# Government misuse
# of the 'Money Message'

A report for Uplift

**By William Hederman**

November 2019

**[www.uplift.ie](http://www.uplift.ie)**

## Introduction

The 32nd Dáil, which has been sitting since March 2016, has witnessed a huge number of Private Members' Bills (Bills initiated by a TD or Senator who is not a Minister). The Fine Gael-led Government has cited this high number as one of the highlights of the Government's time in office. The Programme for Government Annual Report 2019, includes under 'Main Highlights':

> *"341 Private Members Bills published in Dáil and Seanad since May 2016 with 9 enacted."*
> https://assets.gov.ie/9292/31884557fe2c4fae8226540bf618778b.pdf

Ironically, the strikingly low proportion of Bills enacted is partly due to the Government's refusal to issue a 'Money Message' for more than 50 Bills. These are Bills that have been supported by a majority of TDs and Senators. Many of these Bills are progressive Bills that reflect the nature of the Dáil, in which opposition TDs constitute the majority, and in which 'new politics' brings the promise of greater democracy.

Bills affected include the Climate Emergency Measures Bill, which would end the issuing of oil and gas exploration licences; the Occupied Territories Bill, which would ban the importation of goods from Israeli-occupied Palestine; the Cannabis for Medicinal Use Regulation Bill; and the Anti-Eviction Bill, which would ban evictions on grounds of sale or renovation of property.

The purpose of this research was to investigate how the Money Message is being misused and to provide evidence and analysis to support the campaign to change the rules.

# Executive Summary

The Fine Gael-led Government has used a previously obscure parliamentary device known as a Money Message to prevent 51 Private Members' Bills from becoming law. These are Bills that were passed by a majority of TDs, in some cases large majorities. The Government is using the Money Message as an effective veto on any Bills it does not support, thereby overriding legislation passed by a democratic parliament.

The purpose of the Money Message is specifically to allow a government to block Bills that would undermine its managing of the State's finances by introducing a conflicting fiscal agenda. However, it is being used by this Government to block any Bill it does not agree with politically, even though those Bills have been voted for by a majority in the Dáil.

Serious concerns about this abuse of parliamentary procedure have been raised not just by Opposition politicians and civil society organisations, but also by former attorney general, Michael McDowell, the former clerk of the Dáil, Kieran Coughlan, and legal experts.

Academics Dr Eoin Daly of NUI Galway and Dr David Kenny of TCD, have warned that "the Government has made such extensive use of the mechanism that it threatens, in a very real way, the constitutional lawmaking power of the national parliament", and "has the makings of a real democratic and constitutional crisis."
https://www.irishtimes.com/opinion/government-blocking-of-legislation-is-constitutionally-dubious-1.3924971

Bríd Smith's Climate Emergency Measures Bill, to ban new oil and gas exploration licences, provides a compelling example of a Bill the Government objected to on policy grounds and which it blocked by resorting to the Money Message tactic once it realised it could not defeat the Bill politically. The Ceann Comhairle, Seán Ó Fearghaíl, initially decided the Bill did not require a Money Message; 15 months later he reversed his decision, after the Government finally came up with expenditure that could be defined as "appropriation of revenue".

Correspondence between civil servants, released to Uplift under Freedom of Information requests, show civil servants trying to rescue a situation in which the Bill looks set to become law, and where they had not initially used the Money Message as a means of blocking the Bill.

On the other hand, the Government *has* granted a Money Message to seven Private Members' Bills. Thus the Government's refusal to grant Money

Messages is not due to its having an objection in principle to an Opposition Bill costing the Exchequer money. This shows an inconsistency on fiscal grounds and strongly suggests that the Government's refusal to grant a Money Message to numerous Bills is because it opposes the Bills on political or policy grounds.

## What is a Money Message?

The power to enact laws lies with the legislature, i.e. the Dáil and Seanad. However, this must be balanced with the Government's responsibility for managing the State's finances – the Government would not be able to balance the Budget if TDs were passing Bills that resulted in major spending.

Under the Irish Constitution, the Dáil may not pass legislation that involves the expenditure of public monies without a prior recommendation by Government supporting such expenditure, signed by the Taoiseach. Article 17.2 states:

> *"Dáil Éireann shall not pass any vote or resolution, and no law shall be enacted, for the appropriation of revenue or other public moneys unless the purpose of the appropriation shall have been recommended to Dáil Éireann by a message from the Government signed by the Taoiseach."*

This provision of the Constitution has been interpreted via a Standing Order for the Dáil. Standing Order 179.2 states:

> *"The Committee Stage of a Bill which involves the appropriation of revenue or other public moneys, including incidental expenses, shall not be taken unless the purpose of the appropriation has been recommended to the Dáil by a Message from the Government."*

The message referred to here is commonly known as a Money Message. There has never been a Supreme Court case about the Money Message; the precise meaning of the term "appropriation" has not yet been considered by the courts.

However, what is undisputed is that **loss** of revenue – e.g. where a Bill would result in reduced income to the State – is **not** grounds for deciding that a Bill requires a Money Message. This is crucial with regard to the Climate Emergency Measures Bill, which is in focus for this research.

According to the Office of Parliamentary Legal Advisers, a service in the Oireachtas, as of November 2019, 54 Bills currently referred to Committee have been deemed to require a Money Message. Of these, Money Messages have been granted to just three Bills, meaning 51 Bills cannot become law.

Prior to the current Dáil, Money Messages rarely arose, because governments had control of the Dáil, and Private Members' Bills were simply voted down.

### How a Bill is deemed to require a Money Message

It rests with the Ceann Comhairle (chairperson of the Dáil) to decide whether a Private Member's Bill requires a Money Message. The Ceann Comhairle is guided in this decision by the Bills Office, a division within the Oireachtas. The Bills Office in turn seeks advice from the relevant Government departments. If the Ceann Comhairle decides a Bill requires a Money Message, it is at the discretion of the Taoiseach to decide whether to grant a Money Message.

## Legal opinions on the use of the Money Message

The Government's ability to use the Money Message as an effective veto over Bills passed by the Dáil is due in part to the interpretation of the Constitution. In a legal opinion published in May 2019, legal academics Dr David Kenny and Dr Eoin Daly write that "the broad interpretation of the procedure seems to place unjustified limits on the capacity of the legislature to pass any legislation independently of the executive organ of the State, in contravention of the separation of powers and the exclusive lawmaking power of the Oireachtas contained in Article 15.2."

They also assert that "the Government's power under Article 17.2 is not entirely discretionary; it must be exercised responsibly for a purpose related to finances and not for any other purpose, such as purely political opposition to a Bill."
https://www.academia.edu/40448056/Opinion_on_the_Constitutional_Limits_of_the_Money_Message_Procedure_under_Article_17.2_of_the_Constitution_of_Ireland

The Bills Office, and consequently the Ceann Comhairle, has been attaching a Money Message requirement to any Private Member's Bill that involves expenditure, even minor costs such as the basic administrative costs that every Bill involves. This gives the Government an effective veto over the Bill.

Former attorney general and minister for justice Michael McDowell, in a legal opinion in June 2019, writes:

> *"On its face, Standing Order 179(2) goes beyond what is required by Article 17.2. The obligations placed on the Oireachtas by Article 17.2 would be met, even if the words 'including incidental expenses' were removed from Standing Order 179(2)."*
> (McDowell, Michael & McDowell, Hugh, June 11th, 2019, paragraph 6.5)

## The Climate Emergency Measures Bill 2018

This Bill – full title, Petroleum and Other Minerals Development (Amendment) (Climate Emergency Measures) Bill 2018 – sponsored by People Before Profit TD Bríd Smith, provides a striking example of a Bill that the Government objected to on policy grounds and which the Government blocked by resorting to the Money Message tactic once it realised it could not defeat the Bill politically. Unusually, the Ceann Comhairle initially decided that the Bill did not require a Money Message; 15 months later he reversed his decision, after the Government finally came up with expenditure that could be defined as "appropriation of revenue".

The Climate Emergency Measures Bill seeks to end the issuing of oil and gas exploration licences by the Irish Government. The logic behind the Bill is that climate scientists have warned that 80% of the world's *known* reserves of fossil fuels must be left in the ground in order to avoid catastrophic climate breakdown. Against this background, Ireland continues to issue licences to companies to look for *new* reserves.

The Bill was introduced in the Dáil on January 30th, 2018, and was subsequently passed in the Dáil by 78 votes to 48. However, nearly two years on, the Bill is stuck at Committee Stage, with no prospect of becoming law without a Money Message from Taoiseach Leo Varadkar.

The Government had strong political objections to the Bill, which were outlined in detail by several Ministers in Dáil and Oireachtas Committee debates. However, a trawl of these debates during the first 15 months of the Bill's progress reveals that Ministers speaking against the Bill did not once mention that the Bill would result in appropriation of revenue from the State.

This is corroborated by the Ceann Comhairle. In a letter to Minister Sean Canney, dated 22nd May 2019, he writes that his staff have "reviewed all debates on the Bill", including Dáil and Committee debates. "There was no reference in any of these debates to the potential for direct appropriation and incidental Exchequer costs which your letter outlines."

Appropriation of Exchequer revenue was not raised by the Government until 8th May 2019 (in a letter from Sean Canney which the Ceann Comhairle refers to above), more than 15 months after the Bill was introduced.

In the first month after the Bill was introduced, the Bills Office informed the

Chair of the Joint Committee on Communications, Climate Action and Environment that the Bill did <u>not</u> require a Money Message.

Correspondence between civil servants, released to Uplift under a Freedom of Information (FOI) request, reveal the Government's attitude that it will refuse to issue the Money Message because it does not support the Bill politically, for example, “DCCAE... advise that the Government are not supporting this Private Members’ Bill, so it is unlikely one [a Money Message] will be forthcoming.”

FOI records also show Government officials (civil servants) trying to rescue a situation in which the Bill looks set to become law, and where they had not initially used the Money Message as a means of blocking the Bill. In September 2018, an official at the Dept of Communications, Climate Action and Environment writes to a colleague:

> *“The CEM Bill is listed in the Oireachtas Library & Research Service as not requiring a money message... There is no provision in procedures for a revision to the decision on whether a money message is required... I cannot find any process for ceann comhairle to change decision on money message.”*

In fact, as it transpired, the Ceann Comhairle *was* able to simply reverse his decision, which demonstrates the power he holds in the democratic process.

The following is a timeline of the progress of the Bill, including messages exchanged privately between Department officials (marked 'Via FOI').

## Timeline – Climate Emergency Measures Bill 2018

**30 Jan 2018:** The Climate Emergency Measures (CEM) Bill 2018 is introduced in Dáil by Bríd Smith TD.

**7 Feb 2018**: During 2nd Stage debate on the Bill, Minister Sean Kyne outlines the Government’s reasons for opposing the Bill, including security of supply and other policy reasons, but he does not mention a Money Message; he mentions revenue, but only projected loss of revenue, <u>not</u> appropriation of revenue. (Lost revenue is not grounds for a Money Message.)

**08 Feb 2018:** Bill is passed in the Dáil by 78 votes to 48 and progresses to 3rd Stage, meaning it proceeds to the Select Committee on Communications, Climate Action and Environment (CCAE) for pre-legislative scrutiny.

**14 Feb 2018:** Speaking in the Dáil, Minister Sean Kyne opposes the Bill on policy grounds, and again he refers to projected loss of revenue, but not appropriation of revenue.

**26 Feb 2018:** The Bills Office informs the Chair of the Joint Committee on CCAE that the Bill does <u>not</u> require a Money Message.

**27 Sept 2018: [Via FOI]** Noel Regan, an official at the Dept of CCAE, emails a slide presentation he intends to give on the following day to a senior official in his department. The slides include the following:

> *"The CEM Bill is listed in the Oireachtas Library & Research Service as <u>not</u> requiring a money message.*
>
> *"There is no provision in procedures for a revision to the decision on whether a money message is required"*

Bill Morrissey replies (also on 27th Sept 2018):

> *"Issue is can we say in the letter that we may need an appropriation to fight claims for legitimate expectation without this being seen as an admission of liability."*

Noel Regan replies (also on 27th Sept 2018):

> *"I cannot find any process for ceann comhairle to change decision on money message. However, if the committee concluded financial implications this might prompt such a consideration."*

**18 Dec 2018**: Seán Canney TD, the Minister of State for Rural Affairs and Natural Resources, appears before the Joint Committee on CCAE that is subjecting the Bill to pre-legislative scrutiny. Canney presents the Government's policy reasons for opposing the Bill. He makes no mention of a Money Message, nor of revenue.

**19 Feb 2019**: A vote at the Joint Committee on CCAE, on whether to agree the Committee's report on the Bill, is tied 6:6. This stalls the Bill.

**26 March 2019**: Dáil approves a motion from Bríd Smith that the Bill can proceed despite the tied vote at Committee.

**7 May 2019: [Via FOI]** Ken Cleary, Asst Principal in the Climate Change Unit of the Dept of Public Expenditure and Reform, in en email to Patricia

Coleman (Asst Secretary) and Brendan Ellison (Principal Officer), writes:

> *"If the CC [Ceann Comhairle] deems that a money message is necessary, DCCAE will be proposing that one <u>not</u> be issued, on the basis that this measure would not reduce Irish consumption of fossil fuels, it would simply mean that we would continue to import these fossil fuels rather than produce more domestically."*

**8 May 2019:** Minister Sean Canney writes to the Ceann Comhairle, outlining reasons that the Bill requires a Money Message. More than 15 months after the Bill was introduced in the Dáil, this is the first time the Government has argued that the Bill will result in appropriation of Exchequer revenue.

**22 May 2019:** Ceann Comhairle sends a letter in reply to Minister Canney, explaining that he has decided that the Bill <u>*does*</u> require a Money Message after all, reversing his decision of 26th February 2018. The Ceann Comhairle bases his decision on four points made in a letter from Minister Canney. (All four of these reasons are flawed, according to a legal opinion written by barrister John Kenny, commissioned by Bríd Smith TD. See below.)

In his letter of 22nd May, 2019, the Ceann Comhairle also takes the unusual step of reprimanding the DCCAE for not having raised the relevant grounds much earlier in the process:

> *"I must however point out that the information in your letter comes very late in the day ... There has been ample opportunity to highlight the potential Exchequer implications of the current Bill."*

The Ceann Comhairle writes that his staff have "reviewed all debates on the Bill", including Dáil and Committee debates. "There was no reference in any of these debates to the potential for direct appropriation and incidental Exchequer costs which your letter outlines."

Also on **22nd May, 2019**, the Ceann Comhairle writes to Bríd Smith TD to inform her that her Bill requires a Money Message. In the letter, he writes:

> *"I am struck by the fact that, 15 months after the Bill's second reading, the Minister's letter [of May 8th] is the first contribution from the Government on the public record on the appropriation implications of the Bill."*

**28 May 2019: [Via FOI]** Eoin Stephens, an official at the Dept of Public Expenditure and Reform, in an email to Jack McGarry at the Bills Office, with the subject 'Petroleum and Other Minerals Development (Amendment) (Climate Emergency - Oireachtas Money Message Request', writes:

> *"Following on from our telephone conversation, DCCAE have confirmed*

*that no Government Decision has been received on this. They also advise that the Government are not supporting this Private Member's Bill, so it is unlikely one will be forthcoming."*

This reaffirms that the Government's intention to refuse a Money Message is due to their not supporting the Bill, not because of appropriation of revenue.

## Ceann Comhairle's decision that the Bill requires a Money Message

In his letter of 22nd May 2019 to Minister Canney, in which the Ceann Comhairle announces his decision that the CEM Bill does, after all, require a Money Message, he outlines four grounds on which he made his decision (four grounds that had been outlined in a letter to him from Minister Sean Canney).

Barrister John Kenny, in a legal opinion dated 19th June 2019, commissioned by Bríd Smith TD, finds that the reasons given by the Ceann Comhairle for deciding that the CEM Bill requires a Money Message are not valid:

> *"It is my considered view therefore that the four categories of expenditure identified do not, in fact, arise from the Bill and that the Bill does not require a money message... I note with concern the procedure adopted by the Ceann Comhairle."*
> (Kenny, John, BL, 19th June, 2019)

The flimsiness of the arguments made for the Bill requiring a Money Message is illustrated by the example of the first of the four categories of expenditure put forward by Minister Canney (and in turn by the Ceann Comhairle). Their argument was that the Bill, if enacted, would result in the "repayment of application fees to licence applicants for any outstanding applications received prior to the date of the Bill's enactment". In other words, the State would have to repay application fees to oil and gas exploration companies who would now have to be refused a licence as a result of the Bill.

In fact, the State has never repaid application fees to companies to which it refused a petroleum licence. This was easily discovered by way of a Parliamentary Question from Bríd Smith on 4th July 2019, to which Minister Richard Bruton replied:

> *"Since … 2007, 23 applications for petroleum authorisations have been considered and declined… As regards these 23 applications, no refund of application fees has been made. In general terms, it is not practice to return application fees for a petroleum authorisation where the Minister is in a position to consider an application and consequently grant or refuse the application."* https://www.oireachtas.ie/en/debates/question/2019-07-04/24/

## The Occupied Territories Bill

The purpose of the Control of Economic Activity (Occupied Territories) Bill 2018 is to ban the importation of goods from Israeli-occupied Palestinian territories. The Bill would make it an offence for a person to import or sell goods or services originating in an occupied territory (as defined in the Fourth Geneva Convention) or to extract resources from an occupied territory in certain circumstances.

The Bill, which is the culmination of years of work by a coalition of civil society organisations, seeks to ensure Ireland's domestic law complies with international law. The Bill was introduced in the Seanad by Senator Frances Black on 24th January 2018. The Dáil voted to support the Bill by an overwhelming majority of 78 votes to 45, with the abstention of three Government Ministers.

The Ceann Comhairle decided that the Bill required a Money Message. The Government has refused to issue a Money Message and so the Bill cannot progress any further.

In June 2019, former attorney general Michael McDowell SC provided a legal opinion to Sen Frances Black, in which he is unequivocal that the Occupied Territories Bill does not require a Money Message. McDowell provides "a number of reasons why the Constitution does not require that a money message be sent by the Government in order for the Occupied Territories Bill to be passed and enacted."

> *The Occupied Territories Bill does not entail the appropriation of public monies by way of incidental expenses for the purposes of Standing Order 179 (2) when that order is properly construed.*
> (McDowell, Michael & McDowell, Hugh, June 11th, 2019, paragraph 6.3)

As part of this research for Uplift, a Freedom of Information request was made in September 2019 to the Dept of Foreign Affairs for records relating to the Occupied Territories Bill and the Money Message. The department repeatedly deferred on supplying the records in question, and no records had been provided by the time of writing this report. (FOI requests to other departments regarding this Bill were either refused or were redirected to the Dept of Foreign Affairs.)

# Private Members' Bills granted a Money Message

As of May 31, 2019, seven Private Members' Bills had been granted a Money Message during the 32nd Dáil. These are the Bills, followed by the names of the Bills' sponsors:

**Electoral (Amendment) no. 3 Bill 2014** – Éamon Ó Cuív TD (FF)

**Intoxicating Liquor (Breweries & Distilleries) Bill 2016** – Alan Kelly TD (Lab)

**Parole Bill 2016 –** Jim O'Callaghan TD (FF)

**Competition (Amendment) Bill 2016** – Sen Ivana Bacik (Lab)

**Garda Síochána (Amendment) no. 2 Bill 2014** – Mick Wallace TD (Ind)

**National Famine Commemoration Day Bill 2017** – Colm Brophy TD (FG)

**Recognition of Irish Sign Language for the Deaf Bill 2016** – Sen Mark Daly (FF)

https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-05-30_l-rs-note-private-members-bills-pmbs-admissibility-government-messages-and-detailed-scrutiny-updated-note_en.pdf

Of these seven Bills, six were sponsored by Opposition TDs or Senators, including from Fianna Fáil, Labour and Independent. Each was deemed by the Bills Office and by the Ceann Comhairle to require a Money Message, meaning it involves appropriation of revenue. By granting a Money Message, the Government shows not only that it accepts that the Bill will involve an appropriation of revenue, but that it is willing to agree to this appropriation.

The fact that the Government will agree to a Money Message when a Bill is politically acceptable to it, demonstrates that the Government does not object in principle to the fact that an Opposition Bill will cost the Exchequer some money. In other words, the Government does not object in principle to Opposition Bills appropriating money from the State.

As Kieran Coughlan, former clerk of the Dáil (the most senior civil servant in the Oireachtas), argued in an Irish Times article, the fact that some Private Members' Bills have received a Money Message in this Dáil "indicates there may be no consistency in approach by the Government from a fiscal perspective".
https://www.irishtimes.com/opinion/government-relying-on-little-known-rule-to-block-bills-1.3133081

# Possible solutions to the Money Message issue

Several sources advise against taking legal action to change how the Money Message is being used, because, among other reasons, the judiciary is very reluctant to interfere in the workings of the Oireachtas; and the fact that the wording of Standing Order 179 is a matter for the Dáil to regulate.

**Amending Dáil Standing Orders**

In their legal opinion of May 2019, legal academics Dr David Kenny and Dr Eoin Daly do not comment of what course of action should be taken. But they do say there are...

> *"many ways in which constitutional infirmity in the money message procedure could be avoided and guarded against… For example, the Standing Orders might be amended to clarify and limit the definition of appropriation for the purposes of Article 179(2). Alternatively, the Ceann Comhairle could issue Salient Rulings as to the meaning of appropriation or incidental expenditure to the same end. If such a measure at least exempted minor and indirect expenditures in a manner similar to the Westminster rules, this would seem to meet the minimal requirement that the legislature's power to make laws should not be frustrated or undermined by the operation of this procedure."*
> https://www.academia.edu/40448056/Opinion_on_the_Constitutional_Limits_of_the_Money_Message_Procedure_under_Article_17.2_of_the_Constitution_of_Ireland

In his legal opinion of June 2019, former attorney general and minister for justice, Michael McDowell SC suggests that

> *"The obligations placed on the Oireachtas by Article 17.2 would be met, even if the words 'including incidental expenses' were removed from Standing Order 179(2)."*
> (McDowell, Michael & McDowell, Hugh, June 11th, 2019, paragraph 6.5)

Several politicians have drafted motions to amend Standing Order 179.2, including TDs Bríd Smith, Paul Murphy and Jack Chambers, and Senator Frances Black.

One of the motions to amend SO 179.2 is from Bríd Smith TD. On Wednesday, 6th November 2019, the Ceann Comhairle refused to allow her motion to be added to the Dáil Order Paper for debate in the chamber. His refusal provoked a row in the Dáil and on the same day, Smith and three other TDs, Richard Boyd Barrett, Gino Kenny and Paul Murphy, secured permission in the High Court to bring a challenge against this refusal by the Ceann Comhairle. The TDs claim the Ceann Comhairle acted outside his powers by failing to place the motion on the order paper. The case will be heard on 17th and 18th December.

In this judicial review, the High Court will be ruling only on whether the Ceann Comhairle was breaking the rules when he refused Smith’s motion, and will not be ruling on the Money Message issue itself, nor on the wording of the Dáil's Standing Orders.

It is worth noting that Fianna Fáil has not intervened to try to resolve the Money Message issue, either by introducing an amendment to Standing Order 179.2, or by using its support for the Government as leverage to force a change to the Money Message process. After all, several of the Bills blocked using the Money Message are Bills sponsored by Fianna Fáil TDs/Senators.

Sources in other parties suggested that Fianna Fáil's reluctance to intervene could be because a) the party might have use for the Money Message if it is leading a future government; and b) even in opposition it means the party can vote for progressive or popular Bills that it may not really agree with, safe in the knowledge that the Bills will never become law.

In recent weeks, the Money Message issue has attracted more attention. Having been described earlier in 2019 as an “obscure” or “little-known” device, media coverage has created more public awareness. This greater awareness could be used to put pressure on TDs and political parties from members of the public to force a change to the Money Message system. This can be encouraged by the NGOs who have been supporting the various progressive Bills that have been blocked.

ENDS

# APPENDIX

Excerpts from records released via Freedom of Information requests.

**27 Sept 2018:** Email from Noel Regan, an official at the Dept of Communications, Climate Action and Environment.

j

**Ciaran McManus**

| | |
|---|---|
| **From:** | Noel Regan |
| **Sent:** | 27 September 2018 17:42 |
| **To:** | Bill Morrissey |
| **Subject:** | Money messages procedure |
| **Attachments:** | Money messages.pptx |
| **Follow Up Flag:** | Follow up |
| **Flag Status:** | Completed |

Bill,

Matt asked me to update him on the money message process tomorrow morning. See attached slides I intend to use.

Regards,
Noel

**27 Sept 2018:** Two of the slides attached to above email from Noel Regan.

## Process

- If the PMB is approved at second stage, it is further examined before it may process to formal committee stage
- Where it is decided that a Money Message or Financial Resolution is required for a PMB to progress, the sponsoring member is advised by the Ceann Comhairle
- The Climate Emergency Bill is listed in the Oireachtas Library & Research Service as <u>not</u> requiring a Money Message

5 An Roinn Cumarsaide, Gníomhaithe ar son na hAeráide & Comhshaoil | Department of Communications, Climate Action & Environment

## Points to Consider

- There is no provision in procedures for a revision to the decision on whether a money message is required

*Potential points to pursue:*

- The Framework for detailed scrutiny includes a Financial Assessment, specifically:
  - "Does the Bill have financial Implications[31]?"

  *31* PMBs which have financial implications (ie. which propose charges on the people or on the public purse) are only in order for introduction if these implications are "incidental" to the purposes of the Bill (SO 178(1) and 179(1)). At that, these PMBs may only be taken at Committee Stage if a Financial Resolution has been passed (in the case of charges on the people – 178(2)) or a Money Message has been received from Government (for appropriation of revenue or public monies – 179(2)).
- Does a reduction of income fall within definition of Money Message or Financial Resolution

7 An Roinn Cumarsáide, Gníomhaithe ar son na hAeráide & Comhshaoil | Department of Communications, Climate Action & Environment

**27 Sept 2018:** Email correspondence between Noel Regan and Bill Morrissey, officials at the Dept of Communications, Climate Action and Environment.

**From:** Bill Morrissey
**Sent:** 27 September 2018 18:35
**To:** Noel Regan
**Subject:** Re: Money messages procedure

**Follow Up Flag:** Follow up
**Flag Status:** Completed

In essence the letter is an appeal of the ceann comhairles decision..we would be providing additional information that may not have been considered in the ceann comhairle making his original determination

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: Noel Regan
Date: 27/09/2018 19:23 (GMT+01:00)
To: Bill Morrissey
Subject: Re: Money messages procedure

Ok.

I cannot find any process for ceann comhairle to change decision on money message. However if the committee concluded financial implications this might prompt such a consideration.

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: Bill Morrissey
Date: 27/09/2018 18:08 (GMT+00:00)
To: Noel Regan
Subject: Re: Money messages procedure

Thanks - they look comprehensive...issue is can we say in the letter that we may need an appropriation to fight claims for legitimate expectation without this being seen as an admission of liability

Sent from my Samsung Galaxy smartphone.

**7 & 29 May 2019:** Emails from Ken Cleary, Asst Principal in the Climate Change Unit of the Dept of Public Expenditure and Reform:

**Laura Kevany**

**Subject:** FW: Fossil Fuel Exploration Ban
**Attachments:** Climate Emergency Measures Bill - Letter from Ceann Comhairle re Money M....pdf; Letter to the Ceann Comhairle from Minister Canney re POMD(CEM) Bill.pdf

**From:** Ken Cleary
**Sent:** 29 May 2019 14:31
**To:** Patricia Scanlon <Patricia.Scanlon@per.gov.ie>
**Subject:** FW: Fossil Fuel Exploration Ban

Patricia,

Just further to the enquiries Robert had on this topic, Minister Canney wrote to the Ceann Comhairle and he has confirmed that a Money Message is necessary for the PBP climate emergency Bill. This question should really have been resolved before the Bill was referred to committee and the CC raps DCCAE on the knuckles for this a bit. He has requested that the Government issue the required money message or the reasoned response as soon as possible. DCCAE's view is of course that a money message shouldn't be issued and they will convey why in a reasoned response. They intend to bring this to Government as soon as they can, Needless to say this won't be popular with the Bill's sponsors!

Regards,
Ken.

**From:** Ken Cleary
**Sent:** 07 May 2019 12:20
**To:** Patricia Coleman <Patricia.Coleman@per.gov.ie>; Brendan Ellison <Brendan.Ellison@per.gov.ie>
**Subject:** Fossil Fuel Exploration Ban

All,

Just FYI, Robert rang me on Friday afternoon with some questions around a private members bill to ban fossil fuel exploration in the Irish offshore. The Bill was introduced by People Before Profit last year and has been in a kind of legislative limbo. The Dail approved its passage to committee stage but the joint committee on CCAE split evenly on whether it should be considered by that committee. My understanding is that it will now be considered by the DCCAE select committee (ie TDs only). Robert wanted to know if a money message was required for the Bill. I wasn't sure as halting exploration would seem likely to lead to reduced income for the state in the future rather than any immediate cost today.

I rang Matt Collins, the DCCAE A/Sec responsible for petroleum affairs and he said that actually it was DCCAE's view that a money message is necessary. They based this conclusion on the fact that the state would have to refund existing rights holders for the rents they are paying to the State for existing leases (since these are now valueless). These costs would be minor but DCCAE also say that the AG has advised them that the State may be liable for any exploration costs incurred to date on leases that can no longer be exercised. The sum involved here could be much higher ([redacted]). They have drafted a note on this basis for the DCCAE Minister of State (Sean Canney) and their understanding is that the Minister will approach the Ceann Comhairle to convey the DCCAE view that a money message is necessary. They stress that the decision regarding a money message is for the CC alone. If the CC deems that a money message is necessary, DCCAE will be proposing that one *not* be issued on the basis that this measure would not reduce Irish consumption of fossil fuels, it would simply mean that we would continue to import these fossil fuels rather than produce them domestically.

Given the current climate, it is unlikely that this decision will be received favourably by the opposition. There was an interesting exchange however between Brid Smith and Lord Deban (Head of the UK Climate Change Council) at a hearing of the joint oireachtas committee on climate action which summarises the argument quite well:

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_climate_action/2018-12-19/2/

*Deputy Bríd Smith*
That is useful. However, I take issue on the science. We have banned fracking in Ireland and we did so on the understanding that the science has settled on the fact that 80% of known fossil fuels should be left in the ground. That flies in the face of what Lord Deben is arguing. It is a bit like what he said earlier, that if we cannot do it, somebody else can. However, if the gas is extracted, be it in Europe or elsewhere, why would people want to take more out of the ground in Lancashire or Blackpool?

*Lord Deben*
Under the budgets we have set, we will take more gas out of the ground in Dubai or Russia in the coming years. By saying 80% will be left in the ground, it means that 20% will not be left in the ground. That will happen anyway. However, if we produce it at home under the tough measures we have, we will not buy it from Mr. Putin. If we buy it from him, he has not got any of those measures in place. If, for example, one were producing 100, one would not be allowed to produce 120 because one is producing it at home; one must keep it at 100.

There is an issue in this regard. The science is clear. The Deputy can say the science requires us to keep 80% in the ground, but that means we must decide where the 20% comes from. The science is clear that fracking properly with these tough measures means producing gas with less emissions than by taking gas from many of the existing sources today. In order to stick to the science, it is not feasible to claim that fracking is unscientific, which is what the campaigners do.

It is a choice one makes. I would prefer to get what we need for gas from a source that is not controlled by Mr. Putin, because it would ensure that the polluting effect was significantly less. If someone was to take that approach, however, they should not think that they will have a market after around 2032 because there will not be one.

Regards,
Ken.


**Ken Cleary**
*Assistant Principal, Climate Change Unit*

**An Roinn Caiteachais Phoiblí agus Athchóirithe**
*Department of Public Expenditure and Reform*

**Tithe an Rialtais, Sráid Mhuirfean Uacht, Baile Átha Cliath 2, D02 R583.**
Government Buildings, Upper Merrion Street, Dublin 2, D02 R583.

T +353 76 100 7231
www.per.gov.ie

**28 May 2019:** Email from Eoin Stephens, an official at the Dept of Public Expenditure and Reform, to Jack McGarry at the Bills Office in Leinster House:

**James Reddy (PER)**

| | |
|---|---|
| **From:** | Eoin Stephens |
| **Sent:** | 28 May 2019 10:39 |
| **To:** | Public Bills |
| **Subject:** | RE: Petroleum and Other Minerals Development (Amendment) (Climate Emergency - Oireachtas Money Message request |

Hi Jack,

Following on from our telephone conversation, DCCAE have confirmed that no Government Decision has been received on this. They also advise that the Government are not supporting this Private Member's Bill, so it is unlikely one will be forthcoming.

Kind Regards,

Eoin


__

**Eoin Stephens**
*Central Section*
*1.12 South Block*
__

**An Roinn Caiteachais Phoiblí agus Athchóirithe**
*Department of Public Expenditure and Reform*

**Tithe an Rialtais, Sráid Mhuirfean Uacht, Baile Átha Cliath 2, D02 R583.**
Government Buildings, Upper Merrion Street, Dublin 2, D02 R583.
__

T +353 1 604 5039
www.per.gov.ie

An Roinn Caiteachais Phoiblí agus Athchóirithe
Department of Public Expenditure and Reform

**22 May 2019:** Letter from the Ceann Comhairle, Seán Ó Fearghaíl, to Sean Canney TD, Minister of State at the Dept of Communications, Climate Action and Environment.

Ceann Comhairle

Seán Canney, TD
Minister of State
Department of Communications, Climate Action and the Environment
29-31 Adelaide Road, Dublin
D02 X285

22 May 2019

*Re: Petroleum and Other Minerals (Amendment) (Climate Emergency Measures) Bill 2018*

Dear Minister,

I refer to your letter, received in my office on 8 May 2019, in relation to the financial implications of the above Bill, which was introduced by Bríd Smith, TD, and referred to the Select Committee on Communications, Climate Action and the Environment following its passage through Second Stage on 7 February 2018. As you are aware, following the inability of the Select Committee to agree a report on its pre-Committee Stage scrutiny of the Bill, the Dáil agreed on 26 March 2019, on motion made by Deputy Smith, to waive the requirement for the Committee to report on the scrutiny process.

On receipt of your letter, I requested a review of the Bill's financial implications in light of the information set out in the letter. That review is now complete, and I am satisfied that a Money Message is required on the grounds set out in the following paragraphs.

Your letter identifies two categories of cost, the first of which is the economic cost generally of the Bill. This was previously examined by the Oireachtas Library and Research Service (L&RS) and your letter makes reference to the L&RS's assessments. Although the L&RS analysis of the economic impact points to potentially considerable costs, these costs constitute revenue foregone, which is not appropriation within the meaning of the Constitution or Standing Orders. These costs are therefore not germane to the decision on a



Dáil Éireann
Dublin 2
Tel: 01 618 3343
Fax: 01 618 4100
Email:
ceann.comhairle@oireachtas.ie
Website:
www.ceanncomhairle.ie

Money Message. The second category is the following specific costs arising from the implementation of the Bill as set out in your letter:

(1) Repayment of application fees to licence applicants for any outstanding applications received prior to the date of the Bill's enactment.
(2) Repayment of acreage rental fees for existing licences which would have to be returned if the Bill is enacted.
(3) Legal advice which the Department states will be necessary to quantify the State's exposure to claims by licence holders.
(4) Legal services to devise a legal strategy to minimise claims against the State.

I am satisfied, based on the review, that the costs at (1) and (2) constitute appropriation and that the costs at (3) and (4) are incidental expenses that are directly attributable to the implementation of the Bill. Therefore, the Bill requires a Money Message under the provisions of Dáil Standing Order 179(2) before it can proceed to Committee Stage.

This reverses the decision which was communicated to the Committee on 26 February 2018 that the Bill does not require a Money Message. Deputy Smith and the Chairman of the Committee have been advised accordingly and I have copied your letter and this response to the Deputy for her information.

I must however point out that the information in your letter comes very late in the day and is not in keeping with the spirit and letter of the Memorandum of Understanding (MoU) agreed between the Government and the sub-Committee on Dáil Reform last year. There has been ample opportunity to highlight the potential Exchequer implications of the current Bill, even in general terms, in the debates on the public record to date. In re-examining the Bill, my staff reviewed all debates on the Bill, including the Second Stage speech in February 2018, the public evidence given to the Select Committee by your Department on the detailed scrutiny of the Bill in July 2018, and the more recent debate in March 2019 on the motion discharging the requirement on the Committee to report on the detailed scrutiny. There was no reference in any of these debates to the potential for direct appropriation and incidental Exchequer costs which your letter outlines. Notwithstanding the failure of the Committee to agree a scrutiny report, there is an onus on Government to identify appropriation and financial implications of private member's Bills as early as possible in the legislative process. While I accept that it would generally not be possible to carry out a detailed impact assessment in time for Second Stage, it should be possible in most cases to highlight the potential for costs in the nature of direct appropriation and incidental expenses at this stage. In this regard, I draw your attention to the following paragraph (on page 5 of the MoU as agreed) which sets out the Government's commitments in relation to the financial implications of private members Bills:

> The Minister will set out the Government's position on the Bill during the Second Stage speech and should specifically state, where possible at this stage, whether the Bill involves the appropriation of revenue or other public moneys. A key part of the Committee scrutiny process will be to assess the financial implications of the Bill (see Part A of the Scrutiny Framework in Appendix 3). It is important that all implications, and in particular financial implications, are set out in detail from the Government's perspective during the Committee scrutiny process.

Therefore, in order to avoid a recurrence of this particular issue, I have directed my staff to request a cost submission from the relevant Minister on any private member's Bill where, similar to Deputy Smith's Bill, direct appropriation is not clearly identifiable as part of the preliminary examination following Second Stage. The Clerk of the Dáil will notify all Secretaries General of this arrangement and I trust that your Department will co-operate with this new arrangement.

Finally, in the current circumstances, fifteen months on from the second reading of this Bill, I do not consider it appropriate that the six-week deadline outlined in the MoU for a response from Government should apply. Given the late notice which Deputy Smith is receiving in relation to the need for a Money Message, I consider that either a Money Message or a Reasoned Response should be provided by the Government as a matter of urgency, and I will be advising my staff to make the request to the Government accordingly.

Yours sincerely,

Seán Ó Fearghail, TD,
Ceann Comhairle