Department of Environment, Food and Rural Affairs Consultation on the draft Climate Change Bill

A response from Friends of the Earth Scotland

12 June 2006

Introduction
Friends of the Earth Scotland is an independent member of the Friends of the Earth International network. We undertake research, advocacy and community development activities throughout Scotland in pursuit of environmental justice and sustainability. This short response represents the views of Friends of the Earth Scotland and should be read in conjunction with the more detailed comments of our sister organisation Friends of the Earth (England Wales and Northern Ireland).

Friends of the Earth Scotland welcomes the Bill and the intention to put climate change policy on a long-term and statutory footing but believes a number of issues of detail must be addressed and amended if the legislation is to be effective. In particular, we urge the UK Government to adopt appropriate arrangements to incentivise the devolved administrations to contribute vigorously and sustainably to globally equitable emissions reductions.

Setting statutory targets

1. Is the Government right to set unilaterally a long-term legal target for reducing CO_2 emissions through domestic and international action by 60% by 2050 and a further interim legal target for 2020 of 26-32%?

In summary, the principle is right, the specific targets proposed are too low. Plans to set long term and interim targets are welcome. However the most authoritative scientific evidence indicates that the specified CO_2 reductions are inadequate in relation to averting dangerous levels of global warming - especially if the UK is to make an equitable contribution to global efforts. In our view, the UK must aim to contribute towards a global effort to stabilise concentrations of CO_2 at no more than 450 ppm to limit future warming to $2^{O}C$. The UK's targets must reflect this, which implies that targets of least a 40% cut by 2020 and at least 80% by 2050 should appear on the face of the Bill. We note that such levels are in line with those proposed in France, Germany and California. To achieve this level of reduction, a minimum 3% year on year cut must commence immediately.

Carbon budgeting

2. Is the Government right to keep under review the question of moving to a broader system of greenhouse gas targets and budgets, and to maintain the focus at this stage on CO_2

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The Government's proposal that the Bill's initial focus should be on carbon dioxide is acceptable at this initial stage, but arrangements should be flexible enough to include other greenhouse gases in the near future.

More importantly, the Bill should not exclude the UK's share of emissions from international aviation and shipping. It is not adequate for these emissions to be included in the budgets only at some unspecified date in the future. This could lead to infrastructure development that makes it much harder to reach the required targets. This is incompatible with the Bill's purpose of facilitating the planning and delivery of emission reductions in the medium to long-term. These emissions should be included in the first budget period.

3. Should the UK move to a system of carbon management based upon statutory five-year carbon budgets set in secondary legislation?

We strongly advise against a five-year budgetary cycle. This is unlikely to be in sync with the electoral cycle, with each budget spanning more than one Parliament. As a result future administrations may be encouraged to delay hard decisions at the end of their term, whilst any new administrations would not take responsibility for the budgets they inherited. This is incompatible with the underlying intention of the Bill; delivery of more accountable, consistent and long-term decision-making regarding CO_2 emissions.

For this reason we support calls for annual milestones within the legal framework of the budget period which would offer greater accountability and assist the role of the climate change committee. It would also ensure that the carbon budgets of public bodies were synchronized with financial accounting, increasing accountability and integrating planning. Public bodies could still be required to set long term reduction plans in the same way as with conventional business plans, which often project over a three to five year time horizon. Innovations such as an annual allowance to purchase or sell carbon credits could be included as part of such a system to allow flexibility and generate incentives.

4. Do you agree there should be at least three budget periods in statute at any one time?

Yes, at least three budget periods should be in place at all times, with the caveat that all budgets and targets must be set so they are compatible with the total emissions reductions required by 2050. To deliver a long-term consistent approach the Bill must ensure all budgets are drawn up based on the scientific imperative and principles of global equity. These principles should be specified within the legislation

Reviewing targets

5. Do you agree there should be a power to review targets through secondary legislation, to ensure there is sufficient flexibility in the system?

Yes it is sensible and prudent to review and revise targets to reflect new scientific evidence or changes in what is agreed as an equitable contribution to global efforts.

Given that credits can be purchased and that borrowing from future allowances are allowed, we believe that the provisions that allow budgets to be amended within 18 months of their finalisation are too wide. New international agreements or changing scientific evidence are however factors where it should be permissible to revise budgets and the Bill should allow for this.

6. Are there any factors in addition to, or instead of, those already set out that should enable a review of targets and budgets?

No

Overseas Credits

7. Do you agree that, in line with the analysis in the Stern Review and with the operation of the Kyoto Protocol and EU ETS, effort purchased by the UK from other countries should be eligible in contributing towards UK emissions reductions, within the limits set under international law?

We are not against this in principle, but we have concerns regarding current trading and offset schemes and whether they deliver genuine and additional savings. The precautionary principle should therefore be applied and guidance required from the Committee on Climate Change. Until such time as the caps applied by trading schemes are sufficiently robust there should be a limit to the level of credits that can be purchased. Any credits should be clearly accounted for in annual reports and distinguishable from net emissions in the UK.

Banking and borrowing carbon credits

8. Do you agree it should be permissible to carry over any surplus in the budget? Are there any specific circumstances where you consider this provision should be withdrawn?

This would be acceptable only if the Bill clearly specified that emissions in 2050 must be restricted to an acceptable level. To take account of new scientific evidence concerning deeper cuts, the provisions relating to "carry forward' surpluses should be able to be suspended.

9. Do you agree that limited borrowing between budget periods should be allowed?

Only a strictly limited amount of borrowing would be acceptable. This should be limited to the last year of the budget and reserved for unforeseen or unpredictable events such as extreme weather or a fuel price shock. Even 1% offers more flexibility than such events would justify and a tighter limit is advisable.

Compliance

10. Is it right that the Government should have a legal duty to stay within the limits of its carbon budgets?

We support this duty although in practice there must be doubts about the enforceability as proposed in the draft bill. Our main concern is the limited value of retrospectively challenging a failure to meet targets, at which point potential redress is limited, although possible through, for example, the purchase and retiring of equivalent emissions permits on international markets. The Bill should ensure opportunity for challenge via judicial review also in relation to the proposed policy programme, or individual ministerial decisions, when it can be argued they are incompatible with the terms of an acceptable carbon budget as dictated by government targets. All legal challenges should be enabled by the provision of specific protective costs rules to ensure that the threat of costs did not deter otherwise valid challenges. With the availability of credits and borrowing the scope for challenge should be limited, but legal challenge would still be an important backstop to prevent the adoption of policies that could make the Bill's targets unachievable in the long term.

Scrutiny and the Climate Change Committee

11. Do you agree that establishing an independent body will improve the institutional framework for managing carbon in the economy?

Yes this is essential. We strongly endorse the need for annual reports, which must be as up to date as possible operating to the same time parameters as corporate reports and accounts, e.g. the data relates to some time within the previous year.

12. Do you agree that the Committee on Climate Change should have an advisory function regarding the pathway to 2050?

We believe that this must be central to the committee's role. Any actions in the early years of the legislation will inevitably have implications for the 2020 and 2050 targets and the rate of progress required in future years. It is therefore essential that the committee be charged with advising on these longer-term goals as well as the immediate budget period.

13. Do you agree with the proposal that the Committee on Climate Change should have a strongly analytical role?

Yes

14. Are these the right factors for the Committee on Climate Change to take into account in assessing the emissions reduction pathway? Do you consider there are further factors that the Committee should take into account?

Issues of international equity should be included in the list of factors the Committee takes into account. The apportionment of emissions between countries is crucial in assessing the level of cuts required in the UK. Although this will (hopefully) ultimately be determined by international agreements, advice from the Committee could help steer the UK towards the correct level of target in advance of such agreement.

15. Do you agree the Committee on Climate Change should be comprised of technical experts rather than representatives of stakeholder groups?

Yes

16. Are these the appropriate areas of expertise which should be considered? Do you consider there are further areas that should be considered or any areas that are less important?

The Committee should also include expertise on the international equity issues covered above.

17. Do you agree with the principle of taking enabling powers to introduce new trading schemes?

Allowing such enabling powers to be included in the Bill is likely to be the most efficient and timely way of ensuring their delivery, however we would welcome assurances that there will be appropriate public and parliamentary scrutiny of any schemes enacted under the auspices of the bill.

18. Do you consider that these powers are sufficient to introduce effective new policies via secondary legislation? If not, what changes would you make?

Yes

Government Reporting

19. Do you agree that the Committee on Climate Change should be responsible for an independent annual report on the UK's progress towards its targets which would incorporate reporting on a completed budget period every five years?

Yes. The reports should be based on assessing recorded progress towards the annual milestones, and what the government's key policies are expected to deliver each year. Effort should also be made to speed up the reporting timescales to close the feedback loop. A power to revise these timescales to be more responsive would be a helpful addition to the Bill.

20. Is statutory reporting the best way to drive forward progress on adaptation while at the same time ensuring Government is able to develop flexible and appropriate measures reflecting developments in key policy areas?

At this time adaptation should be less of a priority than mitigating dangerous climate change via controls over the level of emissions. However, action must be taken, and statutory reporting on adaptation measures, and their adequacy, offers a flexible framework in the meantime.

Other Comments: Devolved issues

Friends of the Earth Scotland is obviously concerned with the Bill's implications for the devolved nations of the UK. As a minimum the targets/budgets in the Bill must cover all the devolved jurisdictions, providing a framework for the UK to meet its obligations under international agreements. In doing so it should encourage the devolved administrations to deliver emissions reductions more rapidly where this is feasible.
Every part of the UK need not deliver uniform percentage cuts. But it is critical that there are no incentives for buck-passing. A differential in the contribution towards the UK target is likely to be small in terms of overall carbon savings but potentially significant in terms of policy approach.

It is also crucial that overall the UK must cut emissions as outlined in Q1. If a devolved jurisdiction believes the UK targets are inadequate in this respect, it would be unreasonable to expect additional reductions that they decide to make to result in a lower contribution elsewhere. Instead the emissions should be seen as additional to the overall global effort. So, should the Scottish Parliament decide to go beyond final targets in the UK these should be treated as additional to the Bill objectives, not part of it. To do otherwise removes any incentive for more ambitious policies at a devolved level, which is not in the interests of the UK.

Any arrangements for delivering the Bill's objectives at a devolved level should be consistent with those in the UK and be subject to their own rigorous independent scrutiny processes and annual reports delivered in tandem with those at Westminster

The UK Government should negotiate an agreement with each of the devolved jurisdictions regarding the level of budgets for that jurisdiction, so that the cuts when combined meet or exceed those required under the Bill. This should take the form of a published strategy for each jurisdiction showing how budgets will be met, or a "memorandum of understanding". With agreement, Ministers in the devolved assemblies could adopt a duty to meet their part of the memorandum of understanding just as Ministers in Westminster are required to meet the budgets in the Bill.

The Committee on Climate Change should form subcommittees to scrutinise each devolved jurisdiction and the progress they are making. Each subcommittee should be made up of four members, with two members serving on the main Committee and the other two working solely in their devolved jurisdiction considering progress and policies. This balances scrutiny of progress in the devolved jurisdictions with the broader picture of UK emissions.

A reporting structure should be arranged so that the devolved jurisdiction subcommittees feed reports on progress into the Committees report on UK progress. Similar duties should be agreed with Ministers in the devolved jurisdiction to respond to the subcommittee reports. If the devolved administrations take on further duties under devolved legislation, they may wish to appoint separate independent advisers.

Carbon disclosure

Finally, we would wish to take the opportunity to reinforce the case, already made elsewhere by the Aldersgate Group, for improving carbon disclosure[1]. The level of current carbon disclosure is too low, and what there is, is not comparable, and the lack of a clear definition and protocols is impeding progress. This Bill should require companies to report on their carbon emissions, and provide for the establishment in law of a common reporting standard, which is driven by Government and delivered by business.

We trust that you are able to take these comments into account.

For further information please contact:

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[1] 'Carbon Costs: Corporate Carbon Accounting and Reporting' *Aldersgate Group May 2007*