

Working Notes

facts and analysis of
social and economic issues

Issue 72 October 2013

Jesuit Centre for Faith and Justice
26 Upper Sherrard Street, Dublin 1

Phone: 01 855 6814

Email: info@jcfj.ie

Web: www.jcfj.ie

Editor: Margaret Burns

Production Team: Berna Cunningham
Lena Jacobs

Printed by: Colorman Ireland

Design: www.artisan.ie

© Jesuit Centre for Faith and Justice, 2013.
Articles may not be reproduced without permission. The views expressed in articles are those of the authors, and do not necessarily represent the views of the Jesuit Centre for Faith and Justice.

Cover photograph: 'Lough Allen'

© Derek Speirs

Inside photographs: bought under licence
from *iStock Photo*.

The Jesuit Centre for Faith and Justice is an agency of the Irish Jesuit Province. The Centre undertakes social analysis and theological reflection in relation to issues of social justice, including housing and homelessness, penal policy, health policy, and asylum and migration.

A complete archive of *Working Notes* is available on the website of the Jesuit Centre for Faith and Justice: www.jcfj.ie.

If you enjoy *Working Notes*, we invite you to consider making a voluntary subscription to the Jesuit Centre for Faith and Justice. We suggest a sum of €20.00 per year.

Contents

Editorial	2
Climate Change: Economics or Ethics? John Sweeney	3
Will the Government's Climate Bill Work? Oisín Coghlan	9
Intergovernmental Panel on Climate Change Report	14
Protecting Ireland's Birds and Biodiversity: Time for Action Anja Murray	15
Water for All of Life Sinéad O'Brien	20
Environmental Initiatives by Church Groups in Ireland:	
Eco-Congregation Ireland <i>Catherine Brennan</i>	23
An Tairseach, Dominican Farm and Ecology Centre <i>Marian O'Sullivan</i>	25
The Congregation of the Sisters of Mercy <i>Carmel Bracken & Marcella O'Connell</i>	27
Brú na Cruinne <i>Tom Costello</i>	28
Catholic Social Teaching on Ecology Donal Dorr	30

Will the Government's Climate Bill Work?

Oisín Coghlan

Introduction

The outline of the Government's proposed climate legislation (*Climate Action and Low Carbon Development Bill 2013: Draft Heads*) published in February 2013, was the subject of three full days of hearings by the Oireachtas Joint Committee on the Environment in July 2013.¹ The Committee's report to the Minister for the Environment, Community and Local Government, Phil Hogan TD, is due this autumn and the Government has promised to introduce its proposed legislation in the Dáil before the end of 2013.

In the years during which groups such as Friends of the Earth have been working towards obtaining a statutory framework for climate policy, politicians have often claimed: "Nobody asks about climate change on the doorstep". There is one obvious reply to this claim: nobody on the doorsteps was asking about banking regulation in 2002, or even 2007, but this does not mean there was no need for political leadership on foot of the evidence of economic overheating, or no need to manage the risk by strengthening the regulatory framework before the economic crisis hit.

Indeed, there are parallels between the causes of the financial crash and the causes of the climate crisis: poorly understood risk, a short-term focus on business-as-usual, and faith in 'light-touch' regulation. We cannot afford to repeat those mistakes. If we let the climate crisis become a crash there is no way back; as the slogan puts it: 'Nature doesn't do bailouts'.

Climate legislation is, therefore, both a cornerstone of a genuinely sustainable, low carbon, economic recovery and a key element of 'never again', post-crash, political reform. Effective climate legislation can help make Ireland a hub for green enterprise and innovation. Putting our long-term carbon reduction targets into law would give businesses and households the certainty they need to invest in the transition to sustainability.

Why Do We Need a Climate Law?

Our political and public administration systems, with their origins in the nineteenth century, are

not well suited to tackling a twenty-first century problem such as climate change. Politicians are incentivised to think in five-year electoral cycles and with an eye to the 24/7 news cycle, and so to prioritise the expressed, immediate, concerns of voters, as amplified by the media and interest groups.

Climate change, by contrast, seems remote and intangible. We cannot see the carbon emissions and we imagine the impacts are either in distant lands (the Arctic, Africa) or in the distant future. Even if you are a farmer having to import fodder as a result of a poor harvest followed by a prolonged winter, or a homeowner who cannot obtain insurance because your home has been flooded twice in five years, you may not see climate change as a possible reason for the abnormal weather conditions giving rise to these problems.

Compounding the challenge is a public administration system entrenched in departmental silos, with an instinct for incremental change at best, and at risk of 'regulatory capture' by vested interests determined to shape the regulatory system for their own benefit. Climate change requires radical, large-scale action, starting now but sustained over decades, across a range of government departments and sectors, to prevent disaster some way in the future. Those who are anxious to avoid the short-term costs of adjustment are concentrated in specific sectors, are well-informed, and are organised. Those who will pay the price of inaction are dispersed, unorganised – or as yet unborn.

Time after time, between 1997 and 2007, measures to meet Ireland's carbon reduction target under the Kyoto Protocol were discarded or delayed due to opposition or inertia; crucially, there was nothing to compel the Government to ensure that either agreed measures were implemented or alternative measures devised. Only the economic crash of 2008 'saved' Ireland from missing its Kyoto target. Had we not – in effect, by default – met that target, Ireland would have had to purchase hundreds of millions of euro in overseas carbon credits in order to 'offset' the overshoot in emissions.

The apparent intangibility of climate change, the mismatch between the scope of action required across government and the dispersed and disconnected nature of the responsibility to act, and the challenge of ‘chronic urgency’ are key reasons why a strong statutory framework is required. Legislation is the best way to ensure that all departments across government, and all governments across time, take climate change seriously and take action consistently. Such legislation should ‘hardwire’ action and accountability on climate change into the political system.

How Does a Good Climate Law Work?

The constituent features of robust climate legislation are clear. We have good examples in the provisions of the UK *Climate Change Act 2008* and the later, even stronger, Scottish legislation, *The Climate Change (Scotland) Act 2009*.

The essential elements are:

1. An overall long-term national target for reduction in carbon emissions is set down in law.
2. An independent body is established to provide expert advice on the development and implementation of policies in relation to climate change.
3. The Government proposes and parliament adopts *interim* national carbon reduction targets in line with both the long-term national target and the country’s medium-term international obligations.
4. That national target is the starting point for a national action plan.
5. The members of Cabinet negotiate the allocation of emissions between sectors in the same way as they negotiate the allocation of spending between departments in the fiscal budget.
6. These allocations are the starting points for sectoral action plans.
7. The independent body produces an annual progress report for *parliament*.
8. Ministers make statements to parliament, responding to the points raised in the progress reports, and revise action plans as necessary.

How Does the Draft Bill Measure Up?

The Government’s Draft Heads of Bill signals climate legislation that will be too weak to work. It contains elements of the structure suggested above,

most positively in the area of reporting to the Oireachtas, but it falls well short in key respects.

1) Absence of 2050 Target

Internationally, 2050 is a key target date for reductions in carbon emissions. The EU Heads of Government, for example, have already agreed as the objective for 2050 the reduction of emissions within the EU as a whole to between 80 to 95 per cent below where they were in 1990.

The proposed Climate Bill, however, does not contain any national target for emissions reduction by 2050. Climate legislation lacking such a target will not work. The target is what drives the rest of the policy cycle: it provides a legal impetus for timely and adequate action to cut emissions, and a clear benchmark against which to measure progress. Only a numeric target can be clear. Prior to the current Government’s draft legislation, five Climate Bills had been initiated in the Oireachtas and all of these had a target of reducing emissions by 80 per cent by 2050.

A number of objections to having a 2050 target have been raised and these are worth addressing.

Danger of Exposure to Court Action?

It has been suggested that the inclusion of a 2050 target could expose the Government to litigation. This is to misunderstand the purpose of targets. They are to drive political action and parliamentary accountability, not legal action and judicial review. This can be made very clear in the law and has been dealt with in other jurisdictions.²

Moreover, the Fianna Fáil/Green Party Coalition Government produced a Climate Bill with a 2050 target, signed off by the Attorney General, so legal concerns about targets cannot have been decisive. After two years of review, the current Government has proposed a very similar Bill, but with the 2050 target taken out. So it is clear that, ultimately, the decision on whether to include targets will be a political, not a legal, one.

Threat to Competitiveness and Scope for Negotiations?

Another argument made against including a 2050 national target in the legislation is that doing so would result in Ireland’s economy being made less competitive and would tie Ireland’s hands in negotiations regarding how the overall EU emissions reduction target for 2050 should be allocated among Member States.

There is a moral argument against this line of reasoning. Those campaigning for the abolition of slavery were told it would undermine the competitiveness and prosperity of the then United Kingdom of Great Britain and Ireland. That line of reasoning was both immoral and false. Our economy now depends on fossil fuels in the way economies once depended on slavery. Now that we know the damage which burning fossil fuels is causing, the moral choice is to wean ourselves off these fuels, for the sake of our children, no matter what others do.

We do not even need to reach for this overarching moral argument, however. Ireland does not have to adopt unilateral targets or tie its own hands in EU negotiations. It does not, for example, have to enshrine an interim target, for 2030, in Irish law right now. Ireland's 2030 target will flow from the negotiations underway within the EU.

Since the EU has already set a target of 80 to 95 per cent reduction target for 2050, the inclusion in the legislation of, say, an 80 per cent target for 2050 could not be seen as pre-empting negotiations; rather, it would be merely showing a willingness to turn up at the starting line. It is difficult to imagine any outcome from negotiations regarding the EU 2050 target which would see Ireland with an easier target than an 80 per cent reduction in emissions – that is, if we are speaking of a target that is in line with what the science shows is needed to contain climate change.

Moreover, as the reports of the Ernst & Young 'Cleantech' Center³ and the work of the business group, Irish Corporate Leaders on Climate Change,⁴ make clear, there is real economic opportunity for Ireland in the transition to a low-carbon economy. A 2050 target shows that Ireland means business on climate change and it can actually help attract investment and grow sustainable employment.

How Would We Meet a 2050 Reduction Target?

The claim, 'We don't know exactly how we would deliver an 80 per cent reduction in emissions by 2050', in fact serves to highlight the importance of having a target. The point of a target is that it sets the direction. It drives the innovation and action required to meet it. It raises expectations and performance. Ireland's target of generating 40 per cent of the electricity we use from renewable sources by 2020 is one such 'stretch target' and it has significantly improved our performance already, with renewable fuels reaching 20 per cent in 2011.

When John F Kennedy said: "We choose to go to the moon in this decade ... not because [it is] easy, but because [it is] hard" scientists were aghast because the necessary technology did not yet exist. But the setting of the objective drove progress and eight years later a man stepped onto the moon. Now, scientists are telling us we have eight years to start cutting emissions enough to contain climate change. And politicians seem to be saying: "It is too hard". This stands in sharp contrast to Kennedy's belief that a demanding goal can serve "to organize and measure the best of our energies and skills ...".

A climate Bill without specific, explicit, targets raises the question: do those proposing it not want us to measure our progress?

2) Proposed Policy Cycle is Flawed

The sequencing of the policy-making cycle envisaged in the Government's Draft Bill would entrench an anachronistic silo-based approach to policy-making. The Draft provides that each government department would develop a 'sectoral roadmap' – a plan specifying the measures proposed for (a) reducing carbon emissions within the sector for it is responsible and (b) enabling the sector to adapt to the effects of climate change. Following the development of these sectoral roadmaps, a national low carbon roadmap (the 'national roadmap') would be developed.

Such an approach means that government departments would develop their sectoral roadmaps in isolation from one another, with each having a natural vested interest in not offering to make more substantial commitments than other departments. The 'national roadmap' as envisaged would then be little more than a lowest-common-denominator compilation of the sectoral roadmaps.

This policy process will not lead to the transformation in our energy, transport, food, planning and housing systems that is required to avoid unmanageable climate change. As noted earlier, the purpose of climate legislation is to reform policy-making so as to make it fit-for-purpose to tackle a challenging, cross-departmental issue in a transparent, evidence-based and accountable way.

Under the provisions of the Draft Bill, the national roadmap would be developed no later than twelve months after the enactment of the legislation and thereafter at intervals of no more than seven years.

A seven-year period for achieving the targets of a national roadmap is too long – it undermines the possibility of parliamentary accountability by being significantly longer than the electoral cycle. The legislation should instead provide that the Cabinet would be required to agree a five-year headline national target for carbon reductions, based on our international obligations and our long-term target. This should be the starting point for the national roadmap or action plan.

Then, to use the analogy of fiscal policy, the Cabinet should negotiate and agree the allocation of emissions under the national target to different departments and sectors just as it negotiates and agrees spending allocations to departments before the fiscal Budget. The national roadmap, with its five-year national target, should ultimately be adopted by way of a vote by the Oireachtas, just as the key provisions of the fiscal Budget are.

Without the firm central direction provided by climate legislation, along with a Cabinet decision on a national target, the debate about action on climate change becomes one about *whether* to cut emissions rather than *how* to do so, with each department taking a ‘not-us, not-yet’ line in respect of its own sector.

In summary, just as with fiscal policy, the climate policy process should start with the national target, proceed to Cabinet negotiations and then on to sectoral measures. Instead, the Government’s Draft Bill proposes departmental-led sectoral roadmaps, Cabinet agreement on a patchwork national roadmap and no targets. This represents a continuation of the limited ambition and failure of implementation we experienced with Irish policy for Kyoto compliance – the very problems that climate legislation is supposed to rectify, not institutionalise.

3) Expert Advisory Body Not Sufficiently Independent

The Bill proposes the establishment of a National Expert Advisory Body on Climate Change, whose functions would include advising and making recommendations to the Minister for the Environment, other Ministers of the Government, and the Government as a whole in relation to the development of the national low carbon roadmap, sectoral roadmaps, and on policies regarding the reduction of greenhouse gas emissions and adaptation to the effects of climate change.

The composition and functions of the Expert Advisory Body proposed in the Bill would not allow it sufficient independence and authority to be truly effective. It would not be able to publish its own reports unless and until the Government of the day sees fit. Furthermore, it is proposed that four of the ‘ordinary’ members of the Expert Body (that is, members other than the Chairperson) would be the chief executives of four State agencies, appointed *ex officio*. Given that the body would have a maximum of seven ‘ordinary’ members, and a minimum of five, these *ex officio* members would represent a majority of appointees.

The Advisory Body should be a properly independent council of experts, like the UK Climate Change Committee, established under UK *Climate Change Act 2008*, or like Ireland’s Fiscal Advisory Council, established after the economic crash, with the power to independently monitor and assess whether the Government is meeting its own stated budgetary targets.⁵

There should be no *ex officio* members. The state agencies should provide their expertise at the secretariat level, not at the council level. The Expert Body should be able to directly publish its own reports and not depend on the grace and favour of the Government of the day. It should report directly to parliament, not just to Government, as the Comptroller and Auditor General does here and the Committee on Climate Change does under the UK Act.

Three objections have been raised to the idea of adopting a model similar to the UK one. The first is that Ireland has an emissions profile very different to that of the UK, since agriculture plays a much larger role in our economy. However, an independent council is about the *way* we make policy, not about the specific details of policy, and there is no reason Irish policy-making should be less evidence-based, less open and transparent or less monitored or accountable to parliament than elsewhere.

The second objection is that the UK Committee has found itself in public disagreement with the HM Treasury and that this is somehow unseemly or incoherent. On the contrary, it is an example of what transparency in arriving at policy decisions might look like. When the UK Committee proposed a national target for 2027, ministries lined up on different sides: the Treasury and the Department for Business opposed the tough target; the

Department of Energy and Climate supported it. Interestingly, the Foreign Office also supported it, seeing leadership in relation to climate change as a positive part of Britain's international image and reputation. Ultimately, the Prime Minister came down in favour of the Committee's proposal and parliament adopted the tough target.

The third objection is that it is too easy for Government to ignore the advice of a council that is 'outside the system'. However, the impact of the UK Climate Committee so far shows that it is possible for an 'outside' committee to have real influence.

Obviously, legislation could not require that the Government would have to abide by the recommendations of an external advisory committee. However, the fact that the views and advice of such a body would enter the public and media debate would mean that the Government could not simply ignore what the committee had to say and hope that no-one would notice. Instead, Ministers would have to engage in the debate, explain their stance in parliament, and muster support for their position. A fully independent committee can therefore have a galvanising and constructive impact on the shaping of climate policy.

The Way Forward?

Climate legislation is not some magical solution which will make the problem of carbon emissions disappear. But Ireland's experience under the Kyoto Protocol is that traditional policy-making is not equal to the challenge of generating the kind of sustained impetus to act on carbon reduction which is required across a range of departments and agencies and across time.

Effective legislation on climate change is a key element of political reform necessary to make this area of policy-making more long-term, more evidence-based, more transparent and more accountable to the Oireachtas.

The July 2013 hearings of the Oireachtas Joint Committee on the Environment represented a positive, serious and constructive engagement with issues arising from the Government's outline draft legislation on climate change. It allowed in-depth discussions to take place with an array of stakeholders from the business, farming and environmental sectors as well as overseas aid agencies and economic and legal experts.

The Minister for the Environment, Community and Local Government, Phil Hogan TD, has continually stated how central he sees the role of the Committee in framing climate legislation. In the course of the debate on the proposal to abolish Seanad Éireann, Government Ministers frequently cited 'pre-legislative' All-Party hearings as an example of serious political reforms that could be implemented in a single-chamber parliament. A significant test of the commitment of the Government to permitting such hearings to have real impact will come when the Environment Committee publishes its report on the draft climate change legislation.⁶ Simply put: will the Government be prepared to change the draft Bill in light of the Committee's recommendations?

Notes

1. The written submissions made to the Joint Committee in advance of the July 2013 hearings are available on the website of Friends of the Earth (see: <http://www.foe.ie/news/2013/07/01/submissions-on-the-outline-heads-of-the-climate-action-and-lowcarbon-development-bill/>).
2. These issues were explored at the Oireachtas Joint Committee hearings on the *Climate Action and Low Carbon Development Bill: Draft Heads* in July 2013 by Peter Doran (Ceartas), Conor Linhean (William Fry) and Roderic O'Gorman (DCU). Their submissions and opening statements and the video and transcripts of the hearings are available on the website of Friends of the Earth (<http://www.foe.ie/news/2013/07/29/one-stop-shop-on-the-oireachtas-climate-bill-hearings-all-you-need-to-know-and-more/>).
3. See Ernst & Young, *Cleantech Matters – Global Competitiveness: Global Cleantech Insights and Trends Report 2012*, Ernst & Young Global Cleantech Center 2012 ([http://www.ey.com/Publication/vwLUAssets/Global_cleantech_insights_and_trends_report_2012/\\$FILE/cleantech_matters.pdf](http://www.ey.com/Publication/vwLUAssets/Global_cleantech_insights_and_trends_report_2012/$FILE/cleantech_matters.pdf)).
4. "The Irish Corporate Leaders on Climate Change brings together business leaders from a broad cross-section of Irish based businesses to trigger a step-change in policy and action needed both to meet the scale of the threat posed by climate change, and to grasp the business opportunities created by moving to a low climate risk economy." (See: <http://www.corporateleaders.ie/>)
5. The Fiscal Advisory Council was established under the Fiscal Responsibility Act 2012.
6. You can follow developments in climate science and policy and the fate of the Government's Climate Bill on the website of Friends of the Earth (<http://www.foe.ie/climatechange>) and on Twitter @foeireland.

Oisín Coghlan is the Director of Friends of the Earth, an Irish NGO which campaigns for environmental justice and sustainability. (<http://www.foe.ie>)