

DÁIL ÉIREANN

AN ROGHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

SELECT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND RE- FORM, AND TAOISEACH

Déardaoin, 19 Aibreán 2018

Thursday, 19 April 2018

Tháinig an Roghchoiste le chéile ag 10 a.m.

The Select Committee met at 10 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	
Peter Burke,	
Michael D'Arcy (Minister of State at the Department of Finance),	
John Deasy,	
Pearse Doherty,	
Martin Kenny,+	
Paul Murphy,	
Sean Sherlock.*	

* In éagmais / In the absence of Deputy Joan Burton.

+ In éagmais le haghaidh cuid den choiste / In the absence for part of the meeting of Deputy Pearse Doherty.

I láthair / In attendance: Deputies Thomas Pringle and Eamon Ryan.

Teachta / Deputy Michael McGrath sa Chathaoir / in the Chair.

Business of Select Committee

Acting Chairman (Deputy Michael McGrath): With the permission of members, I will act as Chair in the absence of Deputy McGuinness. I remind members to ensure that their mobile phones are switched off. This is important, as phones cause serious problems for broadcasting, editorial and sound staff.

Apologies have been received from the Chairman. We also have notice that Deputy Martin Kenny is substituting for Deputy Pearse Doherty.

Fossil Fuel Divestment Bill 2016 [Private Members]: Committee Stage

Acting Chairman (Deputy Michael McGrath): This is a Private Members' Bill introduced by Deputy Pringle. We are considering Committee Stage today, which was referred to the select committee by order of the Dáil on 26 January 2017. The committee has conducted a detailed scrutiny of the Bill and has reported to the House accordingly. The committee recommended that the Bill proceed for Committee Stage consideration.

I welcome Deputy Pringle to the meeting as sponsor of the Bill. I understand that he wishes to make some introductory remarks regarding the amendments.

Deputy Thomas Pringle: I thank the committee for taking Committee Stage of the Bill, which is important. It was introduced with symbolic and substantive intentions and seeks to focus attention on the urgent need to increase climate action and ambition, including the need to accelerate the phasing out of fossil fuels if the temperature limits adopted in the Paris Agreement are to be achievable. It is also a direct response to the commitment signed up to by the Government under Article 2 of the Paris Agreement to bring financial flows into line with decarbonisation commitments.

The context of the need for a significant increase in ambition in Ireland is worth noting. Our Climate Change Advisory Council, CCAC, stated in its November 2017 annual report that Ireland was not on a pathway to economy-wide decarbonisation by 2050. It also stated: "However, to achieve Ireland's objective of decarbonisation, major new policies and measures, along with changes in current practices are required."

In November 2017, the Environmental Protection Agency, EPA, said in a press statement that the overall emission trends were increasing, making the achievement of Ireland's long-term decarbonisation goals more difficult. In *The Irish Times* in January, Mr. Joseph Curtin, a senior research fellow at the Institute of International and European Affairs, IIEA, and a member of the CCAC, wrote: "Ireland has failed to get to grips with its climate targets. Over the past month, the Citizens' Assembly, the Climate Change Advisory Council, and the Environmental Protection Agency have all called for urgent new measures to meet Ireland's climate obligations."

There are high levels of public and political support and the passage of this Bill on Second Stage received significant international media interest. There have been a considerable number

of high-profile fossil fuel divestment decisions in recent years, including by major universities such as Trinity College Dublin and NUI Galway, and by major cities across the world. Even the Rockefeller Foundation, a family fortune built on the extraction of fossil fuels, has announced divestment. In late 2017, the World Bank announced that it would no longer fund upstream oil and gas from 2019. In January 2018, New York became the most recent major city to announce its intention to divest. This Bill would make Ireland the first state to divest itself from fossil fuels and secure that commitment in legislation.

The Bill has never been about questioning the performance of our institutions, the intentions of the Ireland Strategic Investment Fund, ISIF, or any Government agency. It is about the fact that we all need to do much more at all levels if we are to deliver on the commitments that were made in everyone's interests in the Paris Agreement.

I will take this opportunity to offer my thanks to the Department of Finance officials who were helpful during my negotiations with them in recent weeks - Mr. Eoin Brogan, Mr. Anthony Malone and Mr. Brendan Coogan - and Ms Emma Jane Joyce from the ISIF. There may be some others whom I have left out, but I thank them all for their work on this matter. From Trócaire, I thank Ms Cliona Sharkey, Ms Niamh Garvey and Ms Selina Donnelly. From the Global Legal Action Network, GLAN, I thank Mr. Gerry Liston. All of these people have done Trojan work in getting this Bill ready for Committee Stage.

Before I forget, I will thank my PA as well for her important work.

Acting Chairman (Deputy Michael McGrath): We will proceed to our discussion of the amendments, of which there are 19. They are being grouped together for discussion purposes. Once the discussion is over, we will go through each section and amendment and put the questions as appropriate.

SECTION 1

Deputy Thomas Pringle: I move amendment No. 1:

In page 3, to delete lines 13 to 29 and substitute the following:

“(a) by inserting the following new section after section 49:

“Investment in Fossil Fuel Businesses

49A. (1) In this section--

‘fellow subsidiary undertakings’, ‘higher holding undertaking’, ‘holding undertaking’ and ‘undertaking’ have the same meanings as they have, respectively, in section 275 of the Companies Act 2014;

‘fossil fuel’ means coal, oil, natural gas, peat or any derivative thereof intended for use in the production of energy by combustion;

‘fossil fuel business’ means an undertaking which is--

(a) engaged, for the time being, in the exploration for or extraction or refinement of a fossil fuel where that activity is not an incidental or marginal part of the business of that undertaking, or

(b) a holding undertaking or, as the case may be, a higher holding

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undertaking of an undertaking or undertakings of the kind referred to in paragraph (a) where the turnover of that undertaking or those undertakings comprises at least 15 percent of relevant turnover;

‘group of undertakings’ means an undertaking or undertakings of the kind referred to in part (a) of the definition of fossil fuel business together with its fellow subsidiary undertakings;

‘investment’ includes both debt-based and equity-based investment and cognate words shall be construed accordingly;

‘relevant turnover’ means the turnover of a group of undertakings in the most recently completed financial year of the holding undertaking or, as the case may be, of the higher holding undertaking thereof;

‘turnover’ in relation to an undertaking or a group of undertakings means the amounts of revenue derived from the provision of goods and services falling within the undertaking’s or group of undertaking’s ordinary activities, after deduction of--

- (a) trade discounts,
- (b) value-added tax, and
- (c) any other taxes based on the amounts so derived.

(2) The definition of a fossil fuel business in subsection (1) may, by a regulation adopted by the Minister pursuant to this subsection, be expanded to include any type of activity engaged in by an undertaking that relates in any way to the use of a fossil fuel.

(3) (a) The Agency shall endeavour to avoid the direct investment of the assets of the Fund in a fossil fuel business.

(b) Where the assets of the Fund are directly invested in a business which is or becomes a fossil fuel business, the Agency shall divest itself of its investment in that business at the first point in time at which it becomes possible to do so without causing the Fund to incur a contractual penalty for doing so.

(4) The Agency shall avoid making any investment of the assets of the Fund in a collective investment undertaking or investment product at any time after the commencement of this section unless, having exercised due diligence, it is satisfied that there is not a significant probability that the assets of the Fund will be invested in a fossil fuel business.

(5) Notwithstanding subsections (3) and (4), the Agency may invest the assets of the Fund in a fossil fuel business or in a collective investment undertaking or investment product which thereafter invests its assets in a fossil fuel business, where--

- (a) the making of such an investment by the Agency contributes to the achievement by the State of the national transition objective as defined in section 3 of the Climate Action and Low Carbon Development Act

2015 (hereafter the ‘national transition objective’), the implementation of any existing or future obligations of the State referred to in paragraphs (a) and (b) of section 2 of that Act (hereafter the ‘State’s climate change obligations’) and the implementation of the policy of the Government on climate change,

(b) prior to the making of an investment pursuant to this section, the Agency conducts or procures the conducting of an assessment of the extent to which the making of such an investment would contribute to the achievement by the State of the national transition objective, the implementation of the State’s climate change obligations and the policy of the Government on climate change or, where such an assessment has been conducted by the Department of Communications, Climate Action and the environment, has regard to that assessment, and

(c) no later than two months prior to the making of an investment pursuant to this subsection, the Agency publishes on the internet the assessment referred to in paragraph (b).

(6) When publishing, in accordance with paragraph (c) of subsection (5), an assessment referred to in paragraph (b) of that subsection, the Agency may redact such part thereof as is necessary, and for such time as is necessary, to ensure the protection of commercially sensitive information or to ensure compliance by the Agency with any other provision of law for the time being in force.”.”.

This is a substantial amendment, so I will take a few minutes to go through its rationale. Amendment No. 1 includes the proposal to replace the term “company” with “business” throughout the Bill. The term “company”, as explicitly provided for by section 37 of the National Treasury Management (Amendment) Act 2014, refers to one particular type of business entity, but there are other types of business arrangement or entity that are excluded from this definition, for example, partnerships.

In response to concerns raised ahead of and during scrutiny stage about the breadth and definitions of the original Bill, a number of amendments have been made to the definition of “fossil fuel” and “fossil fuel company”. These definitions and their implications for the scope of the Bill should be viewed together. The inclusion of “intended for use in the production of energy by combustion” is one of the changes proposed to ensure that companies whose operations involve fossil fuels for non-combustion purposes clearly fall outside the scope of the Bill. Furthermore, the definition of “fossil fuel business” makes it clear that domestic or commercial combustion of fossil fuels falls outside the scope of the Bill except where commercial activities also include exploration, extraction or refining. The proposed definition of “fossil fuel” covers a closed, comprehensive list, including coal, oil, natural gas and peat.

The proposed subsection (1)(a) introduces a definition for “fossil fuel business” that has been drafted in co-operation with the Department of Finance, taking into account the committee’s discussion and recommendations on scrutiny stage. The Bill as originally drafted included a definition of “fossil fuel business” as a company whose business either wholly or partly engaged in exploration, extraction, refining, processing or delivery of fossil fuels. Further to the committee’s discussion, I had developed a proposal to replace “partly” with “mainly” and to include a reference to “for the purpose of combustion for energy” in order to tighten the definition to address the concerns raised about the potential administrative burden and unintended

consequences of the original broad definition. I also proposed the removal of the word “processing” which I recognise could be open to wide interpretation. I was also open to agreeing a threshold to define the word “mainly”, this being a suggestion put forward on the scrutiny stage by the Department. Together, these proposals represented a significant tightening of the definition from the outset of engagement. The threshold of 15% relevant turnover for a holding undertaking in the proposed section 49A1(b) is a proposal from the Department that I was happy to accept.

In subsequent engagement with the Department and the Ireland Strategic Investment Fund, ISIF, it was highlighted that the administrative burden of screening for companies involved in exploration, extraction, refining and delivery would be high and have potential unintended consequences, capturing, for example, many small and medium enterprises, SMEs, which are not the target of this Bill. I have thus accepted significant further tightening of the Bill, restricting the company activities falling under the Bill to “exploration, extraction and refinement”. This is also reflected in the Government’s amendments.

With regard to subsection (2), in light of the significant tightening of the definition of “fossil fuel company” in the original Bill, changing the wording from “exploration, extraction, refining, processing or delivery of fossil fuels” to “exploration, extraction and refining”, this provision allows the Minister to expand this definition as she or he sees fit. This is part of ensuring that this legislation can remain relevant as the transition advances. While this legislation can be the first of its kind in the world, in ten or even five years the definition of “fossil fuel company” as currently drafted could be outdated. To ensure continued momentum, the Minister could have the capacity to expand, and not contract, the definition as he or she considers appropriate.

With regard to subsection (3), the divestment provisions have been amended to make explicitly clear that the fund will not be expected to break contractual obligations or incur costs as a result of breaking contracts. This formulation highlights these such costs as distinct from normal transaction costs occurring with normal investment cycles.

The indirect provision is worded differently in recognition of the different role and control of ISIF in managing its indirect investments. It establishes the obligation to pursue fossil fuel-free indirect investment within the scope of the now significantly tightened definition of “fossil fuel business” under the Bill. It recognises the need to exercise due diligence at the outset of each indirect investment.

With regard to subsection (5), in response to the recommendation in the pre-legislative scrutiny report that the Bill not limit the ability of ISIF to support the transition, my first amendment proposals included two flexibility provisions. The first provision would allow ISIF to invest in companies captured by the Bill where this is explicitly to support them to transition away from being a fossil fuel business. The second was a broader provision allowing for investment in fossil fuel companies to continue where this was contributing to the national transition objective, the national climate change policy and the State’s climate change obligations.

Based on discussions with the legal division of the Department, it was accepted that one provision should go forward that provided the broader flexibility for ISIF to invest where it contributes to the national transition objective etc. While we think it would have been a strength of the Bill to have a provision explicitly state that fossil fuel companies seeking to transition away from fossil fuels would be eligible for investment, it was accepted that, given the broader flexibility provided by the second provision, which allows for investment where the end date is unknown, as with gas, it could result in a superfluous provision. This compromise, to have one

broad flexibility provision, is reflected in subsection (5)(b).

To ensure the flexibility provision does not render the divestment provisions meaningless, I had included a provision that would oblige the Minister for Communications, Climate Action and Environment to confirm the extent to which the investment contributes to the national transition objective, the national climate policy and the State's climate change obligations, publishing an assessment to this end three months before the investment decision. Further to consultation with the Department, it has been understood that this would compromise the governance arrangements of the ISIF and its relationship to public expenditure. On this basis, I have put forward a similar provision requiring that an assessment be conducted and be made publicly available, but with a focus on ISIF only, excluding political involvement entirely. It requires ISIF to conduct an assessment of the extent to which the investment would contribute to the delivery of the national transition objective, the State's climate change targets and the Government policy on climate change. Where relevant assessment has been conducted by the Department, ISIF may have regard to this.

ISIF already conducts *ex ante* environmental, social and governance, ESG, assessments, including on carbon intensity where relevant, for its investments, so the basis for such assessments exists. With the commitment in the programme for Government for a national dialogue on climate action and the commitment that preceded this in the 2015 energy White Paper for an energy forum to enable citizens to engage in debates on the State's energy future, making this information publicly available in advance of decisions being taken is considered a reasonable objective. In view of potential commercial sensitivity issues and data protection requirements, publication could be limited to relevant details, with any sensitive information redacted. That is just an explanation

Acting Chairman (Deputy Michael McGrath): Would the Minister of State like to contribute now?

Minister of State at the Department of Finance (Deputy Michael D'Arcy): I thank the Acting Chairman. He looks very well in the Chair.

Acting Chairman (Deputy Michael McGrath): I thank the Minister of State.

Deputy Michael D'Arcy: I thank Deputy Pringle for the work he has done on this Bill. I also thank the staff and the bodies advising him, such as Trócaire. It is appreciated. I am somebody who wants to be helpful and I am very glad to hear the interaction between the Deputy and the Government agencies has been good. We have not gone all the way towards what the Deputy desires, but while we may not always agree and while we will see how it goes, I am very open to matters being reconsidered on Report Stage. I want to be helpful on all Stages and I want to be facilitating. As Deputy Pringle said, this is the first occasion on which such legislation has been considered anywhere. That said, I want to make sure we do not pass legislation that could have unintended consequences. We all know that sometimes happens. I am happy to be as facilitating and helpful as I can.

Despite progress made, full agreement on proposed amendments has not been reached, and Deputy Pringle's text contains a number of issues that would make ISIF extremely difficult to operate in terms of investments in Ireland and globally. The key difficulties with amendment No. 1 can be grouped. The proposed definition of "fossil fuel" cannot be accepted as it is not sufficiently precise from the Government's viewpoint, with the inclusion of "gas" in the definition not aligned with the State's climate change and energy policy. Gas is key in supporting the

transition to a low-carbon economy. The amendment also provides a definition for a “fossil fuel business”, which includes the terms “exploration”, “extraction” and “refinement”. It is positive that the definition no longer mentions “processing” and “delivery”.

When considering these proposed amendments, it is important to consider that the ISIF discretionary portfolio has two key components: first, the Irish portfolio, which includes the direct and indirect investments by ISIF in support of its mandate; and second, the global portfolio, which includes the balance of ISIF in advance of its investment in Ireland. At present, the funds in the global portfolio are invested in funds to earn a return until the funds are required for investment in projects in Ireland.

In this time of negative interest rates and negative returns, it is a challenge for the global portfolio to earn a sufficient low-risk return to ensure that its funds are protected and remain available for investment in Irish projects. The proposed amendments would make it very difficult for these investments to continue, thus making it more difficult for the ISIF global portfolio to earn a return to protect and maintain these funds. The committee needs to consider very carefully any proposed amendments that could lead to a loss of State funds. That said, the prospect of a money Bill being outlined is not being considered here. What I would like to do is reach a position on which we can all agree rather than propose that this has a financial impact on the State.

In discussions with Deputy Pringle, it has been highlighted that to make the Bill workable, certain thresholds should be inserted that would serve as a cut-off point for ISIF’s exposure. The amendment in this regard seeks a 15% threshold across the full range of fossil fuel exposures. However, ISIF has advised, based on international experience, that different threshold levels should be applied to each fossil fuel type. This would provide for varying thresholds in line with carbon emittance, meaning the worst fuels would have lower thresholds. It is important to note the setting of the higher 50% statutory threshold does not preclude ISIF from setting lower thresholds within its sustainability and responsible investment policy. ISIF already has thresholds of 30% for thermal coal and 10% for oil sands, both of which preclude investment in a number of companies. The setting of these thresholds through the sustainability and responsible investment policy ensures that ISIF can go to lower thresholds on an operational basis without a risking a statutory breach when the level is set at 15% or above. A wider and even more serious risk is that, as a result of the proposed statutory requirements relating to a Minister making an order-assessment on individual investments, all of ISIF’s investments could be brought on-balance sheet. This would have a significant impact on public expenditure as any spending by ISIF would require a reduction in wider public spending to meet the expenditure benchmark.

A further complication arises from the requirement for ISIF to publish an assessment of how an investment contributes to the national transition objective two months prior to making that investment. While the provision allows for the protection of commercially sensitive information, this is not sufficient. The release into the public domain of any level of detail regarding an investment in advance of its finalisation could expose ISIF to litigation by co-investors or client companies.

Acting Chairman (Deputy Michael McGrath): Has the Minister of State spoken to all of the amendments in the group?

Deputy Michael D’Arcy: That is just amendment No. 1.

Acting Chairman (Deputy Michael McGrath): They are grouped for discussion so we can discuss the entire block of 19 amendments. If the Minister wishes to speak to the other amendments, now is the time to do so.

Deputy Michael D’Arcy: Will I discuss amendments Nos. 2 to 8, inclusive?

Acting Chairman (Deputy Michael McGrath): Everything. When the Minister of State concludes, I will bring the members in. There is no need to move the amendments. The Minister of State can just discuss them.

Deputy Michael D’Arcy: Amendment No. 2 will correct the Bill’s reference to section 2 of the National Treasury Management Agency (Amendment) Act 2014. The reference should instead be to section 37 of the Act. While section 2 of the Act outlines the definitions for the Act as a whole, it is section 37 which outlines the definitions in respect of ISIF. Therefore, any definitions arising out of this Bill should be inserted in section 37.

Amendment No. 3 is a technical drafting change which is necessary to reflect that I am proposing that a number of new definitions be inserted in the section and not just one. Therefore, the reference to the plural is necessary. Amendment No. 4 is a technical drafting change which is necessary to reflect that, as per amendment No. 2, the definitions arising from this Bill should be in section 37 and not section 2.

Amendment No. 5 seeks to address the issue posed by the word “partly” whereby minimal levels of exposure to fossil fuels would be captured by the definition of a fossil fuel company. The amendment seeks to change the definition to “mainly”, which would target companies whose main line of business is based on fossil fuels and which are the target of the Bill’s provisions.

Amendments Nos. 6 and 7 seek to address the issue posed by the broad scope of the definition of “fossil fuel company”. They seek to narrow the scope of the definition on the core aspects of fossil fuel activity, which I understand is the ultimate target of the Bill.

Amendment No. 8 seeks to address the concerns that ISIF investments in SMEs could be captured by the existing Bill because such entities are unlikely to be listed companies. The insertion of this amendment will ensure that the focus will be on the large international fossil fuel companies, which, we assume, is the intention behind the Bill.

Amendment No. 9 is technical and necessary due to the numbering and ordering conventions of legislative drafting. The Bill proposes a new subsection. Due to the ordering of section 39 of the National Treasury Management Agency (Amendment) Act 2014, this new subsection must be inserted before section 7. Therefore, this new subsection must be numbered 6(A).

Amendment No. 10 is necessary as the Bill’s reference to “direct” and “indirect” appears intended to capture ISIF’s Irish and global investments. However, the labels of “direct” and “indirect” do not refer to the global and Irish portfolios. Instead, they are types of investment that can feature in both portfolios. In order to address this, the amendment seeks to remove any ambiguity by clarifying that the provision applies to fossil fuel investments and complements this by inserting elsewhere an appropriate definition for a fossil fuel investment.

Amendment No. 11 is technical and necessary due to the conventions of legislative drafting. Amendment No. 12 complements amendment No. 10 and is necessary to ensure clarity and consistency regarding ISIF’s Irish and global investments. In order to address this, the

amendment seeks to remove any ambiguity by clarifying that the provision applies to fossil fuel investments. I think amendment No. 13 in the name of Deputy Michael McGrath is next.

Acting Chairman (Deputy Michael McGrath): The Minister of State can keep going.

Deputy Michael D’Arcy: Should I speak on the Acting Chairman’s amendment?

Acting Chairman (Deputy Michael McGrath): No, the Minister of State speaks about all of his amendments. He can come back in a minute.

Deputy Michael D’Arcy: Amendment No. 14 is necessary due to the numbering and ordering conventions of legislative drafting. The Bill proposes a new subsection. Due to the ordering of section 39 of the National Treasury Management (Amendment) Act 2014, this new subsection must be inserted before section 7. Therefore, this new subsection must be numbered 6(c) taking the same approach as for amendments Nos. 9 and 11. Amendment No. 15 is necessary for the appropriate reference to the Bill. Those are all of our amendments.

Deputy Martin Kenny: Deputy Pearse Doherty has supplied some notes on the legislation to me. I welcome the Bill and the work done by Deputy Pringle. We support amendment No. 1. I also welcome the words from the Minister of State that, in general, he would be supportive of it. However, when he went into the detail, I felt there was a bit of a drawback from that. One thing that strikes me immediately is the Minister’s reference to small and medium-sized businesses. We had issues with fracking in the north west. Licences were issued to small companies that came off the shelves. The idea was that these would be developed and then taken over by the bigger ones. That is the trend across the world - never mind in Ireland. The Minister said that there could be a risk of small companies being negatively affected. Small companies are simply pawns in this game that is being played by the bigger players. Anyone who takes an objective view of this will realise that.

Deputy Pringle mentioned that there was a lot of symbolism around the broad thrust of what we are doing but symbolism is very important. I know that, from the beginning, it was Trócaire that basically pushed this with many parties and individuals in order to ensure that Ireland would clearly be seen as a place that is lighting a flame and saying that this is the way forward and that the world needs to move away from fossil fuels and towards renewables. It is also in line with the UN sustainable development goals and many things to which Ireland has signed up.

Amendment No. 1 in the name of Deputy Pringle is excellent and takes care of many of the issues that were raised previously. The definition of “fossil fuels”, which includes fuels intended for use in the production of energy by combustion, goes a very long way to meet any concerns people might have about unintended consequences. It must be taken alongside the flexibility criteria that have already been added. Together, these elements positively and carefully address concerns while maintaining the spirit of the Bill. We have to wonder if anybody opposing these elements is in fact playing matters tactically in order to neuter the Bill while trying to appear as if they are in favour of it.

It is ironic that the Minister for Finance told the Committee on Budgetary Oversight yesterday that he would come back with figures indicating how large will be the EU will levy in respect of the State failing to meet its emissions targets while, today, this committee is trying to limit the effect of a Bill that is a direct consequence of that. It is not good economics in the long term if we do not move ahead with this.

We think that many of the Minister of State's and Deputy Michael McGrath's amendments are about limiting the usefulness of the Bill. Other issues are covered by the new section proposed by Deputy Pringle. We accept amendments Nos. 2, 3 and 4 because they are technical in nature and concern drafting issues. In respect of their being compatible with the new section proposed by Deputy Pringle, I am sure changes can be made at a later stage.

We are open-minded about amendment No. 4. The definition proposed by Deputy Pringle talks about activity that is not an incidental or marginal part of the business while the Minister of State proposes the word "mainly" replacing the word "partly" in the original text. On balance, Deputy Pringle's amendment seems tighter. Deputy Pringle's amendment is a substantive one. Passing it would allow for amendment on further Stages. Amendment No. 1 covers practically everything, so if we could get it through, we would expect the rest to fall.

The Minister of State's amendments Nos. 6 to 8, inclusive, are covered by the new definition in amendment No. 1. Amendments Nos. 6 and 7 are designed to limit the effect of the Bill and we oppose them. Amendments Nos. 9, 11, 14, 15, 17, 18 and 19 are technical amendments and they are stylistic in their approach. Amendment No. 10 from the Minister of State seeks to delete the phrase "direct or indirect". This is putting a horse and cart through the Bill and we are opposed to it.

We hope amendment No. 1 will pass and that the other amendments will fall as a result of that. The Minister of State has said he will come back on later Stages if he has better suggestions.

Deputy McGrath's amendment No. 14 is mainly covered in amendment No. 1 and, in any case, excluding SMEs completely goes too far. As I said at the outset, SMEs are usually used as a means for big companies to come in under the radar. Section 16 is covered in amendment No. 1.

The position is that Deputy Pringle's amendment No. 1 represents a fair attempt to take on board the suggestions and concerns of all sides, including Sinn Féin, and it should be supported and all other amendments withdrawn so that there will be a clearer vision on the next Stage. We ask the Minister of State to continue to engage, not on the basis of trying to subvert the primary purpose of the Bill but on the basis of dealing with genuine concerns and technical issues.

Deputy Paul Murphy: I was otherwise engaged when the last committee discussion took place. I thank Deputy Pringle and Trócaire for their work on the Bill. It is one of the most important Bills to come before the Dáil this term. To be blunt, the Minister of State's response is disappointing. It is fair enough to wrap it up in the pose of wanting to engage and being willing to engage further. Let us hope that works out but, as Deputy Kenny said, the substance of what is being said here is not really meeting Deputy Pringle halfway in terms of the compromises that clearly have been made and the bending over backwards to address the concerns that have been raised.

I will make three points that the Minister of State might respond to. First is the issue of unintended consequences. It is a stock phrase the Government uses when it is opposing something. It says it is worried about the unintended consequences. There is a very deep irony here in relying on unintended consequences. The climate crisis we are dealing with is a crisis of unintended consequences. Nobody set out to destroy our planet. Even the top 100 companies, which have been responsible for over 70% of greenhouse gas emissions since 1988, did not set out to destroy the planet; they just set out to make as much profit as possible and they do not care

about destroying the planet. The real unintended consequences of climate change, which is driven by fossil fuel companies which are the biggest greenhouse gas emitters in the world, and which is covered up by the greenhouse gas-fossil fuel lobby, politicians and right-wing parties that refuse to take them on, is horrifying. It will mean 250,000 additional deaths a year between 2030 and 2050 according to the World Health Organization. They are the real unintended consequences of climate change and we have the opportunity to do something both substantive in terms of investments but also, most importantly, symbolic that will assist the fight against climate change globally by saying Ireland will divest from fossil fuels. I ask the Minister of State to take on board those unintended consequences.

Second, more concretely, the Government has a problem with the inclusion of gas as a fossil fuel. Does the Minister of State accept that gas is a fossil fuel, by any definition?

Deputy Michael D’Arcy: It is a transition fuel.

Deputy Paul Murphy: It is a fossil fuel. It is not clean. It is a fossil fuel. It might not be quite as dirty as oil but it is not somewhere in between renewable energy and fossil fuels. It is not the position that wind energy and wave energy are on one side, oil energy on the opposite side and gas somewhere in the middle. It is a fossil fuel by any definition of what a fossil fuel is. The only reasonable opposition to the inclusion of gas that the Government could put forward is that it will be used during the transition. That is covered by Deputy Pringle’s amendment No. 1. To the extent it is being used as a transitional fuel, it is covered and is excluded. It is in line with Government policy when it talks about fossil fuels. The reason behind trying to exclude it is to create some kind of special category for gas and to say that gas is somehow not a fossil fuel when it is. I ask the Minister of State to accept that gas is a fossil fuel by any reasonable definition.

I will pick up on something the Minister of State said about the money message. Did he say that if we do not reach agreement, the Government will decide this needs a money message and will not give it?

Deputy Michael D’Arcy: I said the opposite.

Deputy Paul Murphy: No.

Deputy Michael D’Arcy: We will not apply a money message. We want to come to an agreement with the committee on the Bill.

Deputy Paul Murphy: If there is not agreement, the Government will not give a money message. That is my question.

Acting Chairman (Deputy Michael McGrath): As I understand it, a money message, if that issue was raised, would have been before Committee Stage. Is that right? It would not have got to Committee Stage if a money message had been required.

Deputy Paul Murphy: The Minister of State is saying he has not required a money message and he will not be requiring a money message regardless of whether we reach agreement.

Deputy Eamon Ryan: The last point is an important and welcome one. We are now on the path to legislating for this. Given we are on Committee Stage and given the numbers of Members who supported it on Second Stage in the Dáil, it means we will legislate for this. It is a real achievement by Deputy Pringle, Trócaire and others. My compulsion is that we get it

right. It is a complicated process and some of the Minister of State's amendments are beneficial in terms of the technical nature of drafting legislation.

I will make a number of points in response to Deputy Pringle's opening statement. There has been a fair bit of commentary about this Bill. Why is the environmental movement going with this divestment tack? Why is this a big deal? One of the reasons it is a big deal is that for 30 or 40 years the environmental movement has been hammering people at the end of the supply chain. We have been putting all the pressure on consumers asking if they are using the right products and being responsible. We have been asking if people have the right car or phone, for example, in terms of the materials that are used in it. There is a broad realisation that the approach is not getting us very far. It is shaming people and making them feel guilty. It is not working because we have not achieved the switch away from fossil fuels which we have to do urgently. There is a broad strategic sense led by organisations such as *www.350.org* and others that we need to start addressing the start of the pipeline and the fossil fuel supply chain and switch it off. We should do it confident in the knowledge that the alternative, renewable, energy efficiency systems, including the digital, transport and clean energy revolutions that are taking place, are part of the burgeoning new economy where anyone who is in any way smart should be investing. This is the new industrial revolution. This is a better, more efficient and cleaner economy and it is where all the money is going. People in the know know this is happening. It is only a small part of the economy but if one looks at the margin of investment changes, it is everything. A total of 90% of new investment is going into this clean area. Money going into the old legacy area is just the dregs and the last of that.

That is what we are doing. This is part of a global divestment movement. It is a fundamentally important approach to the issue of tackling climate change. Even since the Bill was introduced by Deputy Pringle, there are other examples such as the Norwegian sovereign investment fund which owns 1.5% of global stocks. It is not small. It is, admittedly, a fund built up on the basis of oil. It is a bit rich sometimes when the Norwegians and Scandinavians tell us what goody two-shoes they are. That fund is divesting from all fossil fuels. They have indicated they are going to do it later this year. The UK Government said in December that it will change its entire pension fund rules. The UK has £2 trillion in pension fund investments and it says it is changing the rules so that people can do fossil fuel divestment. We are not on our own in doing this, as neighbouring countries want to do it at scale. We have an urgent need to do it because our reputation, unfortunately, is dire when it comes to climate change, sometimes wrongly, because we are not bad at it as a country. There are loads of things we are really good at, but our reputation is shot because the Government in the last seven years, in particular, has been acting against climate action in every international arena. In the European Union negotiations, we used all our political capital to give agriculture a buy-out on climate. In the European clean energy and new market governance rules and new renewables directives the Government is taking an anti-climate change position and action on every file, despite the fact that we are really good at this new transition economy. The Government needs to start showing some leadership and change.

While I welcome that the Government has accepted the Bill and that it will be enacted, a couple of things the Minister of State said about the amendments really sound the wrong note. It was as if I was listening to Shell when I heard him say that gas is the transition fuel. I am sorry, but that is not the case. An Oireachtas delegation went to the UN climate negotiations in Bonn last year and we got a presentation from *priceofoil.org*, which is an international consultancy looking at what exactly it will mean to meet the targets set in the Paris climate agreement. There was a clear assessment based on a scientific analysis of what was agreed in Paris

and what would need to be done to meet it. It shows that even existing oil and gas fields and coal mines - not including new ones - will have to be restricted. In other words, it is not just the known fossil fuel reserves in the ground, it is the working mines, oil fields and gas fields. If we are serious about meeting the climate targets agreed in Paris we are not going to use all of that oil, gas, coal and peat. In that context, it is not correct to depict gas as a great, clean part of climate transition. Any country that takes that line is siding with the Russians, the Saudis and the Shells of this world. It hollers “God, these people do not get it” to anyone interested in climate change.

We will use gas for the next 20 to 30 years because we have a lot of new combined cycle power gas plants and they provide us with a balancing facility and we will import gas and we will use whatever is in the Corrib field for the next five to ten years but we will not get any more gas from our own waters. We have to manage that, but we will not be doing any new gas projects. The fact that we are building new gas networks in the midlands is one of the examples of how this Government does not get climate change. The fact that the Government is even considering a liquified natural gas, LNG, terminal in Shannon and in Cork is an indication that it does not get it. I am sorry about that. The Government is not part of the new clean energy revolution. It is doing damage to our country’s reputation. Gas is not a new, clean energy transition fuel. It is highly polluting. Increasingly, international research shows that because methane has such an incredibly high climate change effect, although it is short term, means that gas is not a transition fuel and it should be included with the other fossil fuels. We should keep this simple. It should be all fossil fuels. I am sorry but the Minister of State’s amendment just does more damage to our reputation. Hopefully, if we get it right this will be used as a message that Ireland is turning around and going green and we are leading the way. In doing that we will attract a huge amount of fund industry and financial services expertise here because we have it here in clean energy solutions. We attract it here because we are seen as being good at this. We would restore our reputation, which we can do, but we will not do it if we are talking about gas as a clean option because it is not. One cannot say that if one is interested in and serious about climate change.

The Minister of State cited complications about the funds and having a differential rate for various fossil fuels, but it is a case of no more fossil fuels. All of them must be gone. It is not possible to say coal is worse than peat which is worse than oil and to have a league table of good and bad fossil fuels, they will all have to go if we are serious about this, and if we are serious about it then the new economy will blossom. As a country we are really well placed to develop that and to attract huge international funds into this country and manage it and be good at it. Let us be good at it. Let us not be like Shell or the former Soviet Union, which is what the Minister of State’s comments at the start sounded like to me.

Deputy Thomas Pringle: I wish to address a couple of points that were made in response to the amendment, especially by the Minister of State. The recommendation of 15% is a Government suggestion. We took that on board from the Government’s arguments and included it. To increase it much further would reduce the effectiveness of the Bill and would not make any sense. We believe 15% is more than achievable.

In relation to the ministerial requirement for investments, in section 49A(6) we have removed the Government from the decision-making process and left it to the agency itself to make the decision. That was also an important factor that was raised by the Government.

Deputy Eamon Ryan and other speakers made the point abundantly clear that gas is a fossil fuel. We recognise that gas is a transition fuel in line with the Government’s approach and we

have included that in the section to allow the process to continue. That is important and should not take from the amendments.

The definition in Ireland of an SME is a company that employs up to 500 people. A small and medium enterprise has a broad definition in the Irish context. We have identified a number of changes to the text. For example, large companies in the business of exploration, extraction or refinement of fossil fuels for combustion or for energy purposes will fall within the scope of the Bill. We do not believe that would capture any significant number of SMEs in this country and for any of those that do the flexibility provision in the Bill ensures that they are still eligible for investment, should that investment be in the transition away from fossil fuels where that contributes to the delivery of the national transition objectives as well.

Deputy Michael D’Arcy: I wish to respond to a number of the points made. In terms of SMEs, which were raised by Deputies Martin Kenny and Pringle, in the Government amendment we capture those companies that would be fracking. A fossil fuel company is defined as one which wholly or mainly engages in the exploration, extraction or refining of fossil fuels. Those companies are all covered. I wish to clarify that matter for the meeting.

I assure Deputy Eamon Ryan that sustainable green finance is a priority in the 2018 action plan. The number one priority I have for financial services is that we would make this country become the sustainable green hub not just for Europe but globally. That is the objective. Everything we are doing is to try to pivot in that direction and we believe that we can do that.

I do not propose to get into a conversation with the Deputy about the agriculture sector because I am a dairy farmer and he and I are not going to agree on that. The position is the position. I have been pretty much consistent on that. The largest expenditure in the Ireland 2040 plan is in the climate change sector and the decarbonisation of the economy. Deputy Eamon Ryan is incorrect in saying the Government is not doing enough. I accept we will not meet the 2020 targets but we will meet the targets for 2030.

To respond to Deputy Paul Murphy, of course gas is a fossil fuel. However, we cannot ignore the position. At EU level the transitional role of gas, in particular, and its importance in underpinning European energy security has been clearly set out in an EU strategy paper, “Policy Framework for Climate and Energy in the period 2020 to 2030”. Regardless of whether I am pleased or displeased with it being a fossil fuel, it is a crucial element of the transition period in which we hope to move towards a much cleaner and more renewable sector for the future. That is the EU position. I do not know what the Shell position is, and I do not really care. However, I cannot ignore that we must try to ensure there are no unintended consequences to everything we do here. We also have to recognise that gas is crucial. We cannot ignore that.

Acting Chairman (Deputy Michael McGrath): There are two amendments in my name.

Deputy Michael D’Arcy: There is another unintended consequence I wish to mention. The State can potentially lose money through the global portfolio if the State is obliged to go into cash. There can be negative returns on that. Make no mistake, that is a fact. With interest rates at historically low levels for this period of time, if ISIF is obliged to move out of certain sectors and put money into cash it can be charged to have that cash. That can then be a charge on the State. It is important to remember that.

Acting Chairman (Deputy Michael McGrath): As I said to the Minister, amendments Nos. 13 and 16 are in my name. They primarily deal with the issues mentioned already regard-

ing the impact on micro, small and medium enterprises and where companies are transitioning from being a fossil fuel company. Amendment No. 16 refers to where divestment would trigger costs associated with contractual obligations. I accept that those issues are referred to in other amendments as well, so I will assess it as we proceed. I might well reserve them until Report Stage when we see how the Bill is progressing.

As nobody else wishes to contribute on the group of amendments, I will put the question. Is Deputy Pringle pressing the amendment?

Deputy Thomas Pringle: Yes.

Amendment put.

The Committee divided: Tá;, 3; Níl, 3.	
Tá;	Níl;
Kenny, Martin.	Burke, Peter.
McGrath, Michael.	D’Arcy, Michael.
Murphy, Paul.	Deasy, John.

Amendment declared carried.

Acting Chairman (Deputy Michael McGrath): Standing Order 97(1) negatives a question when there is an equality of votes.

Amendment declared lost.

Deputy Michael D’Arcy: I move amendment No. 2:

In page 3, line 13, to delete “section 2” and substitute “section 37”.

Amendment agreed to.

Deputy Michael D’Arcy: I move amendment No. 3:

In page 3, line 13, to delete “new definition” and substitute “definitions”.

Amendment agreed to.

Deputy Michael D’Arcy: I move amendment No. 4:

In page 3, line 14, to delete “enactment” and substitute “direction”.

Amendment agreed to.

Deputy Michael D’Arcy: I move amendment No. 5:

In page 3, line 16, to delete “partly” and substitute “mainly”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 2.	
Tá;	Níl;

Burke, Peter.	Kenny, Martin.
D’Arcy, Michael.	Murphy, Paul.
Deasy, John.	
McGrath, Michael.	

Amendment declared carried.

Deputy Michael D’Arcy: I move amendment No. 6:

In page 3, lines 16 and 17, to delete “extraction, refining, processing or delivery” and substitute “extraction or refining”.

Amendment put.

The Committee divided: Tá;, 4; Níl, 2.	
Tá;	Níl;
Burke, Peter.	Kenny, Martin.
D’Arcy, Michael.	Murphy, Paul.
Deasy, John.	
McGrath, Michael.	

Amendment declared carried.

Deputy Michael D’Arcy: I move amendment No. 7:

In page 3, line 17, to delete “fuels (geological deposits);” and substitute “fuels;”.

Amendment agreed to.

Deputy Michael D’Arcy: I move amendment No. 8:

In page 3, between lines 17 and 18, to insert the following:

“ ‘fossil fuel’ means geological deposits of thermal coal and oil sands;
 ‘fossil fuel investment’ means an investment which is mainly in listed
 stocks and securities of a fossil fuel company;”.

Amendment put.

The Committee divided: Tá;, 3; Níl, 4.	
Tá;	Níl;
Burke, Peter.	Kenny, Martin.
D’Arcy, Michael.	McGrath, Michael.
Deasy, John.	Murphy, Paul.
	Sherlock, Sean.

Amendment declared lost.

Deputy Michael D’Arcy: I move amendment No. 9:

In page 3, line 21, to delete “(7) Nothing” and substitute “(6A) Nothing”.

Amendment agreed to.

Deputy Michael D’Arcy: I move amendment No. 10:

In page 3, lines 22 and 23, to delete “investment, direct or indirect,” and substitute “fossil fuel investment”.

Amendment put.

The Committee divided: Tá; 3; Níl, 3.	
Tá;	Níl;
Burke, Peter.	Kenny, Martin.
D’Arcy, Michael.	Murphy, Paul.
Deasy, John.	Sherlock, Sean.

Amendment declared lost.

Staon: Deputy Michael McGrath.

Acting Chairman (Deputy Michael McGrath): Standing Order 97(1) negatives a question when there is an equality of votes.

Amendment declared lost.

Deputy Michael D’Arcy: I move amendment No. 11:

In page 3, line 24, to delete “(8) Upon commencement of this subsection” and substitute “(6B) Upon the passing of the *Fossil Fuel Divestment Act 2018*”.

Amendment agreed to.

Deputy Michael D’Arcy: I move amendment No. 12:

In page 3, lines 25 and 26, to delete “, directly or indirectly,” and substitute “in a fossil fuel investment”.

Amendment, by leave, withdrawn.

Acting Chairman (Deputy Michael McGrath): I move amendment No. 13:

In page 3, in line 26 after “companies”, to insert the following:

“except for investments where the Agency determines that—

(a) the relevant fossil fuel company is transitioning away from being a fossil fuel company,

(b) the relevant fossil fuel company is not exploring, extracting, refining, processing or delivering fossil fuels for the ultimate purpose of combustion, or

(c) the fossil fuel company is a micro, small or medium sized enterprise within the meaning of Article 2 of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003”.

Amendment, by leave, withdrawn.

Deputy Michael D’Arcy: I move amendment No. 14:

In page 3, line 27, to delete “(9) The Agency” and substitute “(6C) The Agency”.

Amendment agreed to.

Deputy Michael D’Arcy: I move amendment No. 15:

In page 3, line 29, to delete “commencement of this subsection” and substitute “passing of the *Fossil Fuel Divestment Act 2018*”.

Amendment agreed to.

Acting Chairman (Deputy Michael McGrath): I move amendment No. 16:

In page 3, line 29, after “subsection”, to insert the following:

“except for where such divestment incurs costs or penalties for the breaching of the contractual obligations of the Agency or the Fund in which case the Agency shall divest from such investments at the first point in time at which it becomes possible to divest without incurring such costs or penalties”.

Amendment, by leave, withdrawn.

Acting Chairman (Deputy Michael McGrath): Amendment No. 17, in the name of Deputy Pringle, is deemed to be consequential to amendment No. 1, which has fallen, so amendment No. 17 will not be taken at this point.

Deputy Thomas Pringle: Do I have leave to reintroduce it on Report Stage?

Acting Chairman (Deputy Michael McGrath): Yes.

Amendment No. 17 not moved.

Section 1, as amended, agreed to.

Section 2 agreed to.

TITLE

Deputy Thomas Pringle: I move amendment No. 18:

In page 3, line 6, to delete “instructing” and substitute “requiring”.

Amendment agreed to.

Deputy Thomas Pringle: I move amendment No. 19:

SFPERT

In page 3, lines 7 and 8, to delete “companies within five years of the commencement of this Act” and substitute “businesses”.

Amendment put.

The Committee divided: Tá; 2; Níl, 4.	
Tá;	Níl;
Kenny, Martin.	Burke, Peter.
Murphy, Paul.	D’Arcy, Michael.
	Deasy, John.
	McGrath, Michael.

Amendment declared lost.

Title, as amended, agreed to.

Bill reported with amendments.

Message to Dáil

Acting Chairman (Deputy Michael McGrath): In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Finance, Public Expenditure and Reform, and Taoiseach has completed its consideration of the Fossil Fuel Divestment Bill 2016 and made amendments thereto.

The select committee adjourned at 12:05 p.m. until 10 a.m. on Thursday, 31 May 2018.