

## *The UK's Climate Change Act 2008 – A Prescriptive Road Map for a Greener Future, or All Style and No Substance?*

BY JONATHAN SIMPSON, DAVID MANNY AND TYLER RUDD

The Climate Change Act 2008 entered the statute books in the UK on the 26 November 2008. Accompanying clarification notes followed on the 2 December 2008. The aims of this legislation are, amongst other things, to:

- set a target for the year 2050 for the reduction of targeted greenhouse gas emissions;
- provide for a system of carbon budgeting;
- establish a Committee on Climate Change;
- confer powers to establish trading schemes for the purpose of limiting greenhouse gas emissions or encouraging activities that reduce such emissions or remove greenhouse gas from the atmosphere; and
- make provisions about adaptation to climate change.

The legislation puts a real emphasis on reporting.

With this legislation, the UK is attempting to set up a framework to achieve long term goals relating to the impact of climate change. The UK appears to be a world leader in this domain so far.

The main provisions of the Act are as follows:

### **Setting Emissions Reduction Targets in Statute and Carbon Budgeting**

The Act establishes medium and long-term emission reduction targets. The targets set are in the form of carbon budgets which are defined as the net UK carbon account (meaning the level of net UK emissions of targeted greenhouse gases (i.e., those stipulated in the Act, which include carbon dioxide, methane and nitrous oxide)) for each succeeding period of five (5) years, starting with the period 2008-2012.

Carbon budget periods are to be set by the Secretary of State (Energy and Climate Change). They must be set three (3) periods ahead. The first three (3) periods must be set before the 1st June 2009. The intention is to provide certainty regarding UK carbon budgets in the medium term.

The carbon budget for the budgetary period including the year 2020 must be such that the annual equivalent for the carbon budget for the period is at least 26% lower than the 1990 baseline. For the year 2050, the target for the net UK carbon account is to be at least 80% lower than the 1990 baseline.

These target percentages may be amended if there have been significant developments in scientific knowledge about climate change or European or international law or policy.

The setting of carbon budgets and amending of target percentages must take into account the advice of the Committee on Climate Change and take into account any representations made by the other national authorities and must be made within a specified time limit.

A number of matters must be taken into account when deciding on carbon budgets, including economic and fiscal circumstances. The list provided is not exhaustive.

An order setting the carbon budget for a period may not be revoked after the date by which a budget for the period was required to be set, which suggests that future governments will not be able to revoke the order. However, the carbon budget may be amended after the date by which it would have been set if it appears that significant changes affecting the basis on which the previous decision was made, have arisen. There are similar provisions once the period has begun. But the order may not be amended once the period has ended.

Proposals and policies must be prepared, which will enable carbon budgets that have been set to be met. These must contribute to sustainable development. No further guidance is offered in the Act as to their preparation.

In preparing these proposals and policies and in exercising its functions generally regarding achieving targets and carbon budgeting, the Secretary of State must have regard for the need for UK domestic action on climate change.

### **Committee on Climate Change**

The Committee's main duties consist of advising on the best trajectory to achieve the 2050 target, the level of carbon budgets and on how much effort should be made by the part of the economy in question, as well as reporting on progress, what further progress should be made and if the budgets are going to in fact be met. The Committee must give reasons for its advice, and is required to publish it.

It should also advise on how to treat emissions of targeted greenhouse gases from international aviation and international shipping and can assist in providing further advice or other assistance on request.

The Committee has certain powers including being able to enter into a contract. Provisions regarding its membership, staff, procedures and administrative requirements are set out in the Act. The Committee can receive grants and can also receive directions on how to carry out its functions.

### **Trading Schemes**

Under the Act, powers are available to create new domestic trading schemes to reduce emissions through secondary legislation.

A trading scheme is a scheme that operates by limiting or encouraging the limitation of activities that consists of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions, or encouraging activities that consist of, or that cause or contribute, directly or indirectly, to reductions in greenhouse gas emissions or the removal of greenhouse gas from the atmosphere. This would apply in particular to activities involving the consumption of energy, the use of materials in whose production energy is consumed, etc.

Before establishing such a trading scheme, the relevant authorities must seek and take into account the advice of the Committee on Climate Change and must consult those likely to be affected by the regulations.

### **Impact of and Adaptation to Climate Change**

The Act lays down a duty on the Secretary of State to prepare reports containing an assessment of the risks for the UK of the current and predicted impact of climate change. This must contribute to sustainable development. The Act also gives powers to direct other bodies to prepare risk analyses and programmes of action

and advisory and progress-reporting functions to the Committee on Climate Change.

### **New Reporting Framework**

A new reporting framework has been put in place by the Act. It provides for a system of annual reporting by the Government on the UK's greenhouse gas emissions. The new Committee on Climate Change has a specific role in reporting annually on the progress, with the Government required to respond to this progress report.

### **Emissions from International Aviation and International Shipping**

The Act provides that currently, emissions of greenhouse gases from international aviation and international shipping do not count as emissions from sources in the UK. There is no definition as to what should be regarded as international aviation or international shipping. However, the Act provides that the Secretary of State must, before the end of 2012, make provisions as to the circumstances and extent to which emissions from international aviation or international shipping are to be regarded as emissions from sources in the UK.

### **Miscellaneous**

The Act provides for a power to put in place waste reduction schemes through pilot incentives as well as a power to introduce charges for single use carrier bags. It also amends the Energy Act 2004 in terms of renewable transport fuel obligations.

### **Conclusion**

This legislation is intended to be a framework for the UK government's response to climate change. Everyone would agree that the political intent driving the legislation is a good one. The question is whether or not this framework will succeed in achieving the goals set out.

Some commentators argue that being a world leader in this field is pioneering and takes the UK

to the "next level" by holding politicians to account on the progress to cut emissions. Others disagree and express concerns on this unilateral drive to reduce carbon emissions in that it may have negative effects on the British economy by driving businesses away. Many have described the targets as "onerous" and "unrealistic".

Concerns have been raised on the lack of consultation prior to the adoption of the Act and on the lack of sanctions provided for by the legislation. The cost of putting these measures in place has not been expressly discussed. Also, why does the UK need its own target-based bill given that the EU sets targets for the European Union?

The Act seems intended to remove the possibility of proposals being reversed by a future government. In reality, this is not the case as the targets and the carbon budgets themselves may be amended and there is effectively nothing to stop subsequent governments from revoking or amending previous legislation.

Some issues, such as emissions of greenhouse gasses from international aviation and international shipping in UK airspace and waters respectively are yet to be properly addressed and leave many questions unanswered.

Our view is that this is a piece of legislation that demonstrates the current government's desired green credentials and taps into the current "green" thinking. However, it is sufficiently weak as to make this green vision subject to changes in the political and economic climate. The real test will be what form subsequent targets, reports, secondary and primary legislation take.

At this stage, it is unclear what impact this legislation will have on entities such as developers, emissions traders and the energy industry in general, as we will have to await issue of subsequent carbon budgets, reports and the legislation needed to ensure the achievement of these lofty emissions targets.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings London lawyers:*

Jonathan Simpson  
+44 20 3023 5153  
jonathansimpson@paulhastings.com

David Manny  
+44 20 3023 5172  
davidmanny@paulhastings.com

Tyler Rudd  
+44 20 3023 5169  
tylerrudd@paulhastings.com