

DÁIL ÉIREANN

AN ROGHCHOISTE UM CHUMARSÁID, GNÍOMHÚ AR SON NA HAERÁIDE AGUS COMHSHAOL

SELECT COMMITTEE ON COMMUNICATIONS, CLIMATE ACTION AND ENVI- RONMENT

Dé Máirt, 9 Bealtaine 2017

Tuesday, 9 May 2017

The Select Committee met at 5.30 p.m.

MEMBERS PRESENT:

Deputy Seán Kyne (Minister of State at the Department of Communications, Climate Action and Environment),	Deputy Bríd Smith,
Deputy James Lawless,	Deputy Brian Stanley.
Deputy Eamon Ryan,	

In attendance: Deputy Tony McLoughlin.

DEPUTY HILDEGARDE NAUGHTON IN THE CHAIR.

Prohibition of the Exploration and Extraction of Onshore Petroleum Bill 2016: Committee Stage

Chairman: I ask members to, please, turn off their mobile phones as they interfere with the sound system. They are also reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. Apologies have been received from Deputy Timmy Dooley.

The purpose of the meeting is to deal with Committee Stage of the Prohibition of the Exploration and Extraction of Onshore Petroleum Bill 2016 which was referred to the Select Committee on Communications, Climate Action and Environment by order of the Dáil on 27 October 2016. The joint committee published a report on the detailed scrutiny of the Bill. This is the first time a Private Members' Bill has reached Committee Stage in this Dáil. It is also the first time a Private Members' Bill, the sponsor of which is not a member of the committee, has reached Committee Stage. I welcome Deputy Tony McLoughlin, the sponsor of the Bill, and thank him for his attendance. I also welcome the Minister of State with responsibility for Gaeltacht affairs and natural resources, Deputy Seán Kyne, and his officials whom I thank for their attendance.

It is proposed to group the following amendments for the purposes of debate: amendments Nos. 1, 2 and 4; and amendments Nos. 3 and 5.

NEW SECTION

Minister of State at the Department of Communications, Climate Action and Environment (Deputy Seán Kyne): I move amendment No. 1:

In page 3, between lines 10 and 11, to insert the following:

“Amendment of Petroleum and Other Minerals Development Act 1960

1. Part II of the Petroleum and Other Minerals Development Act 1960 is amended by the insertion of the following Chapter after Chapter II:

“CHAPTER IIA

Hydraulic Fracturing

Definitions

5A. In this Chapter—

‘enactment’ means—

(a) an Act of the Oireachtas,

(b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(c) an instrument made under an Act of the Oireachtas or a statute referred to in paragraph (b);

‘hydraulic fracturing’ means the generation of mechanical fractures in rock below the surface by means of the physical process of pumping fluid at high pressure into the rock via a petroleum wellbore for the purpose of enhancing the flow of petroleum between the rock and petroleum wellbore;

‘internal waters’ has the same meaning as it has in Part 3 of the Sea- Fisheries and Maritime Jurisdiction Act 2006;

‘petroleum wellbore’ means a boring or other excavation in the earth’s crust made for the purpose of searching for or extracting petroleum.

Prohibition of hydraulic fracturing

5B. (1) Notwithstanding anything in this Act or any other enactment or rule of law it shall not be lawful for a person to search for, get, raise, take, carry away or work petroleum by means of hydraulic fracturing.

(2) The prohibition in subsection (1)—

(a) shall apply in respect of petroleum that is situated in the State including the internal waters, and

(b) shall not apply in respect of petroleum that is offshore.

Offence and penalty

5C. A person who contravenes section 5B shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both.”.”.

This amendment copperfastens the intention of Deputy Tony McLoughlin’s Bill which is to introduce a legal prohibition on onshore fracking. It does not in any way change the objective of the Bill. The language used in the amendment has had the benefit of the advice of the Office of the Attorney General to ensure legal robustness and certainty in the introduction of the prohibition.

Deputy Eamon Ryan: I will add to the Chairman’s comments in commending Deputy Tony McLoughlin for being the first person in the history of the State, as a non-member of a committee, to have a Bill reach Committee Stage. It is a real relief as approximately 26 Bills have proceeded through Second Stage but none has reached Committee Stage. It is important that we be the first, but that it has taken us five months is a source of concern. More than any other in the past year in this Dáil, the Bill has received widespread support.

I acknowledge the statement of the Minister of State and his officials that in changing the course of the Bill, they are not changing its effect. We are *ad idem* as this is a clear indication to everybody involved, including local communities, companies, the energy industry and others that once the Bill is enacted, there will be a clear and strong signal that there will be no fracking for shale oil or gas in Ireland in the future, unless the legislation is amended. There may have been some concern among local communities, particularly in counties Sligo and Leitrim, that any change to the Bill might have seen it being weakened. I am seeking an assurance from the Minister of State that the amendments being made will not in any way alter the intent of Deputy Tony McLoughlin’s Bill in giving a clear and certain signal that it means the end of fracking for shale oil or gas in Ireland. Any judge listening or considering a case might reflect on these

hearings and the intention will be doubly clear that we mean to end the process through this legislation.

Deputy Bríd Smith: I would like an explanation as to why the amendment is being made to the Bill. There are genuine concerns in communities that it will scupper the Bill rather than ensure its intentions will be copperfastened.

Deputy James Lawless: I echo the comments of the previous speakers in congratulating Deputy Tony McLoughlin on bringing forward the Bill which is a milestone in this Dáil in the context of new politics. I say this particularly in the context of the remarks of Deputy Eamon Ryan, as there is a logjam and delays. During Leaders' Questions this afternoon Deputy Mícheál Martin raised the issue of multiple Private Members' Bills passing through the House, not many of which reach this Stage. It is great to see what happens when a Bill does reach this Stage. The committee has been proactive in facilitating the launch of the Bill which we will support. I understand there was a briefing on it, but I did not get to it as I was not aware of it. Maybe that information can be supplied for future briefings and the committee can be involved. I look forward to supporting the Bill at it passes through this Stage.

Chairman: I call on the Minister of State to reply.

Deputy Seán Kyne: I acknowledge the support for Deputy McLoughlin's Bill by all parties and Independents. I acknowledge his role in bringing the Bill this far.

I commend the members of the joint committee on the launch of its report on the detailed scrutiny of the Bill. The report was laid before the Houses of Oireachtas on 12 April. The joint committee made four recommendations on page 57 as follows:

1. In certain sections, the terminology of the Bill should be revised.

2. An enforcement mechanism should be included in the Bill.

3. Any potential drafting deficiencies in the Bill may be best addressed during the Committee Stage debate of the Bill. The Joint Committee also believes that the Minister, with the assistance of the Office of Parliamentary Counsel to the Government, could propose amendments to rectify any drafting problems by drafting a suitable amendment at either Committee or Report Stages of the Bill.

4. The scope of the Bill should be expanded to take account of other activities, such as those that use geothermal technologies, which may be used to access shale gas through other means.

The amendment ensures that the first three recommendations are taken on board. In other words, that the terminology is revised, that there is an enforcement mechanism, including an offence and penalty, and that drafting deficiencies, if any, are rectified in these amendments.

I am not sure whether I need to read the amendment as members have it in front of them. The amendment better clarifies what hydraulic fracturing means. The amendment states quite clearly in section 5B:

(1) Notwithstanding anything in this Act or any other enactment or rule of law it will not be lawful for a person to search for, get, raise, take, carry away or work petroleum by means of hydraulic fracturing.

Section 5C continues: "A person who contravenes section 5B shall be guilty of an offence and

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shall be liable, on summary conviction, to a class A fine or imprisonment for a term.” It is clear that this amendment does what Deputy McLoughlin wants, and what the committee and everyone said they wanted during the Second Stage debate. The amendment ensures that the language is cleared with the Office of the Parliamentary Counsel and the Office of the Attorney General in order to ensure that the prohibition stands.

Deputy Bríd Smith: I am not sure about the protocol. Can we ask Deputy McLoughlin what he thinks of the amendment?

Chairman: Does Deputy McLoughlin believe the amendment is in line with the intent of his Bill?

Deputy Tony McLoughlin: Yes. I am happy to go along with the amendment. Members have expressed their support as well, even those who are not present.

Amendment agreed to.

Chairman: Acceptance of amendment No. 1 means amendment No. 2 cannot be moved.

Deputy Bríd Smith: Is that my amendment?

Chairman: Yes.

Amendment No. 2 not moved.

Section 1 deleted.

NEW SECTION

Chairman: Amendments Nos. 3 and 5 are related and may be discussed together.

Deputy Seán Kyne: I move amendment No. 3:

In page 3, between lines 26 and 27, to insert the following:

“Short title

2. This Act may be cited as the Petroleum and Other Minerals Development (Prohibition of Onshore Hydraulic Fracturing) Act 2017.”.

Amendments Nos. 3 and 5 are technical amendments to reflect the purpose of the Bill. My amendment amends the main petroleum legislation, the Petroleum and Other Minerals Development Act 1960.

Chairman: Do Deputies wish to comment? No.

Amendment agreed to.

Amendment No. 4 not moved.

Section 2 deleted.

SECTION 3

Question proposed: “That section 3 be deleted.”

Deputy Seán Kyne: We were conscious of the need to include the word “prohibition”. The

word was in the original Title. As this is an amendment, and it now becomes an amendment of the Petroleum and Other Minerals Development Act 1960, we wanted to ensure that the word “prohibition” was included. This Act may be cited now with the Petroleum and Other Minerals Development Act (Prohibition of Onshore Hydraulic Fracturing) Act 2017.

Chairman: Are there any comments by members? No.

Question put and agreed to.

TITLE

Deputy Seán Kyne: I move amendment No. 5:

In page 3, to delete lines 7 to 9 and substitute the following:

“An Act to amend the Petroleum and Other Minerals Development Act 1960 to provide for the prohibition of exploration for and extraction of onshore petroleum by means of hydraulic fracturing; and to provide for related matters.”.

My amendment reflects that this is an Act to amend the original Petroleum and Other Minerals Development Act 1960. It provides for the prohibition of the exploration and extraction of onshore petroleum by means of hydraulic fracturing and to provide for related matters.

Deputy Eamon Ryan: Does the provision include gas? In everyday parlance, one would take petroleum to mean petroleum oil. My one concern about the definition of petroleum is that it does not include gas as a fuel to be extracted.

Deputy Seán Kyne: My earlier amendment means that the definition is as follows: “hydraulic fracturing means the generation of mechanical fractures in rock below the surface by means of the physical process of pumping fluid”. Under the accepted terminology, gas is included in the definition as a fluid.

Deputy Eamon Ryan: As a petroleum?

Deputy Seán Kyne: As a fluid.

Deputy Eamon Ryan: Yes.

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

Chairman: Does Deputy McLoughlin wish to make a final comment?

Deputy Tony McLoughlin: I thank the clerk and his staff for inviting me here this evening for this Committee Stage debate. I thank the Chairman for her support and assistance thus far. It has been greatly appreciated to date. I take this opportunity to thank all of the Oireachtas Members of this committee for their support of my Bill. I also thank all of the members of the Oireachtas joint committee who compiled the pre-legislative scrutiny report that was launched last month. I thank the Members who attended the launch and recently spoke to the media and local groups that attended.

The report, which firmly supports the need and scope of my Bill, was yet another indication

that Dáil Éireann, as a whole, is committed to acting to prohibit the process of fracking from ever being allowed to occur in this country. It joins the unique moment on a day in September 2016 whereby all parties bar none in the Dáil came together to speak in support of the Bill on Second Stage. I wish to state for the record of the committee that I have brought the Minister's amendments that were before us today to the close attention of the communities in both counties Sligo and Leitrim. Over the past number of weeks I have analysed and discussed the amendments with groups such as Lovely Leitrim, Good Energies Alliance Ireland and others. They have informed me this week that the amendments have been accepted on the ground and they welcome what has happened here this evening. On that note, the speed and momentum with which this Bill has cleared pre-legislative scrutiny and Committee Stage must be highlighted. Others outside of the House have overlooked the difficult political realities and requirements involved when writing legislation. I wish to acknowledge, in particular, the scrutiny required when dealing with a Private Members' Bill and the politics involved in having such Bills accepted by the Government and the Department. I acknowledge that this Bill is unique legislation that has moved very quickly through the Houses. I acknowledge each and every person involved and thank them for their efforts. No efforts have been made to undermine or delay the legislation. I suspect that the Bill could not have proceeded any quicker and I ask the Minister of State to clarify this.

I am a humble backbencher from the Sligo-Leitrim constituency. For me, today is a groundbreaking moment in Irish politics. I am aware that a Private Members' Bill, let alone one from a non-committee member, rarely if ever reaches Committee Stage in the legislative process. What has happened here today proves that new politics, despite all of the negative comments the media, can work and works quite well. This Bill's passage to Report and Final Stages is solid proof. The Government has accepted this Bill and I presume that it will table its own amendments to improve the legislation. I anticipate that the Bill will reach Report and Final Stages quickly and will make substantial progress by the summer recess. I thank the Chairman, all of the Members and the Minister of State who are present, the Minister and all of the officials for their assistance.

Chairman: I thank the Deputy and congratulate him on his Bill. Deputies Smith and Stanley wish to say a few words.

Deputy Bríd Smith: I congratulate Deputy McLoughlin on his Bill and agree with him that passing Committee Stage is an important step forward.

I have one niggling concern. I wish to raise a political matter even though I know is not the responsibility of this committee. I would like everybody to discuss, in a joined-up manner, whether my concerns are justified or unfounded. The Comprehensive Economic and Trade Agreement, CETA, is being signed by over 20 countries at the moment and we are about to sign up to it also. We have briefly discussed CETA before. As far as I know, CETA can allow for interference in local rules when it comes to making decisions about free trade under this agreement. I am a member of the Oireachtas Joint Committee on Jobs, Enterprise and Innovation. That committee discussed the matter but it was not clarified enough for me. Perhaps the Minister of State or Deputy McLoughlin who are present will express their views on the following CETA matter. If CETA is passed there is a possibility that a country like Canada could challenge the law on the basis that it flies in the face of the sentiments of CETA, which is not to block a production or trade agreement that is enshrined by CETA. There are fracking companies in Canada that may wish to carry out fracking in this country but today's Bill should prevent them from doing so. Can such companies call for an investigation, considering what

is enshrined in the law, into the economic blocking of a Canadian company that wishes to conduct fracking in this country? Can such a company refer the matter to a court of law citing the trade agreement and a court impose a heavy fine on Ireland for preventing fracking? I did not get a satisfactory answer to my query from the Minister for Jobs, Enterprise and Innovation at a meeting of the Joint Committee on Jobs, Enterprise and Innovation. Perhaps the Minister of State can address my query because I am still unclear about the matter.

Deputy Brian Stanley: I was unable to speak on Committee Stage because I was stuck in the Chamber debating Priority Questions. As I have mentioned before, committees sitting at the same time as oral parliamentary questions are being dealt with in the Dáil Chamber is problematic for Members.

I wish to raise a number of issues on Committee Stage. I welcome the Bill and my party supports the fact that the legislation has moved quickly.

We await further information on a number of matters. Last week we got some of the information from the Department and I thank the officials for their clarifications. I will table amendments on Report Stage because I want to ensure that the legislation is tight. I will table amendments on offshore drilling as it takes place along the coasts of other countries. We have a great opportunity to ensure that we get the legislation right. We also have a responsibility to ensure that the Bill moves quickly. I will address offshore drilling by tabling amendments on Report Stage.

Chairman: Can the Deputy briefly highlight his amendments now?

Deputy Brian Stanley: Yes. The Bill deals with onshore drilling. I will table amendments on hydraulic fracking offshore on Report Stage because I want to ensure its purpose is outlined clearly.

I congratulate everybody for dealing with the legislation so quickly, including the officials. I also thank Deputy McLoughlin for introducing the legislation.

Deputy Seán Kyne: I will first respond to the issue raised by Deputy Stanley. He is entitled to table amendments on Report Stage. The Title of the original Bill proposed by Deputy McLoughlin referred to the prohibition of onshore hydraulic fracturing.

Deputy Smith mentioned CETA. The matter was discussed by Mr. Matthew Collins, Assistant Secretary General, Department of Communication, Climate Action and Environment, when he appeared before the Oireachtas Joint Committee on Communications, Climate Action and Environment on 31 January. On that occasion he said that Ireland, as a sovereign State, is entitled to regulate the area of activity in question without contravening CETA. France has also introduced a legal prohibition and it is party to the European Union discussion on CETA that is due to be signed.

Article 8.9.1 of CETA provides:

For the purpose of this Chapter, the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.

I shall quote a statement given by Assistant Secretary General, Mr. Matthew Collins, last

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January: “As this prohibition is being sought on, *inter alia*, environmental grounds, it would appear that Ireland is entitled to regulate the area/activity in question, without contravening CETA.”

Deputy Bríd Smith: I, too, will table amendments on the matter.

Chairman: Can the Deputy outline them?

Deputy Bríd Smith: I will table an amendment on offshore activities and another amendment on the definition of fracking.

Deputy Eamon Ryan: Deputy Smith asked a valid question on CETA. We should start thinking about counter suing Canada for the destruction of our planetary atmosphere through its use of fracking, which is truly scandalous. It is a proud day when Ireland stands up and declares we will not do the same. We should sue Canada for its activities.

Message to Dáil

Chairman: In accordance with Standing Order 90, the Clerk to the Committee will send the following message to the Clerk of the Dáil:

The Select Committee on Communications, Climate Action and Environment has completed its consideration of the Prohibition of the Exploration and Extraction of Onshore Petroleum Bill 2016 and has made amendments thereto.

I thank Deputy McLoughlin, the Minister of State and his officials for attending today.

The select committee will meet again at 11 a.m. on Tuesday, 16 May to debate Committee Stage of the Inland Fisheries (Amendment) Bill 2017. The select committee will meet on the following day, Wednesday, 17 May, to debate Committee Stage of the Minerals Development Bill 2015.

The joint committee will meet at 7 p.m. this evening to review Ireland’s electricity grid development strategy 2017 and the proposed Celtic interconnector between Ireland and France in the context of the withdrawal of the United Kingdom from the European Union.

The select committee adjourned at 6 p.m. until 11 a.m. on Tuesday, 16 May 2017.