



Community Law & Mediation

and the Centre for Environmental Justice

Community Law and Mediation's Climate Action Plan 2023

Submission

Community Law & Mediation

Community Law & Mediation (“CLM”) is an independent community law centre and charity which provides free legal advice, advocacy, mediation and education services in communities experiencing disadvantage. CLM (previously known as Coolock Community Law Centre) was established in Coolock in 1975 and opened a second law centre in Limerick in 2012. Today, it assists more than 4,000 people annually. In 2021, CLM established the Centre for Environmental Justice which works to ensure climate change and other environmental harms do not disproportionately affect those who have contributed least to the problem, and that the State’s response to environmental addresses inequality and protects the rights of present and future generations.

Introduction

CLM welcomes the consultation on the 2023 Climate Action Plan. We have opted to respond to the specific questions in this consultation that pertain to CLM’s relevant areas of expertise. Primarily however, we raise an overarching concern in relation to the obligation on the State to enable meaningful and effective public participation on this consultation. 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. CLM notes the absence of an overarching human rights framework 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.

The latest figures from the Environmental Protection Agency (EPA) show that in 2021, emissions rose rather than fell and Ireland used a quarter of its five-year carbon pollution budget in one year. Ireland’s carbon emissions remain the third highest in the EU and have risen above pre-Covid levels. The EPA have warned that Ireland will not meet its 51% emissions reductions by 2030, relative to 2018 levels, as required under the Climate Action and Low Carbon Development (Amendment) Act. It is past time for radical measures that reduce emissions rapidly and meet the scale and the urgency of the challenge. From the record heat in Europe to the drought in the Horn of Africa to the floods in Pakistan, we are living through a climate and biodiversity emergency and it’s time the Government

started responding appropriately. Communities who have contributed the least to climate change are least equipped to cope with its impacts and are at serious risk of being disproportionately burdened by State responses to climate change. CLM therefore believes that the Climate Action Plan 2023 must be aligned with law and science, and must adopt a human rights perspective, including the prioritisation of environmental democracy.

1. Section 1: Sectoral Emissions Ceilings.

2. Q2 What do you view as the main challenges/obstacles to the Sectoral Emission Ceilings being met?

(A) The Sectoral Emissions Ceilings are not aligned with Ireland's Climate Action and Low Carbon Development (Amendment) Act 2021.

- CLM is deeply concerned by warnings from leading legal and scientific academics that the announced Sectoral Emissions Ceilings are "flawed in law and in science." CLM calls upon the Government to:
- **(1) Set maximum limits for total emissions in MtCO₂e_q for each sector covering the carbon budget period.**

3.

- The agreed targets do not constitute sectoral emission ceilings (SECs) as defined in the Climate Act as they do not set the maximum amount of GHGs permitted per sector during the carbon budget period i.e. the SECs do not divide out the national carbon budget in MtCO₂e.
- The Climate Act (s. 6C) is clear that the sum of the SECs for each carbon budget period must add up to no more than the national emissions ceiling in the carbon budget itself, i.e. 295MtCO₂e for 2021-2025 and 200MtCO₂e for 2026-2030.¹ In other words, the national carbon budget for each 5-year budget period must be divided between the different sectors, and the sum of the SECs must not exceed the national carbon budget. The Government's decision provides a percentage reduction for each sector by 2030 and therefore does not meet the definition of 'sectoral emission ceilings' as detailed in the Climate Act. The SECs must set maximum limits for total emissions in MtCO₂e_q for each sector covering the carbon budget period.
- The production of clear SECs is also necessary for the Climate Change Advisory Council to fulfil its obligation to produce an Annual Review of progress in complying with each carbon budget and SEC by October 30th. The delay in publishing appropriate SECs risks undermining their ability to assess compliance, as well as the broader governance framework that supports timely progress reviews and updates to the Climate Action Plan.
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- **(2). The LULUCF, aviation and shipping sectors should be allocated a sectoral emission ceiling with priority.**
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¹ McMullin, B., Jackson, A., Price, P.R., Sweeney, J. (2022) Letter re: Sectoral Emission Ceilings under the first carbon budget programme. Available at: <https://docs.google.com/a/dcu.ie/viewer?a=v&pid=sites&srcid=ZGN1LmllfGRjdWVjcm58Z3g6NmQyMTlyMTg3YTAyNjUyMQ>

- LULUCF:

- The agreed targets do not cover all sectors as LULUCF has not been allocated a ceiling. The SECs do not cover all sectors as the LULUCF (Land Use, Land Use Change and Forestry) sector has not been allocated a sectoral ceiling. We note the statement that the decision has been deferred for 18 months. This would mean that the LULUCF ceiling will not be set until 3 full years into the first carbon budget period. This creates considerable uncertainty for the other sectors as the LULUCF ceiling may impact the size of the other sectoral ceilings. The Climate Change Advisory Council has also recently cautioned in their Annual Review 2022, that the targets announced last month amount to a “reduction of 42% excluding the Land Use Sector”.²This would fall short of the state’s binding 51% reduction target for 2030. The Council recommends that the targets are revised upwards and monitored closely, and emphasises the importance of the Climate Action Plan 2023 setting precise actions and steps that must be taken to align with the legally binding carbon budgets.

- Aviation

- Emissions from the aviation sector are the fastest growing source of EU emissions.³ Globally, aviation emissions are projected to increase by 300-700% by 2050,⁴ and Ireland’s Action Plan for Aviation Emissions Reduction states that: “*without any intervention, it is expected that the [aviation] emissions will grow significantly in the future.*”⁵ This is unsurprising in light of the recent expansion of Dublin airport⁶ – a development which is wholly inconsistent with the Paris Agreement.⁷ Moreover, if emissions are not reduced in the aviation and shipping sectors, greater pressure will be placed on other sectors to compensate for this shortfall. Such adjustments are not presently envisaged and do not form part of public debate. In addition, the benefits of aviation are inequitably shared. Globally, only 1% of the population cause half of aviation emissions.⁸ While comparable data is not available for Ireland, in the UK, 70% of flights are taken by just 15% of the population.⁹

- Shipping

² Climate Change Advisory Council (2022) Annual Review 2022. Available at: <https://www.climatecouncil.ie/media/climatechangeadvisorycouncil/contentassets/publications/CCAC-ANNUAL-REVIEW-2022.pdf>

³ EU Parliament. 2019. ‘Emissions from planes and ships: facts and figures (infographic).’ Available at: <https://www.europarl.europa.eu/news/en/headlines/society/20191129STO67756/emissions-from-planes-and-ships-facts-and-figures-infographic>

⁴ International Civil Aviation Organisation. 2019. ICAO Agreement on CO2 emissions from aviation. [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/640169/EPRS_ATA\(2019\)640169_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/640169/EPRS_ATA(2019)640169_EN.pdf)

⁵ Ireland’s Action Plan for Aviation Emissions Reduction. 2019. Available at: <https://assets.gov.ie/21634/ee5b50357fb04fc5a8af5f6589759231.pdf>

⁶ <https://www.rte.ie/news/business/2022/0823/1318439-new-320m-runway-at-dublin-airport-opens-today/>

⁷ Dehon, E. 2021. ‘Don’t sink Paris: Legal basis for inclusion of aviation and shipping emissions in Paris targets.’ *Transport & Environment*. <https://www.transportenvironment.org/wp-content/uploads/2021/10/Briefing-paper-NDCs-legal-advice-Aviation-Shipping-Final-2021-2.pdf>

⁸ Gössling, S., Humpel, A. 2020. ‘The global scale, distribution and growth of aviation: Implications for climate change.’ *Global Environmental Change*, Vol. 65 available at : <https://doi.org/10.1016/j.gloenvcha.2020.102194>

⁹ Campaign for Better Transport. ‘Air Traffic Controls: the Hidden Costs of a New London Runway.’ Available at: <https://bettertransport.org.uk/sites/default/files/pdfs/Air%20Traffic%20Controls%20report.pdf#page=25>

- At current growth rates, shipping emissions could represent 10% of total global emissions by 2050.¹⁰ It is also a major source of air pollution with cruise ships particularly detrimental to coastal populations.¹¹

- **Recommendation:**

- The regulation of aviation and shipping emissions must not be confined to the international level. The International Maritime Organisation, the UN agency that regulates global shipping, has consistently resisted attempts to phase out fossil fuels, and has committed to cutting shipping emissions in half by 2050, relative to 2008 levels. This is far from what is needed to avoid catastrophic climate change.¹² In addition, the aviation sector is one of the strongest opponents of climate policy in the EU. Through the International Civil Aviation Organisation, the UN agency that regulates global aviation, the aviation industry has lobbied for the CORSIA offsetting scheme to take precedence over policies addressing absolute aviation emissions reductions.¹³ The aviation and shipping sectors should be included in Ireland's Sectoral Emissions Ceilings for transport.

- **(B) Fossil fuels must be phased out.**

- Fossil fuels are the largest source of greenhouse gas emissions globally and the primary contributor to climate change. Ireland's energy sector must be reoriented to prioritise efficiency, public and ecological value. **Fossil fuel infrastructure:**
- The Climate Action Plan 2021 commits to delivering "circa 2 GW of new flexible gas-fired power stations." In addition, An Bord Pleanála's decision on the development of a liquefied natural gas import terminal is awaited.¹⁴ Fossil fuels are the largest source of greenhouse gas emissions globally and the primary contributor to climate change. To protect low-income households from future energy price shocks and the worst impacts of the climate crisis, the transition to a completely decarbonised economy and society must be accelerated. The development of new fossil fuel reserves, including natural gas or LNG, would run contrary to Ireland's obligations under the Climate Action and Low Carbon Development (Amendment) Act 2021, the Government's Policy Statement on the Importation of Fracked Gas,¹⁵ the Programme for Government,¹⁶ Ireland's membership of the Beyond Oil and Gas

¹⁰ <https://www.transportenvironment.org/challenges/ships/greenhouse-gases/>

¹¹ <https://www.transportenvironment.org/challenges/ships/>

¹² <https://www.washingtonpost.com/climate-environment/2022/06/06/shipping-carbon-emissions-biden-climate/>

¹³ InfluenceMap. 2022. 'Airlines and European Climate Policy: How European Legacy Airlines Are Leading Opposition to European Climate Policy.' *InfluenceMap* Available at: <https://influencemap.org/report/Airlines-and-European-Climate-Policy-19388>

¹⁴ <https://www.irishtimes.com/business/energyand-resources/bord-defers-decision-on-planningpermission-for-650m-shannon-lng-plant-1.4820778>

¹⁵ Government of Ireland. 2021. Policy Statement on the Importation of Fracked Gas.

¹⁶ The Programme highlights the need to develop "safe, secure and clean energy is essential in order to deliver a phase-out of fossil fuels" - See Programme for Government: Our Shared Future <https://www.gov.ie/en/publication/7e05dprogramme-for-government-our-shared-future/>

Alliance.¹⁷ In addition to deepening the climate crisis,^{18 19} and increasing air pollution with associated public health impacts,²⁰ the deployment of new fossil fuel infrastructure would lock households into high gas and electricity prices for decades to come.

Recommendations:

- Pass the Planning and Development (Liquefied Natural Gas - LNG) Amendment Bill into law.
- End further expansion of Ireland's gas network. Consult, engage and collaborate with environmental and human rights bodies as part of Ireland's energy security review, and ensure that fossil fuels are excluded from the review, in light of the war in Ukraine, the cost-of-living, energy poverty and climate crisis.

Data Centre Development

- The prioritisation of energy development to meet the needs of industrial and commercial sectors should be reviewed. We note, for example, Eirgrid's concern that data centres could account for 70% of Ireland's electricity use by 2030. Data centres already account for 14% of Ireland's electricity use, while rural households collectively account for 12%.²¹

Recommendation:

- Place a moratorium on the development of data centres. The continued and rapid expansion of an industry reliant on additional energy consumption is inconsistent with a transition to a completely decarbonised economy and society. There should be an immediate moratorium on the development of data centres until an assessment of what is needed to meet the carbon budget from 2021-2024 is carried out.²²²³

Section 2: Carbon Pricing and Cross-Cutting Issues

- The effectiveness of market measures in addressing the climate crisis is limited. A recent study on the impact of carbon taxes and cap and trade schemes on emission reductions found that the actual reductions achieved by these measures were generally "quite small", averaging out at a reduction of between 0% and 2% per annum.²⁴

¹⁷ <https://beyondoilandgasalliance.com/>

¹⁸ International Energy Agency. 2021. 'Net-Zero by 2050: A Roadmap for the Global Energy Sector.' Available at: <https://www.iea.org/reports/net-zero-by-2050>

¹⁹ Abernathy, S., Jackson, R.B. 2022. Global temperature goals should determine the time horizons for greenhouse gas emission metrics. Environmental Research Letters <https://doi.org/10.1088/1748-9326/ac4940>

²⁰ Loss, H. 2022. 'Natural Gas Samples Taken from Boston-Area Homes Contained Numerous Toxic Compounds, a New Harvard Study Finds.' Inside Climate News. Available at: <https://insideclimatenews.org/news/28062022/natural-gas-stove-boston-toxic/>

²¹ Central Statistics Office. 2022. 'Data Centres Metered Electricity Consumption 2020.' Available at: <https://www.cso.ie/en/releasesandpublications/ep/pdcmec/datacentresmeteredelectricityconsumption2020/>

²² <https://notherenotanywhere.com/campaigns/data-centres/#:~:text=Not%20Here%20Not%20Anywhere%20is,fossil%20gas%20to%20generate%20electricity.>

²³ <https://sites.google.com/a/dcu.ie/dcucrn/files>

²⁴ Green, J. 2021. Does carbon pricing reduce emissions? A review of ex-post analyses.

- CLM recommends that the Government undertake a review of current carbon taxation recycling measures, to assess whether revenues are distributed in a manner which targets groups and households most vulnerable to rising energy and fuel costs.
- CLM recommends that the Government impose a windfall tax on energy companies and recycle revenues to support households to meet their electricity and gas bills. For instance, Corrib, Ireland's domestic gas field, is owned by Vermilion Energy, a Canadian oil and gas company, whose profits increased by over 250% in 2021 as a result of increased EU energy prices. The European Commission recently approved temporary tax measures on energy utility companies to help provide consumers with relief from high prices.²⁵

Section 5: The Built Environment

Q1. Currently SEAI provides approx. 50% of the grant of retrofit to Landlords, Housing for All commits to introducing a minimum BER for rented properties from 2025 onwards. What further supports can be put in place to address the split incentive when retrofitting rental properties (residential and commercial)?

- Provide grants to retrofit worst-performing homes in the Private Rental Sector:** CLM supports Threshold and St Vincent de Paul's recommendation to provide for homes in the private-rental sector reliant on HAP with funding equivalent to the 'Better Energy Warmer Homes Scheme.'²⁶ This would be a step towards addressing the "split-incentives" issue between landlords and tenants. To avoid "renovictions," long-term leases and rent-control must be mandatory.
- Develop a Tailored Retrofit Plan for the Private Rental Sector:** with clear milestones, targets and funding. Also introduce new grants for deep retrofits for landlords in the private rental sector on the condition that long-term leases and rent control are guaranteed to tenants.

Q5. Housing for All Commits to 100% funding to retrofit 40% of local authority housing stock to B2 by 2030 at a cost of 1.4 billion euro. How can we further support local authorities to help them deliver on social housing retrofit targets?

If we are to reach the furthest behind first and undertake a national retrofit programme in accordance with the principles of a Just Transition, Ireland's entire social housing stock should be retrofitted to a B2 standard this decade.

In addition, Local Community Energy Advisors should be deployed throughout every local authority to engage and inform hard to reach energy users who would most benefit

<https://iopscience.iop.org/article/10.1088/1748-9326/abdae9>

²⁵ <https://news.bloombergtax.com/daily-taxreport/european-leaders-back-windfall-profits-tax-on-energy-firms>

²⁶ St Vincent de Paul & Threshold. 2021. 'Warm Housing for all? Strategies for Improving Energy Efficiency in the Private Rental Sector.' Available at: <https://www.svp.ie/getattachment/b950a94bf443-4982-a317-eee4afc7ebd8/Warm-housing-forall-Strategies-for-improvingene.aspx#:~:text=Threshold%20is%20a%20national%20housing,largest%20voluntary%20charity%20in%20Ireland>

from energy efficiency upgrades.²⁷ We recommend that the Government convene stakeholders immediately to advise on this process.

Q8. Are there any specific obstacles in the planning system that is impeding the rollout of district heating and the national retrofit plan? How can we overcome these barriers?

- Continuing to connect new homes to the gas grid. CLM calls upon the Government to end the installation of fossil fuel heating boilers as part of the Warmer Homes Scheme, in accordance with the recommendation of the International Energy Agency.²⁸ The Netherlands and Germany have already undertaken measures in this regard: the Netherlands recently banned the installation of fossil fuel heating systems from 2026, which is notable as gas met 71% of residential energy demand in 2018.²⁹ Germany also announced that it will develop district heating and make heat pumps mandatory from 2024.

Q10. Further to the existing supports financed by carbon tax revenues, how can we protect those who are currently experiencing fuel poverty and those who are at risk?

- **Revise the Fuel Allowance Scheme:**
 - Double the Fuel Allowance rate from €33 to €66.³⁰
 - Widen eligibility for the Fuel Allowance by including those receiving Working Family Payment,³¹ removing the waiting period for those on Jobseekers, expanding eligibility to cover the specific living arrangements of Traveller families,³² and making it available to people on modest incomes in poorly insulated homes.³³ A partial-rate Fuel Allowance payment should be available so it is not all-or-nothing for people just outside the eligibility criteria.
 - The Fuel Allowance Scheme should be available 32 weeks per year, as it was formerly. Currently, the Scheme is only available 28 weeks of the year and needs to be claimed in advance of the winter period.
 - The Fuel Allowance Scheme must be targeted to reach members of the Traveller community who rely on social welfare and live in caravans or

²⁷ SVP, 2022. Foundations for an equal Ireland - Pre-Budget Submission 2022 <https://www.svp.ie/getattachment/3b713953-2f4a-4e50-b81e-6a9f85fb2b10/SVP-Pre-Budget-Submission2022.aspx>

²⁸ <https://iea.blob.core.windows.net/assets/1af70a5f9059-47b4-a2dd-1b479918f3cb/A10-PointPlanToReduceTheEuropeanUnionsRelianceOnRussianNaturalGas.pdf>

²⁹ <https://www.euractiv.com/section/energyenvironment/news/netherlands-to-ban-fossilheating-by-2026-make-heat-pumps-mandatory/>

³⁰ ESRI, 2022., Energy poverty and deprivation in Ireland <https://www.esri.ie/system/files/publications/RS144.pdf>

³¹ SVP Pre-Budget Submission 2023 <https://svp.ie/getattachment/5ca78a6d-af8a-4f3c-a713-09dcb3da5473/SVPPBS-2023-The-Cost-of-Surviving.aspx>

³² National Traveller MABS, 2019. Accommodating Ethnicity: Addressing Energy Poverty Among Travellers Living in Mobile Homes and Trailers <https://www.ntmabs.org/publications/development/2019/ntmabs-energy-poverty-report.pdf>

³³ Age Action, 2022. An Energy Guarantee for Older Persons: Policy Brief https://www.ageaction.ie/sites/default/files/age_action_energy_guarantee_for_older_persons.pdf

mobile homes as this cohort are disproportionately impacted by energy poverty.³⁴ Each family living on the same “site” should be treated as an individual household, and Fuel Allowance should be provided to each household that needs it per site accordingly.³⁵

- **Introduce an Energy Guarantee Scheme:**
 - o This would provide a payment that is indexed to the changing cost of energy so that people in poorly insulated homes and those on low incomes will always be assured of a minimum quantity of energy to keep their homes warm. This payment should be indexed to the current cost of energy required to keep a person’s home warm based on a set quantity of units (kWh).³⁶ The transition to an Energy Guarantee Scheme could be progressed by modifying the Fuel Allowance as outlined above.
- **Apply the €200 electricity credit to Traveller families:**
 - o Many Traveller families did not receive the €200 electricity credit in April 2022. This credit should be applied immediately to Traveller families living on halting sites, sharing accommodation in group housing schemes, and/or living adjacent to the main home.³⁷
- **Accelerate the Phase-Out of Fossil Fuels & Prioritise Energy Efficiency:**
 - o The Review of Ireland’s Energy Poverty Strategy recognises the “*growing connection between alleviating energy poverty and achieving national climate action objectives.*”³⁸ Fossil fuels are globally the biggest contributor to the climate crisis, and Ireland’s continued dependence on fossil fuels is becoming increasingly costly to low-income households. Since January 2021, the price of gas has increased by more than 170% in Europe, and with it, the cost of electricity.³⁹ As oil and gas account for 80% of Ireland’s energy use, with gas accounting for 50% of electricity generation,⁴⁰ Ireland is among the worst-hit countries in Europe by the cost-of-living crisis. Analysis from the Institute for European Energy and Climate Policy has shown that if no action is taken to reduce emissions

³⁴

https://www.citizensinformationboard.ie/downloads/social_policy/MABS_Energy_Poverty_Report_2019.pdf

³⁵ Stamp, S., Kearns, M. 2019. Addressing Energy Poverty Among Travellers Living in Mobile Homes and Trailers: an exploratory study. Available at: https://www.citizensinformationboard.ie/downloads/social_policy/MABS_Energy_Poverty_Report_2019.pdf

³⁶ Age Action, 2022. An Energy Guarantee for Older Persons: Policy Brief https://www.ageaction.ie/sites/default/files/age_action_energy_guarantee_for_older_persons.pdf

³⁷ https://www.foe.ie/assets/files/pdf/joint_statement_on_energy_poverty_and_energy_pollution_dated.pdf

³⁸ Strategy to Combat Energy Poverty – Progress Review and Public Consultation: [file:///C:/Users/CDaly/Downloads/230983_215010e9-c04d-460f-b725-70c4e4938c03%20\(1\).pdf](file:///C:/Users/CDaly/Downloads/230983_215010e9-c04d-460f-b725-70c4e4938c03%20(1).pdf)

³⁹ Climate Action Network Europe. 2022. ‘High electricity prices, the links to fossil gas and the need to shift to 100% renewables and reduce energy demand.’ Available at: <https://caneurope.org/high-electricity-prices-links-fossil-gas-need-shift-to-renewables/>

⁴⁰ <https://www.irishtimes.com/business/economy/why-are-irish-gas-and-electricity-prices-going-up-1.4827718>

from buildings, the energy bills of low-income households will steadily increase over the coming decades.⁴¹

- **Nationalise the Energy System:**
 - o Consider nationalising Ireland's energy system to facilitate the just development of efficient, clean energy for the public good.⁴² France recently nationalised its energy system in light of the energy crisis.⁴³
- **Regulate Energy Pricing:**
 - o Provide for the Commission for the Regulation of Utilities (CRU) to remove standing charges on energy bills and to ensure all energy providers allocate the lowest energy rate to all their users. Those living in energy poverty may not have bandwidth to "shop around" and change their energy supplier on a regular basis to avail of the most competitive rate. Ofgem, the UK regulator, have already implemented such measures.⁴⁴ The CRU could also require energy suppliers to write off consumer debt,⁴⁵ which has already been implemented in Catalonia.
- **Scrap Prepayment Electricity Metres:**
 - o Low-income households may experience difficulties in keeping their meter topped-up and risk disconnection. Energy poverty is not due to excess energy consumption, but inadequate income, poorly insulated housing, and energy prices. Pre-paid meters are unlikely to incentivise behavioural change, but to instead push households into energy poverty.
- **Extend the existing moratorium on disconnections during winter months:**
 - o Extend the moratorium to a full ban on disconnections until at least Spring 2023.
- **Increase rates of all core social welfare payments:**
 - o by at least €20 per week.
- **Increase the minimum wage to a living wage.**
- **Pay all social welfare recipients a Christmas Bonus-style double welfare payment:**
 - o before the end of October at the latest.

Section 9: Public Sector Duty

The Department and implementing local authorities should 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

⁴¹ <https://ieecp.org/wp-content/uploads/2022/05/summary-IEECP-Socially-Just-homes.pdf>

⁴² Mercier, S. 2021. 'Ireland's Energy System: The Historical Case for Hope in Climate Action.' *New Labor Forum* Vol 30: 2, pp. 21-30 <https://doi.org/10.1177/10957960211008165>

⁴³ <https://www.reuters.com/world/europe/frances-edf-be-fully-nationalised-borne-2022-07-06/>

⁴⁴ Friends of the Earth Ireland. 2022. 'A 5-point plan for Government to cut bills, save energy and reduce pollution.' *Friends of the Earth Ireland*, available at: https://www.foe.ie/assets/files/pdf/5_point_plan_to_cut_bills_save_energy_and_reduce_pollution_-_may_2022.pdf

⁴⁵ https://www.foe.ie/assets/files/pdf/5_point_plan_to_cut_bills_save_energy_and_reduce_pollution_-_may_2022.pdf

human rights, many of which are engaged in this consultation including the right to earn a livelihood, right to health, right to family life and right to non-discrimination. These rights are 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. Such equality protections are protected 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 climate action and we refer the Department to the growing body of guidance available to support public bodies in meeting its statutory obligation in this regard.

Section 10: Just Transition

Q3. What additional targeted supports should be considered to minimise the impact of our climate policies to those on low income or households that are most at risk from fuel poverty (including transport and heating)?

Community Law and Mediation provide the below recommendations in developing the forthcoming Energy Poverty Action Plan, which have been endorsed by 20 health, legal, Disability-led, climate justice, Traveller, anti-poverty, and housing organisations.³⁶ Community Law and Mediation's complete recommendations on Energy Poverty are [available here](#).

In developing the forthcoming Energy Poverty Action, Plan, the Government should adopt the following measures:

- **Whole of Government Approach:** Place the Strategy on **statutory footing** to ensure policy coherence and a whole-of-government approach. The Strategy will require cooperation in particular between the Department of Environment Communications and Climate, the Department of Social Protection, the Department of Health, and the Department of Housing.
- **Improve Data Collection:**
 - o The definition of energy poverty needs to be broadened. Energy poverty is currently measured through the "expenditure method." If a household spends 10% or more of their disposable income on energy, it is considered to be in energy poverty. It is CLM's contention that a definition based on cost must also consider the additional financial burden often shouldered by older persons, those who live with long-term health conditions, and disabled people. Furthermore, the expenditure method only provides a snapshot at a certain point in time. Whether a household experiences energy poverty can fluctuate depending on the time of year, change in income, and energy prices.
 - o Households who use less energy than they would need or like to use to afford their bills are also a hidden cohort of those living in energy poverty. It is essential therefore that the expenditure method is combined with the "subjective method" when measuring energy poverty. The subjective method relies on self-reported data on ability to keep your home warm, utility arrears, ability to transition to sustainable energy sources, etc. This

- will require gathering first-hand views of those living in energy poverty, as they will best understand what is needed to eradicate the problem.
 - There is furthermore a need to identify which type of energy is being consumed, so that a commensurate analysis of health harms resulting from energy poverty can be identified.
- **Monitoring and Evaluation:**
 - Effective monitoring and accountability are essential to track progress and make course corrections, and for citizens and communities to hold the government accountable to its obligations on energy poverty. The Strategy must include specific targets for groups at highest risk of energy poverty, including groups at high risk but currently under-represented in official statistics such as members of the Traveller community.’ Clear monitoring and accountability mechanisms that are measurable, actionable, and time-bound are essential to policy coherence and protecting citizens’ rights under the Aarhus Convention.
- **Public Participation:**
 - Those with lived experience of energy poverty in particular must be included at all stages in the design and delivery of a new Energy Poverty Strategy. CLM is deeply concerned that the Department have not ensured that the Strategy is afforded appropriate and inclusive public consultation. This consultation opened in August – during peak annual leave and school holidays – and was open for a period of only four weeks. In the design of the Strategy, Community Law and Mediation recommend convening a focus group including key stakeholders across civil society and must ensure to reach those with lived experience of energy poverty.
- **A Rights-Based Approach:**
 - CLM recommends the consultation and collaboration with relevant anti-poverty, housing, health, community, social justice and human rights bodies to ensure the Strategy is fully poverty and equality proofed.
 - In seeking to address energy poverty, the Government should be cognisant of its 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, many of which are engaged in relation to energy poverty, including the right to livelihood, right to health, right to family life and right to non-discrimination.
- **Consistency with Climate Justice:**
 - We recommend that the new Energy Poverty Strategy prioritises win-win climate action policies that help address inequality and ensure that the cost of climate mitigation and adaptation measures does not fall unfairly on marginalised and vulnerable groups. Measures must aim to eradicate both energy poverty and energy pollution at the same time, such as increasing retrofitting and energy efficiency measures directed at households experiencing energy poverty.
- **Commit to delivering an Energy Poverty Act in 2023:**
 - To ensure accountability and long-term political commitment towards the eradication of energy poverty, the Strategy should commit to delivering an Energy Poverty Act in 2023. Scotland’s Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 includes the following provisions, by way of example:

- A new definition and measurement framework for fuel poverty;
- A legally-binding target to reduce fuel poverty to no more than 5% of households, and that no more than 1% of households should be in extreme fuel poverty, by 2040; *(It is CLM's view that a 21-year target is too long, and that Ireland should aim to eradicate energy poverty much sooner than 2040.)*
- A duty on Ministers to produce a long-term strategy outlining how delivery of the 2040 target will be achieved;
- A duty on Ministers to produce a monitoring report every 5 years;
- The establishment of an independent fuel poverty advisory panel.

Q6. What other issues should be considered by the Government to inform just transition policy in the 2023 Climate Action Plan?

(a) Public Participation

We raise an overarching concern in relation to the obligation on the State to enable meaningful and effective public participation on this consultation. 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. CLM notes the absence of an overarching human rights framework 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.

(b) Access to Justice

Access to environmental justice is recognised as both a human right and also, as a right in international environmental law. Principle 10 of the Rio Declaration as well as the Aarhus Convention accord a central importance to access to justice in achieving the goal of environmental protection. Access to justice is furthermore critical to the effective implementation of environmental and climate law and policy. A recent landmark report by the Intergovernmental Panel for Climate Change credited climate litigation with influencing: “the outcome and ambition of climate governance.”⁴⁶ A review of the implementation of environmental law across the EU found that: “*There have been important changes in the enforcement of European Union environmental law*

⁴⁶ IPCC, 2022: *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA. doi: 10.1017/9781009157926

over the last 25 years. Environmental law has traditionally been reliant on the European Commission, but the Commission has started to withdraw from enforcement. Instead, it is undertaking efforts to 'outsource' enforcement to environmental nongovernmental organisations (NGOs) by systematically promoting access for such groups to national courts.”⁴⁷

The Aarhus Convention provides that access to justice must be “fair, equitable, timely and not prohibitively expensive”, however, in Ireland, there is currently no legal aid available in environmental matters.

The EU Commission’s environment directorate, Aurel Ciobanu-Dordea, has stated that “Ireland continues to be the most expensive member state in which to make an environmental claim before the courts . . . Many have accumulated significant costs simply litigating the question of cost clarity itself. This needs to be addressed. And we are not saying this for the first time.”

CLM calls upon the Government to amend the Civil Legal Aid Act 1995 to provide for legal aid for plaintiffs, including environmental NGOs, seeking to challenge environmental decisions to ensure effective access to justice in line with the Aarhus Convention, Article 47 of the Charter of Fundamental Rights of the European Union and Articles 6 and 13 of the European Convention on Human Rights. This should include the amendment of the express restriction on civil legal aid being granted in public interest and multi-party actions, as set out in Section 28(9) of the 1995 Act. Representative or multi-party actions are an effective way for marginalised persons to vindicate their rights in court. In its consultation paper on multi-party litigation, the Law Reform Commission recommended that the 1995 Act be interpreted as allowing legal aid for representative actions. Despite such reform being desirable in terms of access to justice, increased efficiency and greater consistency in the law, this recommendation has not been followed.

Q7. Should the proposed Just Transition Commission have any other functions in addition to those described above?

& Q8. What mixtures of skills and expertise are required on the Just Transition Commission?

In response to questions 7 & 8, CLM fully supports the recommendations of the Just Transition Alliance, which are as follows:

- As a matter of urgency, move immediately to establish a National Just Transition Commission, in advance of formal legislation, based on social dialogue and comprised of representatives of government, trade unions, employers, affected communities and civil society. The Commission would be charged with developing the national framework and blueprint for Just Transition covering the entire economy, in line with the ILO Guidelines for a Just Transition.
- The focus of the Commission will be on job retention, protection of living standards, skills development, the creation of Decent Work in respect of new employment opportunities

⁴⁷ Andreas Hofmann (2019) ‘Left to interest groups? On the prospects for enforcing environmental law in the European Union’, *Environmental Politics*, 28:2, 342-364, <https://doi.org/10.1080/09644016.2019.1549778>

arising from the transition - particularly in the renewable energy sector - and will underpinned by a commitment to genuine community and regional development;

- Act with urgency to ensure that those sectors of the economy and those regions that are most vulnerable to change are prioritised under the Just Transition process;
- Commit to the development of a new overarching policy and strategy for the energy sector that ensures the maximum retention of key energy assets in public ownership and a leading, strategic role for the State in the development of the renewable energy;
- This process must align with commitments entered into under the United Nations' Sustainable Development Goals (particularly SDG 7) on ensuring "access to affordable, reliable, sustainable" energy for all. To this end, it is critical that energy is officially designated as an 'essential public good' (like health or education) and that there is a guarantee of access to affordable energy as a core policy priority of government.
- Furthermore, CLM call upon the Government to develop a National Just Transition Plan, beyond the midlands region, and to act with urgency to ensure that those sectors of the economy and those regions that are most economically disadvantaged are prioritised under the Just Transition process;
- Protect and improve terms and conditions of employment, and prioritise decent wages for decent work;
- Ensure that trade unions and workers have a leading, strategic role in the development and operation of the Just Transition process