



Community
Law & Mediation



JCFJ
JESUIT CENTRE
FOR FAITH & JUSTICE

Proposed Amendments

Climate Action and Low Carbon Development (Amendment) Bill 2021 (‘the Bill’)

1. Definition of climate justice

What

Replace the definition of climate justice contained in Section 1 of the Principal Act (as amended by section 3(a) of the Bill), with that contained in equivalent Scottish legislation:

Section 35 (23) of the Climate Change (Scotland) Act 2009 act, as amended provides *‘In subsection (22)(b), the “climate justice principle” is the importance of taking action to reduce global emissions of greenhouse gases and to adapt to the effects of climate change in ways which—(a) support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects, and (b) help to address inequality.’*

Why

- Both climate change and climate action have the potential to disproportionately impact those experiencing disadvantage and to exacerbate existing inequalities.
- It is critical that the Bill contains an unambiguous obligation on the Minister and Government to ensure that climate action measures are consistent with climate justice and just transition, including a clear commitment to address inequality.
- This definition proposed above is similar to the proposed definition of climate justice contained in the JOCCA Report, December 2020, which provides, inter alia: *‘support those who are most affected by climate change but who have done the least cause it’, ‘support the human rights and wellbeing of local communities, indigenous peoples and the most vulnerable’ and ‘help address inequality and progressively distribute the financial responsibility for climate mitigation and adaptation measures.’*
- However, climate justice is defined in the Bill as *‘the requirement that decisions and actions taken to reduce greenhouse gas emissions and to adapt to the effects of climate change shall, in so far as it is practicable to do so, safeguard the rights of the most vulnerable persons and endeavour to share the burdens and benefits arising from climate change’.*

- This definition is considerably vaguer than that contained in the Scottish legislation/JOCCA Report recommendation. The definition of vulnerable persons should be directly linked to vulnerability arising from forms of social and economic exclusion which place people at higher risk from climate change and its effects. However, it is unclear how ‘vulnerable persons’ is defined in the Bill. It is similarly unclear what the criteria are for determining what is ‘practicable’.
- Further, unlike the Scottish legislation/JOCCA Report recommendation, the definition contained in the Bill does not impose an obligation to take climate mitigation and adaptation measures in ways which ‘help to address inequality’, rather such measures should, ‘endeavour to share the burdens and benefits arising from climate change’.

2. Just Transition

What

Replace the reference to just transition contained in section 4(8)(k) of the Principal Act (as amended by section 6 of the Bill) with the definition contained in equivalent Scottish legislation:

Section 35C of the Climate Change (Scotland) Act 2009 provides:

‘In this Act, the “just transition principles” are the importance of taking action to reduce net Scottish emissions of greenhouse gases in a way which—

- (a) supports environmentally and socially sustainable jobs,*
- (b) supports low-carbon investment and infrastructure,*
- (c) develops and maintains social consensus through engagement with workers, trade unions, communities, non-governmental organisations, representatives of the interests of business and industry and such other persons as the Scottish Ministers consider appropriate,*
- (d) creates decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy,*
- (e) contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty.’*

Why

- Just Transition is critical if we are to respect the rights of those most vulnerable to climate change and ensure that no worker or community is left behind in making the changes needed to achieve the emissions targets set out in the Bill.
- The proposed definition is similar to the recommendation in the report of the JOCCA in December 2020:

‘A just transition means a transition that ensures the economic, environmental and social consequences of the ecological transformation of economies and societies are managed in ways that maximise opportunities of decent work for all, reduce inequalities, promote social justice, and support industries, workers and

communities negatively affected, in accordance with nationally defined priorities, and based on effective social dialogue.'

- Just transition is not defined in the Bill per se, but is referred to as: *'the requirement for a just transition to a climate neutral economy which endeavours, in so far as is practicable, to— (i) maximise employment opportunities, and (ii) support persons and communities that may be negatively affected by the transition'*.
- The definition contained in the Bill is far less ambitious than that contained in the Scottish legislation or the JOCCA Report. Like the climate justice definition, it potentially dilutes the obligation contained therein by including the language *'as far as is practicable'* and it is vague and lacking in detail with no reference to the need for developing and maintaining social consensus/effective social dialogue, the need to reduce inequality and promote social justice or for the *'employment opportunities'* to be decent or fair.

3. Hierarchy of Factors

What

Amend section 4(8) of the Principal Act (as amended by section 6 of the Bill) in line with the recommendation in the JOCCA's Report in December 2020 i.e. a precise hierarchy in relation to the list of factors, split across three headings: *'be consistent with'*, *'must have regard to'* and *'may have regard to'*, with climate justice and just transition in the *'be consistent with'* category.

Why

- Climate justice and just transition are among a list of 18 factors the Minister and Government *'shall have regard to'* when performing their respective functions under section 4 e.g. developing a long term climate action strategy. Others include, for example, value for money.
- It is unclear how these factors interact and whether equal weight should be placed on each of them.

4. Exclusion of Liability

What

- Section 2A of the Principal Act (as inserted by section 4 of the Bill) should be deleted in its entirety.
- This provides *"For the avoidance of doubt, no remedy or relief by way of damages or compensation is available with respect to or arising out of any failure, of whatever kind, to comply with any provision of this Act or any obligation or duty created thereunder."*

Why

- The Bill imposes clear obligations in terms of climate action. Failure to meet such obligations will have a disproportionate effect on those experiencing disadvantage, infringing their human rights and compounding the difficulties they already face. In

such circumstances, damages are an important remedy and must not be excluded under the Bill.

5. Inclusion of 'Government of Ireland' throughout the Principal Act:

What

- The Bill amends section 15 of the Principal Act, providing that '*A relevant body shall, so far as practicable, perform its functions, in a manner consistent with*', inter alia, the most recent approved climate action plan and national long term climate action strategy.
- Under section 15 (5) of the Principal Act (as amended by section 16 of the Bill), a relevant body is defined as '*(a) a prescribed body, and (b) a public body*'. This should be amended to include *(c) the Government of Ireland*.
- Similarly, the following sections should be amended to include 'Government of Ireland':
 - Section 4(11) of the Principal Act (as amended by section 6 of the Bill): '*A Minister of the Government, shall, in so far as practicable, perform his or her functions in a manner consistent with the most recent approved climate action plan and the most recent approved national long term climate action strategy.*'
 - Section 5(7) of the Principal Act '*A Minister of the Government shall, in the performance of his or her functions, have regard to a national adaptation framework approved by the Government under this section*'.
 - Section 6B(13) of the Principal Act (as amended by section 9 of the Bill): '*A Minister of the Government shall, in so far as practicable, perform his or her functions in a manner consistent with a carbon budget that has effect under subsection (7) or (11), as the case may be*'.

Why

- A recent High Court case clarified that "the Government" is not bound by s.15 of the Principal Act and that provisions that refer only to "A Minister of the Government" similarly do not bind "the Government" as a whole.