Comhar Sustainable Development Council

Consultation Submission on the Climate Change Response Bill 2010

1. Introduction

Comhar Sustainable Development Council (SDC) welcomes the opportunity to respond to the recently published Climate Change Response Bill 2010.\footnote{http://www.environ.ie/en/Environment/Atmosphere/ClimateChange/News/MainBody.24981.en.htm} The long-awaited publication of this Bill is a welcome initiative and Comhar SDC believes that the associated consultation has the potential to make a valuable contribution towards the debate on sustainable development.

The principle of legislating for climate change at a national level is important and complementary to existing UN and EU processes.\footnote{Comhar SDC has made previous recommendations on the need for a Climate Change Law. See http://www.comharsdc.ie/_files/Progfor%20Govt_Budget2010_Comhar_recsFinal.pdf} An effective Climate Change Bill can play a key role in integrating climate change considerations and impacts across sectoral and Government decision making and as a result should link together existing climate policy strands and lead to a more coordinated approach. The converse of this is that an inadequately formulated Bill will send out the wrong policy signals and impose additional burdens on the economy and society without achieving its intended aims.

The Climate Change Response Bill 2010 sets out a statutory approach to strengthen the national response to climate change. Key provisions under the Bill include those of setting national greenhouse gas emission reduction targets; a new national planning process encompassing both mitigation and adaptation; an annual process on reporting to the Oireachtas; a new Expert Advisory Body to advise Government on policy and implementation; and a new duty on public bodies. Comhar SDC has focused its submission around these key provisions as well as addressing further issues currently not covered under the legislation.
The Comhar Council is a multi-stakeholder body and this response has been formulated by the Climate Change Working Group which consists of members from the business, environmental NGOs, social and community NGOs and agricultural sectors. This submission sets out the agreed position of Comhar Council members on a range of issues relating to key provisions in the Bill. Where the submission does not address an issue this does not mean that the Council supports the provisions in the Bill, rather that there are differing views amongst stakeholders and these issues are being addressed in individual responses by Council member organisations.

Due to the current political situation, it seems likely that the introduction of climate legislation in Ireland will be postponed for the time being. Notwithstanding this, Comhar SDC would like to reiterate its view on the importance of the introduction of a Climate Change Bill. In addition, given the cross-party consensus on the principle of legislating for climate change, it is imperative that work continues to address the points raised in our submission.

2. Procedural Issues

The Climate Change Response Bill was published by the Minister for the Environment, Heritage and Local Government on 23rd December 2010. At the same time a period of public consultation was announced to run until Friday 28 January, 2011, thereby allowing less than 6 weeks for interested parties to submit their views. Given the importance and significance of the legislation, Comhar SDC is disappointed that such a short period of time has been allocated to allow stakeholders an opportunity to assess and prepare considered responses on the Bill. Such a confined consultation period is even more challenging in the case of multi-stakeholder bodies where agreed positions need to be reached among the different pillars. It is also runs in contravention to the spirit of the Aarhus Convention, in particular, providing opportunities for early public participation and providing a reasonable timeframe for public participation. Furthermore, it is far from ideal that the consultation process should take place in parallel with the legislative process whereby public representatives are being asked to consider the Bill before the outcome of the consultation is known.

Accompanying the publication of the Bill was a Regulatory Impact Assessment (RIA) which is undertaken by Government Departments and Offices in cases where proposals for primary legislation are put forward and in relation to significant Statutory Instruments. According to the Revised RIA Guidelines, such an assessment should involve a “detailed analysis to ascertain whether or not

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3 This contrasts with the consultation process on climate legislation introduced in the UK and Scotland which both allowed for a period of approximately six months prior to it being laid before Parliament.
different options, including regulatory ones, would have the desired impact. It helps to identify any possible side effects or hidden costs associated with regulation and to quantify the likely costs of compliance on the individual citizen or business. It also helps to clarify the costs of enforcement for the State.”

Unfortunately, the RIA that was published in relation to the Climate Change Response Bill does not adequately assess the quantitative aspects of the Bill and the alternative policy options as prescribed under these guidelines but focuses more on the qualitative impact. The absence of such an analysis makes it difficult for stakeholders to determine the full costs and benefits of the legislation under consideration. Even at this late stage a fully developed RIA must be completed which will provide much needed clarity on the impacts of the Bill, particularly in relation to the targets and will remove all ambiguity for those concerned.

From a procedural level it is important that the Bill does not inadvertently result in negative environmental, social or economic consequences and considers the full impact of provisions in such cases. For example in relation to Section 2(1) subsection 25, it is conceivable that adapting a naturally occurring system including an ecosystem to counteract the effects of climatic stimuli, could have negative impacts for the species composition, or other ecosystem services provided by that system.

Therefore, it is important that the Bill acknowledges and addresses the need for policy coherence. This includes considering how the provisions of the Bill integrate with other government programmes and strategies at a national level and with existing or proposed climate measures at an EU-wide level. Climate change outcomes are by their nature cross-cutting and as a result are determined by policies, plans and programmes in many different areas including in relation to energy, transport and agriculture. The requirement for policy coherence is particularly relevant in relation to the need to ensure the integration of national and sectoral plans under the Bill.

3. Overarching Principles for the Bill

There are a number of overarching principles that should be reflected throughout the different provisions contained within the Bill. These include the need for transparency and accountability as well as monitoring and reporting. Comhar SDC is concerned that parts of the Bill are weak in that regard and need to be strengthened.

For instance, in relation to accountability and transparency, it is important that there be collective Cabinet responsibility for the National Climate Change Plan and Annual Transition Statement, even if the duty is assigned to one particular Minister or An Taoiseach. Additionally, the National Climate Change Expert Advisory Body (EAB) should conduct its operations openly and should facilitate engagement between the public and the Oireachtas.
According to Section 9(1) of the Bill, the EAB will submit their report to Government rather than to the Oireachtas which is different to the case in the UK and Scotland where the Climate Change Committee must lay their report before Parliament. Similarly, there is also no obligation on the Government to report to the Oireachtas in response to the points raised in the EAB’s report which would appear to reduce the overall level of transparency and accountability.

In regard to monitoring and reporting, consultation with the EAB should be mandatory in all cases. It should also be mandatory to consult with stakeholders should they not be represented on the EAB.

4. National Climate Change Expert Advisory Body

The main governance mechanism under the Bill is the establishment of the National Climate Change Expert Advisory Body (EAB). The EAB is given a key advisory role and is required to report on progress in meeting the legislative requirements laid out in the Bill. In considering this provision, it is important to ensure that the most effective governance and reporting arrangements are in place to ensure that the EAB is able to deliver on its mission and that its advice is not merely ignored.

In this respect, Comhar SDC is concerned that the EAB as currently formulated may not be able to meet the demands placed on it with the resources at its disposal, notwithstanding that the EPA will provide secretariat support.

Secondly, in light of the composition of the Body and the pivotal role of Government in its operations, including the appointment process, the level of independence attributable to the EAB as presently constituted is questionable. If the EAB is an expert rather than stakeholder body, it must be able to engage freely with stakeholders in its work. For example, according to Sections 9(3) and 10(7) of the Bill the EAB must receive the consent of the Government before publishing its own reports. In addition, under Section 7(4) its ordinary members and chairperson are to be appointed by the Government after nomination by the Minister for the Environment, Heritage and Local Government rather than undergoing a competitive appointments process.

In appointing ordinary members, the Minister for the Environment, Heritage and Local Government is to have regard to the range of qualifications, expertise and experience necessary for the effective performance of the EAB, though the Bill does not specify what these should include. In the absence of such detail, it is our view that as a minimum, the members’ experience and expertise should collectively incorporate the following:
• business competitiveness;
• climate change policy at national and international level, and in particular its social impacts and impacts on the most disadvantaged communities;
• climate science, and other branches of environmental science;
• economic analysis and forecasting;
• emissions trading;
• energy production and supply;
• financial investment;
• technology development and diffusion;
• commercial expertise;
• sustainable development entrepreneurship;
• carbon leakage; and
• agri-food policy.

Clarity is also required on the exact remit of the EAB and how it may subsume or interact with the existing groups and panels currently active in the climate change arena. This will be important in ensuring that there is no unnecessary duplication.

5. National Climate Change Plan

The Bill contains a provision for a National Climate Change Plan (NCCP) to be produced and submitted to Government by the Minister for the Environment, Heritage and Local Government. This national plan is to be produced no later than twelve months after the Bill comes into force and no less than once every seven years thereafter. The national plan will specify the policies and measures that are required to meet the emission reduction targets set out under the Bill and that will enable the State adapt to the effects of climate change. Additionally, the Government may request that Ministers submit to them sectoral plans specifying the measures they propose to adopt to achieve emission reductions and to assist the State in adapting to the impacts of climate change.

According to Sections 5(5) and 5(25) of the Bill, the Government is under no obligation to accept these national or sectoral plans and can also have them modified. It would seem that a stronger role could be given here to the EAB where it should be mandatory for it to be consulted on the preparation of these plans. In addition, there should also be explicit reference made under Section 5(9) of the need to uphold the polluter pays principle.

The Bill also sets a timeframe of producing the NCCP of no less than once in every seven years. This seems quite a long period of time when different policies are continually evolving and require updating. Therefore, a period of five years seems like a more appropriate timescale. Such plans should also include quantified indicative reductions for the measures listed as has been the case under previous national climate change strategies and also a total indicative target of emission reductions to be achieved for the period of the plan.
6. Other Issues

Comhar Council members also agree that the principle of having ‘carbon budgets’ which address specific time periods is considered appropriate although there is considerable divergence on the timeframe over which these should take place. At the same time, it is important that domestic action should be the primary, although not the exclusive, focus of the Bill in terms of achieving emission reductions. We recognise that domestic action represents one part of Ireland’s international obligations with regard to climate action. Therefore we would endorse the provisions of the EU Emissions Trading Scheme Directive\(^5\) where under Article 10 a proportion of revenues generated from the auctioning of allowances should go towards supporting developing countries adapt to the impacts of climate change.

As part of Comhar SDC’s consultation response, a range of questions were put forward for consideration in relation to the Bill addressing a number of different issues. Each of these dealt with important aspects of the legislation and are listed in Appendix 1. Unfortunately it has not been possible, owing to the time available and the extent of the issues at stake, to be able to reach a common view on all these matters though many are being addressed in the individual responses of Comhar Council members. Comhar SDC recommends that these questions and issues be considered as the Bill and its enactment progresses.

7. Summary

A fully-effective Climate Change Bill when enacted will for the first time provide a domestic legislative base in Ireland for fully incorporating climate change considerations right across the policy making process. It should also provide enhanced certainty for all stakeholders, particularly the business community and government departments, on Ireland’s overall mitigation ambitions. This would greatly assist the creation of a truly national framework for designed transition towards a low to zero carbon and fully resource efficient society. As a result, the importance and significance of this legislation should not be underestimated, particularly in relation to the potential contribution it will make towards sustainable development.

On this basis, Comhar SDC welcomes the publication of the Bill. There are a number of areas where we are of the view that the Bill could be strengthened and these have been addressed in our response. Particularly we would seek to see the principles of transparency and accountability enshrined throughout the legislation to ensure that stakeholders concerns are taken on board and that those activities undertaken as a result of the legislation are conducted in an open

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and fair manner. There is a need for policy coherence to be addressed and attention given to the monitoring and reporting aspects of the Bill. We have also made specific recommendations in regard to certain provisions of the Bill including those relating to the National Climate Change Advisory Body and National Climate Change Plan that we believe would lead to a more effective outcome.
## Appendix 1: List of questions considered as part of Comhar SDC consultative process

<table>
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<th>Provisions</th>
<th>Key Questions</th>
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| **Emission reduction targets**          | - What should be the scale and timeframe of the targets?  
- What is the most appropriate base year to use for all the targets?                                                                 |
| **National Climate Change Plan**        | - Who should be in charge of producing the National Climate Change Plan?  
- Should there also be a requirement under the Bill that for each measure identified in the national plan a public body or agency should be explicitly made responsible for its implementation?  
- Is this approach sufficient in the absence of setting ‘carbon budgets’?  
- Is it reasonable for the Government to be able to request Ministers to submit sectoral plans?  
- Is 7 years a reasonable timeframe to produce a National Climate Change Plan considering ‘carbon budgets’ are set for 5 year periods?  
- Should it be mandatory for the Government to consult with the Expert Advisory Body in the preparation of a National Plan? |
| **Annual transition statement**         | - Who should be responsible for delivering the annual transition statement?  
- Should the EAB report to the Government or Oireachtas?  
- Should the Government be obliged to report before the Oireachtas in response to the points raised in the EAB's report?  
- Should the EAB once established subsume all existing groups and panels currently active in the climate change arena?  
- Should the EAB be able to produce its own reports without consent from the Government and be given a greater level of independence?  
- Although the Bill allows for the establishment of sub-committees, should there be an explicit reference in the legislation for an adaptation sub-committee as is the case under the UK Climate Act? |
| **National Climate Change Expert Advisory Body** | - Should there be a monitoring mechanism to ensure public bodies are complying with their climate change duties? |
| **Duties of public bodies**             | - Is the duty on public bodies contained in the Bill sufficient and of added value?  
- Should there be a monitoring mechanism to ensure that public bodies are complying with their climate change duties? |
| **Miscellaneous issues**                | - Should there be a domestic target set in the Bill and if so what should be the limit on the use of offsets?  
- Should international aviation and shipping emissions be included in the targets?  
- Should the Bill address the financing of measures and the funding of climate change adaptation?  
- Should the approach of setting time bound ‘carbon budgets’ be included under the Irish Bill?  
- Should there be a requirement to report on the carbon implications of measures included under the annual financial budget?  
- Should there be a provision under the Bill to address the public engagement aspect of the climate legislation? |