



Number 29 of 2018

Fossil Fuel Divestment Act 2018



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FOSSIL FUEL DIVESTMENT ACT 2018

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[No. 29.]

Fossil Fuel Divestment Act 2018.

[2018.]

ACTS REFERRED TO

Climate Action and Low Carbon Development Act 2015 (No. 46)

Companies Act 2014 (No. 38)

National Treasury Management Agency (Amendment) Act 2014 (No. 23)



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FOSSIL FUEL DIVESTMENT ACT 2018

An Act to impose certain prohibitions and restrictions with respect to the investment by the National Treasury Management Agency of assets of the Ireland Strategic Investment Fund in fossil fuel undertakings and, in particular, to require that Agency to endeavour to ensure that such assets are not directly invested in such an undertaking (and, where it becomes aware that an undertaking in which such assets have been so invested by it is, or has become, a fossil fuel undertaking, to divest the assets of that fund from such investment); to make provision for a restriction on such investment when the investment is of an indirect nature (as defined hereafter); to provide for a certain exception to the prohibition on investment of assets of that fund in such an undertaking where the investment is consistent with the national transition objective (as defined hereafter), the implementation of the State’s climate change objectives and Government policy; for those purposes to amend the National Treasury Management Agency (Amendment) Act 2014; and to provide for related matters. [17th December, 2018]

Be it enacted by the Oireachtas as follows:

Amendment of National Treasury Management Agency (Amendment) Act 2014

1. The National Treasury Management Agency (Amendment) Act 2014 is amended—

(a) in section 49—

- (i) in paragraph (f), by deleting the second instance of the word “and”,
- (ii) in paragraph (g), by substituting “Fund, and” for the word “Fund.”, and
- (iii) by inserting the following paragraph after paragraph (g):

“(h) measures taken in accordance with section 49A, as inserted by the *Fossil Fuel Divestment Act 2018*.”,

and

(b) by inserting the following new section after section 49—

“Investment in Fossil Fuel Undertakings

49A. (1) In this section—

‘fellow subsidiary undertakings’, ‘higher holding undertaking’, ‘holding undertaking’, ‘subsidiary undertaking’ and ‘undertaking’ have the respective meanings given to them by 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 undertaking’ means an undertaking which is—

- (a) engaged, for the time being, in the exploration for or extraction or refinement of a fossil fuel where such activity accounts for 20 per cent or more of the turnover of that undertaking, as derived from its most recently published audited financial statements,
- (b) a holding undertaking or, as the case may be, a higher holding undertaking of an undertaking of the kind referred to in subparagraph (a), or
- (c) a holding undertaking or, as the case may be, a higher holding undertaking of undertakings engaged, for the time being, in the exploration for or extraction or refinement of a fossil fuel, where the aggregate turnover of such undertakings accounts for 20 per cent or more of the turnover of the group on a consolidated basis, as derived from its most recently published audited financial statements;

‘group’ means an undertaking together with any holding undertaking, higher holding undertaking, subsidiary undertaking and fellow subsidiary undertakings that such undertaking may have;

‘indirect investment’ means an investment of the assets of the Fund in an investment product or in a collective investment undertaking but does not include financial derivative instruments, exchange traded funds or hedge funds;

‘national transition objective’ has the meaning given by the Climate Action and Low Carbon Development Act 2015;

‘State’s climate change obligations’ means the existing or future obligations of the State referred to in paragraphs (a) and (b) (insofar as the obligations of the State referred to in paragraph (b) relate to climate change) of section 2 of the Climate Action and Low Carbon Development Act 2015;

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

- (a) trade discounts,
- (b) value-added tax, and

- (c) any other taxes based on the amounts so derived.
- (2) (a) The Agency shall endeavour to ensure that the assets of the Fund are not directly invested in a fossil fuel undertaking.
- (b) Where the Agency becomes aware that an undertaking in which the assets of the Fund are directly invested is or becomes a fossil fuel undertaking, the Agency shall divest the assets of the Fund from such investment as soon as practicable.
- (3) The Agency shall endeavour to ensure that the assets of the Fund are not invested in an indirect investment at any time after the commencement of this section, unless it is satisfied on reasonable grounds that such indirect investment is unlikely to have in excess of 15 per cent of its assets, or such lower percentage as the Minister may prescribe by order made under this section, invested in a fossil fuel undertaking.
- (4) Notwithstanding subsections (2) and (3), the Agency may invest the assets of the Fund in a fossil fuel undertaking or in a collective investment undertaking the assets of which are invested or will be invested in a fossil fuel undertaking, where the Agency has satisfied itself on reasonable grounds that the investment is intended to be consistent with—
- (a) the achievement of the national transition objective,
 - (b) the implementation of the State’s climate change obligations, and
 - (c) the policy of the Government, as may be communicated to the Agency from time to time by the Minister for Communications, Climate Action and the Environment, in relation to climate change and climate change objectives.
- (5) Where the Agency makes an investment which, but for subsection (4), it would be prohibited from making, it shall when publishing the fact of the investment and the name of the fossil fuel undertaking or collective investment undertaking concerned, publish the fact that the investment is made under subsection (4).”.

Short title

2. This Act may be cited as the Fossil Fuel Divestment Act 2018.