

The Climate Change Act (Northern Ireland) 2022



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Introduction and preliminary points

On 6 June 2022, the Climate Change Bill (No. 2), passed by the Northern Ireland Assembly in March 2022, [was granted royal assent](#). Northern Ireland had finally enacted its own climate change statute after discussing the need for such a statute for over a decade. The journey to royal assent was as chaotic as it was unusual. From having no climate change legislation, two bills were introduced in the Assembly within months of each other. I have previously written a [post](#) on the first bill to be introduced, by then Member of the Legislative Assembly (MLA) Clare Bailey (Leader of the Green Party in Northern Ireland). That bill was overwhelmingly voted through in its second stage, and subject to a lengthy Committee stage which produced a number of suggested changes. Bill No. 2, by contrast, was introduced by Edwin Poots MLA, the Minister for Agriculture, Environment and Rural Affairs (AERA), and spent comparatively little time before the Agriculture, Environment and Rural Affairs Committee. Instead, its provisions were amended to such a considerable extent in its fourth and fifth stages that it bore a closer resemblance to its predecessor than to its original version. In the event, Bill No. 1 was [withdrawn](#), and Bill No. 2 completed its journey, even as the [resignation](#) of the First Minister threw the devolved administration at Stormont into chaos.

The Climate Change Act (Northern Ireland) 2022 ('the Act') is detailed, lengthy and complex and it is not possible to cover all its provisions in detail in this post. At the outset, it should be noted that some of the Act's provisions appear somewhat repetitive or oddly placed. For example, sections 29, 30, 32–36 and 40 concern 'policies and proposals' intended to meet carbon budget periods prescribed under the Act. Section 29(2) calls these proposals 'climate action plans'. However, section 51 then defines 'climate action plans', seemingly with no textual connection to any of the preceding sections which detail the requirements of such plans.

To a large extent, this textual layout reflects the fact that multiple amendments were moved, by different parties and party groupings, at various stages of Bill No. 2's journey through the Assembly. Some of these amendments were moved in relation to the same original clause so that, if one amendment failed to pass, the rest fell accordingly. Different versions of the same substantive amendment were also moved at different parts of Bill No. 2 to ensure that the Assembly could amend Bill No. 2 in a way that carried maximum political support. Northern Ireland's power-sharing arrangements mean the Stormont Executive, comprising parties in mandatory, rather than voluntary, coalition, do not speak with one voice in the Assembly at all times. Consequently, the journey of Bill No. 2 was marked by disagreement between the AERA Minister and his party on the one hand, and the other parties in the Assembly (some of which were also in the Executive) on the other hand. There were also disagreements as to the extent of the Bill's provisions between parties who were nevertheless broadly supportive of an ambitious Bill. Despite these disagreements, however, the Act can be read coherently, in terms of its three main features: targets, policies and oversight.

Targets

[Sections 1-4 set targets](#) (and create duties to set targets) for the years 2030, 2040 and 2050. However, these are not entirely straightforward provisions. Section 1(1) provides for a 2050 emissions target of at least 100% lower than the "baseline" (net emissions levels for 7 greenhouse gases defined in [section 7\(1\)](#)). This is a classic "net-zero" target, in line with similar targets in respect of the [UK generally](#) and [Scotland specifically](#) (albeit Scotland has a different target year), as well as [Wales](#) and [Ireland](#).

However, by section 1(2) of the Act, the net-zero requirement is specifically tied to carbon dioxide, while methane is excepted by section 1(3). The methane exception is unusual and reflects a [move](#) by the AERA Minister to address the concerns of the agri-food sector in Northern Ireland.

Now, the methane exception can be read in one of two ways: first, that methane is the only greenhouse gas that is not caught by the net-zero target, or second, that the methane 'exception' is not in fact an exception, but only an adjustment relative to the other greenhouse gases, so that the other such gases have to reach net-negative (where total emissions are lower than credited carbon units) in order for all greenhouse gases to collectively reach net-zero by 2050. While the Act is silent on which interpretation is correct, the Committee on Climate Change (CCC) [appears](#) to favour the second interpretation:

'Since most other sectors reach nearly zero emissions, bridging the gap from our [initially advised] 82% pathway to Net Zero can only be achieved through additional greenhouse gas removals. (emphasis supplied)'

While the CCC is an advisory body, its advice is threaded into the target-amending powers in [section 5](#) (and the conditions imposed on those powers in [section 54](#)) of the Act, and its opinion thus carries great weight. Although the Northern Ireland authorities have yet to clarify whether they agree or disagree with the CCC's interpretation, any disagreement may necessitate amendments to the targets. It would certainly be a remarkable change for a jurisdiction where aiming for net-zero was [ridiculed](#) by the AERA Minister, for his department to actively work towards delivering a largely net-negative economy.

Interim net emissions amounts are to be set via carbon budgets ([section 23](#)), with extensive consultation requirements feeding into budget proposals. These consultation requirements resemble [those](#) in respect of the UK as a whole, but also refer to the Climate Change Advisory Council in Ireland and the Intergovernmental Panel on Climate Change, reflecting the Act's ambitions to situate Northern Ireland's climate policy within a much larger global context. These ambitions are not restricted to budgets, however.

Policies

The Act contains an extensively detailed and highly prescriptive policy mandate for reaching its targets. This mandate was among the most significant amendments moved to Bill No. 2 during its journey through the Assembly, with this mandate divided broadly into two types of policy: overarching 'climate action plans' and specific 'sectoral plans'. Provisions relating to both types of policy are complex but generally require regard to be had to a number of matters in making each policy type.

For [climate action plans](#), sector-specific consultations by all Northern Ireland departments are complemented by a general overall public consultation ([section 29](#)). While the former feeds into the content of the plans, the latter informs the Assembly of the public reaction to the plans. Consultations aside, each Northern Ireland department must have regard to a range of matters in [section 30](#), among the most important of which are the 'desirability' of policy-coordination across the UK and Ireland, the just transition principle (inspired by [Scotland](#)) and the importance of nature-based projects. These three matters demonstrate the scale of ambition in climate action plans: recognising the climate interconnectedness of Great Britain, Ireland and surrounding islands, aiming to transition to an economic model which is socially responsible and sustainable (with a nod to the [Welsh model](#)), while recognising natural ecosystems as partners in this transition, rather than unintended (or unacknowledged) victims. Moreover, Northern Ireland departments are also required to take account of [carbon leakage](#) (the transfer of economic processes to jurisdictions with lower climate ambitions than Northern Ireland) when contributing to climate action plans. This is a unique requirement in climate change legislation across the UK and Ireland, and demonstrative of the Northern Ireland Assembly's resolve to address Northern Ireland's climate concerns through positive action in Northern Ireland, rather than effectively shipping such concerns elsewhere.

[Sectoral plans](#), in contrast to the detailed and interrelated requirements underlying climate action plans, are more straightforward. General requirements for sectoral plans ([section 13](#)) are complemented by specific requirements for specific sectoral plans, such as a requirement that at least 80% of electricity consumption comes from renewable sources by 2030 ([section 15](#)).

The major difference between climate action plans on the one hand and sectoral plans on the other is that climate action plans are tied to carbon budgets, whereas sectoral plans are tied to the emissions targets (for 2030, 2040 and 2050) set out in sections 1, 3 and 4. Thus, sectoral plans are longer term policies divided by economic sector, whereas climate action plans are shorter term policies encompassing the whole Northern Ireland economy. It therefore stands to reason that climate action plans are set out more prescriptively, bound by specific budgeted emissions within specific timeframes, rather than aiming for longer-term, sector-by-sector structural adjustments.

A significant policy enshrined in the Act is the Just Transition Fund for Agriculture, designed to assist Northern Ireland's large agri-food sector 'to deliver its contribution under' climate actions plans ([section 31](#)). This is inspired by a [similar fund](#) (though wider in scope than agriculture) established in Scotland. Given the CCC's opinion that the reduced target for net methane emissions required compensatory reductions from other greenhouse gases beyond net-zero (as set out earlier), the agri-food sector may well need significant assistance.

Oversight

The third main feature of the Act is in its two main oversight mechanisms: the Northern Ireland Climate Commissioner (NICC) and the Just Transition Commission (JTC). While the NICC is unique to Northern Ireland, the JTC was inspired by the [Scottish JTC](#), except that the Northern Ireland JTC has oversight and advisory roles in relation to the 'just transition elements' of the Act, to be defined in regulations made

under the Act ([section 37](#)). The Act requires JTC membership to be significantly representative of Northern Ireland society, but otherwise leaves the functioning, constitution and financial aspects of the JTC to secondary legislation. A previous Scottish JTC produced a significant [report](#) into a green recovery from the Covid-19 pandemic, and the Northern Ireland JTC, when established, may be expected to produce similar advice.

The NICC was originally a body contained in the first climate change bill. That bill would, if enacted, have established the NICC, with significant independence from the devolved authorities in Northern Ireland, conferred extensive powers of information retrieval and scrutiny of climate policy, as well as required the NICC to review the operation of climate change legislation and suggest improvements to better realise the net-zero target. Initially met with [considerable scepticism](#), the body was favoured by the Assembly at the [Committee stage](#) and eventually added to Bill No. 2. The NICC provision in the Act ([section 50](#)) is a pared back version of the body's original avatar, but nonetheless has some important characteristics. The regulations establishing the body are required to be made within 2 years of the Act receiving royal assent. Moreover, the constitution of the NICC is (unlike that of the JTC) detailed in a manner broadly similar to the originally proposed NICC. Finally, the responsible Northern Ireland department is the Executive Office, which is the joint office of the First and deputy First Ministers. As the First and deputy First Ministers come not only from different political parties but from different community designations in the Northern Ireland Assembly ([by law](#)), the operation of the Executive Office requires political consensus and agreement – crucial to ensure the independence of the NICC.

Complementing these two specific oversight mechanisms are the extensive [reporting requirements](#) in the Act – both from the AERA Department as well as the CCC. These requirements set a pattern of reporting on the progress and outcome of emissions targets and carbon budgets, as well as departmental responses to those progress reports provided by the CCC. These reports, together with public consultation responses to climate action plans will enable the Assembly (and especially its AERA Committee) to maximise opportunities to scrutinise the progress towards decarbonisation and hold the Northern Ireland Executive to account. Of course, once the NICC and JTC are established and functional, the Assembly will no doubt also have the benefit of their views and advice in relation to climate change policy and the operation of the Act itself.

The future of climate change policy in Northern Ireland

From having no climate change legislation of its own, the Assembly scrutinised and debated two bills almost simultaneously. Even through the chaotic end to its term, the Assembly moved with determination to enact a statute with profound effects across Northern Ireland's economy and society.

Ultimately, the Act is rare in many ways. A product of a genuine partnership between civic society and political representatives, it was moved by the Executive following a Private Member's initiative from one of the smallest parties in the previous Assembly. Having recognised the looming threat of climate change, the Assembly has provided strong legislative backing to some of the most important policies Northern Ireland is likely to put in place in the immediate future. However, with the ongoing [political impasse](#) at Stormont, we have a [temporary Executive](#) without a First or deputy First Minister, and an Assembly unable to function due to the lack of a Speaker. Much of the focus has shifted to the UK Government's [attempts](#) to alter the effect of the Ireland/Northern Ireland Protocol in domestic law.

But we must not forget that climate change does not wait in the wings for Stormont to return to normality. The Climate Change Act (Northern Ireland) 2022 only enables climate change policy. The real test will lie in the kinds of policies brought forward under the Act, and how the powers it confers are exercised to meet the challenges of climate change.

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