

Key Reasons for and Key Elements of Effective Climate Legislation

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Why do we need a climate change law?

- **The nature of the challenge**

It is hard for modern democracies to tackle climate change without the support structure of a law. A five-year electoral cycle and 24/7 news cycle doesn't suit a problem that seems impersonal, abstract and remote.

- **Institutionalising cross-party consensus**

A law is the highest possible expression of the cross-party consensus on the need to act on climate change that developed during the last Oireachtas.

- **Ensuring “whole-of-government” commitment**

The Minister for the Environment signed the Kyoto Protocol and agreed Ireland's target but most of the policies and measures required to meet that target fell outside his remit. A law is the most effective way to ensure all Departments across Government play their part in achieving what is a collective commitment.

- **Driving timely action, and continuity of action**

Ireland agreed its Kyoto target for 2008-2012 in 1998, and failed to implement the three main measures identified to meet it (a carbon tax, phasing out peat-fired power stations, switching Moneypoint to gas) and failed to replace them with alternative reduction measures. By 2005 our emissions had risen by twice as much as our target, exposing us to a large bill to buy carbon credits overseas to offset our overshoot. Only crashing the economy brought us close to meeting our target and everybody agrees that's not a method we want to repeat the next time around.

If we had put our Kyoto target into domestic law in 1998 and adopted three five-year carbon budgets for 1998-2002, 2003-2007 and 2008-2012 we'd have tightened the building regulations sooner, introduced a carbon tax in 2002 as promised, and reformed VRT back in 2000, or had to find other policies with the same impact on emissions.

- **Providing certainty for investors, both companies and households**

Replacing old polluting or wasteful technology with new low-carbon or efficient models costs money. When companies and households know that Government policy is hardwired to drive down emissions (and by extension drive up the price of polluting) over not just the next 3 or 5 years but also 10 and 20 years then they have the confidence to invest in switching, knowing that they will reap a return on their investment over time.

- **Enhancing our international credibility, attracting investment**

During the run up to the first Kyoto commitment period Ireland developed a reputation as an environmental laggard. Furthermore, the bursting of our

property bubble left our economic reputation in tatters. As our EU 2020 targets kick in, the law provides an opportunity to present ourselves as a responsible global citizen once again and to position Ireland as a hub for green enterprise and investment.

- **Engaging the public**

People experience climate policy as a variety of individual measures, some of which they like (subsidies for insulation and new boilers) and some of which they don't (carbon tax). They see seemingly disconnected pieces of a jigsaw. A climate law is the opportunity to frame the debate, to present the picture on the jigsaw box. And if the debacle of the FF/GP Bill last year taught us anything it is that introducing something into domestic law will engage people in a way that EU law simply does not!

Why now?

- **Because now is the time to drive action on our EU 2020 targets.**

The first Kyoto commitment period ends this year, and our EU 2020 targets loom ever more clearly on the horizon. The current target is challenging. The EPA reckon without new policies and measures we will overshoot it as early as 2015. And our EU target is likely to toughen in the coming years.

- **To learn and apply the lessons of the recent boom and bust.**

Some of the factors behind the economic crisis are common to the climate crisis: a “misunderestimation” of risk (from sub-prime mortgages and greenhouse gases), a complacency about business as usual (houses prices and carbon emissions will continue to rise without negative consequence) and a belief that light-touch regulation is all we need.

The climate change law is the of the equivalent of the banking regulations we should have enacted in 2002 and the planning and development law we should have enacted in 1998. When politicians tell me that nobody asks about climate change on the doorsteps I say no one was asking about banking regulations in 2002 or 2007 but they would be damn glad now if you had showed leadership and enacted them anyway. A climate law is part of much needed political reform.

What should be in an effective climate law?

First, just as importantly, what is the law *not* about!

- It's not about taking on new targets we haven't already agreed to.
- It's not about mandating specific measures
- It's not about picking on one sector of the economy

A climate law is not about taking on unilateral targets above and beyond our EU targets. It is about making sure we actually *do something* to meet our existing and future EU targets, in a timely and planned manner. The only reason to oppose the targets being in domestic law is if you hope or plan that Ireland will not actually try to

meet them. But the focus of the law is as much about the architecture of policy-making as the targets. It's about ensuring that Governments actually do choose some policies to reduce emissions, based on independent evidence and advice, and are then held accountable to the Oireachtas for their implementation.

Key elements

A science based target for 2050

EU leaders have accepted the IPCC finding that development countries' fair share of the global emissions reductions required to have a 50/50 chance of keeping warming to 2C above pre-industrial levels, is a reduction in emissions of 80-95%, compared to a 1990 baseline, by 2050. This is the target in the UK Act and it is the foundation stone for long-term policy development. Given the way the science is developing there is a case to be made for adopting the 95% end of the spectrum as our target. But for the sake of sticking to the agreed, consensus-based, middle-ground, an 80% target is more likely. To oppose this target is either to say Ireland doesn't think the world should try to stay below 2C or to say Ireland should do less than its fair share.

Interim targets expressed as *legally-binding* 3 or 5 year carbon budgets

Carbon Budgets have been the subject of considerable mystification and misunderstanding during this discussion. They are actually quite simple. They are another way of expressing a target. A percentage reduction captures a moment in time (20% by 2020). A Carbon Budget captures all emissions over a given time (314Mt from 2008 to 2012)

We already have a Carbon Budget under Kyoto. Our target for the first commitment period is that our total emissions from 2008-2012 will be no more than 314 Mt CO₂eq. Calculated as a percentage that works out at 13% above the 1990 baseline.

So we are coming to the end of our first Carbon Budget period. We should now be setting our Carbon Budgets for 2013-2017 and for 2018 – 2022. That third Carbon Budget can simply be calculated so that it would equate, when expressed as a percentage reduction, with our current EU 2020 target.

The benefits of breaking a medium or long-term target into 5-year chunks is obvious. Back in 1998 our Kyoto target was simply too far away to generate any political will to take action. With 5-year Budgets the target isn't always away over the electoral horizon. There is case to be made for 3-year Budgets to make sure every Government faces a target or can't get away with setting a target but not be around to take responsibility for having met it or not.

Just to be clear too, there was never going to be legally-binding *sectoral* targets in law. None of the five Bills so far initiated in the Oireachtas provided for legally binding sectoral targets. There should be sectoral targets but they will always be political not legal, that is to say negotiated every couple of years at Cabinet. But the overall Budget means that each Minister's special pleading doesn't lead to national inaction. With an overall legally-binding Budget, every time it's agreed not to implement some measure an alternative measure or measures of equivalent impact will have to be found.

An independent expert Climate Change Commission

This is a no-brainer but you'd be surprised at the resistance to it being independent. It was in the Fianna Fail manifesto in 2007 but by the time the FF/GP Bill was published 15 months ago it had been downgraded to an "expert advisory body" and had lost the power to publish its own reports.

The model should be the new Irish Fiscal Responsibility Council. A small group of independent experts looking at the evidence and publishing their advice to Government before the Government makes decisions – so as to inform political and public debate. They should also report annually to the Oireachtas on progress, to facilitate the public and parliamentary accountability process.

The UK version has 7 members and 22 staff. Ours will have fewer staff, no doubt. But it's a small investment for good evidence-based advice. And to be very clear – this is an expert group not be a stakeholder group, I don't want to be on it! This is not the Board of Fás or even the Council of NESC.

A "concrete ceiling" on the buying of overseas carbon credits

If the law is to drive the innovation we need in public policy, private enterprise and even personal behaviour it needs to clear we can't just buy our way out of the targets we adopt. Back at the time of Kyoto in 1997, Noel Dempsey as environment minister favoured a concrete ceiling on the use of such flexible mechanisms. That remains sound policy. It will provide the clarity and certainty that businesses and households need to invest. I would say we should rule out offsetting completely and just get on with the much needed transition to a low-carbon, climate-change-resilient economy we need to safeguard prosperity and sustainability in future. Ruling out spending taxpayers money on overseas offsets also has the virtue that the targets we adopt mean what they say, which builds public trust.

Giving the Department of the Taoiseach overall responsibility for climate change

The Department of the Environment simply doesn't have the authority to drive action across Government. The Kyoto experience demonstrates that. The model here is how we organized Northern Irish policy and EU policy until recently. The Taoiseach answered questions in the Dáil on both topics and his Department had an Assistant Secretary with responsibility for those areas. The Minister for Foreign Affairs and that Department maintained a lead role also and could act as a "champion" at Cabinet as required.

But one final word of caution ...

A climate change law is a game-changer but it's not a silver bullet

You still have to win each battle for each concrete measure to reduce emissions. And as often happens the opposition will come from vested interests, organized and focused, facing short-term adjustment costs, while the benefits are often down the line and the beneficiaries diffuse and unorganized (unborn, many of them). But the law will change the rules of the game and level the playing field for what is a struggle between an entrenched, but unsustainable, status quo and hope for the future.

Michael Collins famously said that the Treaty was not freedom, but the freedom to achieve freedom. Well, the climate law is not sustainability, but it is the opportunity to achieve sustainability.