

Northern Ireland Assembly
Committee for Agriculture, Environment and Rural Affairs
Scrutiny of the Climate Change Bill (Bill 19/17-22)

Opening statement of
Dr. Ciara Brennan¹
Environmental Justice Network Ireland, &
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1. I am Dr Ciara Brennan, Director of the Environmental Justice Network Ireland (EJNI) and Lecturer in Law at Newcastle University.
2. In my capacity as an academic, my research has to date focused on the enforcement of environmental law and environmental governance in Northern Ireland and on the island of Ireland. The Committee will be familiar with the [significant criticism](#) (from academics and NGOs, but also official scrutiny bodies) levelled at Northern Ireland's performance in terms of meeting modern standards of environmental protection. This criticism must be set against a context where we have witnessed alarming decline in environmental quality resulting from what is widely perceived as systemic governance failure and mounting concern about the very real impacts that the climate crisis will inflict on an already weakened environment on this island. Frustration at a lack of meaningful government intervention to halt environmental damage and address environmental injustice prompted a small group of academics, lawyers, NGOs and activists to form the Environmental Justice Network Ireland (EJNI) in 2019.
3. EJNI was launched with the goal of creating a collaborative platform for partnership working between academics, representatives of civil society and environmental NGOs. Our core goal is to address the root causes of social and environmental justice deficits on the island of Ireland – and in particular to consider challenges shared across the border such as those posed by the climate crisis. EJNI is delivering this goal through an innovative, transdisciplinary model of collaboration which draws together diverse stakeholders and decision-makers who usually operate in almost completely separate spheres to enhance knowledge exchange and facilitate more effective and strategic

¹ Dr. Thomas L Muinzer is also due to appear before the Committee on behalf of *EJNI* in this session and will present EJNI's full policy note submission.

research, advocacy and action. EJNI now has an extensive [network](#) of members drawn from academia, lawyers, NGOs and community activists from across the island of Ireland and Europe who work together to deliver unique, cutting-edge collaborative environmental justice projects at domestic and international levels.

4. In my capacity as Director of EJNI, I am responsible for oversight of a number of projects which have been funded by internationally recognised bodies such as the European Climate Foundation, the British Academy and Leverhulme Trust, the Community Foundation Ireland and the Joseph Rowntree Charitable Trust. Our current projects include work relating to the rights of nature, access to justice, the cost of environmental justice and waste crime. However, the project most aligned to the committee's business today is our [Climate Governance Observatory](#) (CGO).
5. The CGO team is comprised of myself, Dr Thomas Muinzer, Professor Sharon Turner and our research assistant Caitlin McIlhennon. Dr Muinzer is a Senior Lecturer at Aberdeen University, Co-Director of Aberdeen University Centre for Energy Law and a leading expert on comparative climate laws. Professor Turner is an expert advisor to the European Climate Foundation, a Visiting Professor, University of Sussex and a leading thinker on climate laws and governance at EU level. The goal of the CGO project is to provide a platform for thought leadership about the options for Paris Agreement-compatible national climate governance and law with the aim of sharing this knowledge with partners and government on the island of Ireland, in other EU countries and with the EU institutions. We have produced influential policy papers and technical legal analysis of climate legislation at domestic and supra-national level, in particular in relation to national ownership of climate action created by countries with strong climate laws.
6. Please refer to the *Opening Statement* prepared by Dr Thomas Muinzer for Environmental Justice Network Ireland's full policy note submission.

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Opening statement of
Dr. Thomas L Muinzer¹
On behalf of Environmental Justice Network Ireland, &
Aberdeen University Centre for Energy Law

1. I am Dr Thomas L Muinzer, Senior Lecturer in Energy Transition Law at the University of Aberdeen. I lead Environmental Justice Network Ireland's "Climate Governance Observatory" and am Co-Director of the Aberdeen University Centre for Energy Law. I am an academic lawyer with specialist expertise in climate law. I wrote the first in-depth book-length examination of the first national Climate Change Act, the UK's Climate Change Act 2008: *Climate and Energy Governance for the UK Low Carbon Transition: The Climate Change Act 2008* (Palgrave, 2019; Foreword by Lord Deben). Although the UK Act is not without criticism, it is widely held as a gold standard in this field of law to date, and not without good reason.
2. My next book undertook the first major study of national Climate Change Acts: *National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation* (Hart, 2021 (hard copy)). As Contributing Editor, I was responsible for drawing together the first overall book-length statement and analysis of these Acts as they begin to emerge around the world. Northern Ireland (NI) is engaged by the book's UK chapter, authored by Prof Richard Macrory CBE and I; and the Republic of Ireland's framework climate legislation is examined by Dr Andrew Jackson, who has appeared before this Committee. A final chapter of mine draws the foregoing work across the book together to provide conceptual insights pertinent to Climate Change Acts in general based on current knowledge and experience.

Climate Change Bill: Importance

¹ Dr. Ciara Brennan is also due to appear before the Committee on behalf of EJNI in this session.

3. The Committee on Climate Change (CCC) recently led on and published an extensive report that sets out and analyses UK climate change risk impacts: *Independent Assessment of UK Climate Risk*, report of 16 June 2021 (CCRA3). The study involved over 450 experts from 130 organisations, and it clearly establishes that the UK faces extensive negative impacts over the course of the future as a consequence of climate change. It also underscores that the UK is struggling to keep pace with risks and negative impacts arising at the present time. The CCC's advice to Government is available [here](#). The overall message conveyed is that the current and projected severity of climate change is clear, and so is the need to tackle it.
4. Looking beyond the UK, the current and projected dangers embodied by climate change to non-UK nations, and to the global community in general, need no introduction to this Committee. As we know, such matters are evidenced in detail, e.g., by the warning projections of the Intergovernmental Panel on Climate Change (IPCC), where it is clear that climate change poses an existential threat to life as we know it on the planet.² In addition to the IPCC's recent major report, I would also direct the Committee's attention in particular to the *Summary for Policy Makers* released in 2018 as part of the IPCC's *Global Warming of 1.5°C*.³ This captures a good sense of the scale of the problem and the ambition required in order to bring NI and the UK into line with their obligation under the Paris Agreement to pursue efforts to limit average global temperature rise to a 1.5°C maximum above pre-industrial levels this century: Paris Agreement, Article 2(1)(a).
5. It is clear that as a simultaneously localised and global problem, these climate circumstances require NI to make a suitable contribution to redressing climate change both in terms of shielding NI itself from negative projected impacts, and in terms of assisting global society and humanity in general. The present Bill under consideration provides a vital means of engaging in that process. In this statement I confine my comments to Climate Change Bill No.1, that is, NIA Bill 19/17-22. I emphasise this as the Assembly is in the unusual position of having a second Climate Change Bill moving through its procedures, namely Climate Change (No.2) Bill (NIA Bill 28/17-22). Where I refer to the "Climate Change Bill" or similar in this statement, the reference is to Bill No.1.

² The IPCC's latest report is available here: <https://www.ipcc.ch/report/ar6/wg1/#SPM>

³ Available here: <https://www.ipcc.ch/sr15/chapter/spm/> See also the summary for policy makers accompanying the IPCC's latest report: https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf

Climate Change Bill: Timeliness

6. The introduction of the Climate Change Bill by Clare Bailey MLA in March of this year was extremely welcome, and it should be recognised as a very substantial achievement. The diversity of co-sponsorship and support across a range of prominent parties that the Bill has received is also very positive. The *Financial and Explanatory Memorandum* issued alongside the Bill emphasises that an opinion poll carried out in the summer of 2020 found that almost three out of four respondents supported the introduction of a Climate Change Act for NI, and over two-thirds agreed that there should be a Net Zero emissions target for 2045. It will be recalled that the [New Decade, New Approach](#) deal, agreed in January 2020, included the commitment that “the Executive will introduce legislation and targets for reducing carbon emissions in line with the Paris Climate Change Accord”, and that “the Executive should bring forward a Climate Change Act to give environmental targets a strong legal underpinning.” It will also be recalled that in July 2020 the NI Assembly passed a motion asserting “the Assembly’s demands for the urgent introduction of a Climate Change Act”, requesting action from the Executive within three months. So this Bill is timely, to put it mildly.

Climate Change Bill: Substance and Provisions

The Net Zero Target

7. It might be said with some strong degree of justification that the issue of the level at which a greenhouse gas (GHG) emissions reduction target(s) should be set at in this type of legislation amounts to a “political” rather than a “legal” decision – i.e., the reduction percentage that a 2045 or 2050 economy-wide GHG emissions reduction target might best be set at for NI is to be decided politically. While that is indeed the case, in my view such decision-making should be framed as a *legally-informed* political decision, that is, it should be informed directly by broader legal drivers that set the context for the decision and actively inform its outcome. Most importantly, the UK’s national Climate Change Act 2008 (CCA 2008) applies a “Net Zero” GHG emissions reduction target to the UK for 2050, as follows:

CCA 2008, s.1(1)-(2):

The target for 2050

It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.

“The 1990 baseline” means the aggregate amount of –

- (a) net UK emissions of carbon dioxide for that year, and
- (b) net UK emissions of each of the other targeted greenhouse gases for the year that is the base year for that gas.

It is notable that this economy-wide GHG emissions reduction target of Net Zero based on 1990 UK emissions levels incorporates emissions from the UK as a whole. This includes NI.

8. If this target is to be achieved, it will require the UK’s substate jurisdictions to pull together.⁴ The Scottish Parliament has mobilised its devolved constitutional powers to push forward, locking in the most substantial substate contribution to the UK’s Net Zero 2050 goal via its passage of a Scotland-specific Net Zero target for 2045: Climate Change (Scotland) Act 2009, s.A1. This means Scotland is making a contribution to the UK reductions drive that improves on the 2050 Net Zero standard. The Welsh Assembly has a more limited capacity to act in this area due to certain constitutional constraints, notably a more limited range of devolved powers, but the Assembly has capitalised on the governance space that it does have in a positive way, see e.g.: the Wellbeing of Future Generations (Wales) Act 2015; the Climate Change (Wales) Regulations 2021. NI has the greatest available constitutional capacity to act in the area of climate governance, and so it is very welcome that the Assembly is currently on the cusp of mobilising its legal capacities to pass a Climate Change Act.
9. The CCA 2008 “Net Zero” target provides a benchmark against which the NI emissions reduction drive can be measured. This assists the Assembly in arriving at a *legally-informed* political decision concerning the level of the appropriate NI contribution to the UK’s overall mitigation process that should be embodied in this Bill. The Bill’s present 2045 Net Zero target provides an opportunity for NI to move from a position of climate laggard, dragging negatively on the national UK Net Zero objective, to a position of climate leader, making a

⁴ See further Muinzer, Thomas L. ‘Does the Climate Change Act 2008 Adequately Account for the UK’s Devolved Jurisdictions?’, *European Energy and Environmental Law Review* (2016) 25(3): 87–100.

contribution to the national mitigation drive that improves on the national average by moving Net Zero progress to a point in time prior to 2050 (i.e., 2045). It is self-evident that a Net Zero 2045 target makes a more preferable contribution to climate mitigation than a Net Zero 2050 target. However, given certain challenges faced by NI, including its slower start in working towards Net Zero in binding law, various regionally specific economic challenges, a proportionally large agricultural sector, and similar, it may be arguable that a Net Zero 2050 figure might form a credible alternative target option for the jurisdiction. This would permit NI to contribute to the mandatory UK Net Zero drive in a manner that does not make it a drag on progress, while also taking into account particular challenges faced by the jurisdiction in the UK's broader setting. For the avoidance of doubt, I personally am in favour of the Bill's present 2045 Net Zero target, given the scale of action needed to deal with the dangers of climate change.

10. What I have described as a *legally-informed* basis for political reasoning should also take some account of the fact that the European Union (EU) has introduced a 2050 Net Zero target for the collective EU in binding law, see: Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2021/1119 (European Climate Law).⁵ Brexit notwithstanding, NI does not want to become a solitary corner of Europe left behind in the push towards Net Zero. The CCC has recommended an (at least) 82% 2050 emissions reduction target for 2050, but it appears to be the case that a *legally-informed* basis for political reasoning points to a higher level of ambition. The CCC is rightly considered to be a highly respected advisory body, but its advice is just that – advice only. The views on an 82% target articulated in Lord Deben's letter to Minister Poots, dated 1st April 2021, and in the CCC's Sixth Carbon Budget,⁶ in my judgement arguably underscore not that NI should cement a position as a UK climate laggard in law, but that UK Government and the national institutions should recognise some of the very particular challenges faced by NI - challenges articulated by the CCC in the Sixth Carbon Budget – and, potentially, provide a greater degree of support or assistance if or as required.

⁵ <http://data.europa.eu/eli/reg/2021/1119/oj>

⁶ <https://www.theccc.org.uk/publication/sixth-carbon-budget/>

11. Bearing this in mind, it is helpful to recognise that NI has had more pronounced levels of fuel poverty than the rest of the UK over modern times, it is an economically weaker jurisdiction than the rest of the UK, it faces its own particular geographic and weather-related challenges, and it has a greater proportion of relative emissions arising from agriculture than the rest of the UK, which is both a notoriously difficult sector to regulate and one where jobs and livelihoods should not be unduly put at risk. It should also be recognised that *the UK's national parliament* established the UK Net Zero target, after the CCA 2008 was initially passed (2008) and amended to Net Zero (2019) at Westminster. NI and the rest of the UK now need to achieve this target collectively, even though the NI devolved parliament did not directly create and apply the obligation. The national institutions therefore should be encouraged to view NI in "just transition" terms. A just transition perspective means that, in applying a Net Zero economy-wide target for 2050 for the UK, national parliament and UK Government should not perceive themselves as being at liberty to apply the objective in a manner that some might perceive as treating NI as a partial afterthought. NI needs to be a central part of the conversation, of the direction of travel, and of the Net Zero transition itself. A "just transition" perspective, in this sense, means that the national level is at its best where it takes careful and conscious account of issues and needs bespoke to the jurisdiction of NI where it implements a UK-wide target of this nature. An onus falls on NI politicians to underscore the case for this sort of recognition to relevant actors.

12. For example, Carbon Capture and Storage (CCS) is intended to form a major part of the UK's emissions reduction policy strategy over the years ahead. Aberdeen, the Scottish city that I moved to from my native Belfast to work, is a hub for cutting-edge CCS development, and a significant amount of national finance streams to Aberdeen in order to stimulate CCS research and development in the North Sea. However, current national policy options based on CCC policy pathways indicate that CCS is not due to operate in NI on any significant scale due to technical geographic limitations. National policy choices and circumstances of this nature constrain NI from benefitting from one of the UK's major mitigation opportunities in going forward, while expressly enabling those transition opportunities in the UK's other substate jurisdictions. In this sort of scenario, in my view the following type of thinking is appropriate for UK-level actors: *if we fence NI out of a major mitigation stream (here, CCS), how do we offset this with other policy choices targeted at supporting NI in its transition*

to Net Zero by, or before, 2050? If the UK-level administration is not asking these questions of itself, it is appropriate for NI political leaders to ask these questions of the national institutions, and drive the conversation.

The Net Zero Target: Summary

13. The extent to which the Bill proposes to establish a legally binding Net Zero duty for 2045 is very positive. The figure at which this target is to be set is in effect a political decision, but that decision should be *legally informed*. In my view, it is appropriate and desirable in principle to employ a Net Zero 2045 target, as set out in this Bill. This allows NI to make a UK and indeed world-leading contribution to GHG emissions reduction, where it is on a par with Scotland's pioneering 2045 Net Zero target. The UK's national administration would be required to work carefully in concert with NI to help support this ambitious but worthy agenda. If this figure is considered to be too stringent given NI's particular circumstances, slippage beyond the UK 2050 target would not be appropriate in my view, as it would position NI as: the UK's climate laggard; a "European" laggard (and one participating in the Single Electricity Market with an EU country, the Republic of Ireland); a jurisdiction that is not sufficiently responding to the climate challenge based on IPCC advice and the requirements of the Paris Agreement.

Technical Legal Formulation of the Overriding Climate Objective

14. In relation to the "overriding climate objective" at s.2 of the Bill – namely, the Net Zero objective considered in general terms above – it is notable that this type of target is essentially comprised of an interaction between 3 particular elements: a *quantifiable emissions reduction level* (here, 100%), which is gauged off of a *preceding baseline year* (here, 1990) and pegged to a *future date* (here, 2045). These components are identifiable in the Bill by reading s.2(2) with s.2(6):

s.2(2):

The overriding climate objective is the establishment in Northern Ireland of a net-zero carbon, climate resilient and environmentally sustainable economy by the year 2045.

s.2(6):

In this Act –

(a) “net-zero carbon” means a net reduction of greenhouse gas emissions by at least 100% from the 1990 baseline

Each of the 3 elements noted here (reduction/baseline/date) speak in concert to structure the overall target. Section 2(8)-(9) prevents the 2045 year being revised to a later date, which duly prevents the target being weakened via *date* amendment; but it does not appear to be explicitly stated that express restrictions on amendment of the *baseline year* or the *100% reduction* are constrained. Thus, an explicit restriction on the *base year* and *mitigation %* that is equivalent to that applied to the *date* must be considered if constraints on alteration to the overall target are intended to be expressly entrenched. Note also that s.2(5)(d) appears to contain an error insofar as it attributes 1990 as the base year for the pertinent gases, whereas 1995 is typically used for a range of gases in the UK. See further: CCA 2008, s.25 (hydrofluorocarbons; perfluorocarbons; sulphur hexafluoride); Climate Change (Scotland) Act 2009, s.11(2)(f) (nitrogen trifluoride).

15. Professor Gavin MacLeod Little and I have reviewed issues arising around compliance, enforceability and accountability in this type of legal context and it is clear that legally binding climate objectives of this nature have something of a generalist goal-oriented quality that evokes a number of technical legal issues and complexities: see further “A Stocktake of Legal Research on the United Kingdom’s Climate Change Act” at pp.434–437.⁷ In this case, it is notable that s.2(1) requires the Executive to lay a plan to achieve the overriding climate objective, named a “Climate Action Plan”, before the NI Assembly, which must be approved by the Assembly in order to take effect (s.2(3)). This appears to create something of an accountability vacuum, insofar as a clear obligation to secure the 2045 duty is not placed directly on any specific actor. Preferable framing in a UK setting can be found in the CCA 2008, and the Climate Change (Scotland) Act 2009, which place a primary legal duty on the Secretary of State and Scottish Ministers respectively:

CCA 2008, s.1(1):

The target for 2050

It is the *duty of the Secretary of State* to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline. [Emphasis added]

⁷ Muinzer, Thomas L. & Gavin McLeod Little, “A Stocktake of Legal Research on the United Kingdom’s Climate Change Act: Present Understandings, Future Opportunities” *European Energy Law Report Volume XIII* (UK: Intersentia, 2020): 421–442.

CC(S)A 2009, s.A1(1)-(2):

The net-zero emissions target

- (1) The ***Scottish Ministers must ensure*** that the net Scottish emissions account for the net-zero emissions target year is at least 100% lower than the baseline (the target is known as the “net-zero emissions target”).
- (2) The “net-zero emissions target year” is 2045.

[Emphasis added]

Further Elements of the Bill

16. The establishment of a Northern Ireland Climate Commissioner (NICC) and a Northern Ireland Climate Office (NICO) is a useful and innovative development under the terms of the Bill. The NICC's responsibilities include as follows:

The Climate Commissioner shall be responsible for annual reports under section 4 of this Act.... The Climate Commissioner must review the working of this Act; and prepare reports (referred to in this Act as “review reports”) on the working of this Act for the Assembly in accordance with this section.

(s.9(1)-(2))

...A review report must contain the views of the Climate Commissioner on the adequacy and effectiveness of this Act; and may contain such recommendations as to amendments to this Act which the Climate Commissioner considers necessary and desirable in order to achieve the overriding climate objective.

(s.9(5)(a)-(b))

Such inputs could be very helpful in principle to climate governance in NI. The CCC – the UK's highly regarded independent reporting and advisory body – is in place to support NI in accordance with its extensive review, reporting and advisory duties under the CCA 2008. It seems to me that the NICO, which functions in essence as a review and recommendation body, may occupy some aspects of the type of role that the CCC occupies. It may also be advisable to consider these matters in the context of the role of the Office for Environmental Protection that is emerging under Westminster's Environment Bill. Thus, there is at the least a conversation to be had amongst NI legislators and the CCC about the role that the CCC might play in relation to these sorts of functions; however, a targeted climate office and commissioner for NI should be viewed as a novel, creative and forward-thinking mechanism that, indeed, might put NI at a forefront of the UK. In sum, while careful consideration should be accorded by NI legislators to the scope, role and interaction of the

NICO and the CCC, this does not of its own self necessarily undermine the capacity for such an additional NI-specific climate office to make a very useful contribution to NI climate governance.

17. The Climate Action Plan itself is laid before the Assembly by the Executive, and the Assembly then has the option to approve it (per s.2). The Plan contains “targets” and “measures” (per s.3(1)(a)-(b)). Section 3 outlines targets and measures over s.3(2)-3(3) respectively, as follows:

Targets... mean annual targets in the following areas—

- (a) net greenhouse gas emissions;
- (b) water quality;
- (c) soil quality; and
- (d) biodiversity

(s.3(2)(a)-(d))

Measures ...include—

- (a) carbon budgets...
- (b) nitrogen budgets...
- (c) sectoral plans...

(s.3(3)(a)-(c))

In relation to the targets section, water quality, soil quality, and biodiversity targets stray some way off the path of typical “climate” Acts to date, but that fact in its own right should not necessarily preclude such elements from being incorporated in a Bill of this type – water, soil and biodiversity issues are intimately bound up with climate concerns. Similarly, in relation to the measures, nitrogen budgets are not typically distinguished in legislation of this kind to date. Section 3(6) states that “A nitrogen budget is an account of all major flows of nitrogen in NI, including in its waters, atmosphere and soil”. This is an unusual provision when read in the context of Climate Change Acts in general, apparently inspired by the “nitrogen balance sheet” approach in the Scottish legislation. Again, novelty should not necessarily preclude such matters from being deemed suitable in the context of an NI Bill.

18. By way of modest concluding points, I note that s.2(6)(c) includes nitrogen triflouride (“NF3”) within the definition of GHGs. This is very positive. The UK has been lagging behind contemporary legal and scientific practice in not updating the CCA 2008 to include NF3. The Minister for BEIS has stated in response to a parliamentary question from Caroline Lucas MP that amending legislation for the purpose will be brought forward within the

year, but NI's inclusion of the gas, which is also included in the UNFCCC, EU, Scottish and Irish regimes, frames NI as a leader with reference to this aspect of the CCA 2008. More generally, by way of improving this Bill, consideration should be given to the incorporation of interim GHG reduction targets for 2030 and 2040, or equivalent milestone dates. These targets can assist in keeping NI on a trajectory pegged to Net Zero, and can also provide a structured temporal framework that the Bill's carbon budgets can be linked to directly.