

LAW SOCIETY SUBMISSION



REVIEW OF THE NATIONAL ADAPTATION FRAMEWORK

DEPARTMENT OF THE ENVIRONMENT, CLIMATE & COMMUNICATIONS

20 JULY 2022

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

Contents

1. Introduction	4
2. Response to Consultation Questions.....	4

Question 1: What National information sources do you use to inform yourself about Climate Impacts and Adaptation? Give examples Climate Ireland, others?

Question 2: What improvements would you like to see made to these sources for additional information or to make them more user friendly?

Question 3: Given that the impacts of climate change are uncertain depending on the degree of warming and other factors, how do you think that this uncertainty can be best managed in National Adaptation policy?

Question 4: Are there any significant policy gaps in the current NAF that might be addressed in a new or revised NAF?

Question 5: Are there any Sectors that are not included that you believe should be included?

Question 6: What specific areas or Sectors that should be given increased emphasis? How do we best integrate Sectoral and Local Adaptation Policy into the NAF? How can we better integrate the concept of “just resilience” into National Adaptation Policy?

1. Introduction

- 1.1. The Law Society of Ireland (“the **Society**”) welcomes the opportunity to contribute to the public consultation on the review of the National Adaptation Framework (“the **Review**”) by the Department of the Environment, Climate and Communications (“the **Department**”).
- 1.2. The Society is the educational, representative and co-regulatory body for the solicitors' profession in Ireland. This submission is based on the views of members of the Society's Human Rights & Equality Committee which is comprised of solicitors with experience and expertise in national/international human rights law and climate/environmental law.
- 1.3. The Review comes at a time when the effects of climate change in Ireland are prominent, with increasing temperatures and unstable weather conditions affecting vulnerable communities the most. The IPCC Sixth Assessment Report details irreversible loss in ecosystems, extinction of species, reduced food/water security and extreme weather events as a result of climate change. It further warns that climate change is escalating so rapidly, its impacts may soon overwhelm nature and human capacity to adapt.
- 1.4. The Society welcomes Ireland's participation in international efforts to combat climate change, in becoming State Party to the United Nations Framework Convention on Climate Change (1992), the Kyoto Protocol (1997) and the adoption of the legally binding Paris Agreement 2015. The Government is also under an obligation to comply with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the “**Aarhus Convention**”).
- 1.5. The Climate Action and Low Carbon Development (Amendment) Act 2021 (the “**2021 Act**”) sets out the national framework for the State to meet its commitments under international and EU law. It places a legal obligation on Government to half emissions by the end of this decade and reach net zero emissions by 2050. The 2021 Act reconfirms the Government's commitment to pursue efforts to reduce greenhouse emissions and to limit global temperature increase to 1.5 degrees above pre-industrial levels, as required by the Paris Agreement.
- 1.6. Noting the expansive area covered by the questions set out in the Consultation Document, some of which are beyond the scope of the Society, this submission will focus on human rights and equality concerns in relation to the Review and provide relevant responses.

2. Response to Consultation Questions

Question 1: What National information sources do you use to inform yourself about Climate Impacts and Adaptation? Give examples Climate Ireland, others?

- 2.1. Our sources of information vary depending on the specific information required. For example, the [Department of Environment, Climate and Communications](#) and the [Department of Agriculture, Food and the Marine](#)'s webpages provide useful updates on legislation and policy (and the review/reform of both) related to climate change and the environment. For information on the impact of climate change on the Irish environment and adaptation measures, we look to [Teagasc](#), the [Environmental Protection Agency](#) and the [Marine Institute](#).
- 2.2. The [Climate Change Advisory Council](#) provides useful assessments on Ireland's progress in transitioning to a low carbon, climate resilient and environmentally sustainable economy by 2050. [Climate Ireland](#) is a useful source of information on the changes we can expect in our climate as a result of climate change.
- 2.3. At times, we look to non-governmental organisations such as [Friends of the Irish Environment](#), [Community Law & Mediation](#) and [Eco Advocacy](#) for information on action taken by civil society to encourage compliance with our obligations under international/EU law and to ensure sufficient access to justice in respect of environmental matters.

Question 2: What improvements would you like to see made to these sources for additional information or to make them more user friendly?

- 2.4. Bodies established by statute to provide information and advice on climate change, such as the Climate Change Advisory Council as established under the **2015 Act** should disseminate accessible information for the benefit of the general population.
- 2.5. Reports released by the Advisory Council and State-funded bodies are generally directed at those with knowledge of climate change and environmental issues. For example, [Climate Ireland](#) has been specifically designed for an audience of policymakers and excludes those who may not have prior knowledge in that area.
- 2.6. Citizens Information is the primary source of information in Ireland on policy and changes in legislation. The webpage dedicated to "[Climate change and Ireland](#)" is largely outdated, with no mention of the significant amendments made to 2015 Act by the [amending Act of 2021](#), and does not provide simple explanations of legislation, climate plans, relevant frameworks and caselaw.
- 2.7. The needs of disabled persons, persons with literacy issues and migrant communities should be considered when disseminating information on climate change and the environment. Information could be provided through videos with subtitles and/or Irish Sign Language interpreters, infographics, or "easy-read" versions of reports which are designed specifically for disabled persons. Bullet-pointed summaries should be provided for all reports to ensure that the main findings are easily accessible for all members of the public.

2.8. Article 5 of the Aarhus Convention requires that States provide environmental information to the public in an accessible and transparent manner. Information should be provided on Ireland's obligations to tackle climate change under EU and international law and any consequences where the country fails to comply with those obligations. Sufficient transparency on the State's legal obligations arising from domestic legislation to tackle climate change, and the steps taken to achieve same, is needed. Without transparency, Ireland risks breaching its obligations under the Aarhus Convention and the public's right to environmental information.

2.9. The Society submits that current methods of disseminating information on climate change and the environment are insufficient to fulfil Ireland's obligations under the Aarhus Convention.

Question 3: Given that the impacts of climate change are uncertain depending on the degree of warming and other factors, how do you think that this uncertainty can be best managed in National Adaptation policy?

2.10. We consider that several measures could be introduced in the revised National Adaptation Policy to provide a level of resilience to the impacts of climate change, even accounting for the high level of uncertainty in relation to same.

2.11. Civil society should be consulted prior to the development of climate change policy and legislation, and included in implementation measures around same. Early inclusion of civil society will ensure that the needs and concerns of vulnerable communities are taken into account at any early stage. If such needs fail to be considered, this could lead to the implementation of climate change measures that may prove averse to the needs and concerns of vulnerable communities.

2.12. Easily accessible monitoring and accountability mechanisms should also be established to ensure:

2.12.1. the success of the National Adaptation Framework; and

2.12.2. that any concerns in relation to same are raised.

2.13. When introducing measures to respond to the long-term impacts of climate change, the Government must address the issue of inequality and seek to improve quality of life for those living in Ireland. Consideration should be given to measures necessary to help people transition from employment in high carbon emission industries (who may lack necessary skills for employment in other sectors), to low-income households reliant on products, to services/practices harmful to the environment that may be phased-out for expensive alternatives. Such measures could include free access to training and development, increasing green infrastructure, improving the affordability and accessibility of public transport, and incentives to move toward full green-energy households. The question of inequality should be consistently monitored during the transition to a more resilient society in order to ensure the protection of our most vulnerable communities.

- 2.14. [Regulation \(EU\) 2018/1999](#) on “Governance of the Energy Union and Climate Action” required that Ireland submit a long-term climate strategy by 1 January 2020 for the period 2020-2050, to be consistent with the EU’s climate neutrality objective and to provide transparency with respect to steps taken by Government to achieve the net zero target enshrined in the 2021 Act.
- 2.15. The Department of Education, Climate and Communications launched a public consultation on the long-term climate strategy which provided just 15 working days for responses. Such a short deadline operates to restrict public participation and risks violating the Aarhus Convention.
- 2.16. The long-term strategy is yet to be released which means that Ireland is among only five EU countries that have failed to submit its long-term strategy to the European Commission. Friends of the Irish Environment have [threatened legal action](#) if the Government does not fulfil its EU law obligations to do so. A recent decision by the UK High Court of Justice in [Friends of the Earth v Secretary of State for Business, Energy and Industrial Strategy](#) held that the UK Government failed to comply with its legal obligation to report on proposal and policies for meeting its carbon budgets under Section 14 of the [Climate Change Act 2008](#) and ordered the Defendant to compile a new report by end March 2023 in line with the requirements of that Act.

Question 4: Are there any significant policy gaps in the current NAF that might be addressed in a new or revised NAF?

- 2.17 See response to Q3.

Question 5: Are there any Sectors that are not included that you believe should be included?

- 2.18 Ireland’s first National Adaptation Framework identified 12 key sectors which were required to develop sectoral adaptation plans for September 2019 for approval by Government. The 12 sectors were divided under four themes: Natural and Cultural Capital, Critical Infrastructure, Water Resource and Flood Risk Management and Public Health.
- 2.19 The Society notes the absence of the housing and planning sector from the Critical Infrastructure theme, particularly in light of the [Housing for All Plan](#) that envisages 33,000 homes being built annually for the next 5 years. This significant increase in construction will almost certainly impact Ireland’s ability to meet its climate obligations under EU and International law.
- 2.20 **The Society submits that the housing and development sector should be included in the revised National Adaptation Framework and that the Government Departments which are responsible for governance of the sector should develop adaptation plans around same.**

Question 6: What specific areas or Sectors that should be given increased emphasis?

- 2.21 Increased monitoring should be conducted on sectors which directly impact vulnerable communities and areas where the introduction of certain measures risk exacerbating inequality.

- 2.22 A human rights-based assessment should be conducted for the introduction of any substantial measures across all sectors, with a particular emphasis on housing, transport infrastructure, electricity and gas network, communications networks and health.

How do we best integrate Sectoral and Local Adaptation Policy into the NAF?

- 2.23 The Climate Act 2021 (which significantly amended the 2015 Act) requires sectoral and local adaptation plans to be revised every five years to:

2.23.1 reflect developments in scientific knowledge; and

2.23.2 facilitate the modification and escalation of adaptation actions as necessary.

Any current sectoral and local adaptation should be revised to reflect the key objectives established under the newly amended legislation and any new objectives set out in the revised National Adaptation Framework.

How can we better integrate the concept of “just resilience” into National Adaptation Policy?

- 2.24 Social inclusion is essential to effective adaptation policies, as failure to consider the distributional impacts of climate change can lead to greater inequality. For example, communities located in coastal areas will more likely consider relocating to areas not affected by coastal erosion/rising sea levels. Given varying levels of financial stability and the ability to find new employment in a new area, an intersectional approach to climate adaptation should be utilised as a means to recognise the multiple barriers faced by women, older persons, people with disabilities, members of the Traveller community, people living in Direct Provision and minority groups, when responding to climate change.

- 2.25 Section 42 of the [Irish Human Rights and Equality Commission Act 2014](#) requires all public bodies to have regard to the need to eliminate discrimination, to promote equality of opportunity and to protect the human rights of its members, staff and persons to whom they provide a service. As such, in formulating the new National Adaptation Framework and related climate adaptation policies, Government must ensure that the rights of all persons are respected, protected and fulfilled. This is particularly so in relation to equality rights given the different impacts of the proposed reforms on different societal groups. Such rights are further protected by the [Constitution of Ireland](#), the [EU Charter on Fundamental Rights](#) and the [European Convention on Human Rights](#).

- 2.26 The [2010 Cancun Agreements](#) recognise that disabled persons are disproportionately impacted by climate change as they may face additional barriers in accessing public services such as healthcare and transport. They may also be more vulnerable to loss of employment in the transition to a decarbonised economy and society. Article 4.3 of the [UN Convention on the Rights of Persons with Disabilities](#) (UNCRPD) requires that States ensure the participation of persons with disabilities in the development and implementation of legislation, policies and other decision-making processes around issues which relate to such persons. In its Advocacy Paper [Towards COP26: Enhancing Disability Inclusion in Climate Action](#), the International Disability Alliance outlines the following State obligations around adopting a disability-inclusive approach to climate adaptation:

- “(1) assess and document the differing impacts of climate change on the rights of persons with disabilities through an approach that recognises overlapping forms of inequality;*
- (2) develop and implement evidence-based climate mitigation and adaptation policies to prevent and minimise the negative impacts of climate change on persons with disabilities;*
- (3) provide accessible information on climate change to persons with disabilities;*
- (4) strengthen the capacity of persons with disabilities to participate in climate decision-making that concerns them;*
- (5) ensure that persons with disabilities have access to effective remedies when they suffer harm from climate action or inaction; and*
- (6) support international efforts to combat climate change and enhance the climate resilience of persons with disabilities in low- and lower-middle-income countries through international cooperation and assistance.”*

2.27 The Aarhus Convention places an obligation on Government to ensure that access to justice in environmental matters is protected. Recent developments, such as a rise in strategic litigation against public participation (SLAPP) and the proposed Housing and Planning and Development Bill 2019 will restrict access to justice in respect of environmental decision-making.

2.28 The Society made a submission on the General Scheme of the Housing and Planning and Development Bill 2019 to the Joint Committee on Housing, Planning and Local Government in January 2022 to highlight our substantial concerns around changes in standing rights and leave applications in judicial review cases. We would reiterate our recommendation that the Bill (and subsequent amendments to its text) should be assessed for compatibility with access to justice and meaningful public participation, both of which are protected by the Aarhus Convention and the Irish Constitution.