An Taisce's Response to the Climate Action and Low Carbon Development (Amendment) Bill 2020

6th November 2020

Summary of An Taisce's Response to the Climate (Amendment) Bill 2020

It is the considered view of An Taisce that the Bill in its present form is not fit for purpose. With extensive and radical amendment it could possibly be made effective, but the scale of the defects and omissions is such as to call into question the Government's motivation to legislate for climate action that will underpin effective reductions in greenhouse gas emissions. Similarly, there is a glaring lack of support in the Bill to confirm the clear-cut obligations on Government to meet our international climate commitments and consequent accountability to citizens for failure to do so.

As shown by the success of Climate Case Ireland, the 2015 Climate Act at least allowed appeal to the courts for some minimal level of performance on the part of the State. However, the view of the current Bill from competent legal authorities is that it would systematically strip out any such basis for court intervention. Unfortunately, avoidance of justiciability appears to be a driving force in the Bill's current design. The meagre, superficial, improvements in the bureaucracy of national climate governance offered in the Bill fall well short of compensating for loss of justiciability in support of effective climate action.

An Taisce urges the Committee to put forward recommendations that greatly strengthen the Bill's justiciability to legal force to ensure accountability for meaningful climate action through the next decade and beyond. We hope that the key points and expanded analysis below can be of assistance in achieving that aim.

An Taisce response: key points

1. The Bill needs to pursue and achieve a "National Climate Objective", or NCO, that makes an explicit commitment on behalf of the Irish people, that the State will act to make a full, equitable and just national contribution to meeting the global temperature goals set out in Article 2.1(a) of the Paris Agreement.

    - The draft Bill, in Section 3, fails to require achievement and fundamentally fails to define the essential goal of equitable climate action in the Paris Agreement as ratified by Ireland.

2. The Bill needs to make clear in Section 11(2A) that the ultimate, overriding criterion to be used by the Climate Change Advisory Council (CCAC) in proposing a national carbon budget programme of rolling five-year budgets must be alignment and

consistency with the reformulated NCO and its related equitable national carbon quota 'fair-share' of a Paris-aligned, 'forever' global carbon budget. The Bill needs to specify that the Government must state the scale and duration of any overshoot of the NCO national CO2 quota and the resultant quantity of negative emissions ultimately being relied on to meet the Paris-aligned NCO.

3. Replace "sectoral decarbonisation target ranges" with "sectoral allocations of the overall carbon budget" for any five-year period, specifying that sectoral allocations must sum to no more than a period's total budget.

    - Remove the inadequate language on "sectoral decarbonisation target ranges" described in Section 4(2)(b)(i); section 6B(13); and 6C(7).

4. Require that carbon budget deficits (emissions in excess of a five-year budget limit) must automatically carry forward (without Ministerial or Government discretion), and trigger an obligation to carry out an immediate corresponding review of the adequacy of the rolling Climate Action Plan.

    - Remove the Section 6D(5) (deficit) 1% limit on carry-forwards of carbon budget deficit.

5. In line with the Aarhus Convention, public participation must be explicitly guaranteed, enabling the Oireachtas to mandate the establishment of an independent Public Participation oversight body. The Bill could include explicit provision for a permanent, large scale, programme of citizen participation in the formulation and execution of climate action.

6. Government should remove specific references to agriculture. No part of society or sector should be favoured in law above others because all will be impacted by this Bill. The inclusion of a commitment to a Just Transition will afford all sectors of society equitable status.

7. Methane should not be explicitly treated differently from other greenhouse gases. This would be premature (given that the recently developed methodology known as GWP* potentially enables aggregating carbon dioxide, nitrous oxide and methane into a single, unified "GHG budget" framework). For now, the treatment of non-CO_2 gases in carbon budgets should be explicitly referred for advice from the CCAC, as part of the preparation of the initial carbon budget programme.

8. Reference to carbon leakage should be removed from the Bill as limiting such leakage to non-EU countries would need to be resolved at EU level through Border Carbon Taxes. The current Bill definition also fails to consider the carbon leakage to Ireland occurring due to Ireland's failure to meet its EU ESD climate targets.

9. Interim targets are essential to ensure the intended roadmap (aligned with the Paris Agreement as set out in Point 1 above) is being followed. These currently exist for

our EU 2020 and 2030 targets and cumulative period-based targets are needed in the Bill.

10. The Bill needs to specify a requirement for the Government and Ministers to plan for continuous reductions in total Irish use of nitrogen (in fertiliser and feed) and to report annually on total, national nitrogen usage and show that its nitrogen-reduction plans are aligned with achieving Paris-aligned non-CO_2 emission reductions.

11. An Taisce opposes the need for ex-officio members on the CCAC and such bodies should instead make themselves available to advise the future deliberations of the Council.

An Taisce believes these points speak for themselves with regard to some of the major weaknesses of the published draft Bill but have expanded on them in the following pages.

Introduction

Five years on from the original Climate Action and Low Carbon Development Bill in 2015 Ireland has emitted an additional 300 million tonnes of CO_2 equivalent and we are only now returning to the question of legislating for our climate responsibilities and actions. The language in the current draft Bill is devoid of any sense of urgency, does not align with science or justice and reduces the level of accountability and enforcement rigour in the 2015 Act. These issues must be addressed before the Bill is presented to the Houses of the Oireachtas.

Critique of the Bill

In the four weeks since the draft Bill's publication, civil society has had some time to consider the text. In the main, environmental groups have issued a series of 'qualified welcomes', mostly suggesting that the Bill has merit but needs wholesale improvement before it is finalised. The ambiguities, loopholes and get-out clauses in the language have been highlighted repeatedly by eNGOs. Weak phraseology, such as "have regard to" appearing eleven times in the new Bill and instances of the term "may" at every turn, litter the text. The repeated use of these terms critically undermines the Bill and provides ready-made excuses for future administrations to delay or fudge appropriate climate action. Those that witnessed the 2015 Act passed by the Oireachtas have viewed the proposals now with a sense of deja-vu, considering the comparable weaknesses.

Some of the text in the Bill has been weakened from earlier drafts. The preamble to the bill notes: "The State shall pursue the transition to a climate resilient and climate neutral economy by the end of the year 2050"; previously this read: "The State shall pursue and achieve the transition". The removal of the requirement to succeed, rather than simply have

an ambition to "pursue" is an utterly unacceptable reversal and dilution of the previous position. Achievement is a minimum requirement for serious climate action and ambition.

Time and time again, the lack of enforceable interim emissions targets in the Bill has been raised. Such waypoints were included in legislation produced elsewhere more than a decade ago. Scotland, for example, sets carbon budget-aligned emissions pathways with annual targets and ministers are made accountable for delivering them. This year Ireland is likely to have achieved minimal emissions reduction compared to our legal commitment to the EU Effort Sharing Directive in 2008. In contrast, Scotland is aiming to achieve a 50 percent emissions reduction between 1990 and 2020, and a 75% reduction by 2030 driven by their enforceable legislation. Reductions of 47% had already occurred by 2017 as evidence of the effectiveness of their legislation.

Another major cause for concern is the explicit and inaccurate detail provided for agricultural emissions which already produce more than a third of Ireland's total greenhouse gases. The "special economic and social role of agriculture" is noted in the Bill, the only sector to receive such preferential attention. It is important to note that methane emissions are primarily a problem specific in Ireland to ruminant livestock farming. This problem has been greatly exacerbated by the intentional rapid expansion of dairying since 2010 under agricultural intensification strategies enabled by recent Governments. Other parts of Irish agriculture, e.g. tillage, horticulture etc., have very low overall emissions and should be rewarded and promoted accordingly.

Furthermore, primary legislation cannot be allowed to contain factual inaccuracies. It is worrying that a claim relating to supposed 'special characteristics' of 'biogenic methane' in the 2018 IPCC Special Report on Global warming of 1.5°C (SR15) made it into the draft Bill, given the report in question makes no reference to biogenic methane in relation to agriculture. This inclusion calls into question the competence and knowledge of the drafters at all levels, from the Minister down.

In fact, the SR15 *Summary For Policymakers*, agreed by all nations including Ireland, states: "[m]odelled pathways that limit global warming to 1.5°C with no or limited overshoot involve deep reductions in emissions of methane and black carbon (35% or more of both by 2050 relative to 2010)", followed by specifying, "targeted non-CO_2 mitigation measures can reduce nitrous oxide and methane from agriculture". Moreover, the average of IPCC SR15 global emission pathways indicate a 40% cut in methane emissions by 2030 (Figure SPM.3a); and its illustrative pathways with limited reliance on high risk bioenergy with carbon capture and storage (BECCS) indicate cuts in agricultural methane by -24% to -48% by 2030 *relative to 2010* (Figure SPM.3b).

By contrast, and directly opposed to climate action, Ireland has greatly increased agricultural methane (and nitrous oxide) emissions since 2010 due to increased and inefficient use of nitrogen fertiliser to boost grass growth leading to increased methane emissions from cattle and increased nitrous oxide emissions from fertiliser application and cattle urine and manure. The Bill could therefore provide a science-based requirement for

Ministers to set out plans and account for reducing nitrogen budgets aligned with Ireland's fair share in achieving Paris-aligned methane and nitrous oxide pathways.

There has been much public discourse of the treatment of methane in particular, due to its quite different atmospheric lifetime and role in warming compared to carbon dioxide and nitrous oxide. It has been suggested that methane might be treated via a mitigation target separate from the general carbon budget, an approach adopted in New Zealand. In line with long-understood climate science regarding methane, An Taisce is of the view that the current method of accounting using GWP100 for methane effects, relative to carbon dioxide, is not well-suited to direct incorporation within a single carbon budget for Irish *national policy* assessment, but An Taisce does not support any change in *international* greenhouse gas accounting at present given that the Paris Agreement was framed on the basis of GWP100 as the common GHG accounting metric. Any change in metrics would require the agreement of all 192 signatories to the UNFCCC acting on a recommendation from the IPCC.

A separate, top down, methane target is also highly problematic and risks catering inequitably to the short-term preferences of nations like Ireland or New Zealand that have especially high methane emissions when in fact differentiated responsibility requires such rich nations to cut methane emissions as a matter of urgency. The risks attached to a separate target for methane include the potential to obscure the most effective combination of mitigation actions across all greenhouse gases. For strictly national, cumulative carbon budget purposes, consideration should be given to applying the recently developed methodology known as GWP* for aggregating (at least) carbon dioxide, nitrous oxide and methane into a single, unified "GHG budget" framework in assessment of different national policy options and sectoral proportions for Paris-aligned climate action.

Suggested Amendments

Climate change mitigation and adaptation are both important, but mitigation has overriding physical and ethical primacy. Without adequate mitigation, especially first and fastest by developed nations with high emissions per capita, climate change impacts will physically overwhelm any possibility of effective adaptation. Interim targets are essential to ensure the Paris-aligned roadmap intended is being followed. These currently exist for our EU 2020 and 2030 targets and cumulative period-based targets must be included in the Bill.

References to carbon leakage must be removed. It is unwise to include this concept since carbon leakage operates both ways and it is not the escape mechanism that is clearly the intent of its reference in the text. The environmental burden not accounted for in the exports of other countries are properly dealt with under trade law or by the Border Adjustments suggested at EU level. Any unilateral action by Ireland is irrelevant in this context since emissions are only counted at national level. Another implication is the clear risk of reverse leakage. Companies from countries with stricter climate laws than Ireland are currently seeking to locate in Ireland where the environmental and climate obligations are less onerous. This displaces their environmental burden to Ireland, and competing

organisations in the country concerned can potentially accuse Ireland of facilitating carbon leakage as a result. We must not blacken the genuine efforts of future Governments by allowing carbon leakage into Ireland's emissions inventories through weak and potentially dangerous clauses such as this.

Language to "pursue and achieve" emission reductions should be prioritised, rather than weakened to merely "pursue". It is important that the language be changed from aspiration to commitment and accountability throughout, e.g. "The State shall achieve the transition to a climate resilient and climate neutral economy by the end of the year 2050, or at an earlier date agreed by Government."

The Bill needs to specify a requirement for the Government to plan for continuous reductions in total Irish use of nitrogen (in fertiliser and feed) and to report annually on total national nitrogen usage and show that its nitrogen-reduction plans are aligned with achieving Paris-aligned non-CO_2 emission reductions. In Scotland's climate act the importance of 'reactive nitrogen' in driving agricultural nitrous oxide and methane emissions is recognised (as seen in Ireland in increased cattle emissions from dairy and beef production). The Bill proposed is notable by contrast in failing to identify the need for reducing nitrogen limits over time and nitrogen budgeting (by food type and by river basin).

Carbon Budgets

Carbon Budgets need to be explicitly aligned with Ireland's equitable achievement of Paris-aligned climate action. Stronger commitment and accountability is critical if the Bill is to provide an effective foundation for effective climate action over the next decade. The motivation for a carbon budget programme in climate action governance is to ensure that these fixed-term budgets ultimately add up to alignment with a just and equitable national claim on the finite, "forever", global carbon budget specified by climate science as associated with the Paris temperature goals. The first requirement for this is that governments are bound, in a meaningful way, to take actions that are credibly aligned with compliance with each component, fixed-term budget.

The draft Bill appears to rely primarily on the development of "sectoral decarbonisation target ranges" to give effect to this.

- Specifically, the Bill requires that the rolling ten-year Climate Action Plan sets out a roadmap of "sector specific actions that, in the opinion of the Government, should be pursued to remain within the carbon budget and decarbonisation target range"; it requires Ministers to "have regard to" the carbon budget in effect at any given time; and it requires them to "take account of" the currently approved decarbonisation target ranges. It is clear that this language fails to impose the appropriate force and priority of climate action which must apply to Ministers and the Government as a whole.

- As currently drafted, where the carbon budget is not exceeded, the Minister may bank the difference and increase the next budget period by the corresponding amount. Where overshoot occurs the language is highly ambiguous. The priority of compliance with the fixed-term budgets, and the ultimate effectiveness of the carbon budget approach as a whole, critically relies on how such surpluses and deficits are handled. In simple terms, the implacable arithmetic of the finite "forever" budget constraint is that deficits, in particular, must carry forward. Whether borrowing from the 'middle' carbon budget or the 'future provisional' carbon budget, the limitation of 1% makes no appreciable difference and leaves 99% of the overshoot to be 'forgotten'. This severely undermines the cumulative discipline of the carbon budget framework by tacitly discarding or "forgiving" deficits. The provision appears to have been modelled on UK legislation but compared to their Climate Act, the correction obligation contained in the UK is omitted. An obligation to recover any overshoot in the following five-year budget must be specified. Otherwise this creates a serious risk of non-compliance over the three budget periods.

The draft Bill must explicitly direct Ministers and Government to confirm compliance between sectoral decarbonisation obligations and the overarching national carbon budgets.

Removal from the draft text of the concept of "decarbonisation target ranges" (whose definition is, at best, obscure) and replacing it with sectoral allocations of the overall carbon budget in effect in any given period would strengthen the Bill and make it more accessible**.** Of course this would be subject to the constraint that these allocations must sum to no more than the budget. This change would be simpler, clearer, and much easier for all stakeholders (including citizens) to understand.

An Taisce recommends that the Committee consider adding a requirement comparable to that of the UK Act, but made more explicit: namely that deficits must automatically carry forward (without Ministerial or Government discretion), and trigger an obligation to carry out an immediate corresponding review of the adequacy of the rolling Climate Action Plan.

Regarding sectoral budgets, no role for the CCAC is envisaged and no specific compliance with the national budget is required. The CCAC should be required to advise on whether the ranges add up to their recommended national figure and, if not, propose amendments for the Minister to consider.

An Taisce opposes the inclusion of ex-officio members on the Climate Change Advisory Council and such bodies should instead make themselves available to advise the future deliberations of the Council. Three public bodies are represented on the CCAC by their Directors. The draft Bill specifies CCAC membership of between nine and eleven members and allows all members to vote. Public servants can have inhibitions regarding their ability to be critical of government policy in the event that the CCAC chooses to do so, and allowing the semi-states and advisories to provide up to 33% of the vote compromises the independence of the CCAC. Moreover, the Bill needs to specify that no member of the CCAC can receive significant Government-funded research or other purposes related to climate

action directly approved by the Minister or Taoiseach as this could compromise public confidence in the independence of the CCAC.

An Taisce regrets that Recommendation 1 of the Citizens' Assembly is not reflected in the drafting of this Bill, - "to ensure climate change is at the centre of policy-making in Ireland, as a matter of urgency a new or existing independent body should be resourced appropriately, operate in an open and transparent manner, and be given a broad range of new functions and powers in legislation to urgently address climate change".

The draft Bill lacks accountability for failure. It is not clear who or what body bears responsibility for exceeding a sectoral budget target. The 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 legislation.

The National Climate Objective

The National Climate Objective (NCO) serves to set the overarching purpose and rationale for this legislation. All actions potentially arising under it must ultimately be derived from their contribution, or otherwise, to the NCO. It is therefore of critical importance to frame this in a way that captures the correct ultimate goal(s).

The draft Bill defines the NCO as the pursuit, not the achievement, of a "...transition to a climate resilient and climate neutral economy by the end of the year 2050", where "climate neutral economy" is defined as "...a sustainable economy, where greenhouse gas emissions are balanced or exceeded by the removal of greenhouse gases". This echoes the recent adoption of some form of "net-zero by 2050" objective in a number of jurisdictions, including the UK and at EU level. An Taisce would strongly urge the Committee to reconsider this formulation, which is subject to severe, well documented, and fundamental, flaws.

Global heating is a consequence of the combined global actions of all nations. Nation state mitigation can be effective only in a context of global coordination. Thus, any satisfactory national climate objective must be unambiguously aligned with the required global mitigation action. Unfortunately, generic nation level "net zero by 2050" targets fail this test. Coordination of global climate mitigation is currently addressed through the Paris Agreement.

It is true that Article 4.1 of that agreement refers to achieving (not merely pursuing), at global level, "...a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century", which superficially suggests a "net zero by 2050" formulation. But this is to fundamentally misread the Paris Agreement text. Article 4.1 clearly states that this (global) balance between emissions and removals is not an objective in itself; it is rather just one necessary (but insufficient) aspect of the means to achieve the long-term temperature goal set out in Article 2. Further, Article 4.1 is explicit that this "balance of emissions and removals" must not be simplistically applied in a

uniform way at nation state level ("...recognizing that peaking will take longer for developing country Parties"); because of course, such a uniform approach would fly in the face of the commitment to equity and "common but differentiated responsibilities and respective capabilities" of different countries (Article 2.2).

In the current draft Bill, the overarching Paris Agreement temperature goals are only obliquely recognised, merely as one among many matters to "have regard to", rather than being the very essence and test of the required national contribution to effective global climate change mitigation. The bill drafters must consider reformulating the NCO itself, replacing the flawed concept of national "net zero by 2050" with a simple but explicit commitment, on behalf of the Irish people, that the State will act to make a full, equitable and just national contribution to meeting the global temperature goals set out in Article 2.1(a) of the Paris Agreement. The Bill needs to specify that the Government must state the scale and duration of any overshoot of the NCO national CO2 quota and the resultant quantity of negative emissions being relied on to meet the Paris-aligned NCO target.

Rolling Carbon Budget Programme

The An Taisce recognises what is genuinely useful progress in this draft Bill. Environmental groups have collectively argued for the adoption of a "carbon budget" based governance framework, and this Bill does - for the first time - propose that. That progress is seriously undermined by some of the weaknesses in the Bill. The basic starting point, where the Climate Change Advisory Council proposes the initial budget values is fundamentally problematic, because the criteria to be used by the Council in articulating such recommendations are not clearly specified. There is simply a reference to the omnibus list in section 3.(3)(a)-(y) of matters to "have regard to", without any meaningful differentiation or prioritisation.

This could be resolved by reference to the overarching imperative of the (strengthened) National Climate Objective. But in addition to the criticisms already presented of the draft NCO, it is also entirely unsatisfactory for the purpose of grounding the development of the carbon budget programme. The scientific rationale for cumulative carbon budgets in policy and governance is that any agreed global limit on temperature increase can (with some caveats) be translated into a finite limit on future anthropogenic emissions of carbon dioxide — the so-called global carbon budget or GCB. This ultimate "forever" GCB provides the essential scientific grounding for national and temporal (e.g., five-year) carbon budgets, precisely because the aggregate total of these national and temporal budgets must be constrained to "add up" within the GCB. But the NCO, as drafted, makes no reference to a global temperature goal, and thus provides no basis for recognition of an overarching GCB constraint or recommendation of a specific local temporal carbon budget programme.

This failing in the draft Bill could be fully addressed firstly by the revision proposed above of the NCO (binding the NCO to the Paris temperature goals), and combining this with a revision of section 11(2A) to make clear that the ultimate, overriding criterion to be used by the Council in proposing the carbon budget program must be alignment and consistency

with this reformulated NCO. This would enable the Council to give informed advice on the reasonable bounds of a just and equitable national share of the GCB, as well as whether to plan for (temporary) overshoot of this share (with consequent inter-generational commitment to carbon dioxide removal from the atmosphere). These are the essential parameters to allow the setting of any coherent, near-term (15 year) temporal carbon budget programme. Conversely, absent such revision of the Bill, the recommendations of the Council on the carbon budget programme would remain essentially ungrounded. The advisory task being delegated to the CCAC would be at best arbitrary, and at worst utterly ineffective.

Public Participation

If the measures of the Bill are to achieve success, the establishment of an independent public participation oversight body is needed. Without comprehensive public participation, implementation of climate mitigation and adaptation measures will not match the timelines set out in this Bill. The Aarhus Convention, which Ireland has ratified, protects the public's right to information and participation in decision making and access to justice should either of these be prevented or fail to be provided.

There is a legal obligation on the government to include the public. Citizen engagement has featured regularly during the pre-legislative scrutiny process with members of the Oireachtas committee obviously well aware of its fundamental role. Public participation and a national commitment to a Just Transition are integral to the success of Ireland's transition to a low carbon economy. It is vital that a mandate for its effective realisation be included in the legislation. It simply cannot be left to chance.

To that end, there is an absolute need to establish an independent public participation oversight body. During pre-legislative scrutiny, Dr. Thomas L Muinzer of the University of Aberdeen introduced citizen engagement initiatives in Scotland and the Netherlands to the Oireachtas. He encouraged legislators in Ireland to think creatively and to concretise an appropriate approach. An Taisce supports Dr. Muinzer's suggestion of the creation of just such an institution. The focus of this entity would be on ensuring comprehensive public participation in the national transition. It would ensure national standards and coordination of citizen engagement. By bringing people together to plan our transition a collaborative, just and fairer pathway will evolve with public commitment to its success.

Fixed-term carbon budgets offer a potentially useful climate governance framework: but given the severity of the unfolding climate crisis, such a framework can conceivably be effective only in a context of pervasive societal understanding and support for what will now require significantly disruptive policy actions. The Oireachtas must consider adding to the Bill explicit provision for a permanent, large-scale, programme of citizen participation in the formulation and execution of climate action.

Just Transition

The following are the Just Transition principles as defined in the Climate Change (Scotland) Act 2009 which should be incorporated to afford all sectors and communities equal status in the Bill.

An Taisce recommends the inclusion of principles such as these in a redrafted Irish Climate Bill.

(1) In this Act, the "just transition principles" emphasise the importance of taking action to reduce net Scottish emissions of greenhouse gases in a way which—

A. supports environmentally and socially sustainable jobs,
B. supports low-carbon investment and infrastructure,
C. develops and maintains social consensus through engagement with workers, trade unions, communities, non-governmental organisations, representatives of the interests of business and industry and such other persons as the Scottish Ministers consider appropriate,
D. creates decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy,
E. contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty.