

**Joint Committee on Climate Action**  
**Pre-Legislative Scrutiny of the Climate Action and Low Carbon Development**  
**(Amendment) Bill 2020**

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**Opening Remarks**

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**Introduction**

[1] The publication of the Climate Action and Low Carbon Development (Amendment) Bill 2020 is very welcome. The importance of this pre-legislative scrutiny phase cannot be overstated. It is essential that the draft text is examined closely and improved, as appropriate. I hope that there will be wide engagement and a robust exchange of views during the pre-legislative scrutiny phase and that members of the public will be encouraged to follow the discussion and make their views known through their elected representatives.

[2] This Bill is urgent. We must make progress in a timely fashion. But it is also essential that the legislation that emerges at the end of this process is fit for purpose and that it enables Ireland to meet its climate obligations.

[3] The Bill provides the opportunity to build on and strengthen the landmark Climate Action and Low Carbon Development Act 2015 (the 2015 Act). It is important that we take full account of the experience gained to date under the 2015 Act and that we use this experience to inform our approach to the Bill. We must also consider how

particular implementation challenges that emerged under the 2015 Act can be addressed effectively.

[4] Vague and ambiguous language is not conducive to effective implementation and enforcement of legal rights and obligations. On the contrary, it can lead to complex disputes over the precise meaning and implications of legal provisions. I make this general point in my opening remarks in order to highlight the importance of using this stage of the legislative process to examine carefully the language used throughout the Bill and particularly the language deployed when creating obligations on the State and on public authorities. The way these provisions are designed and drafted is critical to their ultimate impact and to ensuring that they are enforceable.

[5] My particular area of expertise is environmental law, including climate law and governance. I teach and research in these areas at the Centre for Law and the Environment in the School of Law, University College Cork. I served as a member of the Expert Advisory Group to the Citizens' Assembly during the climate change module of the Assembly's work from 2017 to 2018. That experience has given me unique insights into a range of areas that are relevant to this Bill which, I hope, will be of benefit to the Committee in its deliberations.

### **Points to note from the recent Supreme Court decision in Climate Case Ireland**

[6] I would like to mention two points that arise from the recent judgment of the Supreme Court (31 July 2020) in what has come to be known as *Climate Case Ireland* and which are relevant to our analysis of the Bill.<sup>1</sup> First, the Supreme Court judgment is very strong on the principles of public participation and transparency in the formation and publication of climate policy. This is a very welcome development. It underpins the core values that should inform all environmental decision-making – participation, transparency and accountability. This element of the judgment also provides a strong impetus to ensure that the Bill provides effective opportunities for public participation and that, for example, reasonable timeframes are put in place in the legislation to facilitate informed and effective participation in the development of climate policy.

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<sup>1</sup> *Friends of the Irish Environment v Government of Ireland* [2020] IESC 49.

[7] It is disappointing, in my view, that an effort was not made when the Bill was first published to provide an ‘unofficial’ consolidated text incorporating the amendments proposed to be made by the Bill to the current text of the 2015 Act. This could have been done by way of tracked changes, for example, in a Word document. An ‘unofficial’ consolidated text of this nature would be an invaluable reference point and an important resource to enable the public, and those who are not familiar with navigating Bills and complex amendments to legislation, to engage more effectively with the pre-legislative scrutiny process. While the Explanatory Memorandum is certainly helpful as a point of reference to highlight some of the key elements of the Bill, the lack of a publicly available consolidated draft text is, in my view, a missed opportunity.

[8] The second point from the Supreme Court judgment that I wish to highlight is the ‘significant weight’ that the Court placed on the views expressed by the Climate Change Advisory Council. It seems clear from the judgment that the Council’s persistent and stinging critiques of Government policy played an important role in the Supreme Court’s analysis. This serves to confirm the vital role played by the Council and the importance of strengthening its independence and its oversight role and ensuring that it has the necessary range of expertise and resources to support its expanded mandate under the Bill.

### **Recommendations of the Citizens’ Assembly**

[9] The first recommendation of the Citizens’ Assembly following its detailed deliberations on the topic of *How the State can make Ireland a leader in tackling climate change* was as follows:

To ensure climate change is at the centre of policy-making in Ireland, as a matter of urgency a new or existing independent body should be resourced appropriately, operate in an open and transparent manner, and be given a

broad range of new functions and powers in legislation to urgently address climate change.<sup>2</sup>

75 Members of the Assembly were presented and voted. The majority (97%) voted in favour of this recommendation.

[10] But it is important to recall that the question that was put to the Assembly members in the Ballot Paper included a number of examples of the types of functions and powers that the new (or existing) independent body could possess. One of the potential functions envisaged here was - specifically:

To pursue the State in legal proceedings to ensure that the State lives up to its legal obligations relating to climate change.<sup>3</sup>

It is interesting to observe that this important point concerning enforcement of the obligations imposed on the State does not appear to have gained any significant traction since the publication of the report of the Citizens' Assembly. For example, it does not feature among the recommendations presented in the *Report of the Joint Committee on Climate Action - Climate Change: A Cross-Party Consensus for Action*, published in March 2019 or, indeed, in the (non-statutory) *Climate Action Plan 2019: To Tackle Climate Breakdown*.

[11] Given the importance of effective oversight, accountability and – ultimately – enforcement of legal obligations, it seems to me that this is a point that merits further scrutiny and discussion in the context of the Bill.

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<sup>2</sup> *Third Report and Recommendations of the Citizens' Assembly: How the State can make Ireland a leader in tackling climate change* (18 April 2018), p20.

<sup>3</sup> *Third Report and Recommendations of the Citizens' Assembly: How the State can make Ireland a leader in tackling climate change* (18 April 2018), p20. See also the discussion around the drafting and revisions to this question at pp16-20.

## **Multiple issues in the text of the Bill requiring close scrutiny**

[12] The Bill raises a significant number of important issues that merit careful consideration, including the way in which certain provisions and obligations have been designed and drafted. It is not possible to flag all the issues arising for consideration in this brief note. I look forward to engaging with the Committee and to providing any assistance you may require on the legal and practical aspects of the proposed legislation and its subsequent enforcement.

## **Closing remarks**

[13] This Bill provides a unique and timely opportunity to take steps to turn the corner on Ireland's traditional 'laggard' reputation on climate change. We face an existential crisis. The time to act effectively is rapidly running out. We must deliver robust, workable climate legislation that supports a just transition and protects human rights. And we must ensure that the new legislation has the necessary impact across the economy and society to deliver the transformative changes required within the specified timeframes.

[14] We cannot afford to squander this opportunity to strengthen Ireland's climate legislation and to renew our commitment to ambitious climate action.

**15 October 2020**