

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. Thank you, Chair. I'm an Assistant Professor of Environmental Law at UCD and a practising solicitor, with qualifications in law and environmental science. I've published recently in the fields of climate law and biodiversity law, including a chapter on the history of Irish climate law that will appear in a forthcoming edited book on *National Climate Acts* (Muinzer (ed.), Hart).
2. My previous roles include working for the UK Government's Department for Environment (Defra), where I provided legal advice, drafted legislation, and defended litigation. I've litigated cases for many years before the Irish, English and EU courts. Recently, I acted for Friends of the Irish Environment in Climate Case Ireland before the High Court and Supreme Court.
3. The perspectives I offer on the Bill are therefore as an academic, as a former drafter of legislation, and as a litigator.
4. Unfortunately, the Bill as it stands is very weak when compared to leading climate laws adopted elsewhere, and when compared to earlier draft laws prepared in this jurisdiction. That said, the Bill could easily be strengthened.

5. First, interim targets should in my view be included in the Bill to guide the creation of carbon budgets en route to net-zero, consistent with limiting heating to 1.5°C (the [Scottish Act](#) is a useful exemplar here)
 - a. A mechanism for modifying the net-zero date and the interim targets should also be included, with reference to the need for “*progression*” and Ireland’s “*highest possible ambition*,” as per the Paris Agreement.¹
 - b. There is of course a strong argument that 2050 is already too late for Ireland to reach net-zero on the basis of equity.
6. Secondly, the Bill should include legal obligations:
 - a. requiring the Taoiseach or Minister to ensure that carbon budgets (and targets) are met, and
 - b. requiring the Taoiseach or Minister to correct course and compensate if a carbon budget (or target) is not met.

The [Scottish](#), [UK](#) and [New Zealand](#) Acts provide useful precedents here, as does the [Climate Change Bill](#) produced in 2010 by an all-party predecessor Joint Committee. At that time, the Joint Committee on Climate Action and Energy Security proposed placing these legal duties on the Taoiseach;² in the present Bill no such duties exist at all, and there is equally no obligation to ensure that climate action plans are consistent with adopted carbon budgets.

7. Thirdly, the Bill requires the State to “*pursue*” but not “*achieve*” the 2050 climate objective, making the central objective of the Bill weaker than the objectives of the Climate Act 2015, the previous Government’s Heads of Bill, and the Joint Committee’s Bill of 2010. Also, the reference to an “*environmentally sustainable economy*” in the objective of the 2015 Act and the 2019 Heads of Bill has been dropped and should be reinserted.
8. Fourthly, “*have regard to*” is a weak legal obligation. The list of matters to which Ministers and the Government must currently “*have regard*” in adopting plans,

¹ Article 4(3); see also the target-setting criteria in s.2B of Scotland’s Act.

² Citing this as an important innovation.

strategies, frameworks, and carbon budgets could usefully be split, with the stronger requirement “*must be consistent with*” applying to certain matters.

- a. Regarding the principle of applying “*must be consistent with*” obligations to public bodies, see Head 15(2)(a)(v) of the 2019 Heads of Bill.³
 - b. Chief among the matters that public bodies should be required to act consistently with is the first item in s.3(3) of the Bill: that is, the overall objective of the UNFCCC and the temperature limits specified in the Paris Agreement.⁴
9. Fifthly, the public participation obligations in the Bill should in my view be strengthened, and the principles of “*climate justice*” and “*just transition*” should be fully enshrined in the Bill:
- a. Climate justice remains undefined in the Bill and is undermined by the weak “*have regard to*” obligation that precedes it: the principle should be defined⁵ and made meaningful; e.g. the Government could be required to report on how and the extent to which the principle has been taken into account in setting/reviewing the net-zero target date, interim targets, carbon budgets, plans, and so on.
 - b. There is no reference in the Bill to the concept of a just transition: contrast this with [Scotland’s Act](#), which sets out detailed “*just transition principles*” (in s.35C) and requires the Scottish Government to explain the extent to which its climate plans take account of these principles and the SDGs.

³ NB. The relevant obligations (on local authorities) have been weakened between the 2019 Heads of Bill and the new Bill.

⁴ A general duty to this effect could usefully be added to s.15 of the Bill, modelled on s.3(1) of the ECHR Act 2003.

⁵ E.g. See the definition provided [here](#) by Mary Robinson and Tara Shine; and see the definition in the Scottish Act.

10. Sixthly, s.4(7) of the Bill should in my view be amended⁶ or deleted to ensure that the effect of the Supreme Court’s judgment in Climate Case Ireland is preserved.⁷

11. Seventhly, the Climate Change Advisory Council:

- a. Still has *ex officio* members, contrary to the recommendation of a Joint Committee in 2013;⁸
- b. Is the subject of only a “best endeavours” obligation when it comes to gender equality;⁹ and
- c. Could do with additional expertise, including in the fields of law and just transition, and from the perspectives of youth and [future generations](#).

12. Eighthly, the Climate Change Advisory Council should be tasked with reporting, at least annually, on whether the current net-zero target date, the interim targets, the long term strategy, the carbon budget programme and the climate action plan still represent Ireland’s “highest possible ambition”.¹⁰ The Minister should be required to account at least annually to the Joint Committee (s.14) on the same question, after receiving the Advisory Council’s findings and recommendations.

13. Finally, the Bill should in my view be amended to ensure that actions to address climate breakdown and biodiversity loss are *fully complementary*.¹¹ For example, the Bill could usefully promote *via the Climate Act itself* nature-based solutions for mitigation and adaptation that enhance biodiversity.¹²

⁶ E.g. “Without prejudice to the obligation in subsection (6), the national long term climate action strategy may include *inter alia* the following: [...]”. In other words, the overriding obligation is still to “specify the manner in which it is proposed to achieve the 2050 climate objective.”

⁷ Would it be permissible/legally compliant for a long term strategy to include *only* the matters listed in s.4(7)?

⁸ See the Joint Committee on the Environment, Culture and the Gaeltacht’s November 2013 [report](#) on the Outline Heads of what became the Climate Act 2015, at p.15.

⁹ Despite 9 of 11 members being men since 2015.

¹⁰ Art 4(3), Paris Agreement.

¹¹ As the European Commission [noted](#) more than a decade ago, “We cannot halt biodiversity loss without addressing climate change, but it is equally impossible to tackle climate change without addressing biodiversity loss.”

¹² Not least given the huge potential of ecosystem restoration revealed by [recent scientific research](#).

14. While the Citizens' Assembly recommended with 97% support that an independent body be resourced with functions to include pursuing the State in legal proceedings relating to climate change, the present Bill appears to have been crafted with a view to *avoiding* legal accountability.¹³ In my view this is counter-productive: a weak governance framework will not see emissions fall, and falling emissions is the only thing likely to satisfy those who may otherwise turn to litigation. Further, litigation based on fundamental rights cannot be avoided by adopting a woolly climate law framework.

15. In conclusion, to stand a chance of limiting heating to 1.5°C, our emissions need to fall very deeply, very rapidly, starting immediately. We therefore have just one shot at getting this legislation right. We know that robust framework climate laws enable effective action, and we know how such laws are designed.

16. I wish the Joint Committee every success in its work. Thank you.

¹³ Witness the removal of "*achieve*" and "*environmentally sustainable economy*" from the overall objective; the liberal use of "*in the Minister's opinion*" / "*in the opinion of the Government*"; the absence of interim targets; the absence of duties to meet carbon budgets and to correct course; the codification of the Government's "*living document*" argument from Climate Case Ireland by way of the annual revision and approval of climate plans, etc.