



## Community Law & Mediation

### **A submission by Community Law & Mediation to the Department of the Environmental, Climate and Communications on the Development of a new Solid Fuel Regulation for Ireland**

#### **Summary of Recommendations**

CLM recognises an urgent need for comprehensive national regulation of solid fuel burning, which extends to regulation of specified solid fuels across the entire state and increases the range of fuels to be regulated. The compelling underlying rationale for such extended regulation is public health and emissions considerations. In implementing this approach however, CLM believes that it is imperative that any new regulatory regime be implemented in line with principles of just transition and that the consultation and implementation be informed and responsive to the needs of individuals and communities likely to be disproportionately impacted. CLM believes that regulation must be implemented without undue delay and that it must be accompanied by properly resourced and accessible redistributive measures to limit the impact on communities experiencing deprivation, including, for example, energy poverty.

CLM has considered the Consultation Paper and makes the following recommendations in order to ensure that any reforms to air pollution regulations are effective and fair:

- Design and implementation of a human rights and equality matrix to be part of the consultation process on climate adaptation policies, to ensure full public engagement and participation on environmental matters.
- A nationwide ban on specified solid fuels, including bituminous coal, peat and wet wood.
- Consolidation of air pollution legislation, to include consolidation of the regulations implementing the Air Pollution Act 1987 and publication of accompanying guidelines that set out the obligations in plain language.
- Updating of air pollution legislation to include incorporation of WHO guidelines in respect of PM 2.5 and PM 10 standards.
- Collation of accurate and up to date data on energy poverty and other socio-economic disadvantage as linked to reliance solid fuels.
- Design and implementation of properly resourced and accessible redistributive measures to alleviate the negative and potentially disproportionate impact of solid fuel regulation on vulnerable groups, in line with principles of just transition.

Community Law & Mediation is grateful for the opportunity to make this submission and is available to engage further with the Department on the issues raised herein.

### **About Community Law & Mediation**

Community Law & Mediation (CLM) is a community based, independent law centre providing services nationwide and operating in two locations: Dublin and Limerick. It was founded in 1975 and assists more than 3,000 people annually through its services, which include free legal advice and representation; information and education; and mediation and conflict coaching. CLM also campaigns for law reform, and for the safeguarding of rights already enshrined in law.

### **CLM's Centre for Environmental Justice**

In 2020, Community Law & Mediation identified an unmet legal, educational and training need in relation to environmental concerns among the communities it engages with, those experiencing disadvantage or social exclusion. In recent years, CLM has seen how closely intertwined our climate and our changing environment are with the issues experienced by these communities, including energy poverty, housing, employment and health. CLM's law centres in Dublin and Limerick are already working with communities who have been affected by issues linked to environmental justice, including flooding, health concerns related to poor air quality, and poor housing conditions.

CLM's Centre for Environmental Justice was formally launched by Mary Robinson on 11 February 2021. The Centre is the first of its kind in Ireland. The objective of the Centre is to empower communities experiencing disadvantage on environmental justice issues. It provides training and information resources to advance and address environmental concerns and increase participation on environmental issues. The Centre provides legal information and advice on individual and community queries through a monthly legal advice clinic. The Centre is also engaged in law reform and policy work.

### **Human rights and public participation considerations**

CLM welcomes the Department's consultation on the important issue of regulation of solid fuels and our response, specific to the detail of that consultation, is detailed below. Primarily however, we raise an overarching concern in relation to the proper framing of the issues for consideration in the consultation from a human rights perspective, and a related specific concern around the obligation on the State to enable meaningful and effective public participation on this consultation.

Our concerns relate to isolating consideration of solid fuel regulation against other environmental justice concerns such as energy poverty; and related to this, concerns about the State's obligation to properly and meaningfully consult with communities and individuals who are likely to be impacted by any such regulation, some of whom can be described as 'hard to reach' groups. It is our experience and concern that these groups are not aware or engaged in this consultation. The views of these groups will therefore not be taken into account in the formation of new law and policy on regulating solid fuels, despite them being the ones likely to be disproportionately impacted by any regulatory change.

It is CLM's contention that the State must apply a human rights-based approach when acting to address climate change, including when introducing measures that address environmental health concerns or energy consumption. New measures should be poverty-proofed to ensure that they will not deepen existing inequalities. The imperative to incorporate and mainstream such an approach is recognised by several international human rights bodies.

The preamble in the Paris Agreement highlights the need, when responding to climate change, to *"respect, promote and consider [the state's] respective obligations on human rights"* and makes specific reference to the rights of those disproportionately affected by climate change, such as women, children, migrants, indigenous peoples and people with disabilities.<sup>1</sup>

Flowing from this, the Office of the High Commissioner for Human Rights (OHCHR) sets out the obligation on states to ensure that appropriate adaptation measures protect and fulfil the rights of all persons, particularly those living in vulnerable areas.<sup>2</sup> The OHCHR confirms the general procedural human rights principles of good governance that apply to State, including participation, transparency and responsiveness to the needs of the people.<sup>3</sup> UN bodies have consistently highlighted the fact that climate change will have an unequal impact on the substantive rights of social groups already in vulnerable positions, and that state obligation exists in relation to non-discrimination and the protection of members of these vulnerable groups.

The OHCHR identifies the need for a human rights based approach in order to properly address the risk of disproportionate impact on vulnerable groups, stating: *"A human rights based approach addresses cross cutting social, cultural, political and economic problems, while empowering persons, groups and peoples, especially those in vulnerable situations. This can make considerable contributions to climate change policies, making them less myopic and more responsive, sensitive, and collaborative."*<sup>4</sup>

CLM notes the absence of an overarching policy framework or matrix applicable to policy and law reform consultations that ensures that such measures will be implemented in a human-rights compliant manner and will mitigate against a disproportionate impact on specific groups who are experiencing a form of disadvantage. CLM urges the State to develop and apply such a human rights framework that would essentially equality-proof such measures at an early stage – including at consultation stage - and highlight a potential role for the Irish Human Rights and Equality Commission and other human rights defenders in supporting design and implementation of such a framework.

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<sup>1</sup> Recital 11 to the Preamble of the Paris Agreement (2018), 2.

<sup>2</sup> Office of the United Nations High Commissioner for Human Rights, *'Understanding Human Rights and Climate Change'*, Submission of the Office of the High Commissioner for Human Rights to the 21<sup>st</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change (2015), 3.

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights, *'Good Governance and Human Rights'* (24 July 2020)

<sup>4</sup> *Ibid*, n2, 7.

The rights of meaningful public participation is a secondary and linked consideration. The State will be aware that environmental democracy and oversight enjoys strong protections under EU law and the Aarhus Convention and has rarely been as relevant as we grapple with ever increasing environmental challenges and introduce impactful measures to address climate change concerns. As highlighted by the OHCHR: *“The International Covenant on Civil and Political Rights and other human rights instruments guarantee all persons the right to free, active, meaningful and informed participation in public affairs. This is critical for effective rights-based climate action and requires open and participatory institutions and processes, as well as accurate and transparent measurements of greenhouse gas emissions, climate change and its impacts.”*<sup>5</sup>

The Aarhus Convention specifically obliges the State to facilitate public participation in decision-making on environmental issues and sets out the rationale for this position in its preamble, stating: *“... improved access to information and public participation in decision-making enhance[s] the quality and the implementation of decisions, contribute[s] to public awareness of environmental issues, give[s] the public the opportunity to express its concerns and enable public authorities to take due account of such concerns ... thereby to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment.”*<sup>6</sup>

The Department and implementing local authorities must also be cognisant of their duties under Section 42 of the Irish Human Rights and Equality Act 2014. This provision obliges all public bodies to promote equality, prevent discrimination and protect the human rights of their customers and service users and everyone affected by their plans and policies. The duty relates to protection of human rights and this extends to the protection of the right to health, which is the core concern in this consultation. The right to health is protected in various forms by the Constitution and the European Convention on Human Rights Act 2003. Equality rights are also engaged here given the differential impact of the proposed reforms on different groups and equality protections are set out in the Constitution, international and EU law including the EU Charter on Fundamental Rights and the EU Equality Directives. The public sector and equality duty therefore lends further weight to the need for a human rights based approach to regulatory reform and we refer the Department to the growing body of guidance available to support public bodies in meeting its statutory obligation in this regard.<sup>7</sup>

CLM submits that taken together, these legal obligations create a particular and additional duty on the State to fully and proactively consult on the issue of solid fuel regulation and other adaptation measures. Proactive engagement with those likely to be impacted by any further regulation will secure greater buy in and success of the measures. The Joint Oireachtas Committee recognised the need for equality-proofing future regulation, stating: *“In order to achieve a Just Transition, instruments, policies and regulations implemented by the State*

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<sup>5</sup> *Ibid* n3, 4.

<sup>6</sup> Recital 9 to the Preamble of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), 2.

<sup>7</sup> Of particular relevance and assistance is a guidance note issued by the Irish Human Rights and Equality Commission setting out a three step approach to implementation of the public sector and equality duty. The guidance is available here:

[https://www.ihrec.ie/app/uploads/2019/03/IHREC\\_Public\\_Sector\\_Duty\\_Final\\_Eng\\_WEB.pdf](https://www.ihrec.ie/app/uploads/2019/03/IHREC_Public_Sector_Duty_Final_Eng_WEB.pdf)

*should alleviate rather than exacerbate inequalities and protect the most vulnerable.”<sup>8</sup>* Similarly the Programme for Government explicitly recognises the need to apply just transition principles to national policy measures *“so that no one is left behind.”<sup>9</sup>*

The wide-ranging impacts of air pollution are recognised in this consultation and measures being proposed are designed to properly address and tackle environmental health issues and broader climate concerns. It is precisely because of the wide-ranging impacts and the broad impact of any proposed regulation that any consultation of this nature must be transparent, meaningful and truly participative. CLM welcome the detailed consultation document and the related webinars, however, we believe there has been an absence of wider and proactive engagement with ‘hard to reach’ groups, including those who are likely to be negatively impacted by additional regulation in this area.

### **Regulation of solid fuels and just transition considerations**

CLM welcomes the efforts on the part of the Department to strengthen and improve the current regulations in respect of burning of solid fuel, which are overdue and necessary.

Ireland has one of the worst records in Europe in relation to burning fuel domestically. The Climate Change Advisory Council’s annual review for 2019 notes that the average Irish home emits 58% more energy-related carbon dioxide than the average EU dwelling due to elevated use of coal, peat and oil for domestic use and comparatively minimal use of renewable energy.<sup>10</sup> Up to 20% of Irish homes are heated by solid fuels, a proportion which is only exceeded by one other EU country, Poland.<sup>11</sup> Solid fuel use represents a key obstacle to ensuring good air quality in all areas of the country.

The importance of clean air and access to outdoor space has become a significant priority during the pandemic. The role of outdoor space and exercise is particularly relevant for those who are already marginalised and may live in conditions which are overcrowded or may have pre-existing health conditions. Air quality however is even more important indoors, where the negative effects of emissions can be compounded with serious impacts on health and wellbeing.

The negative health implications of burning of solid fuel are well established. Poor air quality is linked to serious health implications, both short-term (acute temporary complaints such as headache, breathing difficulty, or eye irritation) and long-term (chronic ongoing conditions, including asthma, reduced liver function, and cardiovascular disease). Air pollution is estimated to cause more than 1,300 premature deaths per year in Ireland.<sup>12</sup> Children are particularly impacted by growing up with poor air quality, with air pollution leading to measurable declines in cognitive and physical development which continue throughout their lives. According to the EPA: *“People of lower socio-economic status tend to be disproportionately exposed to environmental pollution (such as air or noise pollution), and*

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<sup>8</sup> *Report of the Joint Committee on Climate Action*, (March 2019), Houses of the Oireachtas, 22.

<sup>9</sup> *Programme for Government*, (June 2020),.319.

<sup>10</sup> *Annual Review 2019* (2019), Climate Change Advisory Council, Paragraph 5.2.3.

<sup>11</sup> *Energy in the Residential Sector* (2018), Sustainable Energy Authority of Ireland, Figure 50.

<sup>12</sup> *Air Quality in Europe Report 2020* (2020), European Environment Agency, Table 10.1.

*this may be exacerbated in the future without appropriate policies to protect those most vulnerable in our society.*<sup>13</sup>

In light of the climate imperatives and the human health considerations, CLM recommends that the regulations take the form of a ban on specified smoky fuels to include bituminous coal, peat and wet wood and that the State should set out a path to regulation of other solid fuels that responds to scientific and environmental health priorities.<sup>14</sup> We also support the introduction of a general power to inspect and restrict all burning that produces air pollution, regardless of source, where it poses an active threat to the health and welfare of those living nearby. In our view, such regulation is the most effective way of promoting human health given that all fuels emit harmful levels of PM 2.5 when burnt. A partial ban may have the unintended impact of causing rural and disadvantaged communities to suffer more from the effects of air pollution caused by solid fuel.

In addition, a prohibition on smoky fuels would also be the most efficient way to meet the needs of the relevant EU Directives on clean air as it would remove the most significant emitters of PM 2.5 or PM 10. It would also significantly simplify the regulations as only one standard, that of specified fuel, would continue in use.

It is imperative however that any regulation has the principles of just transition at the core of its approach and implementation. CLM recognises the need for comprehensive, national regulation on solid fuels as essential for effective enforcement and protecting the health and wellbeing of people in Ireland and to reduce the climate impacts of burning of such fuels. However, CLM qualifies this recommendation on the basis that any transition and regulation be implemented in a manner consistent with just transition principles, as detailed below. Further and related, it is important that individuals are not unduly burdened with the pressure of reducing air pollution while industrial and state contributors are not similarly impacted.

CLM also notes that any regulation must be analysed and progressed with regard to the wider context of both air pollution and broader causation issues. Burning solid fuels is one contributor to this issue. In its State of the Environment Report, the EPA states: *“Air pollution is the single largest environmental health risk in Europe... It is now time to tackle the three key issues that have a negative impact on air quality in Ireland: emissions from the burning of solid fuels in our homes, transport emissions from vehicles in urban areas and ammonia emissions from agriculture.”*<sup>15</sup> Therefore, while we welcome concerted action in relation to one causal factor of air pollution in Ireland, we contend that this must be complemented with measures to address other causes of air pollution including transport emission from vehicles and ammonia emissions from agriculture.

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<sup>13</sup> `Environment, Health and Wellbeing`, Environmental Protection Agency, accessed 1 April 2021: <https://www.epa.ie/irelandsenvironment/environmentandwellbeing/>

<sup>14</sup> We welcome the detailed discussion of this approach in the report of the Asthma Society of Ireland in May 2020 *Regulation of Smoky Fuels in Ireland: Assessing Options for Reform* <https://www.asthma.ie/document-bank/report-regulation-smoky-fuels-ireland-assessing-options-for-reform-ucc-environmental>

<sup>15</sup> Chapter 3: Air Quality, `EPA State of the Environment Report 2020` (2020), Environmental Protection Agency, 78.

## **Just transition considerations**

It is essential that reform of the current regulations is conscious of the need for a just transition and that regulation is approached so as to be consistent with broader energy justice considerations and so it does not worsen and deepen existing inequalities. New regulations on solid fuel must be designed and implemented in a way which is just and equitable for all groups in society.

A just transition is one which takes account of the fact that the consequences of both environmental harm, and the measures to combat environmental harm, are often shouldered by those who are already marginalised. A just transition ensures that climate and environmental policy does not exacerbate existing inequalities and that no community is left behind in the process. Such an approach in many respects maps on the human rights principles that the State should have cognisance of when forming climate law and policy.

An approach consistent with just transition principles takes account of the differential circumstances of vulnerable groups. By way of example, we note that solid fuel is often used as a form of top-up energy by members of the Traveller community, in addition to gas bottle heaters, oil heaters and electric heaters.<sup>16</sup> In sites which lack proper connection to utilities, solid fuel stoves may be the main or only source of heating. Imposition of solid fuel regulation is likely to have a disproportionate impact on Travellers, by inflating their energy costs and making energy potentially inaccessible or unaffordable. Any approach must be a holistic one, which takes account of the need for clean and affordable forms of heating for all groups.

## **Energy poverty considerations in solid fuel regulation**

CLM notes with concern the mortality rates associated with air pollution and recognises the underlying imperative for action to address the serious health implications of air pollution. We believe however that in forming policy and law in this area, the State should consider the negative consequences of air pollution within a wider context and take into account the considerable social costs and mortality rates linked with related societal concerns, such as energy poverty. The clear albeit complex links between energy poverty and solid fuel regulation underscore the need for rigorous and thorough analysis of the broader context to inform a fair and just regulatory approach. Such an analysis should not however unduly delay regulatory reform but should be seen as an important element in its successful implementation and one that will avoid unintended consequences.

A household is defined as energy poor if they spend more than 10% of their disposable income on energy costs in any one year, in severe energy poverty if spending more than 15% and in extreme poverty if spending 20% or more.<sup>17</sup> Available data indicates that energy poverty affects up to 28% of the population of Ireland.<sup>18</sup> While generally perceived as primarily affecting the elderly, energy poverty is in fact a significantly greater issue for

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<sup>16</sup> *Accommodating Ethnicity: Addressing Energy Poverty Among Travellers Living in Mobile Homes and Trailers* (2019), National Traveller Money Advice & Budgeting Service, 27

<sup>17</sup> *Policy Links, Issue 1: Energy Poverty experienced by one parent families in the Republic of Ireland* (January 2015), Society of St Vincent de Paul.

<sup>18</sup> *National Energy and Climate Plan 2021 -2030* Submission to the Department of Communications, Climate Action and Environment (November 2018), Society of St Vincent de Paul, 3

families with children, who are often not eligible for the fuel allowance.<sup>19</sup> Members of the Traveller community for example are disproportionately impacted: a recent survey found that Travellers living in mobile homes or trailers are nine times more likely to go without heat than the general population.<sup>20</sup>

Notwithstanding those statistics, measuring energy poverty has been recognised to be a difficult task and there appears to be no agreed international approach to measurement. As noted by the ERSI in a recent report: “*energy poverty is not a distinct type of deprivation in Ireland and that ‘its solution lies in understanding and addressing the constellation of factors that erode a household’s material well-being’ more generally.*”<sup>21</sup> The challenges of measuring energy poverty have implications for formation of effective regulation of solid fuels. Standard measures do not accurately capture those impacted by energy poverty. For example, households in receipt of fuel allowance may not be an accurate indicator of energy poverty, as it ignores the needs of families with children or rural households, who may not be in receipt of such subsidies. It is imperative therefore that any policy interventions are grounded in sound and reliable data that accurately identifies those experiencing energy poverty and those at risk of being negatively and disproportionately impacted by any regulation on solid fuels.

Income-level is a primary influencing factor in fuel choice. Those on lowest income and those most rurally isolated are most dependent on smoky fuels and are therefore disproportionately exposed to the health impacts of those fuels.<sup>22</sup> Households experiencing fuel poverty are also more likely to be reliant on solid fuels.<sup>23</sup> They are therefore likely to be the most affected by any change in regulation on use of solid fuels.

For rural dwellers, poor infrastructure partly explains the over dependence on smoky fuels: 75% of rural homes are not connected to the natural gas grid and 65% are heated with oil, with a further 10% reliant on peat.<sup>24</sup> 42% of rural building stock was built before 1980 and is often poorly insulated, causing increased fuel use. This is indicative of the complex broader context in which any regulation is to occur.

While the health impacts of air pollution are referenced above and detailed in this consultation, CLM believes that any regulation of solid fuels aiming to reduce the health impacts of air pollution must be considered in the broader context of the health and other social impacts of energy poverty and other forms of socio-economic disadvantage. Such an analysis should not impede the well-needed regulatory reform in relation to burning of solid

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<sup>19</sup> *Ibid*, 5

<sup>20</sup> *Accommodating Ethnicity: Addressing Energy Poverty Among Travellers Living in Mobile Homes and Trailers* (2019), National Traveller Money Advice & Budgeting Service.

<sup>21</sup> ‘*ESRI Survey And Statistical Report Series Number 98 -Carbon Taxes, Poverty And Compensation Options*’ (October 2020), Seamus O’Malley, Barra Roantree and John Curtis, 19

<sup>22</sup> ‘*The Regulation of Smoky Fuels in Ireland: Assessing Options for Reform – A Report to Asthma Society of Ireland*’ (May 2020), UCC Environmental Law Clinic, 2.

<sup>23</sup> ‘*The Regulation of Smoky Fuels in Ireland: Assessing Options for Reform – A Report to Asthma Society of Ireland*’ (May 2020), UCC Environmental Law Clinic, 2.

<sup>24</sup> ‘*LPG and BioLPG: a Greener Deal for Rural Ireland – Liquid Gas Ireland Vision for 2040*’ (September 2020), Liquid Gas Ireland, 4.



fuels but should be undertaken to strengthen the overall efficacy and fairness of the measures.

Recent research undertaken by the ERSI noted the health impacts on children of residing in energy-poor homes and highlighted the need for greater policy attention to this area.<sup>25</sup> A subsequent article found that energy poverty increases the likelihood of depression in parents.<sup>26</sup> In 2012, it was reported that Ireland had one of the highest rates of excess winter mortality (EWM) in the EU, estimated to be at between 1,500 and 2,000 deaths yearly.<sup>27</sup> A study in 2015 found that the island of Ireland had the highest levels of excess winter mortality in Europe, with an estimated 2,800 excess deaths during each winter.<sup>28</sup> Homes reliant on solid fuel are more likely to experience energy poverty.<sup>29</sup>

The documented wider health and social impacts of energy poverty are therefore comparable to mortality rates and health implications associated with air pollution. This underscores the need to properly consider and assess the impacts of any solid fuel regulation on particularly vulnerable groups and to design and implement redistributive measures designed to respond and alleviate any disproportionate impact on these groups.

### **Consideration of ‘just transition’ redistributive measures**

Any new regulations on specified solid fuels should be accompanied by measures carefully designed to avoid any disproportionate burden falling on already vulnerable households.

Retrofitting of homes is one key area that has gained welcome attention and focus over the last year. Properly insulated homes ensure energy efficiency thus reducing the risk of energy poverty while at the same time reducing reliance on burning of solid fuels to heat the home.

It is imperative that retrofitting grants and schemes actively and transparently prioritise households who are experiencing or are at risk of energy poverty or other socio-economic deprivation more generally. Design and targeting of such schemes should be informed by reliable and up to date data on households experiencing fuel and other forms of poverty and deprivation. Relevant schemes should be actively promoted within vulnerable communities and made as accessible as possible. Continued and expanded financial commitment to energy efficiency interventions is also crucial, given the scale of need.

Such redistributive measures should be introduced in a timely way so they effectively mitigate against any negative or disproportionate impact of solid fuel regulation on vulnerable groups.

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<sup>25</sup> `ESRI Research Bulletin - Household Energy Poverty and Children's Health` (December 2020), Gretta Mohan, 2. ([https://www.esri.ie/system/files/publications/RB202031\\_0.pdf](https://www.esri.ie/system/files/publications/RB202031_0.pdf))

<sup>26</sup> `The impact of household energy poverty on the mental health of parents of young children` (February 3, 2021), Journal of Public Health, Gretta Mohan.

<sup>27</sup> `Alleviating Energy Poverty in Ireland: an Efficient, Sustainable Approach` (2012), EU Energy Poverty Observatory. (<https://www.energypoverty.eu/news/alleviating-energy-poverty-ireland-efficient-sustainable-approach>)

<sup>28</sup> `Medical Matters: Cold weather and fuel poverty cause 2,800 excess deaths` (16 February 2015), Muiris Houston, Irish Times (<https://www.irishtimes.com/life-and-style/health-family/medical-matters-cold-weather-and-fuel-poverty-cause-2-800-excess-deaths-1.2099569>)

<sup>29</sup> `A Strategy to Combat Energy Poverty 2016-2019` Department of Communications, Energy and Natural Resources, 28.

There are existing and significant delays in some energy efficiency schemes. For example, there is currently an average waiting time of over two years for work to be approved and carried out *Better Energy, Warmer Home Scheme*.<sup>30</sup> More than 7,800 houses are currently awaiting upgrade. Effective delivery of redistributive measures must be aligned with the timeline of implementation of further solid fuel regulation.

Reform of solid fuel regulations clearly sits within a broader, complex policy environment and joined up thinking about wider impacts and linkages is vital. Improvements in rural infrastructure for example may be relevant to increasing the use of cleaner sources of fuel by rural households.<sup>31</sup> From its work in the area of housing and tenants' rights, CLM is aware of the lack of energy efficiency obligations in private rented accommodation and the challenges for renters in heating their home and accessing energy efficiency schemes. Housing Standards Regulations do not include measures to realise energy efficiency in private rented dwellings and no minimum BER rating applies to lettings. A further redistributive measure for consideration is the introduction of incentives and obligations to encourage private landlords to improve the heating and energy standards of their properties.<sup>32</sup>

CLM therefore urges the Department to fully consider appropriate measures to complement the introduction of further regulation of solid fuels so that communities already experiencing disadvantage are not disproportionately impacted and are not exposed to further health or socio-economic inequalities as a result of such regulation.

### **Further implementation considerations**

The current legal framework that governs air pollution, air pollution monitoring and regulation of smoky fuels is complex and spread across several legal instruments. As such, it is challenging to navigate and implement. The law in this area is not accessible or intelligible and this hampers its effective implementation. It is vital therefore that there is a consolidation of the regulations implementing the Irish Air Quality Act 1987 and publication of accompanying guidelines that set out the obligations in plain language.

We also note that the full extent of existing regulations in respect of air pollution and smoky fuels are not being utilised. The prohibition on the emission of smoke contained in section 25 of the Air Pollution Act 1987 has never been commenced and would represent a useful tool in combatting air pollution caused by burning of solid fuels. We recommend that this section be commenced to mitigate against air pollution in all forms, regardless of source, and so that they can be tackled effectively by local authorities on the basis that they are injurious to human health or the environment.

For regulation of solid fuel to meet its stated aim of reducing harm to human health from air pollution, standards applied to air pollution in Ireland must be measured in a way which is most closely related to its impact on human health. For this reason, we recommend that an

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<sup>30</sup> 'Free Energy Upgrades for Eligible Homes', SEAI, accessed 30 March 2021 at <https://www.seai.ie/grants/home-energy-grants/free-upgrades-for-eligible-homes/>

<sup>31</sup> 'Decarbonising Domestic Heating in Ireland' (June 2018), prepared by KPMG on behalf of Ervia, 19.

<sup>32</sup> 'National Energy and Climate Plan 2021 -2030' Submission to the Department of Communications, Climate Action and Environment (November 2018), Society of St Vincent de Paul,

increased focus is placed on the WHO guidelines in addition to EU air quality limits, with consideration given to elevating legislative air quality standards to those of the WHO. The EPA Air Quality Report 2019 notes that while all PM 2.5 monitoring sites reported concentrations within the EU annual limit, they also report frequent exceedances of the daily WHO air quality guideline.<sup>33</sup> The EPA notes: *“The adoption of the WHO guideline values across Europe would signal the commitment of Member States to the improvement of air quality and subsequent health improvements.”*<sup>34</sup>

Article 193 TFEU permits Member States to adopt more stringent environmental protections than those contained in existing EU law, providing notification of said measures is made to the Commission. Certain EU member states including Austria and Sweden have availed of Article 193 to impose elevated standards on PM 10 and nitrogen dioxide levels respectively.<sup>35</sup> CLM recommends that the state evaluate the appropriate standards and considers applying the higher limit values on the basis of public health protection.

Finally, CLM recognises that effective monitoring of air quality and enforcement of any new regulations is essential to the success of restrictions on solid fuel. Local authorities should be properly resourced and supported so they can effectively fulfil their enforcement powers. Furthermore, in line with the obligations on the state under Aarhus, a public information campaign should be implemented to provide information on the application and scope of the regulations, including detail on the enforcement mechanisms so individuals are aware of how to seek remedial action for any potential breach.

### **Key recommendations**

CLM has considered the Consultation Paper and makes the following recommendations in order to ensure that any reforms to air pollution regulations are effective and fair:

- Design and implementation of a human rights and equality matrix to be part of the consultation process on climate adaptation policies, to ensure full public engagement and participation on environmental matters.
- A nationwide ban on specified solid fuels, including bituminous coal, peat and wet wood.
- Consolidation of air pollution legislation to include consolidation of the regulations implementing the Air Pollution Act 1987 and publication of accompanying guidelines that set out the obligations in plain language.
- Updating of air pollution legislation to include incorporation of WHO guidelines in respect of PM 2.5 and PM 10 standards.
- Collation of accurate and up to date data on energy poverty and other socio-economic disadvantage as linked to reliance solid fuels.

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<sup>33</sup> `Air Quality in Ireland 2019` (2020), Environmental Protection Agency, 24 (<https://www.epa.ie/pubs/reports/air/quality/Air%20Quality%20In%20Ireland%202019.pdf>)

<sup>34</sup> *Ibid*, 35

<sup>35</sup> Commission Staff Working Document: Fitness Check of the Ambient Air Quality Directives - Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air and Directive 2008/50/EC on ambient air quality and cleaner air for Europe, European Commission, November 2019.

- Design and implementation of properly resourced and accessible redistributive measures to alleviate the negative and potentially disproportionate impact of solid fuel regulation on vulnerable groups, in line with principles of just transition.

### **Conclusion**

CLM welcomes the move towards a more effective and comprehensive regulation of solid fuels in respect of domestic heating. The health and wellbeing of people living in Ireland are significantly impacted by the current position on solid fuels and this is particularly true in relation to children and the medically vulnerable. There is a clear need for urgent action in respect of regulation. Any new regulations however must be formulated taking account of the needs of vulnerable groups likely to be impacted and to be complemented by supports and measures that will ensure a just transition to cleaner forms of energy.

**Community Law & Mediation  
1 April 2021**