a number of question for the Minister, however, he has answered one of them already.

I raised a question on Second Stage where I instanced a scenario where the land had a compulsory purchase order for an undertaking but something happened so that the proposed project did not actually happen, for instance, if a company was proposing to expand but it might have collapsed and closed down. Could the original landholder buy back his land at the same price, if he so wishes, or if not, what will happen to the land?

**Deputy Pat Breen:** I thank Deputy Quinlivan for his comments on the purchase of lands by the IDA and for his support in progressing the Bill. I think it is important to have all the members in support of the Bill.

I acknowledge the Deputy raised the buy-back provision on Second Stage in the Dáil. I understand where Deputy Quinlivan is coming from in articulating his point of view. As it is only intended to resort to a compulsory purchase order as a truly exceptional measure, when all options have been exhausted, it is not expect that a situation would arise at any stage in relation to that. I will certainly take note of Deputy Quinlivan's suggestion.

**Deputy Maurice Quinlivan:** I understand that Minister. The concern I would have is that should circumstances change, and the company that purchased the land might not be in operation or it might have collapsed.

**Deputy Pat Breen:** I will take note of that and we can deal with that point on Report Stage. Is Deputy Quinlivan okay with that suggestion?

**Deputy Maurice Quinlivan:** Yes. I thank the Minister.

**Deputy Clare Daly:** I think that if the logic is that the legislation will never be used, why are we bothering to change it?

I think we have to view the Industrial Development (Amendment) Bill 2018 in the context of compulsory purchase orders operating without sufficient scrutiny or oversight and that was very much indicative of what happened in the CPO incident in Wicklow County Council. The

lands were purchased under a CPO, which involved in part IDA lands. There are still substantial questions to be answered in that regard as to how Wicklow County Council could seek to purchase land with a compulsory purchase order and pay more than €3 million and yet nine years later, the land is not in the name of the council. How could land be in the names of developers, Quinn and Mulryan, when there was no notice of disposal before the members of Wicklow County Council, which is a statutory body? It is in the context of questions on the lack of scrutiny with the compulsory purchase orders powers that I have a considerable concern about this legislation. I know that people are under pressure today and perhaps we can deal with some of those points on Report Stage.

**Deputy Pat Breen:** I do not wish to refer to any particular case because we are dealing with a Bill in respect of the IDA and not with the local authorities.

The IDA does not pursue its property functions by way of compulsory purchase orders. The case to which Deputy Clare Daly referred earlier, the Reid case, gave rise to the first time the IDA ever attempted to do so. It is exceptionally rare and the only time the IDA would use its powers like that is where there is real and strategic importance involved. The legislation is needed to ensure IDA Ireland can validly exercise compulsory acquisition powers in the future through the designation of the appropriate external body, An Bord Pleanála, which acts as a decision maker in all these cases.

I say again that there is no intention on the part of IDA Ireland to increase the use of compulsory purchase orders. In fact, it is true to say that while the legislation provides for an updated compulsory purchase process, the process has never been more straightforward. It is important to point out to committee members that the provisions being replaced are subject to An Bord Pleanála oversight and we know how An Bord Pleanála operates.

Question put and declared carried.

Section 9 agreed to.

**Chairman:** Amendment No. 2 has been ruled out of order because it is in conflict with the principles of the Bill.

Amendment No. 2 not moved.

Title agreed to.

Bill reported without amendment.

**Chairman:** I thank the Minister of State and his officials, as well as members, for attending the meeting.

### Message to Dáil

**Chairman:** In accordance with Standing Order No. 87, the following message will be sent to the Dáil:

The Select Committee on Business, Enterprise and Innovation has completed its consideration of the Industrial Development (Amendment) Bill 2018 and made no amendments thereto.

SBEI

The select committee adjourned at 5.15 p.m. until 4.45 p.m. on Wednesday, 13 June 2018.