



CONSULTATION RESPONSE ON A NORTHERN IRELAND CLIMATE CHANGE BILL

Introduction

1. The UK Environmental Law Association (UKELA) responds to the consultation launched by the Department for Agriculture, Environmental and Rural Affairs, Northern Ireland (DAERA) on the proposal for a Northern Ireland Climate Change Bill. UKELA comprises over 1,500 academics, barristers, solicitors and consultants, in both the public and private sectors, involved in the practice, study and formulation of environmental law and policy. Its primary purpose is to make better law for the environment.
2. This consultation response has been prepared by UKELA's Climate Change and Energy and Northern Ireland Working Parties. They do not necessarily (and are not intended to) represent the views and opinions of all UKELA members. It follows the consultation questions raised by DAERA and has been submitted online.

Question 1: Which of the following high level options do you think is appropriate for Northern Ireland to take forward?

Option 1: Northern Ireland Climate Change Bill setting interim emission reduction targets and a long term target of net zero emissions in Northern Ireland by 2050 (long term target does not consider expert climate change advice)

Option 2: Northern Ireland Climate Change Bill setting interim emission reduction targets and a long term target for Northern Ireland by 2050, the long term target is an equitable contribution to achieving UK-wide Net Zero by 2050 (long term target considers expert climate change advice)

3. UKELA considers that Option 2 is to be preferred it is based upon expert climate change advice.

Reason 1

4. Whilst both options would be in line with the targets set out by the Paris Agreement, only Option 2 is evidence-based and takes into account the advice of climate change experts, particularly the UK Climate Change Committee (CCC).¹ The CCC's letter to Edwin Poots MLA of 9 December, 2020, states that in every scenario considered, Northern Ireland would be unable to achieve Net Zero by 2050.² However, the CCC models demonstrate that Northern Ireland would be able to reduce GHG emissions to an extent that would contribute to UK Net Zero. The most achievable model – the Balanced Net Zero Pathway – would see a reduction of GHG emissions by at least 82%.³
5. Option 2 considers the unique characteristics, specific to Northern Ireland, which suggest that it may not be able to achieve the same reductions as the UK as a whole. These characteristics include: a smaller number of power stations; a greater economic reliance on the agricultural sector; more dispersed rural communities; and greater reliance on oil for heating (68% of domestic heating is provided by oil as gas infrastructure is under-developed).⁴ In light of these and other considerations, the *Sixth Carbon Budget Report* stated that Northern Ireland would not reach Net Zero by 2050, despite following a similar program to the UK as a whole.⁵

Reason 2

¹ United Nations, 215. 'The Paris Agreement' viewed 24 January 2021, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

² Climate Change Committee, 'Letter: Lord Deben, Climate Change Committee to Edwin Poots MLA', 9 December, 2020, <https://www.theccc.org.uk/publication/letter-lord-deben-climate-change-committee-to-edwin-poots-mla/>

³ *Ibid.*

⁴ The Committee on Climate Change 2019, 'Reducing Emissions in Northern Ireland', viewed 21 September 2020 <https://www.theccc.org.uk/wp-content/uploads/2019/02/Reducing-emissions-in-Northern-Ireland-CCC.pdf>; UKERC, 'Zero In On NI Heat', July 2020, https://d2e1qxpsswcpqz.cloudfront.net/uploads/2020/07/Final_Report_UU_Zero_in_on_NI_heat-2.pdf

⁵ Climate Change Committee: 'Sixth Climate Budget Report', 9 December, 2020, <https://www.theccc.org.uk/publication/sixth-carbon-budget/>

6. Targets are only of use when they are both challenging and achievable. As evidence suggests that NI will be unable to achieve Net Zero by 2050, there would, *prima facie*, seem little point in setting the target as such. The counter-argument is that not setting a target will permit a lower level of ambition and therefore Option 2 with targets is preferred. UKELA suggests that a sensible compromise might be to modify option 2 by setting a review in 5 years' time (in circumstances where opportunities to reduce emissions may have changed). This point is considered further in Answer 3.

Reason 3

7. It is important to also consider the relationship between Northern Ireland and the UK as a whole. For example, nearly 50% of all agri-food products produced in Northern Ireland are consumed in England, Scotland and Wales: thus it is fair that some of these emissions are offset by 'sinks' located elsewhere in the UK.⁶ Attempting to force Northern Ireland to achieve Net Zero by 2050, may simply mean a shift in agri-food product production to other parts of the UK and would therefore, be futile.
8. UKELA submits that the UK should be working to ensure that carbon emissions are reduced throughout the UK. This may require increased investment in Northern Ireland in e.g. renewable non-carbon based activities

Reason 4

9. The size of Northern Ireland's contribution to UK emissions must also be considered. In 2018, Northern Ireland accounted for just 4.3% of UK GHG emissions and 0.04% globally [Northern Ireland making up 2.83% of the UK population].⁷ Furthermore, the difference between net zero and an 'equitable contribution' would be around 18% (thus only 0.0072% of total UK emissions).⁸ Whether Northern Ireland achieves Net Zero emissions, therefore, will not significantly impact the UK in meeting its GHG reduction targets.

⁶ Climate Change Committee, 'Letter: Lord Deben, Climate Change Committee to Edwin Poots MLA', 9 December, 2020, <https://www.theccc.org.uk/publication/letter-lord-deben-climate-change-committee-to-edwin-poots-mla/>

⁷ Northern Ireland Statistics Agency 2020, 'Northern Ireland Green House Gas Emissions 2018', viewed 24 January 2021 <https://www.daera-ni.gov.uk/sites/default/files/publications/daera/NI%20Greenhouse%20Gas%20Statistics%201990-2018%20-%20Report%20%28web%20version%29.pdf>;

Office of National Statistics, 'Population of the United Kingdom (UK) 2019, by country' <https://www.statista.com/statistics/294729/population-united-kingdom-uk-by-country/>

⁸ Climate Change Committee, 'Letter: Lord Deben, Climate Change Committee to Edwin Poots MLA', 9 December, 2020, <https://www.theccc.org.uk/publication/letter-lord-deben-climate-change-committee-to-edwin-poots-mla/>

Question 2: Do you have any opinions on what would be the most important criteria to be considered when setting or updating long term and interim emission reduction targets?

10. UKELA's view is that a key criterion for setting and updating interim and long term emission reduction targets will be to ensure that they align to UK targets that there is close collaboration throughout the UK nations. There must also be collaboration with the EU and Ireland.

Question 3: Do you think flexibility should be built into the Bill, to allow consideration of new emerging evidence and science on climate change (for example on long lived and short lived pollutants) when setting emission reduction targets?

Reason 1

11. Yes. UKELA agrees that climate change law and policy is a developing field of expertise and understanding and the prevalence of emerging evidence and analysis means that it would be prudent for flexibility to be built into the Bill. The developing science on climate change, and the complexity of that science, mean that the goals and targets set now could, in the long-term, be found to be inadequate or, less likely, too-ambitious.

Reason 2

12. The CCC has voiced concerns regarding uncertainties over agriculture emissions, which has specific relevance to Northern Ireland. These include, but are not limited to, lack of experience and skills in alternative land uses, under-investment in research and innovation, lack of information about new low-carbon farming techniques, high up-front costs and uncertainty over future markets for new products.⁹ Therefore, it has been suggested that although targets should be set now, flexibility should be permitted as new information arises regarding these uncertainties.¹⁰

Reason 3

13. UKELA also believes that flexibility should also be built into the Bill in light of the ongoing international debates on: (a) the suitability of measuring all GHG emissions as CO₂

⁹ Climate Change Committee, 'Reducing Emissions in Northern Ireland', February 2019, <https://www.theccc.org.uk/wp-content/uploads/2019/02/Reducing-emissions-in-Northern-Ireland-CCC.pdf>

¹⁰ The Climate Change Committee 2016, 'The appropriateness of a Northern Ireland Climate Change Act - Northern Ireland Report', <https://www.theccc.org.uk/publication/the-appropriateness-of-a-northern-ireland-climate-change-act/>

equivalents; and (b) the need to differentiate between long lived and short lived pollutants. Currently, the two categories of pollutants are grouped together in a 'one size fits all' approach, yet specialists have begun to argue that a dual approach would allow for more accurate data and therefore a more effective policy.¹¹ If the international scientific community decide that short lived and long lived pollutants should no longer be grouped together then the foundation of current measurements of climate change would be altered. Therefore, it would be necessary to amend targets in light of the new scientific consensus, something which can only be achieved through flexible targets.

Reason 4

14. Despite the necessity for a certain level of flexibility within the Bill, UKELA wishes to emphasise the importance of cautious flexibility. For instance, the UK may wish to encourage increased investment in low carbon technologies. However, if investors/ businesses think that the targets will be revised frequently and fluidly., this could discourage investment. A detailed and considered criteria for which goals and targets are to be flexible and why, must therefore be included.

Question 4: Do you agree that a Northern Ireland Climate Change Bill should include a duty for 5 yearly carbon budgets to set a statutory cap (interim emission reduction targets) on total greenhouse gases that can be emitted in Northern Ireland?

15. Yes. UKELA agrees that the proposed bill should include a 5 year carbon budget cap.

Reason 1

16. Northern Ireland contributes to the UK GHG reduction targets and to 'carbon budgets' under the UK Climate Change Act 2008 (CCA 2008). To include a duty for 5 yearly carbon budgets would be a continuation of existing legislation.

Reason 2

17. Interim budgets serve as stepping-stones so that action towards the 2050 target progresses at the right pace. Progress towards the target should be steady so that it is neither continually

¹¹ Oxford Martin School, 'New methane emissions metric proposed for climate change policy', June 4, 2018, <https://www.oxfordmartin.ox.ac.uk/news/2018-news-climate-pollutants-gwp/>

postponed nor then done too rapidly (which would lead to wasted costs as retiring higher carbon assets before the end of their lives). Targets allow the Government to plan for the replacement of high carbon capital assets as opportunities arise, and to undertake the appropriate degree of research, innovation, and incremental change to prepare for larger future changes.¹²

Reason 3

18. Setting targets now would provide structure and a clear message as to DAERA's climate action aspirations but would allow flexibility to react to further information on how to reduce agricultural emissions, particularly given the significance of agriculture to the Northern Irish economy.

Reason 4

19. Although it is proposed that Northern Ireland make an equitable contribution to UK Net Zero rather than achieve Net Zero on its own, it is essential that Northern Irish progress be measured relative to its own circumstances. This is primarily because agriculture is a significant element of the Northern Ireland economy (it accounts for 27% of current GHGs), which is out of line with the UK average.¹³ Therefore, it would be prudent to have a mechanism to reflect targets and carbon budgets to ensure delivery of a fair and balanced pathway to a future net zero.

Question 5: Should provision for reporting on adaptation measures by 'major player' public bodies be included in a Northern Ireland Climate Change Bill?

20. Yes. However, a requirement to report on adaptation measures should be placed on all public bodies not just 'major players'. Seeking to make a distinction between public bodies will cause uncertainty and confusion. Also, a body that is not regarded as a 'major players' may still have the need to report on adaptation because the impacts of climate change could be significant on their operations and activities. Moreover, an increasing number of public bodies are making Climate Emergency Declarations and are either already public reporting on adaptation and mitigation measures or likely to be doing so in the near future: see e.g. Ards

¹² *The appropriateness of a Northern Ireland Climate Change Act – December 2015 Update*

¹³ Committee for Agriculture, Environment and Rural Affairs Official Report, 17 December 2020 [link needed]

and North Down Borough Council declaration of 27.2.19 and Belfast City Council's declaration of 1.10.19.

21. Requesting all public bodies to report on the actions that they are taking to mitigate and adapt to climate change would improve the quality and consistency of climate change information available to Northern Ireland Ministers, Northern Ireland policy officials and the public sector itself.¹⁴
22. Both Scotland and the UK have enshrined reporting requirements in their respective statutes concerning climate change. In the UK this duty is imposed upon a range of reporting authorities (organisations with functions of a public nature and statutory undertakers) but is voluntary. It is recognized that in Scotland it is only 'major players' that are required to report annually on the basis that 'major players' are responsible for the largest percentage of GHG emissions it is reasonable to emulate the position in Scotland.. However, UKELA considers that the approach in Scotland should be reviewed. This is particularly so, when an increasing number of Scottish public bodies are likely to be committing to such reporting as part of their climate emergency declarations commitments: see e.g. Dundee City Council, Glasgow City Council and Stirling Council.
23. There is already a Cross-Departmental Working Group on Climate Change in Northern Ireland (CDWGCC) that comprises mitigation, adaptation, and analytical sub-groups. Currently, the CDWGCC reports annually to the Executive on voluntary actions taken by departments in meeting the adaptation requirements of the CCA 2008. Therefore, increased requirements would be a difference of degree rather than the imposition of a new system.
24. The clear cultural appetite for increased accountability of corporate and public bodies justifies increased reporting requirements placed on all public bodies as compared to that imposed by the CCA 2008.¹⁵

¹⁴ https://www.theguardian.com/environment/2021/jan/22/a-million-young-people-urge-governments-to-prioritise-climate-crisis?utm_term=ef79faa7aba7fbdb36861870da26f956&utm_campaign=MorningBriefingUK&utm_source=esp&utm_medium=Email&CMP=morningbriefinguk_email

¹⁵ https://www.theguardian.com/environment/2021/jan/22/a-million-young-people-urge-governments-to-prioritise-climate-crisis?utm_term=ef79faa7aba7fbdb36861870da26f956&utm_campaign=MorningBriefingUK&utm_source=esp&utm_medium=Email&CMP=morningbriefinguk_email

Question 6: Should provision for reporting on mitigation measures by ‘major player’ public bodies be included in a Northern Ireland Climate Change Bill?

25. Yes, although for the same reasons given in answer to Question 5, the report on mitigation should apply to all public bodies in Northern Ireland, not just the major players. The concern raised in the consultation paper about a potential burden of reporting is unlikely to be material, as mentioned above, some public bodies will already be committing to reporting on climate change through the action flowing from their climate emergency declarations. Further, UKELA’s view is that the consequences of climate change are too important not to be ignored. All public bodies will have financial reporting obligations, the same seriousness should be applied to GHG emissions and efforts to limit these.¹⁶ Requesting public sector organisations to report on the actions that they are taking to mitigate and adapt to climate change would improve the quality and consistency of climate change information available to Northern Ireland Ministers, Northern Ireland policy officials and the public sector itself.¹⁷
26. Both Scotland and the UK generally have enshrined reporting requirements in their respective statutes concerning climate change. In the UK this duty is imposed upon a range of reporting authorities (organisations with functions of a public nature and statutory undertakers) but is voluntary. As note in answer to question 5, UKELA considers that Scotland’s only ‘major player’ approach should be revised so that it applies to all public bodies erequired to report annually.
27. In terms of the national government departments, UKELA notes that there is already a Cross-Departmental Working Group on Climate Change in Northern Ireland (CDWGCC) that comprises mitigation, adaptation, and analytical sub-groups. Currently, the CDWGCC reports annually to the Executive on voluntary actions taken by departments in meeting the adaptation requirements of the CCA 2008. Therefore, any increased requirements would be a difference of degree rather than the imposition of a new system.
28. Finally, as indicated above the clear cultural appetite for increased accountability of corporate and public bodies justifies increased reporting requirements placed on ‘major player’ public bodies as compared to that imposed by the CCA 2008.¹⁸

¹⁶ Discussion Document on a Northern Ireland Climate Change Bill

¹⁷ <https://www.daera-ni.gov.uk/sites/default/files/consultations/doe/NI-climate-change-legislation-discussion-document.pdf> 2015 Discussion Paper

¹⁸ https://www.theguardian.com/environment/2021/jan/22/a-million-young-people-urge-governments-to-prioritise-climate-crisis?utm_term=ef79faa7aba7fbd36861870da26f956&utm_campaign=MorningBriefingUK&utm_source=esp&utm_medium>Email&CMP=morningbriefinguk_email

29. According to the Annual Progress Report published by the CDWGCC in March 2016 (the most recent report): “At the start of the year 37 actions were agreed by the CDWGCC. By 31 December 2015, 25 (68%) of these targets had been achieved, with 9 (24%) having made some progress being carried forward to 2016/17 for completion”.¹⁹ This high level of attainment strongly suggests that provision for reporting would be readily adopted.

Question 7: In addition to continuing to avail of the expertise of the UK Climate Change Committee, should we also include provision in the Bill, for an independent Northern Ireland advisory body on climate change?

30. Yes. UKELA supports the proposal to include a provision in the Bill for an independent Northern Ireland advisory body on climate change. We envisage this can work in collaboration with the UK Climate Change Committee as well as the Office for Environmental Protection being established under the Environment Bill.

Reason 1

31. The evidence put forward by the CCC strongly indicates that Northern Ireland is unlikely to achieve absolute Net Zero by 2050 and that instead it should make an equitable contribution to UK Net Zero. Taking this proposition as a point of departure, it makes good sense that a centralised UK-wide body should act as an advisory body to all countries within the UK to ensure that targets, etc. are consistent but that an independent Northern Ireland advisory board will be of real value to have a particular understanding of circumstances affecting Northern Ireland. Moreover, it is telling that Scotland has had the capacity to create a Scottish Committee on Climate Change but has chosen not to do so, which indicates that the CCC is well able to perform an advisory function to devolved governments.

Reason 2

32. Provision in the Bill for an independent Northern Ireland advisory body on climate change allows for flexibility in the future as to which body or person carries out advisory functions under this Bill, particularly as the Bill framework is designed to last until at least 2050. This

¹⁹ *Cross-Departmental Working Group on Climate Change Annual Progress Report, March 2016*

reasoning was a key consideration of the Scottish Parliament when drafting the Climate Change (Scotland) Act 2009.²⁰

Reason 3

33. The CCC acknowledges that the demographic, geographic, and economic make-up of Northern Ireland means that it faces a different series of challenges on the pathway towards reduced GHG emissions than other nations. It is likely that the Northern Ireland Assembly, government departments and other government bodies including local government will need targeted guidance from an independent advisory body that is able to focus its research upon specific areas of interest to Northern Ireland.²¹

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²⁰ Scottish Government Delegated Powers Memorandum
([https://www.parliament.scot/S3_Bills/Climate%20Change%20\(Scotland\)%20Bill/b17s3-introd-dpm.pdf](https://www.parliament.scot/S3_Bills/Climate%20Change%20(Scotland)%20Bill/b17s3-introd-dpm.pdf))

²¹ This reasoning was relied upon by the Scottish Ministers: "This arrangement will be reviewed in the future and, if it is considered that the UK Committee on Climate Change is not providing advice and scrutiny suitable for Scotland's unique requirements, the Scottish Ministers will be able to create or designate another person or body to carry out these functions." (*Ibid.*)