

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÍOMHÚ AR SON NA HAERÁIDE

JOINT COMMITTEE ON CLIMATE ACTION

Dé Máirt, 27 Deireadh Fómhair 2020

Tuesday, 27 October 2020

Tháinig an Comhchoiste le chéile ag 1.30 p.m.

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	Seanadóirí/Senators
Richard Bruton,	Lynn Boylan,
Réada Cronin,	Timmy Dooley,
Cormac Devlin,	Alice-Mary Higgins,
Alan Farrell,	John McGahon,
Darren O'Rourke,	Pauline O'Reilly.
Christopher O'Sullivan,	
Bríd Smith,	
Jennifer Whitmore.	

I láthair/In attendance: Deputy Sean Sherlock.

Teachta/Deputy Brian Leddin sa Chathaoir/in the Chair.

Business of Joint Committee

Chairman: Before we begin, I remind members that this meeting cannot go on longer than the two hours scheduled. In that regard, is it agreed that contributions by members will be limited to five minutes each, to include questions and answers? Agreed.

General Scheme of the Climate Action and Low Carbon Development (Amendment) Bill 2020: Discussion (Resumed)

Chairman: I welcome Mr. Jonathan Church, a climate accountability lawyer from ClientEarth, and Dr. Thomas Muinzer, lecturer on energy transition law from the University of Aberdeen. Our witnesses are appearing remotely from outside the Leinster House complex. They will be invited to make a brief opening statement, which will be followed by a question-and-answer session. They are directed that only evidence connected with the subject matter of these proceedings is to be given, and they are asked to respect the long-standing parliamentary practice to the effect that, where possible, they should not comment on, criticise or make charges against any person, persons or body outside the Houses or an official either by name or in such a way as to make him, her or it identifiable. I also advise the witnesses giving evidence from a location outside the parliamentary precincts to note that the constitutional protections afforded to witnesses attending to give evidence before committees may not extend to them. No clear guidance can be given on whether, or the extent to which, evidence given is covered by absolute privilege of a statutory nature. If the witnesses are directed by the committee to cease giving evidence on a particular matter, they must respect that direction. I also wish to advise them that any submission or opening statements made to the committee will be published on its website after the meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I remind members and witnesses to turn off their mobile telephones or switch them to flight mode. They interfere with the sound system and make it difficult for the parliamentary reporters to report the meeting. They have an adverse effect on television coverage and web streaming.

I invite Mr. Church to make his opening statement.

Mr. Jonathan Church: I thank the committee for the invitation. 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.

I echo widely expressed concerns that the Climate Action and Low Carbon Development (Amendment) Bill 2020, as it stands, represents a step backward – as compared with laws such as the UK Act – in presenting only a loosely defined “national 2050 climate objective” and in not tying its carbon budgets strongly to that. Likewise, it is regrettable that there is no duty for the objective or carbon budgets to be achieved.

To speak more generally, it is natural that legislatures will be cautious about imposing broad legal duties on governments to meet ambitious targets years in the future. If so, however, the

solution 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 that, through frequent and focused moments of accountability, bake in a need to course correct if ever progress is falling behind.

The UK Act offers a cautionary tale in this respect. In June 2011, the UK set in law its fourth carbon budget, thereby setting a limit on UK greenhouse gas emissions for the five-year period centred on 2025. At that time the UK Government's emissions for the fourth carbon budget period were projected to be much higher than the budget allowed but the fourth 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". 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 in meeting its carbon budgets. Opposition MPs and civil society organisations have highlighted the persisting policy gap. The UK Government has published new policy plans – in theory required to meet the fourth carbon budget and, indeed, the budget following, but to little avail. UK Government policy has not been brought into line with the fourth carbon budget. All indications are that the fourth carbon budget, now only two years away, will not be met in full. The UK Climate Change Act has failed what could be considered its first real test.

Turning to the Bill, it seems less well equipped than the UK Act to deliver policy progress that will deliver emissions targets. I shall identify the weaknesses in this regard. First, the Irish 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 but that plan is then "subject to such modifications" as the Government considers "appropriate", without any apparent constraint.

Second, the Climate Change Advisory Council's annual review and report appear to focus on the progress made towards meeting the current carbon budget, 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, EPA, 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 strategies to include their projected impact on future emissions.

Third, 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. 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.

In summary, 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. I thank the committee for the opportunity to assist today.

Dr. Thomas Muinzer: I am a senior lecturer at the University of Aberdeen, and co-director of the Aberdeen University Centre for Energy Law. I am a lawyer with specialist research interests in climate law. My book, entitled *Climate and Energy Governance for the UK Low Carbon Transition: The Climate Change Act 2008*, published last year by Palgrave and with a foreword by Lord Deben, chairman of the UK's committee on climate change, provides the first in-depth book-length examination of the UK's Climate Change Act 2008. The Act was the first example of a state passing national framework climate legislation, and it is widely held in research and practice to constitute the most developed, robust and successful climate change regime created to date.

My most recent book, *National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation*, will be published in November by Hart. This book is the first major study of national climate change Acts from around the world. As well as containing internationalist chapters, deep-dive case study chapters are included that hone in on individual case study countries. Ireland's climate change Act provides the basis for one of the case study chapters. The final chapter to the book ties the foregoing work together to deduce generalisable, conceptual insights pertaining to climate change Acts based on current knowledge and experience and suggests the key features of successful climate legislation.

In an article for the Irish press in early 2019 entitled *Reflections on Ireland's Response to Potentially Irreversible Climate Change*, I began by pointing out that "Ireland stands at an important historical moment" as it endeavours to get to grips with "one of the greatest problems facing humanity", namely, anthropogenic or human-driven climate change. I noted that Ireland's performance at that time was insufficient, and that things did not have to be like this: "Ireland has the capacity to make a world-leading contribution towards overcoming this challenge." Indeed, I pointed out, with reference to Victorian scientist, John Tyndall, from County Carlow, that Ireland has a proud heritage of making significant contributions to managing the climate change challenge, due to the fact that his work helped us to understand the greenhouse effect.

The creation of the Climate Action and Low Carbon Development Act 2015, hereafter referred to as the 2015 Act, was a positive step in that it indicated a broad legislative intention to engage with climate change. However, it did not live up to the proud Irish legacy one associates with Tyndall's achievements, due to its inability to drive adequate emissions reductions and adaptation processes in practice, and due to the light-touch doctrinal substance of the legislative regime itself. I mentioned that Ireland forms the basis of a case study in my national climate change Acts book. The chapter is provided by Andrew Jackson. The research in that chapter, and my own analysis in the tenth chapter to the forthcoming book, clearly exposes the weak legislative character of the initial 2015 Act.

The question before us today, in essence, concerns the extent to which the Climate Action and Low Carbon Development (Amendment) Bill 2020, which I will refer to hereafter as the amendment Bill, improves on the insufficiency of Ireland's performance to date. Part of the solution in the current context may be to endeavour to bring the Irish regime more into line with the UK regime in operation next door to Ireland, insofar as that regime has been performing effectively in practice and is widely considered to be the world-leading example of national framework climate legislation. The UK Parliament passed the Climate Change Act 12 years ago, absorbing key elements of the EU's 2020 requirements for the UK and exceeding them in many areas. The UK originally set in law for itself a stringent 34% greenhouse gas emissions reduction target for 2020, and locked in a robust 80% emissions reduction target for 2050. The

UK met its 2020 target two years ago, and has since set its 2050 target to net zero.

Although the amendment Bill amounts to progress of a kind, it does not develop the original Act in a substantial enough manner to neutralise the weaker and more ineffectual aspects of its legislative character. The manner in which the national 2050 climate objective displaces the national transition objective, and in which carbon budgets and a decarbonisation target range are added could be useful, but the relatively soft language of the 2050 objective would be required to be replaced by a 2050 target per the UK Climate Change Act, if the legislation is to drive a meaningful emissions reductions trajectory. The carbon budget levels would need to be fairly stringent, and subject to a less flexible and fluid design than is currently applied. These budget levels in turn should be ideally pegged to interim targets that drive an emissions reduction trajectory towards the 2050 target. Other desirable components underpinning climate legislation, including sanctioning mechanisms and enhanced public participation and engagement, could also be incorporated.

Chairman: I thank Dr. Muinzer and Mr. Church for their opening statements, and will now take questions from members in the order in which they raise their hands.

Deputy Richard Bruton: I thank the witnesses for their presentations. Most members will agree that the Act, as it stands, relies heavily on political accountability, including the power of the Oireachtas committees and that of accountability through these Houses. I can certainly see the logic of some of the legal changes that the witnesses have proposed, for example, to strengthen the wording to achieve due account, to take steps to bring within budget, and as Mr. Church said, to take in opportunities to adapt.

I am interested on hearing the views of the witnesses on a number of issues. When they consider litigation and sanctions, how do they see them bearing on many groups in society who have to make massive changes here? In Ireland, as in other jurisdictions, there are people who oppose carbon tax, people who want to protect herd size, and people who do not want to see car sales become zero-carbon in 2030, and so on. If annual budgets are locked in, will we effectively have litigation every other year on material deviation from some of these targets? Some people argue that we should deliver 7% per annum, every year, regardless. That is not practical, given the starting point. I am interested in the scope of the litigation that the witnesses see being created by the vehicle.

Chairman: Are Deputy Bruton's questions directed at Mr. Church or Dr. Muinzer?

Deputy Richard Bruton: They were both handling the same issues.

Chairman: Would Mr. Church like to respond first?

Mr. Jonathan Church: Apologies, I have just come back from experiencing technical hitches. I just caught the very end of the question.

Chairman: We will go to Dr. Muinzer.

Dr. Thomas Muinzer: Litigation is a slightly tricky issue in the context of the Bill, even as it currently stands, and that is before we even come to the notion of perhaps stepping up carbon budgets by pegging them to interim targets or a slightly more developed 2050 target. Section 3(3)(a) to (y), which sets out a range of things to which one has regard when undertaking functions under sections (4) to (6), inclusive, is rather a *melée* of a very broad range of interests and considerations that might run a risk of opening a door to fairly extensive legal challenges, as

parties try to stress test whether those elements have “had regard to” the legislation. Litigation is an issue one might want to consider quite broadly and in the round.

In terms of the narrower issue of sanctions that might be imposed on a carbon budget level - perhaps a 2050 target or an interim target - in a sense, litigation sanctions are our tool to drive successful outcomes. I would, therefore, potentially encourage that they be used as a useful opportunity. That said, however, if one looks around the world and tries to point to a climate change Act that contains robust sanctions fit for that sort of purpose - enforcing targets and so on - they tend to be relatively soft-touch sanctions. If one takes a look across the water in the UK, for example, there is a debate as to whether the Act contains sanctions. It does not contain explicit sanctions but it does contain the facility for judicial review, which some people consider to amount to a sanction in its own right. One can go to court and the court can perhaps do particular things. When one has a framework that is reasonably devoid of sanctions on those major substantive points - targets and so forth - one still finds that they act as a useful regime driver. Perhaps we should not worry as much as we might think we should at first when it comes to the role and significance of sanctions.

Chairman: I thank Dr. Muinzer. I understand Mr. Church did not hear the question because of technical difficulties so I will afford Deputy Bruton the opportunity to ask the question again for his benefit.

Deputy Richard Bruton: It was really on the scope of litigation and tightening up many of these legislative proposals such as having annual targets and perhaps having the view that each year 7% should be delivered, as advocated by some people. Does that create a vehicle where we will be regularly in the courts taking on groups at the very time we are trying to socialise the need to make dramatic change? I refer to the balance between political persuasion, which is pretty much at the heart of the Act as it is now drafted, and a more legalistic approach. How well does that fit? A person said to me that when one is dealing with an addict, as we arguably are in the case of fossil fuels, one does not necessarily advocate cold turkey. There are many other ways. Is this a bit of cold turkey?

Mr. Jonathan Church: First, to echo my initial remarks, there are two important components of effective climate laws. One is the political persuasion angle, as the Deputy has highlighted, and the accountability that is generated by the Act. In the UK, that has not proven to be sufficient to drive emissions reductions as needed to meet the carbon budgets in place.

The Deputy asked how far this law will open up possibilities for litigation. My perspective is that the more vague and less well targeted the duties in an Act like this are, the more it can have the effect of encouraging litigation. As Dr. Muinzer pointed out, a whole list of possible considerations need to be taken into account under the section he noted. All of those might attract litigants. There might be areas of uncertainty that will attract people to try to use the law to make progress where they feel progress is lacking. A better way to approach a law of this kind is to actually be clear and precise in the language of the law in order that the duties are clear. There will be less appetite for people to bring litigation if the edges of what is demanded by the Act are clearer. In the UK Act, there are clearly defined dates by which carbon budgets need to be set and they have always been followed. That is because of the clarity in those duties. It is only if those duties were less clearly framed that one might see more litigation coming into play.

I have one final thought on the enforceability of targets. Traditionally, people have always focused on how far those targets are enforceable and what the consequences are if one misses those targets. The important question is not so much what happens if one misses a target be-

cause once one has missed that target any enforceability mechanism is, in a sense, by the by. What one needs to do is focus the important parts of this law on what the Government needs to do and what steps it needs to take to keep on track to those targets. In a sense, remedying any deviation in terms of ongoing progress is much easier than waiting for a breach five, ten or 15 years down the track and then wondering how it can be enforced. If the law is drafted to require little and often, but with hard-edged accountability, I hope many of the problems about litigation might be lessened.

Deputy Jennifer Whitmore: I thank both witnesses for presenting today. This question is probably more with regard to Dr. Muinzer's presentation but Mr. Church may also wish to comment. In his opening statement, Dr. Muinzer said he worked on doing analysis of international climate law and essentially came up with a series of key features by which successful climate legislation could be determined. What are those features? How would Dr. Muinzer see this legislation falling in with them? If one looks at the current Bill, which of the key features does it meet and which does it not meet? Could Dr. Muinzer put forward some suggestions as to how it could be tightened up?

Dr. Thomas Muinzer: I thank the Deputy for her very good question. The book I mentioned presents analysis of climate change Acts and some deep-dive analysis of particular states, including Ireland. That analysis is provided by Dr. Andrew Jackson, who I understand has appeared before this committee. It is an erudite and excellent analysis. The book as a whole draws lessons based on the current condition of knowledge and practice in the area of climate change Acts. We are thinking about just the sort of Act we are dealing with today - national framework climate legislation and national level framework legislation such as this.

The Deputy asked about specific major identifiable components which are considered largely best practice to include within climate change Acts. I am sure it will come as no surprise that the two major thematic components which are identified are a substantial focus on mitigation and a substantial focus on adaptation. Those two major thematic components may initially sound reasonably obvious. An Act like Sweden's climate change Act, in essence, ignores adaptation. There are reasons it was argued it was appropriate to do that. It was felt in Sweden to some extent that adaptation was catered to under other extant frameworks. At any rate, in principle we have two major thematic components that must be dealt with in an adequate way: mitigation and adaptation. Of course, the Irish legislation engages robustly with both features.

In terms of more granular components, targets are considered key. One could have a conversation around the form and nature of targets. We might think most obviously of a fairly stringent emissions reduction target for 2050 like that found in section 1 of the UK Act, which refers to a net zero target. However, New Zealand's legislation, for example, includes emissions reduction targeting but uses a split target approach where one is distinguishing methane with a split target. It also incorporates a 1.5°C temperature rise target that is pegged to the Paris Agreement which indicates how when we think about targets we may also think in terms of temperature. There is, therefore, a range of ways in which one can approach targeting but targets and carbon budgets are considered a leading-edge best practice granular component. The Irish amendment Bill includes those. I will argue they are included in a soft form that should be examined and, frankly, tightened but that component is represented. Long-term planning procedures are considered to be another major component. They feature in our Bill in terms of our strategic framework and so forth. The creation of an independent climate committee is another component. We have our advisory council, which is being adjusted and augmented under the Bill. There is probably a discussion to be had on that but that type of committee of these

leading edge frameworks is very much a major thematic component. The adoption of robust mitigation and adaptation plans is another core granular component. One could argue that is reasonably well developed in Irish legislation. Public participation and engagement is another component. There may need to be a conversation about the extent to which the Irish Bill caters to that in an adequate way. That is a relative blind spot in the UK Climate Change Act, which has virtually nothing to say about public participation and engagement. That is not the case in the Scottish Act, which has relatively well-developed features. Other components are monitoring and reporting procedures, sanctioning mechanisms, which we have touched on, the need for a conversation as to the form those sorts of mechanisms might take, and institutional transparency. A conversation may have to be had around that in respect of the Irish Bill in which there seems to be a reasonably robust presence of institutional transparency. There may be some problematic elements there also.

Those are the core components identified from the research. Some can be pegged explicitly to our amendment Bill. We might need to have a conversation on others as to whether they are sufficiently robust. Others are arguably not meaningfully present. Perhaps I am being a little harsh but the public engagement element may not be meaningfully present in our amendment Bill depending on one's view. I thank the Deputy for the question.

Chairman: I call Senator O'Reilly.

Senator Pauline O'Reilly: I thank both witnesses for joining us. As a member of the Government and of the Green Party in particular, it is important to me to tie future Governments to this area. It is important to recognise that at this stage all of us in this room want to tighten up the legislation.

Dr. Church's sixth point was that the UK Climate Change Act has failed, specifically on the fourth carbon budget, which he believes will not be met in two years. He is also critical of the legislation before us. Dr. Muinzer said the Bill before us is an advancement on what we had in 2015. We want to make sure it is even better. What are the failures of the UK Climate Change Act that we can avoid? Dr. Muinzer mentioned a couple of those, in particular to do with public participation. It seems to me that whatever is contained in an Act, more than the Act is required, to see significant change. Would the witnesses agree with that? Are other measures needed beyond the climate Bill before us? Likewise, do the witnesses see failures in the Scottish Act or do they hold that up as the one for us to use as a template?

Chairman: I remind both witnesses that we are trying to have the questions and replies from both of them within the five-minute slot. They might be direct and speak to the Bill as best they can; they both have three and a half minutes to reply. I call Mr. Church.

Mr. Jonathan Church: I thank the Senator for the question. To pick up briefly on the previous question, I would highlight the importance of the planning provisions for driving progress now to keep it on track to meeting carbon budgets. That is what has fallen short in the UK Act. There has not been this course correction each year where even though we have seen the projected emissions in the UK consistently below where they will need to be to meet our fourth carbon budget, there has not been enough traction from the committee on climate change, or from the Bill itself, to clearly require government to put better plans in place. We have seen a bit of an evolution from the UK 2008 Act where there is not that emphasis on seeing the projected emissions, asking whether they are enough, and then remedying the plans that need remedying. We see more of an emphasis on that in Finland's 2015 Act and Sweden's 2018 Act. I am not as familiar with the Danish Act, which is new this year, but my understanding is that Denmark's

new climate Act, which again is a second generation Act, focuses on the need to be demanding when it comes to the quality of those plans. Are we on course or not? If not, something needs to be done that year. My understanding is that if the plan is not amended, the parliament can have a say on whether more needs to be done. That is the important area on which the current Bill could focus much more. It is to have clarity about whether we are on track and making the necessary changes early to ensure we do not worry about meeting those budgets in due course.

Dr. Thomas Muinzer: I will speak briefly about some slight differences between our 2015 Act, as amended, and the UK Act and then address the very good question on the identifiable failures under the UK regime that Ireland may sidestep or avoid in this sort of case. In terms of some headline similarities and differences, the texture of the UK's Climate Change Act is more business, energy and industrial strategy, BEIS, orientated. It puts primary duties in terms of targets and other areas on the Secretary of State for Business, Energy and Industrial Strategy, a member of the UK Government. It has a tendency to deal with economy-wide targets. Arguably, there is a more sectoral texture in the Irish legislation. I am thinking of measures such as the sectoral adaptation plans in section 6 and so on. There is a nice sectoral texture in the Irish legislation that acknowledges the different sectors that pose different problems. There is a slight orientation towards economy-wide targets and an economy-wide approach to perspective in the UK Act but there is a nice character in the texture of the Irish Act that may be its strong suit.

In terms of other differences between the two Acts, in the Irish legislation the Government has a comparatively large concentration of power. There is a fine balance in the UK legislation between the UK Parliament and the Government parties approving carbon budgets and so on. There is a sharper articulation of the separation of powers. Arguably, the courts can do more in the UK context, which is a branch of governance within our executive. We talk about judicial review, JR. There is a relatively well developed capacity for JR under the UK legislation.

As to whether this is a positive or negative development, one may take one's own view but in terms of the 2050 objective, under the Irish legislation the emphasis is on the State. In the UK legislation, the emphasis is on the Secretary of State, an identifiable actor within the UK Government. In the Scottish legislation, when it comes to duties, for example, and the net zero duty for 2045, the emphasis is on the Scottish ministers. That is slightly different as it is on the collective Scottish Government. Those are areas we might want to talk more about. There are some divergences which I suggest create arguable strengths and weaknesses but I would flag some of those differences. There is a richly developed sectoral character in the Irish legislation that seems to be quite useful.

Chairman: Before I call Deputy Boylan, I want to note that Deputy Sherlock is joining us remotely. His hand is raised and I will call him after Deputy O'Rourke has contributed.

Senator Lynn Boylan: I thank both of our speakers. I want to elaborate on what Dr. Muinzer said about the sectoral layering in the Irish heads of the Bill. In New Zealand, there are many references to ecology and biodiversity. There is a reference to biodiversity, the ecosystems and the ocean in the recital and the commission has to take account of any ecological assessment, as does the risk assessment and the climate action plan. Should this be incorporated to the Irish example, given we have the scope to look at the sectoral areas?

Will our guests comment on reference in the proposed Bill to one or more greenhouse gases? It is not specifying all greenhouse gases. There is also a reference to a decarbonisation range, although it is not specified.

Dr. Thomas Muinzer: The Senator raised some very good points on the New Zealand legislation. It is a good example of how we can learn in the context of the Irish experience from other legislation, perhaps by trying to cherry-pick some of the stronger components. There is an argument for building in developed recognition of biodiversity and so on in the Irish legislation. I have a concern about the contents of head 3, paragraphs (a) to (y), where there is a long list of matters that are to be taken into account over the course of proposed sections 4 to 6 functions. That is such a diverse list of features that it could, arguably, be problematic. Why would I say this from a legal perspective? It is extremely wide, which can pose legal and practical problems. It also contains a range of competing interests, so it is quite difficult to balance broad and competing interests in that way in legislation. In that regard, if we are building in elements like biodiversity and so on, one would want to be careful as to how one adds to the texture of the legislation, even if it is for the good reasons mentioned by the Senator.

I will briefly comment on this type of legislation. There can be a tendency to throw much at this type of legislation because it is dealing with a very broad and pervasive problem in climate change; it is as pervasive a legal problem as we can get as climate is all around us. Perhaps there is a tendency to want to pack this legislation with various matters but one can adequately err on the side of caution and still allow the law to function very well. We must remember we are dealing with framework legislation, and it tries to sketch a framework that will set a policy direction and form a basis for further action. The further action may be fleshed out via policy and secondary legislation and so on. We want to stress the framework element and not overpack the legislation, even if it would be for positive or good reason.

Another good question was raised but perhaps I should hand over to Mr. Church so he has adequate time to answer.

Mr. Jonathan Church: I thank Dr. Muinzer. I will briefly pick up on the greenhouse gas emissions point. It is a potential concern that it is not well defined which greenhouse gases will fall into the bucket. This is particularly given the nature of Ireland's economy and the large proportion of emissions from agriculture, as in New Zealand, where it felt it was necessary to bracket out methane. There are good scientific reasons for doing that because methane is a short-lived rather than long-lived gas. We might want to treat those targets differently.

It is important that throughout this there should be a strong and clear framework. I agree with the comments just made about a tendency to overpack the law. I might put the sectoral decarbonisation target ranges into that bracket of maybe going that extra step. There is already much in this Act, including many duties for the Minister to deal with, reports and time limits. It would be real challenge to produce these decarbonisation target ranges. It might help focus minds but I have concerns that those decarbonisation target ranges do not need to be strictly tied to the carbon budget.

I am always a little nervous of the idea of a target range. It can make sense at an EU level, when there is an attempt to capture disagreements or divergence of views. Are we really saying that we are aiming for a range in any case? If we achieved more than the highest value, for example, would we have missed the target? If the target was a range of 10% to 20% in a period, would a 23% reduction be a failure? There is something strange about using a range in this respect.

By the same token, there is an important place in this for celebrating success. If a target is a 10% reduction by a certain time and a government or a sector achieves a 12% reduction, it should be celebrated. Laws of this kind are often seen as being burdensome but we must create

a space for success as well. Perhaps including a range in this way means we can never quite meet that success if we never meet the highest target in the range.

Deputy Réada Cronin: I thank the two witnesses for assisting us with the Bill. My first question is for Dr. Muinzer. I am interested in his mention of sanctions. Without a just transition being mentioned in the Bill, we do not want people to think sanctions will be placed on them. The sanctions should be on the Government. Will Dr. Muinzer speak a little about that please?

It feels as if we are in the territory of optics and aspiration over action and achievement. Will Mr. Church give us three actions that we could seek to achieve in order to match optics and aspiration with action and achievement? It is really important that the Bill lives up to its remit but the language is very vague.

Dr. Thomas Muinzer: I thank the Deputy for her question. A member has pointed to the New Zealand legislation and some lessons around biodiversity and so forth that we can potentially learn. Deputy Cronin raised the question of the just transition and there is an inspiring template in Scotland that we can look to, which contains a relatively well-developed acknowledgement of the just transition. With the work in Scotland there is a kind of raised consciousness around the just transition, which the Act may partially stimulate. We have a useful template to look to in order to fill what could be an arguable blind spot in the Irish legislation.

With particular reference to sanctions, I will speak specifically to the text, as a lawyer tends to. Head 3 deals with our 2050 climate objectives and it would displace the old section 3(1) of the principal Act. It indicates, “The State shall pursue the transition to a climate resilient and climate neutral economy” so it is the tendency within the legislation. I will not necessarily say that this places a duty as it does not work in the same way as the UK Act, which is very robust. It points the duty towards the State, with the implication being it is towards the Government. The language could perhaps be more sharply developed around those points at certain stages to assert and affirm. The UK Act may provide a useful template.

When thinking of sanctions, the orientation is typically towards the Government. It would be useful to stress-test the language just to ensure that is coming through and clear. The sanctions question can be complex. In the UK experience, judicial review is available, as members know. In my writing, I have tried to think through what remedial outcomes a court might apply in the context of a particular breach of the climate change legislation in the UK. Typically, in approaching that question, I have broken duties into two different types in the Act, with the first being procedural duties. That may be the process of reporting to the parliament or something like that.

Substantive duties would classically be a 2020 or 2050 reduction target. With procedural duties, there tends to be a capacity for courts to order a report, say, if one had been missed but with substantive duties, it can be very difficult to see what courts can do meaningfully. If the net zero 2050 target was missed in the UK, that could be judicially reviewed, it is a legally binding duty, but what would the court actually do? It would probably award declaratory relief where it declares that there has been a breach of the duty. It may award costs to the party that brought the case but beyond that, it is difficult to see exactly what the court can do. A lesson for Ireland, when considering sanctions, is that part of the form that sanctions might be able to take, as well as could usefully take, lies in the courts’ capacity in Ireland to undertake certain actions to issue certain orders. When considering sanctions, one must look carefully to the legal system and context in the jurisdiction in question to see what outcomes could be dictated by the courts,

or perhaps even created by them because we are starting to see creative judgments around the world in this area. There might be capacity for creativity in Ireland. Sanctions, especially, are a question where there is no magic bullet or one-size-fits-all answer. Ireland will have to think independently within the context of its own legal framework and tradition.

Chairman: Does Mr. Church wish to answer Deputy Cronin's second question on whether the Bill was more than optics?

Mr. Jonathan Church: I agree that there are a lot of optics around the Bill. I would love to see elements tightened up. I will try and be more specific and helpful as I have spoken quite generally, and give some examples. Take section 4 where the climate action plan is developed. My opening statement noted that its approval is subject to such modifications as the Government considers appropriate. That allows too much leeway. It is perfectly possible for each climate action plan to deviate from targets from the start. At the very least, if the Government wants to deviate from the plan proposed by the Minister, it should require a justification, maybe in concert with the advisory council. That is something more like the UK Act where a carbon budget is proposed and if it is not followed, the Government must account for why that is the case. Otherwise there is a risk that the carbon budgets and plans become too unmoored from the ultimate objective.

Section 4(13) features a potentially important duty for Ministers in the performance of their duties to have regard to the climate action plan and strategy. I would love to see stronger wording because the duty to have regard is very weak, as I am sure others have noted. It could be satisfied by a tick box for a Minister to say "Yes, I have had regard, but I choose not to act in compliance with it on this occasion". Stronger language, whether a duty to act in compliance with the plan or strategy or work compatibly with the strategy, could go a long way to strengthening things.

Sections 12 and 14 concern the annual review and report by the advisory council and any subsequent evidence given to the joint committee. As I noted, there is some emphasis on projections and some emphasis in section 14(1)(b) on whether there has been an increase or decrease in emissions based on the agency's reports. I would tighten up this section so that the Government must show how its projected emissions compare with the projected emissions required for meeting carbon budgets. Then, if there is a deviation, the Government must at least account for why that deviation is there and, at best, amend the Government's plans to satisfy that flight path to the carbon budgets. I can provide the committee with the kind of wording that might do that. It is the kind of wording that newer laws that the Governments in Sweden, Finland and Denmark have started to use with the importance of correcting for the gap between projected emissions and the emissions that are needed.

Chairman: We have afforded other witnesses the opportunity to elaborate on answers in writing. If they wish to do so we would welcome that and appreciate it if they could do so by 30 October.

Senator Alice-Mary Higgins: That answers my question of how we ensure that this is a second generation piece of legislation and that we have learned things. I think the witnesses will indicate some of the issues that will address that in writing. I appreciate that.

I was interested in some key points that have been raised. I refer to the relative weakness of balance between Government and Legislature here, except the ultimate accountability when it moves away from the Government and becomes the State. It seems there is a lot of govern-

mental or ministerial discretion in the Bill. It is about how we can make the Bill more robust so that the Legislature can hold the Government to account.

Dr. Muinzer spoke of the importance of interim targets in the Scottish legislation. How important are the 2020 target of a 56% reduction and the 2030 target of 73% reduction, recognising they can be flexibly moved to be more ambitious, in providing guidance so that we can correct course if we are not reaching these? How important is it to have them in the legislation? Can we get something in writing on how the just transition was incorporated? The sustainable development goals, STGs, are also explicitly mentioned in the Scottish Act. The just transition and STGs are particularly relevant for those sectoral plans and targets. It strikes me that some of the things that are in the long list would be very usefully applied in the sectoral plans.

There was a question on litigation and how vague language can lead to more litigation. Can it also lead to litigation that can slow progress towards the goals if we have competing interests in that section?

Chairman: I think the first question is for Dr. Muinzer and the second for Mr. Church.

Senator Alice-Mary Higgins: They overlap. I am happy to let either respond.

Dr. Thomas Muinzer: Was the first question on the Scottish legislation?

Senator Alice-Mary Higgins: They overlap. One question was for Mr. Church on Government accountability and ministerial discretion in the Bill and how that can be made more robust in making it more accountable to the Legislature. The other question, for Dr. Muinzer, was on interim targets and the SDGs in the Scottish Bill. I ask the witnesses to also comment in writing on the nitrogen balance sheet which Senator O'Reilly raised before, as we will not have time.

Dr. Thomas Muinzer: The Scottish targets is a useful and interesting question. It is worth contextualising how the targets in Scotland developed. That is quite interesting. The UK passed its Climate Change Act in 2008. In 2009, Scotland passed its sub-state Climate Change (Scotland) Act which was extensively amended last year, as I am sure the committee knows. When the original Act was passed in 2009 it was a relatively well developed piece of legislation and was quite ambitious. Over the course of passing that, the Scots looked at targets which is one of the things that is being agonised over in Ireland in relation to our Bill. Effectively, Scotland absorbed the two milestone targets under the UK's Act for 2020 and 2050, but ratcheted up the 2020 target for a range of reasons. It increased it to 42% at that time under the initial regime. The Scots said they would go further or at least try another alternative device. We would like to be a little more granular in how we account for our emissions reductions trajectory. The UK Act has stringent five-year carbon budgets that are pegged to interim targets insofar as the 2020 interim target and the 2050 target set the range that the carbon budgets travel on. The carbon budgets are set in secondary legislation and approved by parliament. The Scots built in annual targets of at least 3% per year. From the get-go in 2009 Scotland took a sub-state annual granular approach to targeting. That has proved very useful and has set Scotland up well. It has had a very successful emissions reduction drive. The country was well placed to introduce more robust interim targets in the recent amendments to which the member referred. To cut a long story short, the interim targets are very important. They are key to the success of carbon budgeting and granular targets. I could say more, but I will conclude there.

Senator Alice-Mary Higgins: Could Dr. Muinzer comment on the sustainable development goals, SDGs, and the nitrates balance-sheet in a written follow-up?

Dr. Thomas Muinzer: I would be happy to.

Mr. Jonathan Church: I agree with Dr. Muinzer on the role of the Legislature. There are obvious parts of the Bill where the role of the Legislature could be rebalanced relative to the Executive. I refer, for example, to the preparation of the climate action plan. The Bill envisages a process whereby the Government approves the climate action plan and it is simply laid before the Houses of the Oireachtas. As far as I can see, the approval of the Oireachtas is not needed. Requiring a parliamentary vote, either when the plan is first prepared or when it is improved, as might be judged necessary by the Climate Change Advisory Council or the Joint Committee on Climate Action, could be a very important change to the constitutional balance. It could help to ensure a pressure on the Government to perform to a certain standard. There are a few provisions which could be changed to give the Parliament a vote rather than an observer role.

A very good point was made about the risk of litigation going both ways. The clearer the law is, the lower the likelihood of litigation. There is much leeway for arguments to be made in the courts. Reducing this would mean that elements who wish for less ambition would have less chance of slowing things down through legal arguments. Some four or five years ago a climate sceptic who was then the UK Secretary of State for the Environment, Food and Rural Affairs floated the idea of amending the 2050 target in the Climate Change Act 2008 to zero, effectively switching the Act off. He may have seen that there was an opportunity to do that in accordance with the Act. The language did not tie the Act to the targets sufficiently robustly. That is an example of how litigation can go both ways. It demonstrates the fact that clearer language is better.

Deputy Darren O'Rourke: I thank both witnesses. I would like to pick up on a point Dr. Muinzer raised on public participation and engagement. Perhaps Mr. Church would also like to comment. Could the witnesses comment on the importance of that element and what it looks like in other jurisdictions? Are there exemplars?

Dr. Thomas Muinzer: I thank the Deputy for that very good question. Asking a question like that is a key to the puzzle. Those are exactly the types of questions we should be thinking about. What public engagement would look like in adequate legislation is not an easy question. There is probably no magic bullet or one-size-fits-all solution that would suit all jurisdictions. To some extent this needs to be concretised in the context of specific jurisdictions.

I will confine myself to issues relating to the legislation. Some approaches taken in Ireland, such as the citizens' assemblies, are widely admired as positive examples of how the public can be engaged to usefully inform action on certain issues. That has included climate governance in this jurisdiction. Ireland has some things to be proud of and has set a good tone in that area. We must then turn to the question of how these important components might be built into the legislation itself. As the Deputy suggests, we can take a cursory look at what is happening elsewhere. The UK's Climate Change Act 2008 has something of a blind spot in this area. The Scots perceived this when constructing the Climate Change (Scotland) Act 2009, and tried to make some improvements in that area. They built some public engagement elements into that legislation which chiefly hinge on the development of a public engagement strategy. As part of this strategy, the Government and the devolved institutions need to engage with the public to raise consciousness of climate change and mobilise its interests. They must emphasise that through their energy choices, members of the public are players in the game of energy decarbonisation and transition. Some of those elements are linked to ensuring the principles of a just transition suffuse society as these changes occur.

That accounts for Scotland. To my knowledge these Acts are springing up like wildfire. When I started my book there was a very small number. At that time, it was widely held that the best legislation was that of the Netherlands. There was an extremely robust public participation process prior to the passage of the legislation. That was carried over into the Dutch Climate Act, which sets out a framework for citizens' participation. I encourage the committee members to look at that legislation. It provides a framework for public participation. This is complemented by a climate agreement setting out specific actions the Dutch Government is required to take in order to mobilise public engagement. These include monitoring public views, trying to raise consciousness of the problem of climate change and emphasising the public's engagement and interest in the process. It is very useful to look at the Netherlands and Scotland. We can also think creatively within our own tradition of citizens' assemblies to colour our legislation.

Mr. Jonathan Church: I agree with all that. I would add that Dr. Muinzer's picture of the UK Climate Change Act 2008 is quite right. There is not enough in that Act and it risks looking too technocratic. Carbon budgets are set and in theory they are democratically mandated. They go through Parliament, but there is a potential mismatch between what is involved in meeting those carbon budgets and an understanding of their implications among the people at large. Those two things must be connected.

There may be a real opportunity to somehow establish a periodic role for Climate Assembly UK to feed into the mechanisms of the Act. That could be useful. I believe France has a similar climate assembly. There was talk of somehow integrating its conclusions into the national policy agenda.

Deputy Sean Sherlock: I thank the Chairman for affording me the opportunity to join the committee today. This debate has been really useful and proved to be a very useful tutorial for somebody such as myself.

On the role of local authorities, in the wording of the legislation is there insufficient direction given to local authorities on the interpretation of national climate action plans and how they translate at the most local level into adaptation and mitigation measures? Does either witness have a view on the role of local authorities? Does the wording need to be buttressed or tightened up? I see a role for local authorities. Transport and housing are two key elements of taking carbon out of the equation so the role of local authorities would be important. Slightly tangential to that is the role of public participation. If there is a facility for local authorities to invite members of the public to make submissions then that could be an opportunity for the citizen to engage at the most local level. Can consideration be given to tightening up the wording? Do the witnesses have a perspective on the wording?

We have a climate change advisory committee and there is the Committee on Climate Change in the UK. Let me explain the way I look at the Irish committee. The Professor John FitzGerald of this world keep us honest. By that I mean, when they talk people listen because they do not have a "political" agenda. To what extent does the UK Houses of Parliament view the UK Committee on Climate Change? Does it have a real beneficial impact in terms of influencing policymakers and Government? Can we learn from the UK experience? Can we translate the lessons learned into a legislative text here that gives greater weight to the Irish climate change advisory committee such that it has more power, better powers of intervention and the power of persuasion? My questions are more philosophical but the witnesses might have perspectives on them.

Finally, I thank both of the witnesses for their submissions to the committee.

Chairman: I suggest that we start with Mr. Church this time and he might want to address the question on the role of local authorities.

Mr. Jonathan Church: Yes, I shall try to do that. Outlining the role of local authorities is a difficult question to answer. In the UK I have spoken to a number of people about how the UK Act is implemented and whether it should, as it were, try to reach down to local authority level because, clearly, what happens at local authority level is hugely important, as the Deputy Sherlock mentioned in terms of, most obviously, housing and other kinds of infrastructure as well. At the same time it is very difficult to draw a direct line from the kinds of emissions that are needed nationwide to any particular local authority so I do not have a firm view on that. I would just say that there is a lot here, again to go back to Dr. Muinzer's comment about heavily packing the law. I wonder whether it might be possible in a more lean way to somehow require that local authority plans, as they exist, be in some sense compliant with the overall duties in the Act rather than again trying to come up with new plans at local authority level that then have to interact with existing planning structures at local level. That could, potentially, get quite complicated. It is important that, in a sense, the law is somehow felt at local level.

On the advisory council point, there are certain things we can do in terms of giving the advisory council a greater role. For example, in requiring government to respond to the advisory council's annual report or, potentially, allowing the advisory council to raise the alarm in some way. The success of the Committee on Climate Change in the UK - and Deputy Sherlock is right to suggest that it has been and continues to be seen as a real success - is largely down to the people who have been on that committee. I refer to the high-quality work of the secretariat, the non-political nature of the people on the body, and the sensitive way in which those on the committee, including the Chair, have been able to take the right line. Inevitably, there are political questions about how far one pushes it or how far one pushes there. It is a testament to the people who have been on that committee, and how they have conducted themselves, that the CCC is seen as so authoritative across the board. That probably goes as much to getting the right structures in place, having independent funding, having enough money to attract the best people to be on the secretariat and also being quite careful and cautious to have non-political experts on the committee. For example, in the UK Lord Deben, has been the Chair for recent years and is a retired Conservative environment Minister of State. That is a very good political vantage point to be able to stand in and give the best picture of the committee's work.

Dr. Thomas Muinzer: Deputy Sherlock asked a very good question about the advisory council. There are some distinctions between the Irish advisory council and the Committee on Climate Change. I cast no aspersions on the Irish advisory council as I know that it includes a range of distinguished people and it does good and important work. So simply thinking about the legislation, in the original 2015 Act, section 11(3) states: "The advisory council shall be independent in the performance of its functions," which is very important. The Committee on Climate Change in the UK is independent as well. Section 9(18) semi nests the advisory council within the Environmental Protection Agency which, according to the legislation, becomes its sort of administrative support and perhaps they meet on the premises and so forth. That may have been a useful and prudent thing to do.

I shall talk about the law on the page and cast no aspersions on the committee, which I know does important work. The Committee on Climate Change, in the UK legislation, is sketched very robustly as an independent entity and is very much freestanding. When one considers the structure of the institution itself one will see that it has its committee, which Mr. Church discussed, an adaptation subcommittee, and a very substantial secretariat that is very well re-

sourced. The CCC stands very freely and is not quite subject to the same membership structure entirely in terms of how the competition is sketched out in the Irish Act, which is different. There are a few other differing elements as well. The CCC is very robustly freestanding in the UK and the Irish committee does important independent work but, from a vantage point, it sketches its functions now slightly less independently. One thing that we might learn from the CCC is how the legislation sketches it out in a very rooted, freestanding way, and that then has spoken to the theme of its popularity and how it is perceived. It is construed and considered as a robust freestanding, independent and reporting body. I cast no aspersions on the Irish committee, which is highly respected as well.

I shall give one brief example. Lord Deben wrote the foreword for my book on the Climate Change Act. Typically, I critiqued the Act and its institutions but I did not have a great deal that was critical to say because the CCC fulfils an important function, stands independently and has been a key piece of the machinery in the UK. One reason that Lord Deben kindly wrote the foreword is that he might have anticipated that I would have had a lot of critical commentary but I actually did not simply on the basis of how the CCC has performed to date and been viewed. There are some useful lessons there, I think.

Deputy Cormac Devlin: I thank the witnesses for their testimony, for highlighting various aspects of the Bill and for their own experiences. The debate has been very interesting. By this point many of the questions have been asked so forgive me for any repetition. I was taken with the point in the opening statements about the need to tighten up the language in the Bill. Both witnesses spoke about that in some detail. In terms of the differences between what is being proposed here and what the UK has done given its experience in climate action for nearly 12 years, what are the main differences between what is being proposed here and the witnesses' lived experiences of what the UK has introduced?

Mr. Church spoke about the indications of the carbon budget not being met and it was only two years away. What sanctions are built into that Act? What implications will it have for the UK Government if those targets are not met?

In his opening statement, Dr. Muinzer spoke about the UK Act and its performance and involvement. We heard about the need to tighten up the language in the Bill before us, the commitments in that Bill, its impact on future Governments and the sanctions it could bring. Deputy Sherlock asked about the role of local councils. That is an important element when one is speaking about the impact it will have on local authorities. Regarding the advisory committee about which both witnesses spoke, what kind of make-up should it have? Would it have members from youth and community groups? I think both witnesses spoke about the Dutch and Scottish models. Could they delve into the advisory councils in the Netherlands and Scotland and how they possibly differ from each other or which has the better make-up? Mr. Church spoke about public participation in the Netherlands as an example of best practice. Was that on a continuous basis or was it at the pre-legislative scrutiny stage?

Dr. Thomas Muinzer: I will take one of the questions that is easily dealt with, namely, the composition of the advisory council. A range of criteria is set out in the legislation about the sorts of people who would be appropriate to have a seat on the council. It seems a relatively conventional list. I need to juxtapose it with the criteria set out in the UK Act but I have nothing to imply that it is strongly dissimilar. These committees tend to emphasise the utility of economists and that is fine. Deputy Devlin mentioned youth and community input. I think that could be a very useful development and one that should be considered. Hopefully, this is not too predictable but given the legal considerations at issue when it comes to a committee like that,

including with reference to taking cognisance of Article 2 of the United Nations Framework Convention on Climate Change, UNFCCC, and EU law that is sketched out within the Bill and of which the advisory committee must be cognisant, a lawyer or lawyers would be a useful addition to the committees. The UK Committee on Climate Change falls through the same hole in the floor slightly. It has under-emphasised and slightly devalued the role of lawyers in its committees and the legislation does that. I made the point to the UK committee several times that this is something that can be usefully improved and others have done likewise. Recently, a solicitor was brought on to the adaptation sub-committee so that is progress of a kind.

I will make a general point about language. It is difficult from a lawyerly perspective to discuss the language problems meaningfully in the abstract. It is easier to work through the text but, of course, we do not have time to do so. A useful touchstone would be if we juxtapose the original section 3(1) regarding the national transition objective with the 2050 objective. Section 3(1) is displacing that. We see that we are moving from phrasing that “for the purposes of enabling the State to pursue and achieve the transition to” and so on and so forth to a new construction in which “the State shall pursue”. Obviously, when one drops the word “achieve”, that raises alarm bells in a lawyer. It is a softening. “Pursue” is a verb. It means to follow something or to try to catch it and is relatively soft in comparison with the previous construction. The legislation is peppered with that slightly soft legal language. To give a concrete example, section 4(2)(a) of the principal Act points out that when updating the climate action plan, the Minister “shall take account of the carbon budget programme”. Again, language like “take account of” would be rather soft legalese. It is slightly different to actually needing to adhere to it so I strongly recommend stress testing the legislation for that type of phraseology and strengthening it in line with a UK-style approach.

Mr. Jonathan Church: To follow up on Dr. Muinzer’s point, there is a duty to “take account of” in the Bill as it stands. Under the UK Act, every five years, the Secretary of State must put in place a plan for meeting carbon budgets so the language is much more hard-edged. Under the UK Act, the Secretary of State, and the UK Government as a whole, have an ongoing duty to have in place proposals and policies that in the opinion of the Secretary of State, or words to that effect, are sufficient to meet those carbon budgets. Those kinds of more direct links are drawn in the UK Act compared with the Bill.

The consequences of not meeting the fourth carbon budget will be highly mitigated. It gets very technical. It involves extra credits that are in the carbon budgeting system. That system in the UK Act has given a lot of hot air, as it were, for the UK Government to be able to say it meets its budgets without actually having undertaken all of the necessary emissions reductions, so, on paper, it will be able to say it met its budget. In my statement, I used the words “meeting the budget in full” or something like that, which was just a way of making that distinction. Once one starts missing one’s budgets in the real sense, one is off track and the more off track one is, the harder it becomes to get back on track. I do not think there will be any legal consequence of the UK Government not meeting its fourth carbon budget in full. It will just make it increasingly hard to meet the fifth and potentially the sixth carbon budget and at some point, I fear there will be a kind of breaking point and it may be difficult to see a way to meet the targets.

Deputy Christopher O’Sullivan: I missed the start of the presentations but I will certainly look back on the footage to hear the full opening statements. Dr. Muinzer said that what was impressive about the UK Committee on Climate Change was the cohesiveness of the membership and the non-politicisation of the approach and chairperson. I genuinely feel that this is something we can mirror here. We have a great Chairman and there is very much a shared

cohesive approach so far. We have not got down to the nitty-gritty but it feels like there is a common goal here. Deputy Devlin asked a question that has not been answered and I know the witnesses can respond with a written statement. It was on public consultation and public input. It is easy to imagine how this would have happened prior to the legislation but how would it be done given the timelines involved in trying to bring the climate action Bill through the Houses of the Oireachtas? The examples from the Netherlands and Scotland were good examples to look at. For the purposes of the committee, will the witnesses flesh out how public consultation would work after the Bill is enacted and during the lifetime of the legislation?

Chairman: Does Mr. Church want to go ahead?

Mr. Jonathan Church: Dr. Muinzer is better placed to speak on this.

Dr. Thomas Muinzer: I thank the Deputy for the question. Earlier, I was emphasising that with the Citizens' Assembly there is a discourse tradition in Ireland in stimulating and developing public engagement. It is such a niche component of a climate change Act that I would encourage legislators and lawmakers in Ireland to think creatively and try to concretise an appropriate approach in the Irish system. Of course, part of doing this can also be usefully informed by other jurisdictions. Public engagement elements within climate change Acts, at least so far as I know as more Acts are emerging all the time but I have looked at quite a number in detail, tend to be relatively undeveloped. Then we get some diamonds in the rough such as the Scottish Act. I do not want to overblow its public engagement element but I set it in context earlier. Initially, the Scottish Act was in the context of the UK pioneering the form of the legislation in 2008 and the Scottish then stood up and said there seemed to be inadequate integration of public engagement and participation elements within the legislation itself, which is different to pre-legislative scrutiny. The Scottish Administration tried to build in some public engagement components, which was very impressive. In terms of what the components say and do we can take a look at the legislation but basically it is predicated around a public engagement strategy. The Scottish Government developed this strategy and needs to keep it under review and update it, which involves a range of measures, in particular reaching out to communities and people in Scotland to raise consciousness about climate change as a serious problem that we all face. It also raises consciousness about how our personal behaviour can contribute to solutions, whether with regard to the energy choices we make or whether we choose to use public transport.

The gold standard at the time I worked on these Acts in detail, which was recently, was the Netherlands Act. The Netherlands does not have a freestanding Act in the way the UK does or that Ireland does in its way. There are other examples of freestanding architecture, such as the 2012 Mexican Act. The Dutch Act is partnered with a climate agreement, which is very important and has substantial elements that interact with the Act. The climate Act sets out a framework for public participation and the climate agreement tries to stipulate what that means in terms of action points and what could and should be done. The Act locks in the notion that a framework exists and operates and the agreement, which can be subject to lower-level policy changes, deals more with the specific elements.

One of the main innovations it introduced that I did not mention earlier, and I do not have the Act in front of me, is that it created a citizens' monitor. This is a particular actor embedded in the legal regime that is required to monitor citizen engagement with climate issues to disseminate information and to consider human behaviour and behavioural change in the context of a low carbon transition. It set up this particular actor to target these types of issues, whereas in the Scottish case it was more of a strategic approach built around a public engagement strategy. In the Irish case we need to take these things and make them our own. It could involve a

targeted strategy embedded in the legislation that is updated on a rolling basis. It could even involve the creation of a particular actor or small institution to deal with public interaction and consciousness raising to consider public behaviour. There is a range of options and inspiration from which we can draw.

Senator Lynn Boylan: I want to tease out further the make up of the advisory committee. The importance of its independence has been mentioned and that there would be a preference that it would not be fitted in with the EPA but that it would be a standalone entity. Do either of the witnesses have an opinion on the membership and the *ex officio* members of the committee and what impact they would have on its independence? Is it normal that it has a voting system? There are *ex officio* members who have a vote that is worth the same as the other members and the chair has the casting vote.

Deputy Richard Bruton: My questions are similar. In our system we have groups such as Teagasc, which is an agricultural research body. It contains much of the cutting-edge thinking about what can be done. It seemed strange to cut it out of an advisory council when many of the issues will be with regard to how agriculture can be adapted. The other issue is that although the EPA is a State body it is in itself quite independent with independent enforcement powers. It is a spur to improvement in many of the key areas where we need to see change, certainly with regard to waste management and biodiversity. We could say the same of some of the other bodies that are there. They bring an expertise. In a small country that does not have access to huge amounts of independent research capability, it seems if we can put in place a legislative framework that does not undermine the independence of the council then having these people there would be a good thing.

Deputy Darren O'Rourke: I have a question on the pros and cons of adopting the split target approach of handling various emissions in various ways. It was referenced with regard to New Zealand.

Dr. Thomas Muinzer: With regard to the *ex officio* members I will stick to the four corners of the legislation to make a general point. When one looks at the composition of the Irish advisory council and the input of *ex officio* members and how voting works, we can see why things might be structured this way. It does contrast with the UK's Committee on Climate Change. The *ex officio* input, while there may be lucid and positive reasons for it, does not create quite the same level of optics of independence that we find with the UK's Committee on Climate Change, when these types of features are read in conjunction with the advisory council. It is not fair to say it is nested within the EPA but it is interactive with the EPA in terms of how the legislation structures certain arrangements. I am speaking about the legislation on the page. When we read it we have an independent advisory committee but we have these other features that are interwoven. In the UK version we have an independent Committee on Climate Change. The legislation ring-fencing this in an independent zone creates two slightly different impressions. There are slightly different features at play. The UK's Committee on Climate Change, CCC, is the advisory and reporting body, as we know, just like the advisory committee. Its functions are fairly similar. In the UK it has been a relatively respected institution, is considered to be fairly robustly independent and it provides useful advisory support. On specifics of the advisory committee, again I am thinking of the four corners of the legislation. I am sure in practice it would be different, but it did not jump out at me as to how it would have a broad access to a wide sweep of data, for example, or an automatic entitlement to data that might allow it to produce long-term climate modelling and so on. The CCC's doors are quite open with regard to its access to data, for example. How the legislation compares and contrasts is something that

might be looked at.

There are one or two points within the legislation where certain elements slightly troubled me around the advisory committee in terms of the legislation structures. I will go through it but I will be brief as I do not want to take all the time. A small example is section 6B that deals with the approval process for carbon budgets. The advisory committee would recommend a carbon budget level and the Minister can amend that and finalise it at section 6B(1)(c) to (d). If the Minister departs from the advisory committee's advice, which the Minister can do, it has to account for that departure under the legislation. From what I see in the legislation, the next step is that matters are then moved to the Government, which can then approve or modify the budget level under section 6B(6)(a) to (b). I did not see clearly there that the Government would be required to account for a departure from the advisory committee's proposed carbon budget. So, in practice, the advisory committee could propose a budget, perhaps the environment Minister might accept that, and as it moves to the next stage the Government may modify that. I did not see the same requirement for the Government to account for a departure from the advisory committee's budget level. I am aware that the Oireachtas is involved then and so on. On that narrow point, however, in the UK procedure in legislation, if there is a departure from a CCC recommendation it quite clearly has to be accounted for. There are a few little such areas within the legislation that I find slightly concerning with regard to the narrower functions. I will pass on to Mr. Church, as appropriate, because I do not want to use all the time. I thank the Deputy for the questions.

Chairman: I thank Dr. Muinzer. We might come back to the question from Deputy O'Rourke about the pros and cons of the split targets, after Mr. Church, who may want to come in on the *ex officio* question.

Mr. Jonathan Church: Yes, certainly. I will be brief. The questioner absolutely has a good point that there will be important expertise among the *ex officio* members and that they represent important perspectives. The UK Committee on Climate Change, through being suitably resourced and empowered and in the way it has acted, has always had all the expertise it needs whether it is working with different institutions, bodies and with civil society. It is an active and outward facing body that gets and has good access to all of the relevant analyses and information it needs and all of the capacity it has in house, as Dr. Muinzer has mentioned. It is not, therefore, so important to have, as it were, certain perspectives represented in the committee itself. It may well be that the CCC does have experts on the committee in agriculture, for example, or in biomass, economics or behavioural science to bring their expertise, but there might not be. There may not be people with specific representations on bodies such as Teagasc, for example, and on other similar bodies. One can get that expertise and those perspectives without necessarily having it set up with *ex officio* members.

On the dual targets, it is my sense that it does make sense to have different targets for long-lived greenhouse gasses and short-lived gasses like methane, particularly when agriculture emissions are such a large part of the challenge here. All that is required is real clarity between those two targets. Again, I am conscious that we do not want to overpack the law, but having clarity on that and having those two targets could well be valuable. I understand that the short-lived greenhouse gasses like methane do not actually have to come right down to zero in order to have no impact on climate and global temperatures. There is a potentially important way here for Ireland to become climate neutral without necessarily having to get its methane right down to zero. I do not mean to be unambitious but I mentioned it because it could be as legitimate a way of driving the transition to be climate neutral in a way that is more suitable to

Ireland's circumstances. We have mentioned New Zealand's Act, which goes some way in that direction, but perhaps not as far as it could do.

Chairman: I thank Mr. Church. Will Dr. Muinzer come back in on the issue of dual targets?

Dr. Thomas Muinzer: Yes. New Zealand's Act adopts a split-gasses approach and it separates out a specific target from the rest of the legislation. It is something we want to take note of, especially in Ireland. In this context I am sticking to the legislation. I understand there is policy discourse and discussion around methane in Ireland, which is quite rich and well developed in terms of its legislation. The New Zealand legislation is something we want to take note of as a useful climate change Act that we can look to. There is a similar demographic composition in Ireland and New Zealand. Both countries face some hard problems that the UK does not face insofar as we have a large proportion of our emissions come from the agricultural sector in a way that is simply not the case in the UK and Scotland. New Zealand faces similar problems. The argument for the split-gasses approach is thought to be sensible on the part of some. I would not encourage that approach in the context of our particular Act. Although I recognise that we face particular hard problems in the agricultural sector, for reasons I could go into, I thought it was quite controversial in the New Zealand context. It has occurred but at the same time that context is not Ireland's context. The New Zealand Act has carbon budgets that are more rigidly defined and, effectively, they function as "stepping stones", as described by Prue Taylor, an authority on the New Zealand Act. Those are the stepping stones that drive the emissions trajectory in New Zealand. It has a net zero target that encompasses the rest of the greenhouse gasses in its basket. Methane is separated out but it still has a relatively stringent target. In the context of that framework there is still a high degree of stringency that we are not in a position to import into our Act just yet without some substantial development of how we articulate targets, how we frame our carbon budgets and so on.

Chairman: I thank Dr. Muinzer.

Senator Alice-Mary Higgins: I would appreciate written comments from Dr. Muinzer on the idea of the separated targets because while it may be more difficult to achieve zero in terms of bio-methane the concern is that although it does not last as long it does have a quicker and higher impact. The same argument might be made, if we are looking to special qualities, that bio-methane targets might need to be much higher than other targets in the interim to ensure we do not heat past a tipping point. That is interesting. Perhaps Dr. Muinzer could send a note on it also.

In the Scottish Act there is clearly a requirement in respect of the reporting mechanisms of the United Nations Framework Convention on Climate Change, UNFCCC, around greenhouse gasses to ensure that whatever other internal mechanisms we might be doing, we are hitting the UNFCCC targets. Perhaps Dr. Muinzer could also send on a note for this.

On the technical expertise within the CCC on the science of greenhouse gasses and those factors we need, is there scope for a separation? How is that work done versus the wider expertise? The concern in relation to our advisory council, for example, is the scientific expertise that might be needed around genuinely saying something will get us to 1.5°, keep us below 1.5°, or not, versus all the other expertise. That expertise is now channelled towards the budget. It seems to me that there may be an argument for having a scientific subgroup that would focus on the scientific facts, while the wider group might make an input into sectoral plans in the way which has been described in the UK, with civil society or Ministers being able to engage in that context concerning how things can be done and what works in that regard.

Does Mr. Church have a comment regarding the interaction of trade legislation and climate legislation? How do we ensure this climate legislation is not undermined by other legislation? Are there any good examples internationally that we could look to in ensuring this climate legislation is not chipped away at by other competing imperatives?

Chairman: I thank Senator Higgins. We do not have much time remaining. I will ask a question about public bodies now, and then we will finish with both witnesses giving their answers to that question and those posed by Senator Higgins. Will the witnesses give details of how other jurisdictions have placed obligations on State agencies, State-owned companies and regulators in their climate change legislation? For everyone's information, we need to be out of this room in five or six minutes. I ask Mr. Church to go first.

Mr. Jonathan Church: I will be brief. I thank the committee again for inviting me to participate in this meeting.

Senator Higgins made a good point about science. The CCC in the UK has just ensured it has the scientific capacity it needs in-house. It has also been very active at reaching out for extra expertise when needed. Often, it is possible for the CCC to take the target it has and focus not so much on the science in respect of what the environmental impact of those targets will be, but much more on how it will be possible to reach that target in a social and economic sense. I do not want to say too much about the methane question, but it is a more complex one. There may be a greater need for specific scientific expertise in a context where methane has a special role to play, as I think it does in Ireland.

I am afraid I do not have a great deal to add with regard to trade, except to say that the best protection against carbon leakage, which I know is picked up briefly in the Bill, is that so many other countries are pursuing similar laws. Everybody is moving in the same direction. Increasingly, trade deals are made with the environmental impact in mind. It is to be hoped that there is not too much of a threat when everybody is moving together. I do not have anything to add on the public bodies point. I thank the committee again, and I will hand over to Dr. Muinzer.

Dr. Thomas Muinzer: Senator Higgins asked an important question which raises some good points. It is good that a reflective conversation is occurring around the composition of the CCAC and how that is articulated in the legislation. A richer scientific and technological presence and input would be useful. I am trying to stick to the legislation and avoid the general cultural discussions in Ireland. The CCAC may be an important and respected body, but it is heavily oriented towards economic interests and concerns. That is partly reflected in some outputs, some aspects of its composition and some aspects of the way in which the legislation articulates its membership. That is something that could be eased up slightly, and that speaks to the theme of richly integrating science and scientific capacity.

There are broader questions concerning governance, beyond the composition in respect of individual members. If I am reading the legislation correctly, it seems the CCAC can do quite a bit, including creating subcommittees and thinking in novel ways when it comes to its own governance. It is, therefore, a substantial institution that might want to develop a science-technology committee. I do not see why it could not do that, if the resources are available and I am reading the legislation correctly. Those are all things that should be usefully considered. The CCAC is just one entity, so it will need help and support and will need to be cognisant of, and draw on, the reports of the IPCC. It may even want to enrich collaborative links with the CCC in the UK in useful ways. The sky is the limit when it comes to novel thinking in the composition and governance of the CCAC. The legislation should reflect and enable those sorts

of opportunities.

Moving to the question from the Chair regarding public bodies, it would take me a little while to scan through my knowledge of international climate change texts and how they treat that question. It is a broad query and a very good one. Given that we are concluding and in light of the breadth of that very good question, it is probably more useful if I emphasise that for me the bread and butter aspect of meaningfully engaging Irish public bodies in the transition process, as articulated in the legislation, lies in nailing down robustly articulated targets, which are ideally economy-wide. I refer to tweaking and refining the 2050 objective in the proposed section 3(1), getting carbon budgets nailed down, getting them just right, making them robust and perhaps thinking of how the UK does that. It will also be necessary to articulate the governance framework that will gradually drive the national transition which will impact on public bodies and drive private transformation. As we are concluding, I highlight that broader point.

In closing, I emphasise that this sort of approach will prepare us very well for all the sorts of things coming down the track at EU level, such as the EU climate law. We have our problems, especially regarding agriculture, but if we do not step up and really grapple with them now, and preferably in this legislation, we will be placed at even more of a disadvantage as things move forward quickly in the EU context. We must prepare our agriculture sector for those changes as best we can, as well as those other shocks and impacts that are coming. This legislation is the key to doing that. I ask the committee to excuse the slightly broad answer, but I am thankful for the question.

Chairman: We are out of time. On behalf of the committee, I thank Mr. Church and Dr. Muinzer for attending for this worthwhile and thorough engagement. It will greatly assist us in our consideration of the draft Bill in the coming weeks.

Senator Alice-Mary Higgins: I have a couple of technical questions. What is the deadline for people sending us in follow-up pieces?

Chairman: It is 30 October.

Senator Alice-Mary Higgins: I forgot to ask the witnesses if there are any good practices in legislation in respect of offsetting.

Chairman: I am not sure if they picked up on that question.

Senator Alice-Mary Higgins: I refer to limits regarding how much neutrality is based on offsetting. I do not know if there are good legislative examples.

Chairman: If the witnesses can send in their observations in writing regarding the question of offsetting, we would welcome that. We will resume our pre-legislative scrutiny of the climate Bill tomorrow morning.

The joint committee adjourned at 3.29 p.m. until 11.30 a.m. on Wednesday, 28 October 2020.