

Joint Committee on Climate Action

Pre-legislative scrutiny of the

Climate Action and Low Carbon Development (Amendment) Bill 2020

Opening statement of

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1. I am a lawyer at ClientEarth, an environmental law charity with offices in London, Brussels, Berlin and Beijing. Since 2014 I have worked on climate governance, focusing in particular on the UK Climate Change Act and its implementation. I am speaking today as a lawyer and an advocate for effective climate change legislation.
2. First, I would echo widely-expressed concerns that the Bill, as it stands, represents a step backward – as compared with laws like the UK Act – in presenting only a loosely defined “national 2050 climate objective” and in not tying its carbon budgets strongly to that objective. Likewise, it is regrettable in my view that there is no duty for the objective or carbon budgets to be achieved.
3. To speak more generally, I think it natural that legislatures will be cautious about imposing broad legal duties on governments to meet ambitious targets years in the future. But if so, the solution in my view is not to compromise on these laws by making them weak or unenforceable; rather it is to have them focus on guiding government action effectively over time so these targets will not in fact be missed. National climate laws need to put in place systems of governance which, through frequent and focused moments of accountability, “bake in” a need to “course correct” if ever progress is falling behind.
4. I think the UK Act offers a cautionary tale in this respect. In June 2011, the UK set in law its 4th carbon budget, thereby setting a limit on UK greenhouse gas emissions for the five-year period centred on 2025. At that time the Government’s emissions for the 4th carbon budget

period were projected to be much higher than the budget allowed.¹ But the 4th carbon budget was then some 11 years away, apparently ample time to close this gap. Even so, the Committee on Climate Change (“CCC”) was already stressing “the need for a step change in the underlying pace of emissions reduction in order to meet carbon budgets”.²

5. In the years since 2011, the CCC has continued to highlight – in increasingly strident tones – the need for the UK Government to do more to get on track to meeting its carbon budgets.³ Opposition MPs and civil society organisations have highlighted the persisting “policy gap”.⁴ The Government has published new policy plans – in theory required to meet the 4th carbon budget (and indeed the budget following).
6. To little avail. UK Government policy has not been brought into line with the 4th carbon budget. All indications are that the 4th carbon budget – now only two years away – will not be met in full.⁵ In my view the UK Climate Change Act has failed what could be considered its first real test.
7. Turning to the current Bill, it seems to me less well equipped than the UK Act to deliver policy progress that will deliver emissions targets. I would identify the following weaknesses in this regard:
 - First, the Government’s climate action plans are never required to be adequate for meeting the carbon budgets. The Minister sets out a roadmap of actions that “in the opinion of the Government, should be pursued” to remain within the carbon budget.⁶ However, that plan is then “subject to such modifications” as the Government considers “appropriate”⁷ – without any apparent constraint.⁸

¹ Higher by 181 Mt CO₂e – <https://www.gov.uk/government/publications/updated-energy-and-emissions-projections-2011> (For context, Ireland’s total annual greenhouse gas emissions are of the order of 60 Mt CO₂e – <http://www.epa.ie/ghg/keymessages/>)

² 2011 annual report, p.8: <https://www.theccc.org.uk/publication/meeting-carbon-budgets-3rd-progress-report-to-parliament/>

³ The CCC has also instituted progress indicators in an effort to elicit greater action. (The Government has been adjudged to be on-track in 4 out of 21 indicators in each of the past two years.)

⁴ <https://www.documents.clientearth.org/library/download-info/mind-the-gap-reviving-the-climate-change-act/>

⁵ Not, that is, without the use of “flexibilities” which were designed to be used only in unexpected circumstances. The Government’s most recent emissions projections, released in May 2019, show that the 181 MtCO₂e “policy gap” of 2011 now measures 139 MtCO₂e.

⁶ S.4(2)(b)(i)

⁷ S.4(10)

⁸ The Minister and Government must also “have regard to” the carbon budget programme: S. 3(3)(r)

- Secondly, the Advisory Council’s annual review and report appears to focus on the progress made towards meeting the current carbon budget⁹. But attention must be focused on future carbon budgets and the actions being taken now to meet them.
 - To this end, emissions projections provide a critical basis for timely accountability and course correction. The Advisory Council’s annual report is required to include at least a summary of projections as prepared by the Environmental Protection Agency.¹⁰ But this would be inadequate: projections must make clear by how much the Government’s current plans and policies are expected to satisfy (or miss) forthcoming carbon budgets. As drafted, the Bill does not even require climate action plans and strategies¹¹ to include their projected impact on future emissions.
 - Thirdly, accountability is weak. The Government is not required even to respond to the Advisory Council’s annual report. Where a response is required to a report of the joint committee, there are no requirements as to what that response must include.¹² No corrective actions are required.
 - Finally, there is no duty for either the climate action plan (or the long term climate action strategy) to be implemented.¹³
8. In sum, the Government is not required to produce plans adequate for meeting targets, scrutiny mechanisms are not focused on assessing whether progress is adequate, and nothing substantive is required of Government even where it falls short. I cannot see how the Bill as drafted can be expected to drive the emissions reductions needed.
9. Thank you for the opportunity to assist the Joint Committee this afternoon.

⁹ S.12(1)(ii): “adhering to the carbon budget for that period”

¹⁰ S.12(2)(b)

¹¹ S.4(7) (“may include”)

¹² S.14(5)

¹³ In fact – only a requirement that they “shall not” be implemented unless approved by Government – s.4(12)