



Stop Climate Chaos Coalition

Briefing on the Climate Action (Amendment) Bill 2020

Executive Summary

The Climate Action (Amendment) Bill 2020 substantially improves the 2015 Climate Action and Low Carbon Development Act but significant weaknesses remain. Pre-legislative scrutiny is the ideal opportunity to achieve consensus on strengthening the Bill in line with the spirit of last year's landmark JOCCA report, which had all-party backing for the chapter on Governance.

We would urge the TDs and Senators on the Joint Oireachtas Committee to recommend the following key changes to the Bill.

1. **"The State shall pursue *and achieve*" the 2050 objective.**

The Heads of Bill published by the outgoing Government in January included the word achieve in the 2050 objective. This draft Bill does not. It needs to go back in again. Simply pursuing the objective is not good enough, we need to achieve it.

2. **The state shall achieve the objective of a climate neutral economy by 2050 *at the latest*.**

The 2050 objective in the Bill must be a floor for Ireland's climate ambition, not a ceiling, particularly as net-zero by 2050 still does not represent our fair share of the global effort to achieve the goals of the Paris Agreement.

3. **The definition of a Carbon Budget must be tightened** to make it explicit that it will cover all gases and all sectors in a single national emissions limit.

4. **The Bill must oblige the Climate Change Advisory Council to propose Carbon Budgets that are in line with the 2050 climate objective in the Bill.**

That clear and direct relationship between the long-term target and the 5-year Carbon Budgets is the driving force of effective climate laws in other jurisdictions. The budgets must ensure consistent, sustained action between now and 2050 in line with EU targets. It is currently missing in this Bill.

5. **There must be a clear duty on the minister and the government to produce plans that are in line with the Carbon Budgets.**

Not just to "have regard to" the Carbon Budgets when producing their plans.

Introduction

The Climate Action (Amendment) Bill 2020 substantially improves the 2015 Climate Action and Low Carbon Development Act, but significant weaknesses remain that must be addressed during the pre-legislative and legislative process.

Before the Bill was published, Stop Climate Chaos set 5 tests for the Bill to ensure that it addresses weaknesses in the 2015 Act, and in the climate governance framework:

1. Does it put Ireland's 2050 net zero emission's target into law, and set it as the floor, not the ceiling, of our ambition?

2. Does it create a fully independent expert Council to advise the Government and monitor progress?

3. Does it mandate the Government to propose 5-year pollution limits or carbon budgets that will be legally binding once adopted by the Dáil?

4. Will the 5-year pollution limits include all greenhouses gasses and all sectors of the economy?

5. Does the Bill provide for robust Ministerial accountability to the Oireachtas for keeping within the legally binding pollution limits?

Below we select some key areas where we believe changes to the Bill are necessary to meet those tests, and we propose some amendments to that effect. The precise wording of any amendments may vary based on legal advice; these suggestions are presented here to illustrate the key changes needed for an effective Bill, which we hope the Joint Oireachtas Committee will recommend in its pre-legislative scrutiny report.

1. There must be a duty to *achieve*, not just pursue climate neutrality. And by 2050 at the latest.

It is very welcome to see the introduction of a numerical target (net zero) for climate neutrality by 2050 as set out in the Programme for Government. However, we are concerned that the wording does not clearly specify that early action is required if Ireland is to contribute to the goal of keeping global warming below 1.5 degrees. The climate neutrality objective must be linked to the trajectory of emissions that is consistent with Ireland's fair share of the Paris Agreement-aligned global carbon budget. Furthermore, the obligation on the State *to achieve*, not merely pursue the

target of climate neutrality should be made more explicit. Section 3 of the draft Bill reads as follows:

3. (1) The State shall pursue the transition to a climate resilient and climate neutral economy by the end of the year 2050 (in this Act referred to as the 'national 2050 climate objective').

The previous, outline draft of this Bill, published on 6 Jan 2020, included the word *achieve*. The word *achieve* has been dropped from the draft published on 7 October. It must be reinserted. Moreover, climate neutrality by 2050 must be the legal floor for our ambition not the ceiling since net zero emissions in 2050 still does not represent our fair share of the effort to achieve the temperature goal of the Paris Agreement. Therefore, the words "at the latest" must be inserted into the Bill.

In addition, the language in the 2015 Act that defined the National Transition Objective under section 3.(1) includes a reference to 'environmentally sustainable' which we think should be retained. We recommend amending section 3.(1) of the draft Bill as follows:

3.(1) *The State shall pursue and achieve the transition to an environmentally sustainable and climate neutral economy by the end of the year 2050 at the latest (in this Act referred to as the 'national 2050 climate objective').*

We also recommend that the Bill be revised to ensure that the net zero climate objective is linked to a cumulative carbon budget that is consistent with Ireland's fair share of the global mitigation effort. It is important that the Bill does not create a situation where the carbon budgets are 'free floating' elements disjointed from the cumulative budget implied by net zero in 2050 or earlier. We recommend inclusion of a definition of a 'fair and safe emissions budget' following the Scotland example (see section 2B. of Scotland Act 2009).

We also urge the committee to ensure that the revised Bill creates an unambiguous and explicit duty on the government to adopt carbon budgets that are consistent, at a minimum, with the climate neutrality target as well as the commitment in the Programme for Government for a 51% reduction in greenhouse gas emissions by 2030. This means setting a legally binding target for 2030, and strengthening the existing requirement for the carbon budgets to reflect national climate policy and the obligation on the State to ratchet up climate ambition over time.

2. Strengthening language and definitions

The definition of a carbon budget in the draft Bill is vague. It defines a carbon budget as meaning,

'in relation to one or more greenhouse gases, the total amount of greenhouse gas emissions that are permitted during the budget period' (emphasis added).

This definition implies that the carbon budget does not have to include all 6 greenhouse gases that Ireland is required to report under the UNFCCC Kyoto Protocol. It is not clear whether the discretion to exclude a gas or gases lies with the Minister or with the Climate Change Advisory Council (CCAC). Nor is there any requirement on either the Minister or the Council to explain or justify the exclusion of any gas or gases.

This definition should be amended to reflect the wording in the original heads of Bill published last January to read:

'Carbon budget' means the total amount of permissible greenhouse gas emissions which can be emitted during a 5-year period and calculated on an economy-wide basis.

In this definition, 'permissible' means the lawful amount of all six UNFCCC greenhouse gases that can be emitted during a budget period.

In addition, the Committee should closely scrutinize the references in the Bill to 'may' as opposed to 'shall' which give a great deal of Ministerial discretion, and which may ultimately be used as justifications for policy failures or failure to achieve targets, or even to evade accountability to the Oireachtas or in the courts. Language such as 'have regard to' or 'take account of' does not impose a clear obligation on the duty-holder to do more than consider or weigh up various criteria, rather than adhere to them. Similarly, language stating that the national actions plans or carbon budgets must be consistent with the targets set by the Bill 'in the Government's opinion' leaves far too much discretion, and weakens the crucial link between the emissions reduction plans and the targets. Such terminology should be avoided and replaced where possible with clear unambiguous duties linked to a range of criteria that can be objectively assessed.

Wherever possible, obligations on the Minister or the Government should be made explicit as is the case in the UK Climate Change Act 2008 under sections 1 and 13 - see below:

Sec. 1 The target for 2050

(1) It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline.

Sec. 13 Duty to prepare proposals and policies for meeting carbon budgets

(1) The Secretary of State must prepare such proposals and policies as the

Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.

(2) The proposals and policies must be prepared with a view to meeting—

(a) the target in section 1 (the target for 2050), and

(b) any target set under section 5(1)(c) (power to set targets for later years).

(3) The proposals and policies, taken as a whole, must be such as to contribute to sustainable development.

(4) In preparing the proposals and policies, the Secretary of State may take into account the proposals and policies the Secretary of State considers may be prepared by other national authorities.

A further phrase that creates unnecessary ambiguity and which appears to be designed to avoid justiciability is the reference to ‘in the opinion of the Minister’. We think this should be removed and any discretion over policy ambition should be clearly defined and subject to criteria as suggested in our section 6 below (sustained policy commitment in line with the science).

3. Create an obligation on the Minister to achieve the target and adhere to carbon budgets

The draft Bill does not make the achievement of the 2050 objective an explicit duty of the Minister or Government. We recommend that the Bill include a requirement that the Minister(s) shall ensure that the net accounting emissions do not exceed the emissions/carbon budget for the relevant emissions budget period.

The draft Bill states

3.(3) For the purposes of performing their functions under sections 4, 5 and 6 the Minister and the Government *shall have regard* to the following matters:

The language in this section could be strengthened by amending it to clarify the duty of the Minister to adhere to the carbon budgets so that when preparing a plan or framework under sections 4, 5 and 6 for approval, the Minister and the Government are required to perform their functions in a manner consistent with the carbon budget and decarbonisation target range in operation.

It is clear from case law in the planning and environmental arenas that ‘have regard to’ does not require compliance and gives a great deal of discretion to the Minister. This

language must be strengthened to impose clear, unambiguous *ex ante* duties on the Minister and Government as is the case in the UK and Scotland Climate Change Acts.

It is concerning that that section 6D (4), covering the revision of carbon budgets, could permit the Minister to ‘borrow’ extra emissions reductions achieved in one period, and carry them forward into the subsequent carbon budget period. Given that net zero emissions by 2050 still doesn’t represent Ireland’s fair share of the effort to achieve the temperature goal of the Paris Agreement, and as such reflects the legal floor of our ambition and not the ceiling, any emissions reductions achieved ahead of this trajectory should be welcomed and ‘banked’, and not used as a credit to reduce our ambition in the years that follow.

4. Climate Change Advisory Council membership and voting rights

We recommend that references to Teagasc and Met Éireann in section 7.(1)(a)-(c) are deleted – it is not appropriate that these state bodies should have full membership of the Council and there is a danger that representation by these state bodies will undermine the intended independence of the Council. The Committee should consider whether it is appropriate for the EPA or any state body to have voting rights on the Council.

5. Limit on the use of offshore mitigation

The Bill should specify a limit to the reductions sourced from overseas by the Government to meet emissions budgets, and only as a last resort and not as a first choice. The Climate Action Council should be mandated under section 9 to set a limit on the number of reductions sourced from overseas that can be purchased and include reasons for this limit. This should place primary reliance on reducing emissions at home, while retaining flexibility to manage the uncertainty of making long-term projections. This may require the introduction of a new definition of ‘offshore mitigation’ in the definitions section and an additional subsection under section 3.(3):

“offshore mitigation” means emissions reductions and removals, or allowances from emissions trading schemes –

- (a) that originate from outside the State,
- (b) that are expressed as a quantity of carbon dioxide equivalent,
- (c) that are robustly accounted for to ensure that, among other things, double counting is avoided, and that either –

(e) represent an actual additional, measurable, and verifiable reductions or removal of an amount of carbon dioxide equivalent, or

(f) are a verified, traceable emissions trading scheme allowance that triggers the reductions of carbon dioxide equivalent;

(g) adhere to human rights principles, especially the principle of free and prior informed consent.

The Committee should also consider what treatment is appropriate for emissions from the aviation and shipping sectors which are not mentioned at all in the draft Bill.

6. Sustained policy commitment in line with science

Section 6 of the Act is to be amended to make provision for the adoption of carbon budgets that are proposed in the first instance by the Climate Change Advisory Council. However, these are not explicitly required to be consistent with the trajectory of emissions reductions that would align Ireland with commitments under the Paris Agreement, or the achievement of the climate neutrality objective. This is a crucial flaw that must be addressed for the Bill to be effective.

It should be clear from the Bill that the first and second carbon budgets shall jointly correspond to the Programme for Government commitment to reducing emissions by 51% by 2030. This is equivalent to setting an interim target for 2030 which is common practice in the climate laws of other similar jurisdictions. Equally, the bill could make clear that Ireland's 2030 EU target is binding in national law.

We suggest that the Committee consider changes along the lines of the following:

- 6A. (4) The Advisory Council shall prepare and submit a proposed carbon budget programme consistent with the national climate objective and Ireland's 2030 EU target, to the Minister as soon as may be after the commencement of this section.

We also recommend that the Council be required to review the adequacy of the 2050 target in 2021 to reflect Ireland's fair share of the 1.5° C temperature goal in the Paris Agreement, and on the basis of any relevant scientific reports, changes to EU law, or at the request of the Minister. The Council should also be required to recommend a change to the carbon budget programme if it is satisfied that there has been a significant change in a specified factor, including an increase in the EU-wide 2030 target, that will require a change to the target or budget programme.

Amendments or revisions to the budget must only be considered because of scientific evidence or drastic changes to economic outlook, not sectoral lobbying. These factors are set out in section 6.B (6) (a) and (b) but these subsections do not specify that the relevant scientific advice should be based on the published reports of the IPCC. We suggest the following amendments therefore:

- (6) For the purpose of performing its functions under subsections (4) and (5), the Advisory Council shall have regard to -
 - (a) relevant scientific advice, including the reports of the Intergovernmental Panel on Climate Change, and
 - (b) UNFCCC guidance and standards on the reporting of greenhouse gas emissions and removal.

A more detailed list of criteria could include the following:

The Government may vary or revise a plan approved by them under [this section] only if –

(a) significant change has occurred, or is likely to occur, since the commencement of the Climate Act 2020, to one or more of the following, as they relate to climate change:

- (i) global action,
- (ii) scientific understanding of climate change,
- (iii) the State's obligations under relevant international agreements,
- (iv) technological developments,
- (v) distributional impacts and the risk of fuel poverty,
- (vi) equity implications (including intergenerational equity),
- (vii) the principal risks and uncertainties associated with emissions reductions and removals, or
- (viii) social, cultural, environmental and ecological circumstances, including risks to biodiversity, and

(b) the [Climate] Council is satisfied that the change justifies the variation or revision to a carbon budget programme or climate neutrality objective.

We are concerned that the various plans that the Minister is obliged to prepare under the Bill (a Long Term Strategy, Climate Action Plan with annual updates, and sectoral

plans/decarbonisation target ranges) are disjointed and not required by the draft Bill to comply with the carbon budget programme, which in turn may not even be consistent with the 2050 objective. We recommend tightening up the language in section 4. so that all plans and policies must be consistent with the cumulative budget represented by the 2050 objective, along with the carbon budget programme. It is not sufficient that Ministers should merely 'have regard to' the 2050 target or the carbon budgets.

There is currently no compliance mechanism in the draft Bill. In the event of failure to meet a carbon budget or budget programme, the Minister should be required to explain to the Oireachtas how this 'carbon debt' will be rebalanced, as is provided for in the UK Climate Change Act (S.18 and S.19). Additionally, we recommend that provision be made in the Bill for compliance costs should they arise should be allocated to the relevant Department's vote.

7. Just Transition

The Bill creates a long list of criteria under section 3.(3) that the Minister and Council shall have regard to when devising budgets and plans under the Act. Some of these pertain to the carbon budgets and the longer list of 25 relates to the drafting of plans and policies. However, there is an over-emphasis on economic criteria, quite a lot of duplication, the inclusion of an incorrect reference to the IPCC SR15 report, and no mention of a 'Just Transition'.

We recommend **deleting**

3. (3) (i): duplication with (e)

(l): duplication with (e)

(n): covered by (m)

(y): this is a misleading reference to the IPCC SR15 which is not about biogenic methane but makes a clear reference to the need for urgent and steep reductions in short-lived greenhouse gases.

We also recommend **including** in section 3.(3)

(c) Climate justice and the equitable distribution of climate mitigation duties based on differentiated responsibilities and respective capabilities

Also

(i) Distributional impacts and the risk of fuel poverty

- (ii) Equity implications (including intergenerational equity)
- (iii) The principal risks and uncertainties associated with emissions reductions and removals
- (iv) social, cultural, environmental and ecological circumstances, including risks to biodiversity
- (v) The need for a just transition for the workers and communities most impacted by the move to a climate neutral economy.

In preparing its recommendations, we believe that the Committee should consider the role of the CCAC in advocating a Just Transition in its policy recommendations to the Government, alongside the development of carbon budgets. This may include for example an obligation on the Council to consider the Just Transition Commissioner's opinion and advice, and consultation with relevant stakeholders, workers and communities. The Council should also be required to consider social justice and the need for a Just Transition in any advice it gives and during the preparation of carbon budgets. The current language in section 3. (3) omits any reference to fuel poverty or the need for climate policies to be socially just and equitable across generations.

8. Duties of public bodies

The following amendments should be considered:

- Public bodies should be required not merely to have regard to 2050 and carbon budgets, but to perform their functions in a manner consistent with such targets and associated carbon budgets.
- Public bodies should be required to perform their functions in a manner that respects national and international commitments for the conservation and sustainable use of biodiversity.
- An Oireachtas standing committee on climate change should be tasked with holding not only Government Departments, but also public bodies, to account for their operations and response to targets.
- The Bill should introduce transparent reporting requirements on public bodies in line with relevant Scottish legislation, including a remit for the Minister to assess and issue directions regarding such reports, and that public bodies must comply with such Ministerial directions. These reports should also demonstrate how governance and management arrangements deliver on climate responsibilities.

- The Bill should provide a legislative basis for the planned Climate Action Mandate for all public bodies and introduce a requirement for such bodies to carry out climate stress tests and climate-related financial disclosures.
- The Bill should ensure that climate action plans are produced not only by local authorities (as currently proposed in the Bill) but all public bodies.

9. Public engagement as a miscellaneous provision

The Climate Change (Scotland) Act 2009 contains a provision in relation to public engagement that should be included in this Bill to ensure that there is a binding legal commitment on the State to provide opportunities for the public to become informed, and to engage with climate policy decision-making. We suggest wording along these lines:

- (1) The Minister shall prepare and publish a strategy (a “public engagement strategy”) setting out the steps they intend to take to—
 - (a) inform persons in Ireland about the targets specified by virtue of this Act;
 - (b) encourage them to contribute to the achievement of those targets.
- (2) The public engagement strategy must, in particular, identify actions which persons in Ireland may take to contribute to the achievement of the climate neutrality objective set out in section 3.(3)(1) and the corresponding duties of public bodies towards public engagement
- (3) The public engagement strategy must be published no later than 31 December 2021.

We hope that these recommendations will be considered by the Committee as it carries out the pre-legislative scrutiny. We would be delighted to meet and discuss with you any aspects of this briefing and/or other suggestions for improving the Bill as they arise during your deliberations.

Briefing by the Stop Climate Chaos Coalition, 20 October 2020

[Stop Climate Chaos](https://www.stopclimatechaos.ie/) is the civil society coalition campaigning for Ireland to do its fair share to tackle the causes and consequences of climate change since 2007. Our 42 member organizations include overseas aid and development, human rights, environmental, youth, faith and community groups. <https://www.stopclimatechaos.ie/>