

ONSHORE FRACKING (PROHIBITION) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by Áine Murphy MLA (“the Member”), in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Member contends that scientific studies increasingly show that fracking can have damaging impacts on the environment and communities. The EU’s Scientific Committee on Health, Environmental and Emerging Risks (‘SCHEER’) in 2018 identified (whilst acknowledging a paucity of sound data in many areas) key risks that extraction including hydraulic fracturing (‘fracking’) could have significant negative impacts on both the environment and the health and wellbeing of nearby populations. Understanding of these risks is developing (e.g. links to seismic activity) and the Member notes that the policy trend against fracking in neighbouring jurisdictions reflects this context.
4. In NI, the former Department of Enterprise, Trade and Investment (‘DETI’) granted four petroleum exploration licences in 2011 and in that year the Assembly debated and carried a motion supporting a moratorium on fracking. In September 2015, the “Strategic Planning Policy Statement – Planning for Sustainable Development” (‘SPPS’) was published by the former Department of the Environment. That publication included a presumption against granting planning permission to developments seeking to exploit unconventional hydrocarbons in NI. There are currently no active petroleum licences in NI. The Department for the Economy (‘DfE’), is in receipt of two applications that remain under consideration.
5. In 2020, the Minister for the Economy announced a high-level review of petroleum licencing within the DfE. That review, which has not yet been

- published, will focus on the economic, environmental and societal impacts of petroleum activities in NI.
6. The Irish Government and jurisdictions in Great Britain, have already taken steps to prohibit fracking either by a legislative ban or a policy moratorium (in the case of Scotland, this was implemented through planning legislation and in Wales through powers under the Wales Act 2017). In the Oireachtas, the Petroleum and Other Minerals Development (Prohibition of Onshore Hydraulic Fracturing) Act 2017 ('the 2017 Act') was signed into law on 6 July 2017. The Act provides 'for the prohibition of exploration for and extraction of onshore petroleum by means of hydraulic fracturing; and to provide for related matters.'. The 2017 Act makes any contravention of the ban an offence and puts in place associated penalties.
 7. The UK's then Business, Energy and Industrial Strategy Secretary announced a moratorium on fracking in England following a report from the Oil and Gas Authority ('OGA') which identified the potential risks of links between fracking and seismic activity (tremors). The Minister stated on 2 November 2019, '...After reviewing the OGA's report into recent seismic activity at Preston New Road, it is clear that we cannot rule out future unacceptable impacts on the local community. For this reason, I have concluded that we should put a moratorium on fracking in England with immediate effect'.
 8. The Member believes that the Bill aligns with the wishes of the Assembly as agreed following a Private Member's Motion which was debated on 13 October 2020:

"That this Assembly recognises the moratoria, in various forms, on fracking in England, Scotland and Wales and the ban on fracking in the Republic of Ireland; notes that this motion builds on the 2015 strategic planning policy statement presumption against the exploitation of unconventional hydrocarbon extraction in Northern Ireland; acknowledges its responsibility to protect public health and the environment; and calls on the Executive to instigate an immediate moratorium on petroleum licensing for all exploration for, drilling for and extraction of hydrocarbons until legislation is brought forward that bans all exploration for, drilling for and extraction of hydrocarbons in Northern Ireland."
 9. The Member's initial intention was that this Bill would prohibit both onshore and offshore fracking. However, it became apparent that legislating for offshore fracking would require the written consent from the Secretary of State. The Member wrote to the Secretary of State and received a response that sought some additional information. A response has been provided to the Secretary of State with this additional information but, as of yet, no subsequent response has been received.

10. In order to progress the introduction of legislation before the end of the current mandate, the Member has decided to proceed with a Bill to prohibit onshore fracking, with a view of addressing the issue of offshore fracking in the next mandate upon receipt of a response and consent from the Secretary of State.
11. The Onshore Fracking (Prohibition) Bill has a single policy objective:
 - a. To secure a ban on the issuing of licences for the onshore exploration, extraction and production of fossil fuels by means of fracking in NI.

CONSULTATION

12. The Member conducted a consultation exercise over an eight-week period between 2 December 2020 and 27 January 2021. The Member also shared her legislative proposal with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland.

OPTIONS CONSIDERED

13. **Option 1:** Do Nothing.
14. **Option 2:** Proceed with the Bill to amend the Petroleum (Production) Act (Northern Ireland) 1964 to end onshore fracking.

The Member notes the impact of moratoriums on fracking and growing consensus of concern around its use as a means of oil and gas exploration. However, the Member considers that a legislative prohibition would give a clear and enduring signal of our determination to prohibit the practice in this jurisdiction. Following consultation and deliberation, the Member considers that amending primary legislation is the best mechanism by which to achieve the policy objectives.

OVERVIEW

15. The Bill has three clauses and no schedules. A commentary on each of the clauses follows below.

COMMENTARY ON CLAUSES

Clause 1 - Prohibition of onshore hydraulic fracturing ('fracking'): The main provision in clause 1 is the insertion of a new section 2A into the existing legislation dealing with petroleum extraction. That legislation is the Petroleum (Production) Act (Northern Ireland) 1964.

The new section 2A makes onshore fracking unlawful. The effects of this on the existing legislation are then spelt out explicitly. Firstly, the Department has no power to frack (that right is currently included within section 1 of the 1964 Act). Secondly, the Department has no power to grant a fracking licence (that power is

currently included in section 2 of the 1964 Act). Thirdly, any existing licence for onshore fracking is void to the extent that it authorises onshore fracking.

Clause 1 also sets out the technical definition of onshore hydraulic fracturing ('fracking'). This covers all fracking, except fracking on the foreshore or in the sea.

Clause 2 - Commencement: sets out when the provisions will come into effect/force.

Clause 3 - Short title: sets the short title by which the Act may be cited.

FINANCIAL EFFECTS OF THE BILL

16. The Member considers that due to the absence of a specific study into potential impacts of fracking on the public purse, it is difficult to project financial effects at this time. However, DfE has commissioned research into the economic, societal and environmental impacts of future onshore petroleum exploration and production, including Unconventional Oil and Gas (UOG) in NI. This work was commissioned at the end of 2020 and findings have not yet been published. It is important to examine studies conducted in other jurisdictions, for example Scotland and Wales. Based on this assessment of fracking, the key implication from a public purse perspective of prohibiting the practice appears to be a loss of potential revenue. The DfE in their guidance to licence applicants has identified three revenue streams:

- *Ring-fence Corporation Tax:* standard corporation tax applicable to all companies (with modifications, such as capital allowances), with the addition of a "ring-fence" that prevents taxable profits from oil and gas extraction in the UK being reduced by losses from other activities or by excessive interest payments.
- *Supplementary charge:* an additional charge set at 20% on an applicant's ring-fence profits, excluding finance costs.
- *Royalties:* levied at 7.5% of the gross value of oil and gas won in a particular licence area, less an allowance for the cost associated with conveying, treating and initial storage of the oil and gas between the wellhead and the point of valuation. Royalties are payable to DfE, but:

"...may be claimed by former owners of the mineral rights by way of compensation for the vesting of these rights in DfE under the Petroleum (Production) Act (Northern Ireland) 1964..."

17. Both the Scottish and the Welsh Governments undertook research into potential impacts of facilitating unconventional hydrocarbon development in their jurisdictions. The 2016 Scottish study noted that growth of unconventional oil and gas exploration fracking would also bring revenue from direct, indirect and local

government taxes. In many respects, measuring financial costs is therefore about projecting the loss of potential revenue resulting from a ban on this form of petroleum exploration. This also relates to weighing up the loss of potential job creation, community funding and economic output resulting from the development of this industry (the Welsh and Scottish reports looked at jobs and growth in the round). However, this does not consider the broader environmental and social impact of other potential consequences that pursue unconventional gas development, such as those affecting:

- The environment;
- The visual landscape;
- Tourism;
- Agriculture; and,
- Health.

18. In coming to their decision, the Scottish and Welsh Governments have determined these broader impacts outweighed any potential economic benefits. It is also important to note that any potential loss of revenue as a result of this Bill should be considered against alternative policy options that policymakers may choose as an alternative to supporting fracking and their revenue-generating potential. For example, the Scottish Government has chosen to pursue renewable energy development, rather than unconventional hydrocarbon exploration and development. It is important to note that this policy choice is also likely to stimulate economic activity and job creation, which will impact the public purse by generating corporation and income tax revenues.
19. The Member acknowledges that wider income derived from the licensing and taxation of fracking would not be realised but highlights that, on balance, the Bill will bring benefits. This comes from taking into account the avoidance of negative impacts and the potential to explore alternative energy strategies. The Member notes the settled consensus against fracking across other jurisdictions reflect an acknowledgment that the risks from environmental and social costs associated with it outweigh any possible benefits.
20. It is also important to note that any negative impacts in terms of environmental, health and social implications arising from fracking are unquantifiable and could also result in costs to the public purse and the wider economy. Therefore, any cost-benefit analysis should be comprehensive and the Member welcomes further discussion on these issues during the Bill's passage.

HUMAN RIGHTS ISSUES

21. The Member is satisfied that the Bill is human rights compliant.

EQUALITY IMPACT ASSESSMENT

22. An Equality Impact Assessment has not been undertaken, as communications between the Member and the Equality Commission for Northern Ireland and legal advice the Member has received did not identify any equality implications for the Bill. Therefore, it is considered the Bill will not have an adverse impact on any of the groups identified in section 75 of the Northern Ireland Act 1998.

LEGISLATIVE COMPETENCE

23. At Introduction, the sponsor of the Bill, Ms Áine Murphy had made the following statement under Standing Order 30 of the Northern Ireland Assembly:

“In my view the Onshore Fracking (Prohibition) Bill would be within the legislative competence of the Northern Ireland Assembly.”

SECRETARY OF STATE CONSENT

24. It is considered the Secretary of State’s consent under section 8 of the Northern Ireland Act 1998 is not required for this Bill.