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8th June 2021

To: **An Taoiseach
Micheál Martin TD**

Government Buildings
Merrion Street Upper
Dublin 2

**An Tánaiste
Leo Varadkar TD**

Department of
Enterprise, Trade
and Employment
Kildare Street
Dublin 2

**Minister
Eamon Ryan TD**

Department of the
Environment, Climate and
Communications
29-31 Adelaide Road
Dublin 2

Re: Climate Action and Low Carbon Development (Amendment) Bill 2021

A Taoiseach, a Thánaiste agus a Aire,

We refer to our previous letter of 14th April in relation to this matter. While we did not receive any substantive response to the arguments made there, we note [Government amendment \[#107\] to the Bill](#) which has now been presented at Select Committee stage, and Minister Ryan's [statement](#) to the Select Committee on 3rd June that this amendment "tries to address one of the concerns raised" by commentators on the Bill. As amended, the new s. 6A(5) (of the Climate Action and Low Carbon Development Act 2015, as amended) would now read:

The first two carbon budgets proposed by the Advisory Council shall provide for a reduction in greenhouse gas emissions such that the total amount of annual greenhouse gas emissions in the year ending on 31 December 2030 is 51 per cent less than the annual greenhouse gas emissions reported for the year ending on 31 December 2018, as set out in the national greenhouse gas emissions inventory prepared by the Agency.

This corresponds to what we called "interpretation B" in our original letter. While this would, at least, resolve the confusion in the original text (ruling out the alternative

"interpretation A"), it *does nothing whatever to engage with the substantive criticisms we offered of such a formulation.*

Briefly, there are two fundamental difficulties. Firstly, this wording remains legally obscure, at best. The Council's role under the Act is to propose a series of 5-year carbon budgets - i.e. the total amount of greenhouse gas emissions permitted during each 5-year budget period - and not to propose the emissions reduction pathway that is to be followed (as detailed in our previous letter). As there is no direct relationship between the combined budgets for 2021-2030 and the emissions in any individual year (by design) it is entirely unclear how the Council is to "provide for" annual emissions having a certain value in 2030.

Secondly, and even more importantly, this wording sets no statutory constraint on the cumulative budget that the Council may propose for the period. To illustrate this difficulty, we present a set of illustrative emissions pathways in an Annex attached to this letter, below. As you will note, *all* the pathways shown meet the requirement referred to in the proposed s. 6A(5), in that the putative *annual* emissions in 2030 are 51% below the baseline level. However, their corresponding budgets (and thus contribution to global heating) vary over a very wide range, potentially including *zero* cumulative mitigation. As formulated, s. 6A(5) thus gives the *appearance* of setting a statutory emissions reduction target for the immediate period of 2021-2030, but without *in fact* setting any corresponding constraint on the carbon budgets that the Council can propose.

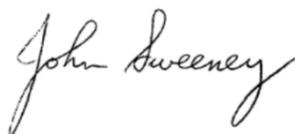
It remains unclear to us whether you consider that the emissions reduction commitment expressed in the Programme for Government¹ corresponds to *any* upper limit on cumulative emissions over the period 2021-2030. We would appreciate it if you would clarify that question explicitly. If your view is that it *does* correspond to some such upper limit, then presumably that is what should be codified in the Bill. We would very much welcome clarification on what that number is, how it is derived from the Programme for Government, and a corresponding statutory formulation.

In conclusion though, we reiterate our view that the currently proposed Government amendment of s. 6A(5) remains both bad law and bad science.

Le gach dea-ghuí,



Barry McMullin
Faculty of Engineering and
Computing, Dublin City University



John Sweeney
Maynooth University
(emeritus)



Andrew Jackson
Sutherland School of Law
University College Dublin

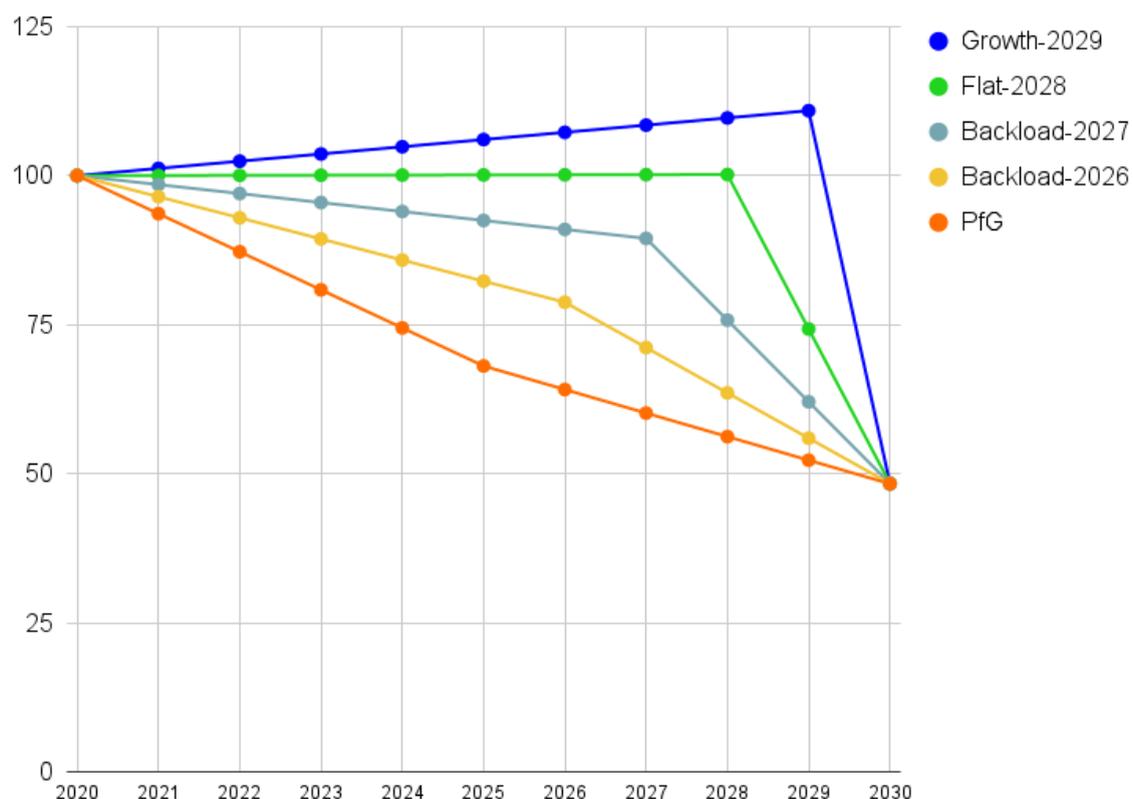
¹ "We are committed to an average 7% per annum reduction in overall greenhouse gas emissions from 2021 to 2030 (a 51% reduction over the decade) and to achieving net zero emissions by 2050."

ANNEX

The table and charts below present a set of *illustrative* (not exhaustive) pathways for annual and cumulative emissions from 2021-2030, all constrained so that annual emissions in 2030 are 51% less than in the baseline year (identified as 2018 in the proposed text of s. 6A(5)). However, the associated carbon budgets (the cumulative emissions over the period) vary from 6.9 up to 10 baseline years (i.e., zero cumulative reduction). This corresponds to an equivalent constant annual reduction rate ranging from the -7% p.a. originally stated in the Programme for Government (**PfG** pathway) down to zero% p.a. (**Growth-2029** pathway).

Illustrative pathway	Equivalent constant annual reduction rate per annum	Cumulative emissions (baseline years)	Cumulative change vs baseline
PfG	7.0%	6.9	-31.4%
Backload-2026	4.9%	7.6	-23.5%
Backload-2027	3.1%	8.4	-15.6%
Flat-2028	1.5%	9.2	-7.7%
Growth-2029	0.0%	10.0	0%

Annual emissions



Cumulative emissions

