

## Climate Change Bill (Northern Ireland) 2021



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### 24 May, 2021

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#### Introduction

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The Bill is rare in three ways. First, it is a Private Member's Bill, not originating from the Northern Ireland Executive; in the current mandate of the Assembly, there have so far been only. Second, it commands significant cross-party support in a jurisdiction famous (or infamous, depending on one's perspective) for entrenched party-political divides. Finally, it was predominantly drafted by civil society rather than legislative counsel.

As one of several people involved in drafting the Bill, the relief I felt at its passage was mixed with only a slight sense of trepidation at the detailed scrutiny it will now face at the Committee Stage. This post sets out three main themes of the Bill as it moves through this scrutiny.

#### Transparency, democracy and consensus

One of the hallmarks of the Bill is the mechanism by which its main policy document, the climate action plan (CAP) is adopted. Under clause 2(1), the Executive Office (comprising the First and deputy First Ministers) lays a CAP before the Assembly, which must approve it for it to have effect (cl. 2(3)). Moreover, the Executive Office must publish the CAP for public consultation for at least 16 weeks prior to laying it before the Assembly (cl. 2(4)). The adoption of a CAP is therefore a partnership between Northern Ireland's executive, legislature and public. The importance of this partnership cannot be overstated: climate change mitigation requires widespread support, with a need for ownership of such

mitigation by the very public subject to it.

However, the element of partnership goes beyond executive-legislature relations. The constitutional arrangements which prescribe decision-making in the Stormont Executive are marked by the need for cross-community consensus. In particular, “cross-cutting” matters which span multiple Executive departments must be subject to (Northern Ireland’s Cabinet). The sheer reach of CAP policies and targets (cl. 3(2), (3) and (7)) means that Executive Committee agreement is unavoidable when agreeing a CAP.

### **Independent and robust monitoring**

While equivalent legislative provisions in and require ministerial reporting on the progress of action to address climate change, the Bill makes this the function of a new agency: the Northern Ireland Climate Commissioner (NICC) (cl. 9(1)). The NICC is a statutory corporation (cl. 6(1)), independent of local and Stormont government (cl. 6(2)), appointed by the Crown on nomination by the Assembly (cl. 7(2)) and removable only on request (cl. 7(7)) or by a supermajority of the Assembly (cl. 7(8)). Aside from incidental powers common to statutory corporations (cl. 6(8)), the NICC is granted extensive information retrieval powers (cl. 10) along the lines of the

The creation of a new agency may be anathema to those who believe in minimal government, but it is justified with reference to the past and the future. The recent past in Northern Ireland’s governance was marked by an opacity which brought devolved government to its knees for almost 3 years. This cannot be risked in the future endeavour to address climate change. Just as an independent Comptroller with robust powers is essential for public confidence in public finances, so too is the independent NICC essential for confidence in the public’s future.

However, NICC sceptics should find succour in the fact that the agency does not have . This was a deliberate choice to underline the democratic foundations of the Bill. The Assembly already possesses sanctioning powers – and it is only right that elected representatives should decide if and when to sanction ministers for failing to abide by policy approved by the Assembly.

Finally, the NICC must also review the functioning of the Bill and suggest improvements to achieve its flagship net-zero 2045 target (cl. 9(2)). This speaks to both the anticipated longevity of climate change as a crisis and its fluctuating nature, requiring legislative responsiveness.

If the breadth of the NICC’s functions makes the search for the ideal candidate more hopeless than the search for El Dorado, then the Bill also provides for the NICC to obtain advice from anyone qualified to give it (sch. 1 para 2(1)).

### **The room for ambition**

In its design, the Bill sets a floor and not a ceiling, allowing climate change policy to be as ambitious as possible. This is expressed in 4 interconnected provisions. First, the net-zero target year may be brought forward from 2045 (cl. 2(8)).

Second, while the CAPs require interim targets (cl. 3(2)) and sector-specific measures (cl. 3(3) and (7)), neither are prescribed in the Bill itself. This is partly to compensate for sectors in Northern Ireland which might be underprepared for decarbonisation, with a requirement that Northern Ireland’s fiscal, social and economic circumstances be taken into account when setting targets (cl. 3(4)(b)(iv)). Mainly, however, the lack of prescription enables exploration of ambitious decarbonisation policies. Of course, sceptics might point out that the lack of prescription also enables lethargy. However, CAPs are driven to achieve the net-zero target (cl. 3(4)(c)) and in a way which is just and fair (cl. 3(8)).

Third, the Bill allows for CAPs to be altered through their lifetime (cl. 11). Any alterations must be approved by the Assembly in the same way as the CAPs are adopted (cl. 11(3)) and the Executive Office is barred from lowering any targets the Assembly had initially approved in the CAP (cl. 11(2)(e)). However, measures to achieve these targets (and the overall net-zero target) may be altered without restriction. This not only enables greater ambition but also allows for course correction if it appears that the CAP will not be achieved.

Fourth, the Bill provides for a “non-regression principle” (cl. 12(2)) according to which every law in force in Northern Ireland must be read and given effect. The similarity of this provision with (HRA) is deliberate. The principle protects (without cutting across parliamentary sovereignty) those environmental and climate provisions which were in place in Northern Ireland at the end of the Brexit transition period. Expressing this principle in language akin to the HRA enables it to become a rule of statutory construction, allowing the courts to check any legislative developments that breach this non-regression “floor”.

## **Conclusion**

As this Bill proceeds through its legislative stages, it will be repeatedly scrutinised and almost certainly amended. The Committee Stage is due to last until 16 December, underlining the enormity of the task facing the Assembly. Concerns about the Bill’s impact were raised on 10 May and will continue to be raised and debated, both in the Assembly and beyond. I absolutely welcome such debates. This Bill is possibly one of the most important the Assembly will ever have considered, and it must be owned by the public at large.

The task of decarbonising Northern Ireland will certainly not be easy. However, the zeal with which the Assembly have taken up this Bill provides hope that, at long last, 13 years after Westminster led the world in climate law, we can catch up.

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