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# MAPPING JUST TRANSITION **LEGAL** **OBLIGATIONS** ON THE ISLAND OF IRELAND

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## Summary

- The concept of a just transition has evolved over time from a 'labour-focused' concept, concerned with the social and economic interventions needed to safeguard the livelihoods of those working in emissions intensive industries, to a concept concerned with mitigating the adverse and uneven impacts of climate action policies on already vulnerable and marginalised groups *within* a country.
- The concept of 'just transition' is closely linked to concepts like 'climate justice' and 'equity' and could be seen as relevant when interpreting these concepts.
- There is significant scope to argue that in Ireland, an obligation for the minister, government and the CCAC to act in a manner consistent with just transition and climate justice arises indirectly under section 3(3) of the revised Climate Act.
- The concept of a 'just transition' has been directly incorporated into Ireland's Climate Action and Low Carbon Development Act 2015 (as amended) by section 4(8) which requires the Government and Minister to have regard to the 'requirement for a just transition,' amongst 17 other criteria, in climate planning.
- There is potential for constitutional and human rights to be used as 'gap-fillers' if framework climate laws, like Ireland's revised 2015 Climate Act, does not provide adequate protection for adversely affected workers and communities.
- EU climate and energy law provides for several just transition measures including the Just Transition Fund, the Social Climate Fund and the 2023 Council Recommendations on ensuring a fair transition towards climate neutrality. These measures have been criticised for failing to create concrete legal obligations and enforceable rights for affected communities and workers.
- Northern Ireland's legal framework for climate governance has only been established relatively recently. The Climate Change Act (Northern Ireland) 2022 creates quite extensive just transition obligations in terms of climate planning and the establishment of just transition initiatives like a 'Just Transition Fund for Agriculture' and a 'Just Transition Commission for Northern Ireland'. If effectively implemented these provisions hold significant potential to deliver a just transition. The 'non-diminution' of human rights guarantee in Article 2 of the Windsor Framework could also be applicable in an environmental and just transition context.

## What does the concept 'just transition' mean?

The concept of a just transition originates from the 1970s North American trade union and the environmental justice movements, and seeks to counter the 'jobs' versus 'the environment' framing.<sup>1</sup> As originally conceived, the concept of a 'just transition' provided a framework to inform discussions on the social and economic interventions needed to safeguard workers' jobs and livelihoods during the from a high carbon to a decarbonised and climate resilient society.<sup>2</sup> It recognised that the transition to a low-carbon society would disproportionately affect certain livelihoods and that such impacts would need to be mitigated.<sup>3</sup> It therefore emphasised the need for state supports to protect workers and communities who depend on high emissions industries from bearing an undue burden of the cost of decarbonising our society.<sup>4</sup>

In addition to this narrow 'labour-driven' concept of just transition, the concept also has a broader usage. The broader definition calls for justice in the decarbonisation process not just for workers but for a much wider constituency. It emphasises the importance of not continuing to sacrifice the wellbeing of vulnerable and marginalised groups for the sake of advantaging others, as has been common practice in our fossil fuel-based economies.<sup>5</sup> To be clear, the latter definition does not ignore the need for decent jobs and strong baseline protections for fossil fuel workers and their communities, but rather sees the just transition as encompassing these 'wins' and much more. Today, this broader definition is increasingly used to refer to 'the idea of minimising the adverse and potentially unequal socioeconomic effects that climate policies may have on various vulnerable groups and communities'.<sup>6</sup>

Climate justice is concerned with exposing the uneven responsibility for climate change and contesting the unequal distribution of impacts and response measures, both geographically and socially.<sup>7</sup> In the context of international climate law, climate justice is taken to 'refer to distributive and corrective justice considerations associated both with the impacts of climate change and of climate change response measures'.<sup>8</sup> While the 2015 Paris Agreement was the first international climate agreement to make explicit reference to climate justice (in the Preamble),<sup>9</sup> iterations of the climate justice concept, like equity,<sup>10</sup> common but differentiated responsibilities and respective capacities (CBDR-RC)<sup>11</sup> and the need for developed country leadership,<sup>12</sup> have always featured prominently.

These two concepts, just transition and climate justice, are 'in many ways overlapping and intertwined'.<sup>13</sup> Climate justice has sometimes been described as focused on interstate and intergenerational considerations of justice (e.g., concerned with questions like what would be a fair or just contribution from an individual country to global emissions reductions with regard to a national carbon budget).<sup>14</sup> Whereas just transition has been described as concerned with intrastate justice considerations (e.g., concerned with

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<sup>1</sup> The Just Transition Research Collaborative, *Mapping Just Transition(s) to a Low-Carbon World* (November 2018) 4.

<sup>2</sup> E3G, *How to ensure a just and fast transition to a competitive low-carbon economy for the EU?* (21 November 2021), 7.

<sup>3</sup> Ann M. Eisenberg, 'Just Transitions' (2019) 92 *South California Law Review* 273, 275-276.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* at 275.

<sup>6</sup> Vilja Johansson, 'Just Transition as an Evolving Concept in International Climate Law' (2023) 35 *Journal of Environmental Law* 229, 230.

<sup>7</sup> Paul Chatterton et al, "Articulating Climate Justice in Copenhagen: Antagonism, the Commons, and Solidarity" (2013) 45(3) *Antipode* 602, 603; Peter Newell et al, "Toward transformative climate justice: An emerging research agenda" (2021) 12(6) *WIREs Climate Change* 733.

<sup>8</sup> Annalisa Savaresi 'The Paris Agreement: a new beginning?' (2016) 34(1) *Journal of Energy & Natural Resources Law* 16, 23-24.

<sup>9</sup> Recital 13 to the Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS 54113 (hereinafter the Paris Agreement)

<sup>10</sup> Article 3(1) of the UNFCCC, (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (hereinafter the UNFCCC) and Article 2(2) and Article 4(1) of the Paris Agreement (n9).

<sup>11</sup> Article 3(1) and Article 4(1) of the UNFCCC, Article 2(2) and Article 4(3) of the Paris Agreement.

<sup>12</sup> Article 3(1) of the UNFCCC.

<sup>13</sup> Johansson (n6) 244.

<sup>14</sup> Sadhbh O'Neill et al, *Environmental Justice in Ireland: Key dimensions of environmental and climate injustice experienced by vulnerable and marginalised communities* (2022) 16 <https://communitylawandmediation.ie/wp-content/uploads/2022/03/Environmental-Justice-in-Ireland-230322-1.pdf>

questions around how to share the burdens and benefits from national climate policies equitably so that they do not exacerbate existing inequalities).<sup>15</sup>

However, the lines between the concepts continue to be blurred by both international practices and political declarations that increasingly acknowledge the need for developed countries to assist developing countries with managing the transition within their countries in fair and inclusive ways.<sup>16</sup> Just transition can therefore be understood as not just as having an intra-state focus but also as being concerned with justice considerations between states, approximating the concept of just transition to existing principles of international climate law like equity and CBDR-RC.<sup>17</sup> The cross-fertilisation of these concepts goes both ways. It also helps bring an intra-state focus to principles like equity so that it also encompasses concerns around minimising the adverse and potentially uneven socio-economic impacts of climate policies on already vulnerable and marginalised groups not just between states but *within* states too.<sup>18</sup>

## What just transition obligations exist under international climate law?

Recital 10 of the Preamble to the Paris Agreement was the first explicit reference to just transition in an international climate treaty.<sup>19</sup> It refers to 'taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities'. As a preambular reference this provision does not give rise to enforceable legal obligations, however it is not 'legally irrelevant' either.<sup>20</sup> Article 31 of the Vienna Convention on the Law of Treaties states that '[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.<sup>21</sup> The context of a treaty explicitly includes its preamble.<sup>22</sup> Just transition legal scholar, Vilja Johansson has suggested that the preambular recital could perform an interpretative function to inform operative treaty provisions like the principle of equity (as mentioned above) and the obligation to consider the concerns arising from the adverse impacts of the implementation of climate response measures.<sup>23</sup> She also notes that State practice since the Paris Agreement, for example in the COP 26 decisions at Glasgow and COP 27 in Sharm El-Sheikh, has extended the labour-focus of just transition within the Paris Agreement to include recognition of the need for a just transition that supports the poorest and most vulnerable.<sup>24</sup>

In terms of how international climate law is given effect under Irish law, it is important to remember that Ireland adopts a dualist approach to international agreements. Article 29.6<sup>o</sup> of the Irish Constitution states that '[no] international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas'. The effect of this rule is that 'in the absence of legislation... an international agreement to which Ireland is a party does not form part of Irish law, notwithstanding its binding effect on the State as a matter of international law'.<sup>25</sup> Furthermore, international agreements cannot be invoked before the courts and applied the Irish legal system in the absence of legislation incorporating them into domestic law.<sup>26</sup> However, unincorporated international agreements can still be used by the courts as an aid to the

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<sup>15</sup> Ibid.

<sup>16</sup> Johansson (n6) 240-242.

<sup>17</sup> Ibid at 241.

<sup>18</sup> Ibid at 238-239.

<sup>19</sup> Recital 10 to the Paris Agreement (n9)

<sup>20</sup> Johansson (n6) at 236.

<sup>21</sup> Article 31(1) Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) UNTS vol 1155.

<sup>22</sup> Ibid at Article 31(2).

<sup>23</sup> Johansson (n6) 238-239 citing Article 4(15) of the Paris Agreement (n9) and Articles 4(8) and 4(10) of the UNFCCC (n10)

<sup>24</sup> Johansson (n6) 240-242

<sup>25</sup> David Fennelly, *International Law in the Irish Legal System* (1<sup>st</sup> edn, Roundhall, 2014) [2.43].

<sup>26</sup> Ibid at [2.79]

interpretation of Irish law.<sup>27</sup> Where it is possible to do so, 'the presumption of compatibility' requires national law to be interpreted in a manner compatible with international law.<sup>28</sup>

## Has international climate law been incorporated into Irish law?

Leaving aside the EU law dimension of this question (which will be discussed below), Ireland's national framework climate act, the Climate Action and Low Carbon Development Act 2015 (as amended) could be considered to give effect to certain obligations under the Paris Agreement e.g., the requirements to produce a long-term climate action strategy.<sup>29</sup> What's more, section 3(3) of the Climate Act requires the Government and Ministers to perform their functions in relation to climate action plans, long-term climate action strategies, national adaptation frameworks, carbon budgets and sectoral emissions ceilings in a manner consistent with, amongst other things, Articles 2 and 4(1) of the Paris Agreement. Section 6A(9) imposes similar obligations on the Climate Change Advisory Council (CCAC) in the performance of its carbon budgeting functions.

Article 2 of the Paris Agreement states:

'1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

- a. Holding the increase in the global average temperature to well below 2 °C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
- b. Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
- c. Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances'.<sup>30</sup>

Article 4(1) of the Paris Agreement states:

'In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty'.<sup>31</sup>

As noted by the present author elsewhere, sections 3(3) and 6A(9) 'function as a conduit making the international law commitments to equity and common but differentiated responsibilities and respective capacities a matter of national climate law'.<sup>32</sup> The Irish courts have yet to consider the application of sections 3(3) and 6A(9). It therefore remains to be seen how expansively the courts would understand concepts like CBDR-RC and equity. Though it would seem appropriate that the concept of equity, as

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<sup>27</sup> Ibid at [2.85]

<sup>28</sup> Ibid.

<sup>29</sup> Article 4(19) of the Paris Agreement (n9); Article 15 of the Governance Regulation and section 4(1)(b) of the Climate Act.

<sup>30</sup> Article 2 of the Paris Agreement (n9), emphasis added.

<sup>31</sup> Article 4(1) of the UNFCCC (n10), emphasis added.

<sup>32</sup> Andrew Jackson and Orla Kelleher, 'Ireland's Second-Generation Climate Act: Still Playing the Laggard During the Climate Crisis?' (2023) 70 The Irish Jurist 283, 301.

incorporated via sections 3(3) and 6A(9), would be interpreted in a manner consistent with its meaning under international climate law. What's more, following Vilja Johannson's analysis there would seem to be a strong case that considerations of equity should, in this context, include not just inter-state and inter-generational justice questions around equitable shares of the remaining global carbon budget but *also* an intra-state focus. For example, Ministers, government and the CCAC should also be focusing here on minimising the adverse and potentially unequal socio-economic impacts for vulnerable and marginalised groups *nationally* of policies and measures adopted under climate plans, carbon budgets, and sectoral emissions ceilings.

The Irish courts have considered similar consistency obligations under section 15 of the revised Climate Act where requires prescribed public bodies to perform their functions *consistently with* Ireland's climate plans and objectives. In *Coolglass v An Bord Pleanála*, the Irish High Court held that these consistency obligations (strengthened from 'have regard to' obligations under the originally enacted Climate Act) impose a very high standard only just falling short of unconditional compliance.<sup>33</sup> The obligation does not require a public body to act in a way that would be prohibited by law, but it does mean exercising discretionary or evaluative powers in whatever way is likely to be consistent with the state's climate plans and objectives. On 16 May 2025, the Irish Supreme Court granted leave to appeal the High Court's decision recognising the 'very important issues' raised regarding (amongst other things) the extent of the consistency obligations under section 15 as well as the 'urgency of the matter'.<sup>34</sup> In the interim, the *Coolglass* judgment should be understood to impose strong obligations of consistency across the state.

In short, it can be argued that an obligation for the minister, government and the CCAC to act in a manner consistent with just transition and climate justice arises indirectly under section 3(3) of the revised Climate Act.

## Does the Climate Action and Low Carbon Development Act 2015 (as amended) deal with just transition explicitly?

The long title of the Climate Action and Low Carbon Development (Amendment) Act 2021, which amended the Climate Action and Low Carbon Development Act 2015 makes clear that the 2021 Act is

'to provide for the approval of plans by the Government in relation to climate change for the purpose of pursuing the transition to a climate resilient, biodiversity rich and climate neutral economy by no later than the end of the year 2050 and to thereby promote climate justice, and just transition; to make certain changes to the Climate Change Advisory Council; to provide for carbon budgets and a sectoral emissions ceiling to apply to different sectors of the economy; to provide for reporting by Ministers of the Government to a joint committee of the Houses of the Oireachtas; to provide for local authority climate action plans; for those and other purposes to amend the Climate Action and Low Carbon Development Act 2015'. (emphasis added).

Section 4(8) of the revised Climate Act requires the Government and Minister when performing their functions in relation to climate action plans, national long-term climate action strategies and national adaptation frameworks to 'have regard' to 'the requirement for a just transition to a climate neutral economy' amongst a list of 17 other criteria.<sup>35</sup> This section also requires the Minister and the Government to 'have regard to climate justice' in this context.<sup>36</sup> Section 6A(9)(b) imposes a similar obligation on the

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<sup>33</sup> *Coolglass v An Bord Pleanála* [2025] IEHC 1 (Hereinafter *Coolglass*) For a wider discussion of the judgment, see: Orla Kelleher, 'C2LI Litigation Brief #1/2025: The Irish High Court, Ireland, *Coolglass v An Bord Pleanála* - Judgment of 10 January 2025' <https://www.lexxion.eu/en/cclr-blog/c2li-litigation-brief-1-2025-the-irish-high-court-ireland-coolglass-v-an-bord-pleanala-judgment-of-10-january-2025/>

<sup>34</sup> *Coolglass v An Bord Pleanála* [2025] IESCDET 65.

<sup>35</sup> Sections 4(8) and 5A of the Climate Action and Low Carbon Development Act 2015 (as amended)

<sup>36</sup> Section 4(8)(d) of the Climate Action and Low Carbon Development Act 2015 (as amended).

CCAC to 'have regard to climate justice' in the preparation of carbon budgets. As the Irish High Court noted in *Coolglass*, with simple 'have regard to' obligations, a 'decision-maker has to take the matter into account but is free to depart from it. The weight to be attached to the matter is in principle for the decision-maker.'<sup>37</sup>

A just transition is rather weakly defined in the Climate Act as one 'which endeavours, in so far as is practicable, to (i) maximise employment opportunities, and (ii) support persons and communities that may be negatively affected by the transition'. This definition is supplemented by a non-statutory 'national transition framework' outlined in the Climate Action Plan 2021.<sup>38</sup> The four just transition principles are:

1. An integrated, structured, and evidence-based approach to identify and plan our response to just transition requirements;
2. People are equipped with the right skills to be able to participate in and benefit from the future net-zero economy;
3. Costs are shared so that the impact is equitable and existing inequalities are not exacerbated; and
4. Social dialogue to ensure impacted citizens and communities are empowered and are core to the transition process.

The 2021 Climate Action Plan also made clear that 'climate policy will need to align with these four principles'.<sup>39</sup> However, this type of just transition obligation does not promise a particular outcome but is more procedural in nature. As Vilja Johannson notes 'the softly worded [obligation] combined with the abstract definitions of just transition, offer a lot of political leeway to [government] in how they fulfil these... requirements'.<sup>40</sup> She further observes that 'the downside of this wide political discretion is that it leaves the implementation of the mechanisms vulnerable to noncompliance or bad faith performativity'.<sup>41</sup> What's more, it may be difficult to challenge non-compliance with these just transition requirements as it is difficult to say precisely what they demand from government.<sup>42</sup>

## Are there just transition obligations *beyond* the Climate Action and Low Carbon Development Act 2015 (as amended) in Ireland?

In its 2023 Policy Statement on a Just Transition, the Irish Human Rights and Equality Commission stated that '[h]uman rights and equality are critical to the achievement of Just Transition and climate change action'.<sup>43</sup> It noted in the context of Climate Action Plan 2023 that a 'human rights and equality based approach should not be ... limited to global climate commitments... but must be fundamental to domestic climate action too'.<sup>44</sup> It noted that '[i]n adopting a rights-based approach, it is also essential that the State implements the Just Transition in a non-discriminatory manner, taking into account the needs of structurally vulnerable groups, including those living in poverty, older people, disabled people, women, and minority ethnic people'.<sup>45</sup>

There are a range of constitutional and human rights that are likely to be of relevance to a just transition including the rights to life, health, wellbeing/quality of life, bodily integrity, the rights of the person, human dignity, inviolability of the dwelling place, property rights, children's rights, equality before the law as well

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<sup>37</sup> *Coolglass* (n33) [64].

<sup>38</sup> Government of Ireland, *Climate Action Plan 2021: Securing Our Future* (2021) 40.

<sup>39</sup> *ibid.*

<sup>40</sup> Vilja Johannson, 'Just transition in framework climate laws: Between meaningful governance and performative law' (2025) *Review of European Comparative and International Environmental Law* 155, 160.

<sup>41</sup> *ibid* at 169.

<sup>42</sup> *ibid* at 161.

<sup>43</sup> Irish Human Rights and Equality Commission, *Policy Statement on a Just Transition* (March 2023) 4.

<sup>44</sup> *Ibid* at 8.

<sup>45</sup> *Ibid* at 10.

as substantive and procedural environmental rights. There is already a growing recognition in climate litigation that constitutional/human rights can be used 'a gap-filler to provide remedies where other areas of law do not'.<sup>46</sup> The same may also prove true for just transition litigation.

## Were there other ways to incorporate the just transition into the Climate Action and Low Carbon Development Act 2015 (as amended)?

In its Pre-Legislative Scrutiny on the draft of the Climate Action and Low-Carbon Development (Amendment) Bill 2020, the Joint Oireachtas Committee on Climate Action made several significant recommendations on just transition that did not make it into revised Climate Act.<sup>47</sup> For example, it recommended defining just transition, in line with the definition proposed to the Committee by the International Labour Organisation:

"A "just transition to a climate resilient and climate neutral economy" means a transition that ensures that the economic, environmental and social consequences of the ecological transformation of economies and societies are managed in ways that maximize opportunities of decent work for all, reduce inequalities, promote social justice, and support industries, workers and communities negatively affected, in accordance with nationally defined priorities, and based on effective social dialogue".<sup>48</sup>

It was also recommended that section 3(3) should be amended to include a requirement that when carbon budgeting and adopting climate plans/strategies, Ministers and Government would have to ('shall') perform their functions in a manner consistent with climate justice and just transition.<sup>49</sup>

Various expert submissions to the Joint Oireachtas Committee recommended the just transition principles enshrined in the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 as a possible source for inspiration.<sup>50</sup> Section 35C of the Scottish Climate Act enshrines 'just transition principles' and section 35 includes an obligation on the Scottish Government to explain the extent to which its climate plans take account of these principles.

'The "just transition principles" are the importance of taking action to reduce net Scottish emissions of greenhouse gases in a way which—

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

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<sup>46</sup> Annalisa Savaresi and Juan Auz, 'Climate Change Litigation and Human Rights: Pushing the Boundaries' (2019) 9(3) Climate Law 244.

<sup>47</sup> Joint Oireachtas Committee on Climate Action, *Pre-Legislative Scrutiny on the draft of the Climate Action and Low-Carbon Development (Amendment) Bill 2020* (Oireachtas, December 2020) [33-JCCA-01] [https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_climate\\_action/reports/2020/2020-12-18\\_pre-legislative-scrutiny-on-the-draft-of-the-climate-action-and-low-carbon-development-amendment-bill-2020\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_climate_action/reports/2020/2020-12-18_pre-legislative-scrutiny-on-the-draft-of-the-climate-action-and-low-carbon-development-amendment-bill-2020_en.pdf)

<sup>48</sup> Ibid at 33-34.

<sup>49</sup> Ibid at 26.

<sup>50</sup> See: Andrew Jackson Opening statement to the Joint Committee on Climate Action on the Pre-legislative scrutiny of the Climate Action and Low Carbon Development (Amendment) Bill 2020 (Joint Oireachtas Committee on Climate Action, 21 October 2020); TASC, *TASC short submission to the Oireachtas Committee on Climate Action Opinion on Just Transition and the Climate Action and Low Carbon Development (Amendment) Bill 2020* (22th October 2020)

- e) contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty’.

Vilja Johannson notes that this ‘duty to explain’ under the Scottish Climate Act ‘adds useful transparency to the application of the guiding requirements and could support its fulfilment’.<sup>51</sup> These recommendations were not followed in the final text of the revised Climate Act in Ireland.

## Are just transition obligations legally enforceable?

The Irish Courts have yet to interpret the scope of sections 3(3), 4(8) or 6A of the revised Climate Act, though several climate cases are pending before the Irish courts.<sup>52</sup> These cases – challenging the Climate Action Plans 2023 and 2024, the long-term strategy and the sectoral emissions ceilings – fall within the definition of climate litigation, ‘lawsuits that involve material issues of climate change science, policy or law’.<sup>53</sup> Closely associated with climate litigation is the emerging field of just transition litigation.

Just transition litigation is defined as ‘lawsuits raising questions over the justice and fairness of laws, projects or policies adopted to deliver climate change adaptation and/or mitigation’.<sup>54</sup> These cases do not aim to undermine climate action.<sup>55</sup> Instead their purpose is shine a light on the inequalities associated with the transition, in terms of the distribution of socio-economic and environmental burdens and benefits and whose views are taken into account in decision-making.<sup>56</sup> Globally, these cases, which foreground questions of justice, have tended to be brought under constitutional, human rights, planning or tort law.<sup>57</sup> They tend to raise questions in relation to the social and environmental impacts of renewables projects like windfarms, biomass power plants, hydroelectric dams or critical raw mineral mines on individuals and communities.<sup>58</sup> Although this concept of just transition litigation has yet to be employed in an Irish context, there are likely several cases that could be classified as such. For example, the ongoing public inquiry into gold mining in Sperrins – which was recently suspended to facilitate a cross-border public participation exercise – could arguably be understood in these terms.<sup>59</sup>

## What just transition obligations exist under EU climate and energy law?

Under the 2019 European Green Deal, the European Commission detailed its strategy to ensure that the EU achieves climate neutrality by 2050, decouples economic growth from resource use and leaves no-one behind.<sup>60</sup> The EU enshrined its commitment to achieving net-zero greenhouse gas emissions by 2050 at the latest and a reduction of at least 55% in net greenhouse gas emissions by 2030 relative to 1990 levels

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<sup>51</sup> Johannson (n40) 161.

<sup>52</sup> For discussion see Andrew Jackson’s discussion of the pending second wave of climate cases in Ireland here <https://communitylawandmediation.ie/watch-it-back-cej-webinar-irelands-climate-justice-obligations-outlining-irelands-legal-scientific-and-policy-priorities-ahead-of-a-new-government/>

<sup>53</sup> Annalisa Savaresi and others, ‘Conceptualizing just transition litigation’ (2024) 7(11) Nature Sustainability 1379.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> V’cenza Cirefice, ‘Sperrins Gold Mine Inquiry Suspended: Transboundary Solidarity for Environmental Justice in Ireland’ (Rundale, 6 March 2025) <https://www.rundale.org/2025/03/06/sperrins-gold-mine-inquiry-suspended-transboundary-solidarity-for-environmental-justice-in-ireland/> and Amy Strecker, V’cenza Cirefice, Alison Hough and Ciara Brennan, ‘Transboundary environmental justice: Gold mining in the Sperrin Mountains’ EJNI Research Report, April 2025, available [here](#).

<sup>60</sup> Commission (EU) ‘The European Green Deal’ (Communication) COM(2019) 640 final, 11 December 2019.

in the European Climate Law.<sup>61</sup> Significantly Article 4(5)(c) stipulates that when proposing a 2040 target for the EU, the Commission 'shall consider,' amongst other things, 'the need to ensure a just and socially fair transition for all'. In February 2024, the Commission recommended reducing the EU's net greenhouse gas emissions by 90% by 2040 relative to 1990 levels.<sup>62</sup> The process of adopting a 2040 target is ongoing with concerns that the European Commission may weaken this target.<sup>63</sup>

Under the Governance Regulation (the other key instrument of the EU's climate regulatory framework) the EU and its Member States are required to produce 10-year plans for 2021-2030 known as National Energy and Climate Plans (NECPs) as well as a national Long-Term Strategy (LTS) with a horizon to 2050.<sup>64</sup> NECPs are required to detail (amongst other things) the macroeconomic and, to the extent feasible, the health, environmental, skills and social impact of the planned policies and measures for 2021-2030.<sup>65</sup> There is also an obligation on Member States to assess the number of households in energy poverty in its NECP and if a Member State identifies a significant number of households in energy poverty, it must include a national indicative objective to reduce energy poverty in the final NECP.<sup>66</sup> The LTS is expected to detail the expected socio-economic effect of the decarbonisation measures.<sup>67</sup> For further discussion of the just transition dimensions of the NECP and LTS see EJNI's corresponding briefing paper on Just Transition Initiatives.<sup>68</sup>

The Fit for 55 Package contains some 19 pieces of legislation to implement the EU's 2030 target of at least a 55% reduction in GHG emissions.<sup>69</sup> The three key EU just transition measures for 2030 are the EU's Just Transition Fund, the Social Climate Fund and 2023 Council Recommendation on a fair transition towards climate neutrality.<sup>70</sup>

- The objective of the Just Transition Fund is to allocate €17.5 billion between 2021 and 2027 to 'provide support to the people, economies and environment of territories which face serious socio-economic challenges deriving from the transition process'.<sup>71</sup> To access the funding, Member States were required to prepare Territorial Just Transition Plans by 2022 outlining the support measures they were planning to undertake from the list of support activities listed in the Regulation.<sup>72</sup>
- The Social Climate Fund (SCF) amounts to approximately €86.7 billion of public funding from 2026-2032 to advance a socially fair transition towards climate neutrality.<sup>73</sup> It is designed to provide Member States with funding to alleviate the social and economic impacts of the ETS 2 on vulnerable households, micro-enterprises and transport users.<sup>74</sup> The ETS 2 will introduce a carbon price to the transport and building sector from 2027 and will ringfence some revenue to support

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<sup>61</sup> Articles 2 and 4 of the Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law) [2021] OJ L 243.

<sup>62</sup> European Commission, 2040 Climate Target [https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2040-climate-target\\_en](https://climate.ec.europa.eu/eu-action/climate-strategies-targets/2040-climate-target_en)

<sup>63</sup> Karl Mathiesen, 'EU exploring weaker 2040 climate goal' (Politico, 31 March 2025) <https://www.politico.eu/article/eu-exploring-weaker-2040-climate-goal-90-greenhouse-gas-cut-wopke-hoekstra/>

<sup>64</sup> Parliament and Council Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action [2018] OJ L328/1 (hereinafter the Governance Regulation)

<sup>65</sup> Article 8(2) of the Governance Regulation (n64).

<sup>66</sup> Article 3(3)(d) of the Governance Regulation (n64).

<sup>67</sup> Article 15(4)(d) of the Governance Regulation (n64)

<sup>68</sup> Caitlin McIlhennon, 'Mapping Just Transition Initiatives on the island of Ireland', June 2025, Environmental Justice Network Ireland Research Paper.

<sup>69</sup> For discussion of the Fit for 55 Package see: Sebastian Oberthür and Kati Kulovesi, 'Accelerating the EU's climate transformation: The European Green Deal's Fit for 55 Package unpacked' (2025) 34(1) RECIEL 7.

<sup>70</sup> Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund [2021] OJ L231/1; Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation 2021/1060/EU [2023] OJ L 130/1; Council Recommendation on ensuring a fair transition towards climate neutrality [2022] OJ C243

<sup>71</sup> Article 1 of the Just Transition Fund Regulation (n70).

<sup>72</sup> See Articles 8 and 11 of the Just Transition Fund Regulation (n70)

<sup>73</sup> European Commission, *Social Climate Fund* [https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/social-climate-fund\\_en](https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/social-climate-fund_en)

<sup>74</sup> Article 3 of the Social Climate Fund Regulation (n70)

those seriously impacted under the Social Climate Fund.<sup>75</sup> To access the funding, Member States must submit Social Climate Plans to the Commission by June 2025 outlining how they will allocate SCF resources and define programmes for the 2026-2032 period to address the social and distributional impacts of rising fossil fuel prices.<sup>76</sup> The Commission must access a Member State's Social Climate Plan to ensure compliance with the Regulation.<sup>77</sup> For further discussion of the SCP and SCF see EJNI's briefing document on the '[Social Climate Fund and Social Climate Plans: Implications for Ireland](#)' and '[Public Consultation and Ireland's Social Climate Plan](#)'.

- The 2023 Council Recommendation on a fair transition towards climate neutrality provides guidance for Member States on policies to ensure that the transition to climate neutrality is socially fair and inclusive. Member States are encouraged to adopt a comprehensive policy package for a fair transition towards climate neutrality. The Recommendation places a particular focus on measures such as active support for quality employment, access to education, training and lifelong learning, fair tax benefits and social protections and access to affordable essential services and housing.<sup>78</sup>

Arabadjieva and Bogojević have criticised the EU's just transition legal framework as mainly reflecting a '*reactive rationale*' that is notably less ambitious and comprehensive relative to the EU's laws on climate action.<sup>79</sup> They argue that:

'a common drawback of all three just- transition measures is that they do not contain any concrete *legal obligations* to provide support for workers and communities, or any corresponding *enforceable rights* for workers to receive support, for example in the form of a right to retraining or social assistance. Measures are instead left to the discretion of the Member States, which differ in their resources, institutional capacities, technical expertise and political motivations'.<sup>80</sup>

While this is certainly a valid criticism of the EU's just transition legal framework, it is useful to bear in mind in the Irish context the additional sources of just transition obligations, as outlined above, the parameters of which have yet to be tested.

## What just transition obligations exist under Northern Irish law?

Northern Ireland's legal framework for climate governance has only been established relatively recently. Post-Brexit, there are two significant sources of just transition obligations: the Climate Change Act (Northern Ireland) 2022 and, more indirectly, the rights guarantee enshrined in Article 2 of the Windsor Framework to protect rights guaranteed under the 1998 Good Friday/Belfast Agreement (hereafter 'the 1998 Agreement').

In June 2022, Northern Ireland's Climate Act passed into law with Royal Assent.<sup>81</sup> The Act makes provision for, *inter alia*, a 2050 net-zero target and 2030 and 2040 targets, 5 yearly carbon budgets as well as a climate action plan to meet budget/targets. In December 2024, the Northern Ireland Assembly approved

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<sup>75</sup> Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of market stability reserve for the Union greenhouse gas emission trading system [2023] OJ L 130/134 (2023 ETS Directive).

<sup>76</sup> Articles 4 and 6 of the Social Climate Fund Regulation (n70).

<sup>77</sup> Article 16 of the Social Climate Fund Regulation (n70).

<sup>78</sup> Council Recommendation on ensuring a fair transition towards climate neutrality [2022] OJ C243.

<sup>79</sup> Kalina Arabadjieva and Sanja Bogojević, 'The European Green Deal: Climate Action, Social Impacts and Just Transition Safeguards' (2024) Yearbook of European Law 1, 13.

<sup>80</sup> *Ibid* at 13-14.

<sup>81</sup> For summary of the key provisions of the Act see: Anurag Deb 'The Climate Change Act (Northern Ireland) 2022 (FTB, 30 September 2022) <https://www.ftbchambers.co.uk/elblog/view/the-climate-change-act-northern-ireland-2022>

secondary legislation setting Northern Ireland's first three carbon budgets<sup>82</sup> and a new 2040 target to reduce emissions.<sup>83</sup>

Northern Ireland's Climate Act contains a number of innovative provisions on just transition. For example, modelled on the Scottish Climate Act, section 30(3) enshrines the 'just transition principle' which all Northern Ireland departments must have regard to (amongst a list of other criteria like the 'desirability' of policy coordination with the UK and Ireland) when deciding on the proposals and policies to be included in each Climate Action Plan. As seen below, the 'just transition' is defined broadly - referring to both the labour dimension of just transition and the more expansive notion of just transition supporting those most affected and using the transition as an opportunity to tackle existing inequalities.

Section 30(3): 'The just transition principle is the importance, in taking action to reduce Northern Ireland emissions and increase Northern Ireland removals, of doing so in a manner which, so far as possible, achieves the objectives of—

- (a) supporting jobs and the growth of jobs that are climate resilient and environmentally and socially sustainable,
- (b) in particular, supporting the agriculture sector and other sectors of the economy in Northern Ireland that are likely to be most affected by action to reduce those emissions and increase those removals,
- (c) supporting low-carbon investment and infrastructure,
- (d) developing and maintaining consensus through engagement with (among others) workers, trade unions, communities, non-governmental organisations and representatives of the interests of business and industry,
- (e) creating decent, fair and high-value work in a way which does not negatively affect the current workforce,
- (f) contributing to a resource-efficient and sustainable economy,
- (g) supporting persons who are most affected by climate change, particularly those who may have done the least to cause it or may be the least equipped to adapt to its effects,
- (h) reducing, with a view to eliminating, poverty, inequality and social deprivation,
- (i) eliminating gender inequality and advancing equality of opportunity between men and women,
- (j) supporting the social and economic needs of people in rural areas, and
- (k) taking into account the future generations principle'.

Similar to the Scottish Climate Act, section 30(6) requires that 'each Climate Action Plan must explain how the proposals and policies set out in the plan take account of the just transition principle'. At the time of writing, Northern Ireland has not yet adopted its first Climate Action Plan so it remains to be seen how the just transition principle will operate in practice.

Inspired by the Scottish legislation,<sup>84</sup> the Northern Ireland Climate Act also makes provisions for two other just transition initiatives: a Just Transition Fund for Agriculture and a Just Transition Commission for Northern Ireland. Section 31 requires the Department of Agriculture, Environment and Rural Affairs (DAERA) to establish a 'Just Transition Fund for Agriculture' in order to provide advice and financial assistance to the agricultural sector to deliver its contribution under policies and proposals for the Climate Action Plan. Section 37 places a duty on the DAERA to establish a Just Transition Commission for Northern Ireland. Once established, the Just Transition Commission will have an oversight role in relation to the

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<sup>82</sup> The Climate Change (Carbon Budgets 2023-2037) Regulations (Northern Ireland) 2024.

<sup>83</sup> The Climate Change (2040 Emissions Target) Regulations (Northern Ireland) 2024.

<sup>84</sup> Deb (n81)

implementation of the just transition elements of the Act and an advisory role to departments to ensure compliance with the just transition principle. Neither the Just Transitions Fund nor the Just Transition Commission (JTC) have been established yet though work does seem to be underway following a public consultation on the JTC in January 2025.<sup>85</sup>

Progress towards implementing Northern Ireland's Climate Act is less advanced than in Ireland. This could be attributed to how recently the Act was enacted and to delays in adopting carbon budgets, a 2040 target and the implementation of other key aspects of the climate governance framework while the Assembly was suspended and since it was re-established in early 2024. In early 2025, some action has been taken to push forward implementation (e.g. consultations on a [Fuel Poverty Strategy](#) for NI and on the establishment of a [Just Transition Commission](#)) however it may be some time before the framework as a whole is operational. Overall, Northern Ireland's Climate Act has significant potential to support a just transition if implemented effectively, given how the concept has been integrated across the legal framework.

It is also worth briefly mentioning the significant potential of Article 2 of the Windsor Framework in the context of the just transition. Article 2 of the Windsor Framework provides legal protections that certain equality and human rights in Northern Ireland are not reduced after Brexit. Article 2 includes a legally enforceable non-diminution guarantee for human rights and safeguards, but is dependent on provisions of both the 1998 Agreement and EU law.<sup>86</sup> The precise scope of Article 2 remains to be seen but there is real potential for the Article to be deployed in an environmental context to maintain existing levels of environmental protection.<sup>87</sup> Similar to the way constitutional/human rights could serve as an important gap-filler in Ireland, there would seem to be potential for this justiciable human rights guarantee to be applied in a just transition context in Northern Ireland.

## Conclusion

The implementation of just transition obligations remains at an early stage in both Ireland and Northern Ireland, although Northern Ireland continues to lag further behind. There is significant potential to learn from the experiences of the just transition obligations in action on both sides of the border once these are 'up and running'. As the present author has argued elsewhere, binding climate acts are a 'necessary but insufficient condition' for tackling the climate crisis: 'transformative change' is required.<sup>88</sup> Taking seriously the need for a just transition and learning from the just transition experiences in both jurisdictions is likely to be an important first step towards delivering transformative change.

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<sup>85</sup> <https://www.daera-ni.gov.uk/consultations/consultation-establishment-just-transition-commission>

<sup>86</sup> Joint Declaration No. 1/2023 of the Union and the United Kingdom in the Joint Committee Established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Economic Atomic Energy Community' 17.4.2023 L102/87.

<sup>87</sup> See Ciara Brennan, Mary Dobbs, Alison Hough, Orla Kelleher and Lisa Whitten, *The Environment, Human Rights and the Windsor Framework* (Northern Ireland Human Rights Commission, forthcoming 2025)

<sup>88</sup> Jackson and Kelleher (n32) 321.