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Recent Developments in the Area of Climate Change Law in the United Kingdom

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The Climate Change Act 2008

The Climate Change Act 2008 (2008 Act)[1] was touted as the first long-term legally binding commitment to address climate change agreed by any country and indeed, it set in motion many subsequent legal developments which now shape the current law and policy in this area. In terms of objectives, the 2008 Act creates a binding target of an 80% cut in greenhouse gas emissions by the year 2050, measured against a 1990 baseline level (s.1). Whist this is a commendable target to be set, it remains a largely unenforceable obligation to place on whoever happens to be the Secretary of State for the United Kingdom (UK) in 2050. The Act affords much attention to the creation of a carbon budgeting system whereby an amount for the net UK carbon account (i.e. the 'carbon budget') is determined for three consecutive five year periods, beginning with 2008-2012. This effectively provides interim targets which will help keep the UK on track to achieve its long term goal of an 80% reduction. There are statutory requirements regarding consultation and reporting in relation to carbon budgeting, much of which is to be carried out by the specially created Committee on Climate Change (CCC) (s.32). This new, independent body is to provide expert advice to the Government on carbon budgets and meeting emission

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[1] Climate Change Act 2008 (c.27) available at http://www.opsi.gov.uk/acts/acts2008/ukpga_20080027_en_1.

reduction targets. Furthermore, the CCC must complete annual progress reports detailing how effectively the UK is moving towards its targets and budgets (s.36), to which the Government must then respond. A final key provision in the 2008 Act is a limit placed on the use of international carbon credits to meet the UK's targets and carbon budgets (s.11). In this respect, the CCC has a role in providing advice on how the Government should achieve an appropriate balance between domestic action and credits obtained at European and international levels for each of the three carbon budgets. For the initial 2008-2010 budgetary period a zero limit on the purchase of credits was set (excluding carbon units bought under the EU Emissions Trading System).

At the same time the Climate Change Act took effect in the UK, the Government also passed the Energy Act 2008[2] which was seen as contributing to the country's long-term energy and climate change strategy. In particular, the Energy Act 2008 updated and consolidated energy legislation so as to reflect the emergence of new, and renewable, technologies (notably carbon capture storage) and respond to the UK's need for secure energy supply (by for example considering offshore gas supply infrastructure).

The Work of the Committee on Climate Change

Instrumental to the success of the UK's climate change strategy has been the creation of the CCC,[3] to advise the Government on how it should meet its emission reduction targets, and report to parliament on progress made in reducing greenhouse gas emissions. In accordance with the 2008 Act, the CCC has also created a sub-committee on Adaptation to facilitate effective and timely preparation for the impacts of climate change in the UK. The first report of the CCC, *Building a low-carbon economy - the UK's contribution to tackling climate change,* was published in December 2008 (2008 Report).[4] In addition to confirming the 2050 target and

[2] Energy Act 2008 (c.32) available at http://www.opsi.gov.uk/acts/acts2008/ukpga_20080032_en_1.
[3] See the website of the Committee on Climate Change at http://www.theccc.org.uk/.
[4] Committee on Climate Change *Building a low-carbon economy - the UK's contribution to tackling climate change* (December 2008) available at http://www.theccc.org.uk/reports/building-a-low-carbon-economy.

outlining details of the various carbon budgets, the CCC considered whether the international aviation and shipping industries should be included in UK budgets. The 2008 Report recognised that whilst aviation and shipping emissions currently make a relatively small contribution to total greenhouse gas emissions, if unconstrained they will likely grow too much larger shares. As such, it is imperative that such emission growth is either significantly curtailed or alternatively, more stringent targets are established in other sectors to compensate for the difficulty of achieving cuts in these sectors.[5]

Aviation was recognised in the 2008 Report as requiring an international agreement. However, the CCC concluded that because aviation is included in the EU ETS, it is not essential to also include international aviation within UK national budgets. Furthermore, whilst international aviation would ideally be included in UK national budgets for completeness, there remain significant methodological problems in allocating the UK's international aviation emissions.[6] In light of the importance of including international aviation emissions in the UK's climate mitigation strategy, the Committee was requested to report annually on trends in aviation emissions, and did so for the first time in December 2009. The Report, *Meeting the UK aviation target – options for reducing emissions to 2050*, reflected the Committee's mandate to consider *inter alia* to what extent the proposed expansion of London's Heathrow airport could be compatible with the UK's 2050 emission reduction target.[7] The CCC concluded that taking into account prudent assumptions on the likely improvement in fleet fuel efficiency and biofuels penetration, demand growth of approximately 60% would be compatible with keeping CO2 emissions no higher than 2005 levels.[8] However, the CCC recognises that in the absence of a carbon price and with unconstrained airport expansion, UK aviation demand could grow over 200% by 2050, from 230 million annual passengers in 2005 to 695 million passengers in 2050.[9] As such, there is considerable effort required by the UK Government to address the escalating problem of aviation emissions. The CCC has advised that aviation CO2 emissions should be capped by way of either, a global sectoral deal, or

[5] Ibid, at p.305.
[6] Ibid, at p.306.
[7] Committee on Climate Change *Meeting the UK aviation target – options for reducing emissions to 2050* (December 2009) available at http://www.theccc.org.uk/reports/aviation-report.
[8] Ibid, at p.145.
[9] Ibid, at p.48.

through including domestic and international aviation emissions in national or regional emissions reduction targets.[10]

The 2008 Report also examined the extent to which shipping should be included within UK emission targets. In this respect, the CCC recognised that unconstrained growth in this sector could result in global CO2 emissions growing two to three times above current levels by 2050 and that it is, therefore, essential that international shipping emissions are included in overall emission targets and policy frameworks.[11] However, as there does not exist any current plan to include international shipping in the EU ETS, the Committee believed that a European only approach to shipping could be undermined by carbon leakage effects. As such, shipping requires a global sectoral agreement and it would thus not be appropriate at this stage to include international shipping emissions within the UK carbon budget.[12]

Low Carbon Transition Plan

In July 2009 the Government issued a white paper (in accordance with its obligations set out in the 2008 Act) requiring the Secretary of State to produce a report setting out (i) an indicative annual range for the net UK carbon account for each year, and (ii) proposals and policies for meeting the carbon budgets for the current and future budgetary periods.[13] The result is the *Low Carbon Transition Plan*[14] which aims to deliver emission cuts of 18% on 2008 levels by 2020. The Plan allocates individual carbon budgets to UK Government departments and requires them to create their own plans for executing such objectives. The key areas for development focus on the power sector, homes and communities, workplace and jobs, transport, and farming. Notably, the Plan identifies a goal of 40% of electricity from low-carbon sources as a result of moving towards renewables, carbon capture storage, and building new nuclear power stations. In November 2009 a new Energy Bill was

[10] Ibid, at p.42-43.
[11] *2008 Report,* at p.306.
[12] Ibid.
[13] Sections 12 and 14, Climate Change Act 2008.
[14] *The UK Low Carbon Transition Plan: National Strategy for Climate and Energy* (2009) available at http://www.decc.gov.uk/en/content/cms/publications/lc_trans_plan/lc_trans_plan.aspx.

introduced to Parliament which implements some of the key measures set out in the Low Carbon Transition Plan. It includes provisions on delivering a new financial incentive for carbon capture and storage, implementing mandatory social price support, and introducing a package of measures aimed at ensuring that the energy markets are working fairly for consumers and delivering secure and sustainable energy supplies. The Energy Bill passed through initial readings and was introduced in the House of Lords on 25 February 2010. Finally, highlighting the scope to take advantage of new climate-based markets, the Government published its *Industrial Strategy for the Development of Carbon Capture and Storage across the UK* (CCS Strategy) in March 2010 setting out how the UK can make the most from its knowledge and skills in engineering, geology and the subsea sector and become a centre for CCS innovation and business.[15] Accordingly, in addition to mitigation measures, government strategy also includes recognising potential areas of commercial development and contemplating ways in which such opportunities can be maximised by UK industry.

Conclusion

The recent developments and measures introduced by the UK in the area of climate change law and policy appear promising. However, there now needs to be a much greater focus on implementation to ensure these targets are met. There has already been a level of scepticism and public debate regarding some measures, such as the feed-in-tariffs to be paid to those that employ renewable energy technologies (in particular, solar panels).[16] Whilst the UK government appears to be making all the right noises at present, there needs to be greater substantive development on how such targets will be implemented and achieved before a more accurate account of UK climate change law will become evident.

[15] The *Industrial Strategy for the Development of Carbon Capture and Storage Across the* UK (2010) available at http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/ccs/occs/occs.aspx.

[16] See for example the debate on the *Guardian* website: http://www.guardian.co.uk/environment/feed-in-tariffs.